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# TEXAS REGISTER

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# TEXAS REGISTER

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# IN THIS ISSUE

## **GOVERNOR**

Appointments.....	1003
Proclamation 41-3959.....	1003

## **ATTORNEY GENERAL**

Opinions.....	1005
---------------	------

## **PROPOSED RULES**

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### ADMINISTRATION

10 TAC §1.24.....	1007
10 TAC §1.24.....	1008

### **TEXAS STATE BOARD OF PLUMBING EXAMINERS**

#### ADMINISTRATION

22 TAC §§361.1, 361.4, 361.6, 361.10, 361.12, 361.15.....	1011
---	------

### **TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS**

#### PRACTICE AND PROCEDURE

22 TAC §575.26.....	1019
---------------------	------

### **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

#### MUNICIPAL SOLID WASTE

30 TAC §330.647.....	1020
----------------------	------

### **TEXAS VETERANS COMMISSION**

#### ADMINISTRATIVE GENERAL PROVISIONS

40 TAC §452.2.....	1023
--------------------	------

#### TRANSPORTATION SUPPORT SERVICES

40 TAC §§459.1 - 459.6.....	1024
-----------------------------	------

## **ADOPTED RULES**

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

1 TAC §372.355.....	1027
1 TAC §372.406, §372.410.....	1027
1 TAC §372.1507.....	1027

### **TEXAS DEPARTMENT OF AGRICULTURE**

#### LICENSING

4 TAC §2.10.....	1028
------------------	------

#### SEED QUALITY

4 TAC §9.1.....	1029
-----------------	------

4 TAC §9.2, §9.3.....	1029
4 TAC §9.4, §9.5.....	1029
4 TAC §9.7.....	1029
4 TAC §9.9, §9.11.....	1030
4 TAC §9.12.....	1030

## WEIGHTS AND MEASURES

4 TAC §12.1.....	1031
4 TAC §§12.10 - 12.15.....	1031
4 TAC §12.21.....	1032
4 TAC §12.30.....	1032
4 TAC §§12.40 - 12.42.....	1032
4 TAC §12.60, §12.61.....	1032
4 TAC §12.70.....	1032
4 TAC §§12.71 - 12.74.....	1033

## COTTON PEST CONTROL

4 TAC §20.1, §20.3.....	1033
4 TAC §§20.12 - 20.15, 20.17.....	1034
4 TAC §20.30, §20.31.....	1034

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### ADMINISTRATION

10 TAC §1.11.....	1034
-------------------	------

#### HOMELESSNESS PROGRAMS

10 TAC §7.8.....	1035
10 TAC §7.8.....	1036
10 TAC §7.25.....	1037
10 TAC §7.25.....	1038
10 TAC §§7.34, 7.36, 7.39, 7.40.....	1039
10 TAC §§7.34, 7.36, 7.39, 7.40.....	1040

### **TEXAS HOLOCAUST, GENOCIDE, AND ANTISEMITISM ADVISORY COMMISSION**

#### COMMISSION PROCEDURES

13 TAC §§191.1, 191.3 - 191.9.....	1043
------------------------------------	------

### **TEXAS EDUCATION AGENCY**

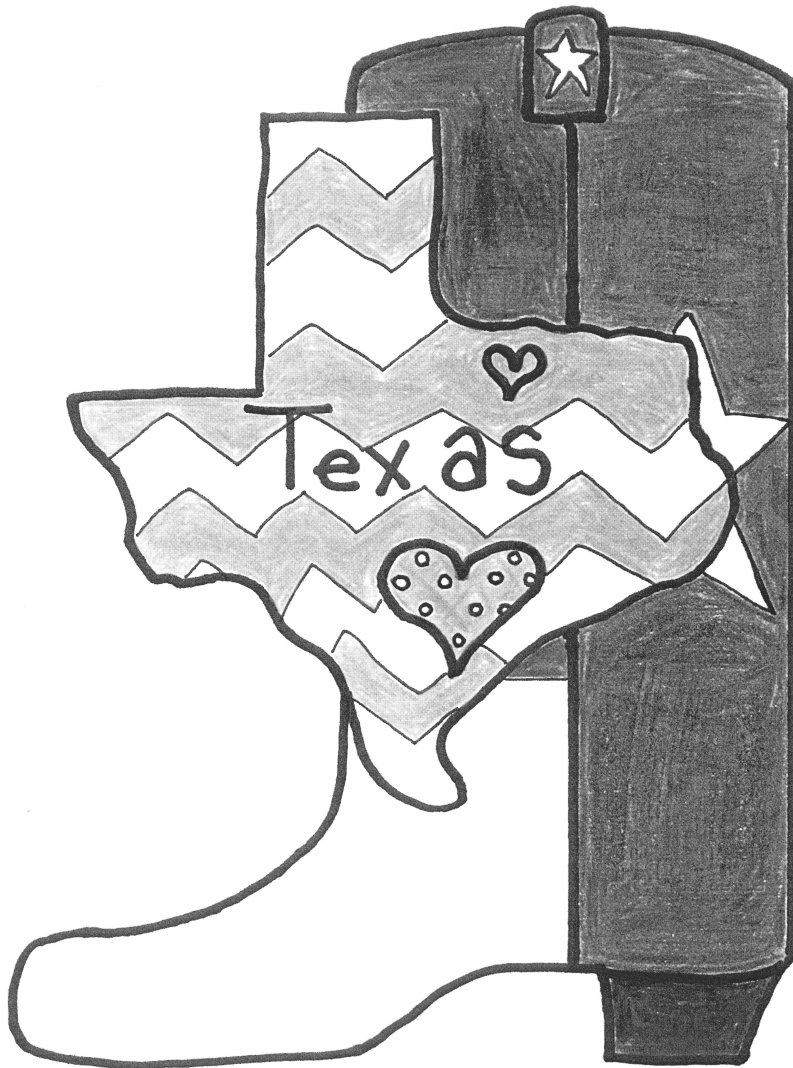
#### STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §§33.1, 33.5, 33.10, 33.15, 33.20, 33.25, 33.30, 33.35, 33.40, 33.45, 33.50, 33.55, 33.60, 33.65, 33.67.....	1044
19 TAC §§33.3, 33.4, 33.6 - 33.8.....	1044

### **HEALTH AND HUMAN SERVICES COMMISSION**

TEXAS HOME LIVING (TxHmL) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)	
26 TAC §§262.1 - 262.9 .....	1059
26 TAC §§262.101 - 262.107 .....	1066
26 TAC §§262.201, §262.202 .....	1070
26 TAC §§262.301 - 262.304 .....	1071
26 TAC §262.401 .....	1072
26 TAC §§262.501 - 262.508 .....	1074
26 TAC §§262.601, §262.602 .....	1076
26 TAC §262.701 .....	1076
26 TAC §262.801 .....	1079
HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)	
26 TAC §§263.1 - 263.9 .....	1098
26 TAC §§263.101 - 263.108 .....	1106
26 TAC §263.201 .....	1109
26 TAC §§263.301 - 263.304 .....	1110
26 TAC §263.401 .....	1113
26 TAC §§263.501 - 263.503 .....	1113
26 TAC §263.601 .....	1117
26 TAC §§263.701 - 263.708 .....	1119
26 TAC §263.801, §263.802 .....	1121
26 TAC §§263.901 - 263.903 .....	1121
26 TAC §263.1000 .....	1128
TRANSITION ASSISTANCE SERVICES	
26 TAC §§272.1, 272.3, 272.5, 272.7 .....	1130
26 TAC §272.11 .....	1131
26 TAC §272.33 .....	1131
26 TAC §272.41 .....	1132
<b>TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>	
USE OF RECLAIMED WATER	
30 TAC §210.5 .....	1132
<b>TEXAS WATER DEVELOPMENT BOARD</b>	
STATE WATER PLANNING GUIDELINES	
31 TAC §358.6 .....	1134
FINANCIAL ASSISTANCE PROGRAMS	
31 TAC §363.2 .....	1138
31 TAC §363.45 .....	1139
DRINKING WATER STATE REVOLVING FUND	
31 TAC §371.1 .....	1141
31 TAC §371.64 .....	1144
CLEAN WATER STATE REVOLVING FUND	
31 TAC §375.1 .....	1146
31 TAC §375.84 .....	1149
<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>	
TAX ADMINISTRATION	
34 TAC §3.41 .....	1149
34 TAC §3.102 .....	1150
<b>TEXAS COMMISSION ON JAIL STANDARDS</b>	
HEALTH SERVICES	
37 TAC §273.2 .....	1153
<b>DEPARTMENT OF AGING AND DISABILITY SERVICES</b>	
INTELLECTUAL DISABILITY SERVICES- -MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES	
40 TAC §§9.151, 9.152, 9.154 - 9.170, 9.186, 9.189 - 9.192 .....	1154
40 TAC §§9.551, 9.552, 9.554, 9.556, 9.558, 9.560 - 9.563, 9.566 - 9.568, 9.570, 9.571, 9.573 - 9.575, 9.582, 9.583 .....	1154
<b>RULE REVIEW</b>	
<b>Proposed Rule Reviews</b>	
Texas Department of Housing and Community Affairs .....	1157
Texas State Library and Archives Commission .....	1157
Texas Commission on Environmental Quality .....	1157
<b>Adopted Rule Reviews</b>	
Department of State Health Services .....	1159
Health and Human Services Commission .....	1159
<b>IN ADDITION</b>	
<b>Coastal Bend Workforce Development Board</b>	
Request for Statement of Qualifications for Financial Audit Services (RFQ No. 23-03) .....	1161
<b>Office of Consumer Credit Commissioner</b>	
Adjustment of Maximum Fee Amounts .....	1161
Notice of Rate Ceilings .....	1162
Notice of Rate Ceilings .....	1162
<b>Credit Union Department</b>	
Application to Expand Field of Membership .....	1162
Notice of Final Action Taken .....	1162
<b>Texas Commission on Environmental Quality</b>	
Agreed Orders .....	1163

Combined Notice of Public Meeting and Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) and Notice of Application and Preliminary Decision for TPDES Permit for Industrial Wastewater New Permit No. WQ0005397000.....	1164	Notice of Water Quality Application .....	1175
Correction of Error.....	1166	Notice of Water Rights Application.....	1175
Correction of Error.....	1166	Revised Combined Notice of Public Meeting and Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) and Notice of Application and Preliminary Decision for TPDES Permit for Industrial Wastewater New Permit No. WQ0005397000 .....	1177
Enforcement Orders .....	1166	<b>Texas Facilities Commission</b>	
Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration No. 171256 .....	1167	Request for Proposals (RFP) #303-3-20747 .....	1178
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions .....	1168	<b>General Land Office</b>	
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions .....	1169	Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....	1179
Notice of Opportunity to Comment on Shutdown/Default Orders of an Administrative Enforcement Action .....	1170	Notice of Availability - Texas Coastal Management Program .....	1182
Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill .....	1170	<b>Texas Health and Human Services Commission</b>	
Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 330 .....	1171	Notice of Public Hearing on Proposed Payment Rates for the STAR Kids/STAR Health Medically Dependent Children's Program (MDCP) Out-of-Home Respite Retroactive to December 1, 2022.....	1183
Notice of Public Meeting for TPDES Permit for Municipal Wastewater Major Amendment Permit No. WQ0011041002.....	1172	Public Notice - Texas State Plan for Medical Assistance Amendment.....	1183
Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016036001 .....	1172	<b>Texas Department of Housing and Community Affairs</b>	
Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016148001 .....	1173	Notice of Public Comment Period and Public Hearing on Draft 2023 Department of Energy Weatherization Assistance Program State Plan .....	1184
Notice of Receipt of Application and Intent to Obtain a Type V Municipal Solid Waste Permit.....	1174	<b>Texas Department of Insurance</b>	
		Correction of Error.....	1184



# THE GOVERNOR

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

## Appointments

### Appointments for February 10, 2023

Appointed to the Industry-Based Certification Advisory Council for a term to expire February 1, 2027, Donna G. McKethan of Waco, Texas (Ms. McKethan is being reappointed).

### Appointments for February 13, 2023

Appointed to the Appraisal Management Companies Advisory Committee for a term to expire January 31, 2025, Raheela M. Ahsan of Dallas, Texas (replacing John H. Eichelberger, III of Houston, whose term expired).

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2026, Tara Turk-Zaafran of Houston, Texas (Ms. Turk-Zaafran is being reappointed).

### Appointments for February 14, 2023

Appointed to the Texas Holocaust, Genocide, and Antisemitism Advisory Commission for a term to expire February 1, 2029, Jeffrey L. Beck of Dallas, Texas (Mr. Beck is being reappointed).

Appointed to the Texas Holocaust, Genocide, and Antisemitism Advisory Commission for a term to expire February 1, 2029, Kenny E. "Ken" Goldberg of Dallas, Texas (Mr. Goldberg is being reappointed).

Appointed to the Broadband Development Office Board of Advisors for a term to expire February 1, 2025, Adriana R. Cruz of Austin, Texas (Ms. Cruz is being reappointed).

Greg Abbott, Governor

TRD-202300703



## Proclamation 41-3959

### 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 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, pursuant to the Texas Disaster Act of 1975, I have issued a series of executive orders and suspensions of Texas laws aimed at protecting the health and safety of Texans, ensuring uniformity throughout the State, and achieving the least restrictive means of combating the evolving threat posed by COVID-19; and

WHEREAS, Executive Orders GA-13, GA-37, GA-38, GA-39, and GA-40 remain in effect with "the force and effect of law" under Section 418.012 of the Texas Government Code; and

WHEREAS, ending the disaster declaration would terminate the executive orders that protect Texans' freedom by suspending the power of local governments to require masks, compel vaccinations, and close businesses; and

WHEREAS, I intend to keep these executive orders and suspensions in place until the Legislature can enact laws this session to prohibit local governments from imposing restrictions like mask mandates and vaccine mandates; and

WHEREAS, renewing the disaster declaration in no way infringes on the rights or liberties of any law-abiding Texans; and

WHEREAS, under the Texas Disaster Act of 1975, a state of disaster continues to exist in all counties during Texas' successful economic recovery from 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.

Under the terms of Executive Orders GA-38, GA-39, and GA-40, all of which remain in effect by virtue of this renewal, local governments are divested of any lawful authority to subject Texans to mask mandates, vaccine mandates, or business-closure mandates. As a matter of state law, COVID-19 cannot justify those local intrusions upon personal liberty.

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.

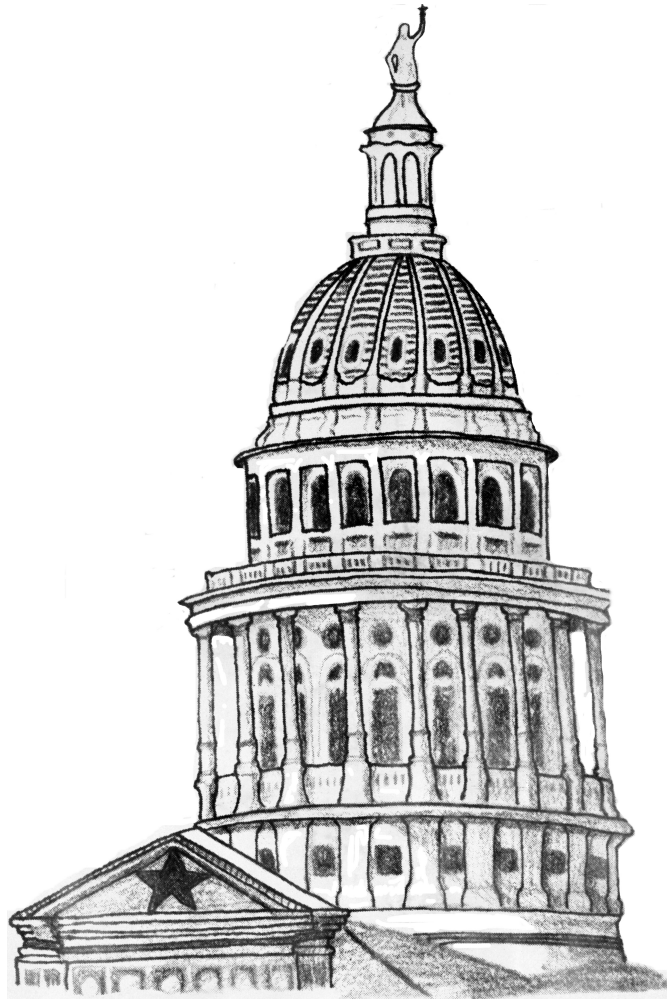
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

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 14th day of February, 2023.

Greg Abbott, Governor

TRD-202300702







# THE ATTORNEY GENERAL

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

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

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

## Opinions

### Opinion No. KP-0427

Ms. Kelly Parker

Executive Director

Texas Optometry Board

333 Guadalupe Street, Suite 2-420

Austin, Texas 78701-3942

Re: Authority of the Texas Optometry Board under section 351.005 of the Occupations Code to take action against licensed optometrists who are independent contractors (RQ-0463-KP)

### SUMMARY

The Legislature directs that Occupations Code section 351.408 be liberally construed to prevent manufacturers, wholesalers, and retailers of ophthalmic goods from controlling or attempting to control optometry. Given that directive and the express terms of subsection 351.408(d), a court would likely conclude that a legal entity wholly owned and controlled by at least one licensed physician that is also a manufacturer, wholesaler, or retailer of ophthalmic goods is exempt from Occupations Code section 351.408 only if the legal entity has offices at three or fewer locations.

### Opinion No. KP-0428

The Honorable James M. Tirey

Hale County Attorney

500 Broadway, Suite 340

Plainview, Texas 79072

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

### SUMMARY

Chapter 176 of the Local Government Code requires disclosure when a local government entity contracts or considers contracting with a vendor with whom a local government officer of the entity has a specified employment, business, or family relationship. Chapter 176 likely applies when a law firm contracts with a city and the law firm employs the son-in-law of the city manager. The chapter does not prohibit a contract in such circumstances, but it requires the officer to file a con-

flikt-of-interest statement and the vendor to file a conflict-of-interest questionnaire.

Whether a lawyer or law firm's employment in particular circumstances would constitute a conflict-of-interest under the Texas Disciplinary Rules of Professional Conduct involves fact-intensive questions that cannot be resolved in an Attorney General opinion.

### Opinion No. KP-0429

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

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

### SUMMARY

Section 203.001 of the Local Government Code makes a justice of the peace, as an elected county officer, the records management officer for his or her office for purposes of the Local Government Records Act.

We cannot conclude as matter of law that a commissioners court, in selecting and purchasing a computer software system for the county over the objection of the justice of the peace, impermissibly intrudes on the officer's sphere of authority in the fulfillment of the officer's records management duties under the Act.

A justice of the peace seeking recourse would need to challenge the commissioners court's actions by invoking a district court's supervisory jurisdiction in article V, section 8 of the Texas Constitution through a properly filed lawsuit. A district court reviewing the matter may not substitute its policy judgement for that of the commissioners court but may set aside any actions of the commissioners court that are illegal, unreasonable, or arbitrary.

### Opinion No. KP-0430

The Honorable Micheal E. Jimerson

Rusk County & District Attorney

115 North Main, Suite 302

Henderson, Texas 75652

Re: Required mental state under Local Government Code section 111.012, which creates a criminal offense for an officer, employee, or official of a county government who refuses to comply with applicable budget preparation requirements (RQ-0471-KP)

**S U M M A R Y**

Pursuant to Local Government Code section 111.012, an officer, employee, or official of a county government who refuses to comply with the budget preparation duties in subchapter A of chapter 111 commits an offense. Section 111.012 does not prescribe the culpable mental state but neither does it plainly dispense with any mental element. Accordingly, Penal Code subsection 6.02(c) provides that "intent, knowledge, or recklessness" suffice to establish criminal responsibility.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202300679

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 14, 2023



# 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 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

#### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §1.24

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.24, Information Security and Privacy Requirements. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

##### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the security of personal information.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor would the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be elimination of an outdated rule while proposing a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 24, 2023 to March 27, 2023, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 27, 2023.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed section affects no other code, article, or statute.

§1.24. *Information Security and Privacy Requirements.*

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

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300641

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 26, 2023

For further information, please call: (512) 475-3959



## 10 TAC §1.24

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.24, Information Security and Privacy Requirements. The purpose of the proposed rule is to make it more clear who at the Department should be contacted for ISPA related issues.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being proposed under exception item (6) which provides for an exception when necessary to protect the health, safety, and welfare of the residents of this state. Through protection of private information, the welfare of residents is protected. No costs are associated with this proposed rule.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to the rule governing the security of personal information.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule does not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand, or repeal an existing regulation, but merely revises a rule.
7. The new rule does technically increase the number of individuals to whom this rule applies, as several new provisions are being specified; however, those Contractors subject to those provisions of the rule are already required to satisfy the state and federal regulations specified. This rule merely formalizes these requirements in one place, under rule, and provides the specific detail on the agreement required of Contractors reflecting their adherence to the requirements.

8. The new rule will not negatively or positively affect the state's economy.

### b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule provides specific detail on the handling by Department Contractors of personal information. Contractors subject to those provisions of the rule are already required to satisfy the state and federal regulations specified. This rule merely formalizes these requirements in one place, under rule; and provides the specific detail on the agreement required of Contractors reflecting their adherence to the requirements. Other than in the case of a small or micro-business that participates as a Contractor in one of these programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate as a Contractor in a program, the requirements of the rule - already provided for in other state and federal regulations - will not require an onerous burden.

3. The Department has determined that because this rule relates only to a revision to a rule, and the rule changes do not specifically relate to geographic location or business size, there will be no economic effect on small or micro-businesses or rural communities.

### c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

### d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to requirements of existing and future Department Contractors and echoes state and federal regulations already in effect.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule is applicable to all properties statewide, there are no "probable" effects of the new rule on particular geographic regions.

### e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be improved clarity on the process for Contractors to submit their agreements. There will be limited economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule are already applicable under other state and federal regulations.

### f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the

state or local governments as the implementation of this rule generates no fees, nor requires any cost.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 24, 2023 to March 27, 2023, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 27, 2023.

STATUTORY AUTHORITY. The proposal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

§1.24. Information Security and Privacy Requirements.

(a) Purpose. The purpose of this rule is to provide the mechanism by which the Department will ensure the security and privacy of Protected Information belonging to persons who do business with the Department and those they serve.

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

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this title.

(2) Computing Device--Any computer, laptop, server, smart phone, or any other data processing device that is used to connect to the Department's network.

(3) Contractor--A third party, including, but not limited to, outside auditors and legal counsel, funding agencies, Vendors or Subrecipients, including any and of its Representatives that may gain access to Protected Information on account of a contract with the Department.

(4) Criminal History Records Information--For the purposes of Tex. Gov't Code Chapter 411, Subchapter F, information collected about a person by a Criminal Justice Agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. The term does not include:

(A) Identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or

(B) Driving record information under Subchapter C, Chapter 521 Transportation Code.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Financial Statements of a Tax Credit Applicant--For purposes of Tex. Gov't Code §2306.6717(d)(Public Information and Hearings), a formal statement of the financial activities of a Low Income Housing Tax Credit Applicant, submitted to the Department as part of a Low Income Housing Tax Credit Application, including but not limited to, the balance sheet, income statement, cash flow statement or changes in equity.

(7) Information Resources--The procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

(8) Information Security and Privacy Agreement (ISPA)--An agreement between the Department and a Contractor implementing information security and privacy requirements of the Department.

(9) Non-Public Personal Information--For purposes of the Graham-Leach-Bliley Act (15 USC §§6801-6809 and 6821-6827), and implementing regulations, personally identifiable financial information provided to the Department or any of its Contractors, resulting from any transaction with, or any service performed for a client or consumer, or otherwise obtained by the Department or its Contractors, unless the information is otherwise publically available.

(10) Personal Identifying Information--For purposes of Tex. Bus. & Com. Code Chapter 521 (Unauthorized Use of Identifying Information), and any implementing regulations, information that alone or in conjunction with other information identifies an individual, including an individual's name, Social Security number, date of birth, or government-issued identification number, mother's maiden name, unique biometric data including fingerprint, voice print, retina or iris image, unique electronic identification number, address, or routing code, and telecommunication access devices as defined by Tex. Penal Code §32.51.

(11) Personal or Business Financial Information--For purposes of Tex. Gov't Code §2306.039 (Open Meetings and Open Records), any personal or business financial information including, but not limited to, Social Security numbers, tax payer identification numbers, or bank account numbers submitted to the Department to receive a loan, grant, or other housing assistance by a housing sponsor, individual or family.

(12) Protected Health Information--For purposes of Tex. Health & Safety Code Chap. 181 (adopting definitions in 45 CFR §160.103), any information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, and that identifies the individual, or can be used to identify the individual.

(13) Protected Information--Protected Health Information, Personal Identifying Information, Sensitive Personal Information, Personal or Business Financial Information, Non-Public Personal Information, Financial Statement of a Tax Credit Applicant, WAP Applications and Participation Information, Criminal History Records Information, and Victims of Violence Information.

(14) Representative--Any officer, employee, contractor, subcontractor, member, director, advisor, partner, or agent of Vendor/Subrecipient, or any person serving in such a role, however titled or designated.

(15) Sensitive Personal Information--For purposes of Tex. Bus. & Com. Code Chapter 521 (Unauthorized Use of Identifying Information), an individual's first name or first initial and last name in combination with any one or more of the following items if the name and items are not encrypted:

(A) Social Security number;

(B) Driver's license or government-issued identification number;

(C) Account or credit/debit card number in combination with any required security code, access code, or password that would permit access; or

(D) Information that identifies or reveals an individual and the physical or mental health or condition of the individual, the provision of health care to the individual, or payment for the provision of health care to the individual.

(E) The term does not include publicly available information that is lawfully made publicly available.

(16) Subrecipient--An organization with whom the Department contracts, and entrusts to administer federal or state programs or funds, including but not limited to, units of local government, non-profit and for-profit corporations, administrators, community action agencies, collaborative applications, sub-grantees, developers, owners, land banks, participating mortgage lenders, and non-profit owner-builder housing providers. This also includes an Affiliate of a Subrecipient.

(17) Vendor--A person or organization that supplies goods or services, properly procured under relevant laws, to the Department.

(18) Victims of Violence Information--Any information submitted to a covered housing provider, including the Department and its Contractors pursuant to 24 CFR §5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking. Also included pursuant to Tex. Gov't Code §552.138 is information regarding the location or physical layout, an employee, volunteer, former or current client, or the provision of services to a former or current client, a private donor, or a member of a board of directors or board of trustees of a family violence shelter center, victims of trafficking shelter center, or sexual assault program.

(19) WAP Applications and Participation Information--For purposes of Weatherization Program Notice 10-08, U.S. Department of Energy, issued February 1, 2010, regarding the Department of Energy Weatherization Assistance Program (WAP), any specifically identifying information related to an individual's eligibility application for WAP or the individual's participation in WAP, such as name, address, or income information.

(c) Applicability and Implementation.

(1) This rule applies to Contractors as defined in subsection (b)(3) of this section. This rule is not applicable to third parties that contract with the Department but have no access to Department Protected Information.

(2) Contractors with Department contracts that are active on the effective date of this rule shall have 180 calendar days from the effective date of this rule to enter into an ISPA with the Department. Contractors that execute new Department contracts or contract renewals on or after the effective date of this rule shall enter into an ISPA with the Department no later than the date of contract execution, if an ISPA with the Department is not already in place. The ISPA shall be in a form provided by the Department on its website. A Contractor must download, execute and return the contract according to instructions on the website and as directed by the Program Services Division of the Department. A Contractor need only execute one ISPA, even if they participate with the Department in multiple programs or activities.

(3) The ISPA shall be effective with respect to all current and future contracts that Contractor has or will have with the Department for as long as the Contractor has access to Protected Information. Contractors receiving awards or contracts after the effective date of this rule must have an executed ISP Agreement on file with the Department's Program Services Division or enter into an ISP Agreement before work can begin on the new award or contract.

(4) Contractor and Department may agree to eliminate or reduce access to, or the generation of, any class of Protected Information related to Contractor's obligations to the Department, provided it does not impair Contractor's ability to fulfill its obligations to the Department.

(5) Contractor shall accept responsibility for all Representatives and ensure the safeguarding of Protected Information in accordance with applicable federal and state laws, and the terms and conditions set forth in the ISPA.

(6) The Department may, in its sole discretion, require Contractor to amend an ISPA in order to conform to state and/or federal law.

(d) ISPA Security Measures. The ISPA shall include, among other requirements:

(1) Security measures for devices that connect to the Department network, and

(2) Security measures for maintenance of Department information external to the Department network, including, but not limited to:

(A) Maintaining an inventory of all information technology (IT) assets;

(B) Implementing and maintaining a risk management program;

(C) Ensuring information is recoverable in accordance with risk management decisions;

(D) Adhering to monitoring techniques for detecting, reporting, and investigating security incidents;

(E) Providing IT security training to employees;

(F) Conducting criminal background checks on employees with access to department information;

(G) Separating development and production environments;

(H) Following a software change control process;

(I) Maintaining and following an IT security policy that has been approved by the department; and

(J) Implementing other requirements reasonably necessary to ensure the security and privacy of Protected Information in the Contractor's possession or control.

(e) Breach. In the event of an actual or suspected breach involving Department Private Information stored by the Contractor, Contractor shall promptly notify the Department no later than twenty-four hours after discovery of the incident. The Contractor will coordinate and cooperate fully with the Department in making all breach notifications and taking all actions required by law to effect the required notifications.

(f) Texas Public Information Act. If Contractor receives a request pursuant to the Texas Public Information Act for Information maintained by Contractor on account of a contract with TDHCA, Contractor shall notify the Department within three calendar days of the receipt of the request by forwarding the request to [open.records@tdhca.state.tx.us](mailto:open.records@tdhca.state.tx.us)

(g) Department Review. Contractor and Representatives shall permit Department to conduct periodic IT general controls audits, Internet security scans, and internal network vulnerability assessments, and contract monitoring audits at reasonable times, and upon reasonable notice. Such reviews may be conducted by the Department, the Texas State Auditor's Office, the Texas Department of Information Resources, an applicable federal oversight agency, or any third parties under contract with one of these agencies.

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

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300642

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 26, 2023

For further information, please call: (512) 475-3959



## TITLE 22. EXAMINING BOARDS

### PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

#### CHAPTER 361. ADMINISTRATION

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 22 TAC §§361.1, 361.4, 361.6, 361.10, 361.12, 361.15

The Texas State Board of Plumbing Examiners (Board or TS-BPE) proposes amendments to the existing rules at 22 Texas Administrative Code (TAC), Chapter 361, §§361.1, 361.4, 361.6, 361.10, 361.12, and 361.15, all of which concern definitions and general provisions. The proposed amendments are referred to as the "proposed rules."

###### EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The proposed rules implement changes to Texas Occupations Code, Chapter 1301 (Plumbing License Law or PLL) as amended by House Bill 636 (HB 636), 87th Texas Legislature, Regular Session, 2021 and Board efforts to improve regulation of the industry by simplifying the rules as part of its four-year rule review. The proposed rules simplify the existing rules by eliminating unnecessary language and internal references. This allows the rules to stay current regardless of changes to referenced laws or rules. In addition, the Board has sought to expand the definition of "Direct Supervision" to modernize the rule to address current industry practice post-pandemic.

HB 636 amended the Plumbing License Law. Statutory changes eliminated the requirement that a responsible master plumber (RMP) complete an approved training program regarding the laws and rules applicable to the operation of a plumbing business in Texas. HB 636 added a qualification path for licensure as a Tradesman-Limited Plumber upon successful examination and completion of a career and technology education program offered by a high school or institution of higher education approved by Texas Education Agency and the Board. HB 636 further amended Section 1301.404 to vest the authority for the administrative approval of continuing professional education programs and instructors in the Executive Director rather than the Board. HB 636 amended Section 1301.304 to move the responsibility to investigate violations of the PLL or rules from the Enforcement Committee to the Board, or a Board-designated employee. The proposed rules facilitate the statutory changes made by HB 636.

The Board, under its general rule-making authority in Section 1301.251 of Texas Occupations Code and part of its four-year

rule review of the existing rules at 22 Texas Administrative Code (TAC) Chapter 361, initiated a rule simplification initiative to make the rules easier to understand and enforce by eliminating unnecessary language, adding clarifying language, and restructuring regulations to make the rules more efficient. Unnecessary internal references to rule and statute have been eliminated to keep the rules current regardless of changes to statute and rule.

###### SECTION BY SECTION SUMMARY

Section 361.1 lists definitions. The definitions do not create any affirmative duty on or regulation of registrants or licensees. The definitions simply define terms for use by the rules and PLL. The following definitions have been amended as follows:

(3) Advisory Committee: The language has been updated to be more concise and eliminates unnecessary and outdated rule reference. This allows the rules to stay current regardless of changes to referenced laws or rules.

(9) Certificate of Insurance. The language has been updated to be more concise and eliminates unnecessary and outdated rule and statutory references. This allows the rules to stay current regardless of changes to referenced laws or rules.

(14) Complaint. The language has been updated to be more concise.

(18) Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include virtual visual, real-time communication. This rule is amended on a recommendation by the workgroup. The pandemic created necessary social-distancing practices for virtual supervision to ensure worker safety across all industries. Technology supported social distancing by providing the capability to visually stream or project the job site in real-time such as on Facetime, Zoom, etc. These practices demonstrated that such technology could be successfully utilized to provide service and supervision. As such, the definition is amended to allow a Responsible Master Plumber (RMP) the flexibility to choose how they supervise their staff aided by technology as they see fit. This rule does not alleviate the responsibility of the RMP from adequate supervision or from ensuring that work is performed to code. It is in the RMP's discretion to utilize optional technology as they deem it appropriate given their job sites, staff, and technological capacities. Should inspection or investigation be done on the job site, any present licensee or registrant must demonstrate that real-time, visual communication is successful and effective.

(21) Field Representative. The amendment makes the rule more concise by eliminating an unnecessary reference and correcting a spelling mistake.

(23) License. The language has been updated to be more concise.

(25) Maintenance Man or Maintenance Engineer. This definition defines what work maintenance staff may perform. The definition is amended to include longstanding and inadvertently repealed language showing that work "incidental to and in connection with" maintenance duties does not include cutting into fuel gas plumbing systems and installation of gas fueled water heaters. This language was present from 2000 until July 2017 when the rule was re-organized. Staff, discovering the inadvertent deletion during the four-year rule review, believes it was repealed in error. The long-standing language is reclaimed into the definition to provide clarifying guidance for ease of use and does not expand or restrict the current industry practice of maintenance men or maintenance engineers.

(36) Petitioner. The definition is updated to eliminate unnecessary references. This allows the rules to stay current regardless of changes to referenced laws or rules.

(39) Plumbing Inspector. The definition is updated to eliminate unnecessary references. This allows the rule to stay current regardless of changes to referenced laws or rules.

(47) Responsible Master Plumber. The definition is updated to eliminate unnecessary references. This allows the rule to stay current regardless of changes to referenced laws or rules.

Section 361.1(b) states that any definition not in rule is defined by the statute. This language is unnecessary and deleted to make the rule more concise.

Section 361.4 Language requiring the Board to set forth in writing procedures for its operation is not required in statute and is deleted to make the rule more concise.

Section 361.6 Renewal fees for Med Gas, Multipurpose Residential Fire Protection Sprinkler Specialists, Water Supply Protection Specialists endorsements and the related late renewal fees for such endorsements are eliminated. The Board has not been collecting these fees. The rules simply update their current practice.

Section 361.10 Based on the recommendation of the Director of Finance, the Historically Underutilized Business (HUB) Program rule is amended to incorporate the rules of the Texas Comptroller of Public Accounts, not the Texas Facilities Commission.

Section 361.12 Rule provisions, not required by statute, for advisory boards are eliminated to make the rule more concise. The Board currently has no advisory boards.

Section 361.15 Rule language about when the Board will elect a secretary is eliminated as unnecessary and not required by Section 1301.157 of the statute.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director for the Board (Executive Director), 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 the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the rules.

#### PUBLIC BENEFITS

The Executive Director 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 to have fewer regulatory barriers and rules that are easier to use and enforce.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE RULE

The executive director 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.

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

Given that the proposed rules do not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the rules are 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 Board has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules do not require an increase or decrease in future 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; (6) the proposed rules do not expand, limit, or repeal an existing regulation; (7) the proposed rules do not increase or decrease the number of individuals subject to the rule's 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-BUSINESS, 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 Lynn Latombe at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@tsbpe.texas.gov with the subject line "Rule Amendment." All comments must be received within 30 days of publication of this proposal.

#### STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Texas Occupations Code authorizes the Texas State Board of Plumbing Examiners to adopt rules as necessary to implement the Chapter.

No other statutes or rules are affected by the proposal.

#### §361.1. Definitions.

[(a)] The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

(1) APA--The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.



(2) Adopted Plumbing Code--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.

(3) Advisory Committee--A committee appointed by the presiding officer of the board created to assist the board in exercising its powers and duties. [A Board appointed committee, subject to §1301.258 of the Plumbing License Law, §361.12 of the Board Rules and Chapter 2110 of the Texas Government Code, of which the primary function is to advise the Board.]

(4) Appliance Connection--An appliance connection procedure using only a code-approved appliance connector that does not require cutting into or altering the existing plumbing system.

(5) Applicant--An individual seeking to obtain a license, registration or endorsement issued by the Board.

(6) Board--The Texas State Board of Plumbing Examiners.

(7) Board Member--An individual appointed by the governor and confirmed by the senate to serve on the Board.

(8) Building Sewer--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(9) Certificate of Insurance--A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in [~~§1301.522 of~~] the Plumbing License Law and [~~§367.3 of the~~] Board Rules.

(10) Chief Examiner--An employee of the Board who, under the direction of the Executive Director, coordinates and supervises the activities of the Board examinations and registrations.

(11) Cleanout--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(12) Code-Approved Appliance Connector--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(13) Code-Approved Existing Opening--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code-approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(14) Complaint--A written complaint filed with the Board against a person whose activities are subject to the jurisdiction of the Board. [~~charge alleging a violation of state law, Board rules or orders, local codes or ordinances, or standards of competency; or the presence of fraud, false information, or error in the attempt to obtain a license, registration or endorsement.~~]

(15) Contested Case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(16) Continuing Professional Education or CPE--Approved courses/programs required for a licensee or registrant.

(17) Director of Enforcement--An employee of the Board who meets the definition of "Field Representative" and, under the direc-

tion of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(18) Direct Supervision--

(A) The on-the-job oversight and direction of a registered Plumber's Apprentice or licensee performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(iii) This oversight may include virtual visual, real-time communication.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Registered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(19) Endorsement--A certification issued by the Board as an addition to a Master Plumber, Plumbing Inspector, or Journeyman Plumber License or a Plumber's Apprentice Registration, including a Drain Cleaner Registration, a Drain Cleaner-Restricted Registration, and a Residential Utilities Installer Registration.

(20) Executive Director--The executive director of the Texas State Board of Plumbing Examiners who is employed by the Board as the executive head of the agency.

(21) Field Representative--An employee of the Board who is:

(A) knowledgeable of the Plumbing License Law and of municipal ordinances related [~~relating~~] to plumbing;

(B) qualified by experience and training in good plumbing practice and compliance with the Plumbing License Law;

(C) designated by the Board to assist in the enforcement of the Plumbing License Law and Board rules;

(D) licensed by the Board as a plumber; and

(E) hired to:

(i) make on-site license and registration checks to determine compliance with the Plumbing License Law;

(ii) investigate [consumer] complaints [filed under §1301.303 of the Plumbing License Law]; and

(iii) assist municipal plumbing inspectors in cooperative enforcement of the Plumbing License Law.

(22) Journeyman Plumber--An individual licensed under the Plumbing License Law who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(23) License--A license, registration, certification, or endorsement issued by the Board. [document issued by the Board to certify that the named individual fulfilled the requirements of the Plumbing License Law and of the Board Rules to hold a license issued by the Board. ]

(24) Licensing and Registering--The process of granting, denying, renewing, reinstating, revoking, or suspending a license, registration or endorsement.

(25) Maintenance Man or Maintenance Engineer--An individual who:

(A) is an employee, and not an independent contractor or subcontractor;

(B) performs plumbing maintenance work incidental to and in connection with other employment-related duties; and

(C) does not engage in plumbing work for the general public.

(D) For the purposes of paragraph 25(B), "incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. It does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters.

(E) An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections.

(26) Master Plumber--An individual licensed under the Plumbing License Law who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, who is knowledgeable about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(27) Medical Gas Piping Installation Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to, oxygen, nitrous oxide, medical air, nitrogen, or medical vacuum.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect medical gas and vacuum system installations.

(28) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install a multipurpose residential fire protection sprinkler system in a one or two family dwelling.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect a multipurpose residential fire protection sprinkler system.

(29) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(30) Military spouse--A person who is married to a military service member who is currently on active duty.

(31) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(32) One-Family Dwelling--A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(33) Party--A person or state agency named or admitted as a party to a contested case.

(34) Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(35) Person--An individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(36) Petitioner--A person requesting the Board to adopt, amend or repeal a rule pursuant to §2001.021 of the Texas Government Code and [§361.14 ~~of~~] the Board Rules.

(37) Plumbing--

(A) All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, multipurpose residential fire protection sprinkler systems or any combination of these that: supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage.

(B) The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the

treatment of rainwater to supply a plumbing fixture or appliance. The term "service" includes, but is not limited to, cleaning a drain or sewer line using a cable or pressurized fluid.

(38) Plumbing Company--A person who engages in the plumbing business.

(39) Plumbing Inspection--Any of the inspections required in [~~§1301.255 and §1301.551 of~~] the Plumbing License Law, including any check of multipurpose residential fire protection sprinkler systems, pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(40) Plumbing Inspector--Any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(41) Plumbing License Law or PLL--Chapter 1301 of the Texas Occupations Code.

(42) Pocket Card--A card issued by the Board which:

(A) certifies that the holder has a Responsible Master Plumber License, Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or a Plumber's Apprentice Registration; and

(B) lists any Endorsements obtained by the holder.

(43) Political Subdivision--A political subdivision of the State of Texas that includes a:

- (A) city;
- (B) county;
- (C) school district;
- (D) junior college district;
- (E) municipal utility district;
- (F) levee improvement district;
- (G) drainage district;
- (H) irrigation district;
- (I) water improvement district;
- (J) water control improvement district;
- (K) water control preservation district;
- (L) freshwater supply district;
- (M) navigation district;
- (N) conservation and reclamation district;
- (O) soil conservation district;
- (P) communication district;
- (Q) public health district;
- (R) river authority; and
- (S) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(44) P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(45) Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(46) Respondent--A person charged in a complaint filed with the Board.

(47) Responsible Master Plumber or RMP--A licensed Master Plumber who:

(A) allows the person's Master Plumber License to be used by only one plumbing company for the purpose of offering and performing plumbing work;

(B) is authorized to obtain permits for plumbing work;

(C) assumes responsibility for plumbing work performed under the person's license;

(D) has submitted a certificate of insurance as required by [~~§1301.3576 of~~] the Plumbing License Law and [~~§363.26 of the~~] Board Rules; and

(E) When used in Board forms, applications or other communications by the Board, the abbreviation "RMP" shall mean Responsible Master Plumber.

(48) Registration--A document issued by the Board to certify that the named individual fulfilled the requirements of the PLL and Board Rules to register as a Plumber's Apprentice.

(49) Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision--The general oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber, or licensed plumber designated by the RMP.

(51) System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee--An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, or successfully completed a career and technology education program, who constructs, installs, changes, repairs, services, or renovates plumbing for one-family or two-family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two-Family Dwelling--A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) Water Supply Protection Specialist--A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board to engage in customer service inspections, as defined by rule of the Texas Commission on Environmental Quality, and the installation, service, and repair of plumbing associated with the treatment, use, and distribution of rainwater to supply a plumbing fixture or appliance.

(55) Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting.

(56) Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

[(b) Any term not defined in this section shall have the definition set out in §1301.002 of the Plumbing License Law.]

#### §361.4. The Board.

The board shall hold meetings and conduct business in accordance with all applicable laws, these sections, and any procedures it may establish to discharge its functions. [The board shall set forth in writing any such procedures so established and file them with the agency as open records.]

#### §361.6. Fees.

(a) The Board shall waive the initial license, application and examination fees for military service members, military veterans and military spouses who substantially meet all of the requirements for licensure or examination by the Board.

(b) The Board has established the following fees:

- (1) Initial Licenses, Endorsements and Registrations.
  - (A) Responsible Master Plumber License--\$300;
  - (B) Master Plumber License--\$75;
  - (C) Journeyman Plumber License--\$40;

- (D) Medical Gas Installation Endorsement (Master)--\$55;
  - (E) Medical Gas Installation Endorsement (Journeyman)--\$14;
  - (F) Medical Gas Installation Endorsement (Inspector)--\$27.50;
  - (G) Plumbing Inspector License--\$55;
  - (H) Water Supply Protection Specialist Endorsement (Journeyman)--\$14;
  - (I) Water Supply Protection Specialist Endorsement (Master)--\$55;
  - (J) Water Supply Protection Specialist Endorsement (Inspector)--\$27.50;
  - (K) Tradesman Plumber-Limited License--\$35;
  - (L) Plumber's Apprentice Registration/Application--\$15;
  - (M) Residential Utilities Installer Registration/Application--\$18;
  - (N) Drain Cleaner Registration/Application--\$18;
  - (O) Drain Cleaner-Restricted Registration/Application--\$18;
  - (P) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Master)--\$55;
  - (Q) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Journeyman)--\$14;
  - (R) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Inspector)--\$27.50.
- (2) Examinations.
- (A) Master Plumber--\$175;
  - (B) Journeyman Plumber--\$40;
  - (C) Medical Gas Piping Installation Endorsement (Master)--\$80;
  - (D) Medical Gas Piping Installation Endorsement (Journeyman)--\$27;
  - (E) Medical Gas Piping Installation Endorsement (Inspector)--\$40;
  - (F) Plumbing Inspector--\$55;
  - (G) Water Supply Protection Specialist Endorsement (Journeyman)--\$27;
  - (H) Water Supply Protection Specialist Endorsement (Master)--\$80;
  - (I) Water Supply Protection Specialist Endorsement (Inspector)--\$40;
  - (J) Tradesman Plumber-Limited License--\$36;
  - (K) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Master)--\$80;
  - (L) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Journeyman)--\$27; and
  - (M) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Inspector)--\$40.

- (3) Renewals.
  - (A) Responsible Master Plumber License--\$300;
  - (B) Master Plumber License--\$75;
  - (C) Journeyman Plumber License--\$40;
  - ~~{(D) Medical Gas Piping Installation Endorsement (Master)--\$55;}~~
  - ~~{(E) Medical Gas Piping Installation Endorsement (Journeyman)--\$14;}~~
  - ~~{(F) Medical Gas Piping Installation Endorsement Inspector--\$27.50;}~~
  - ~~{(G) Plumbing Inspector License--\$55;}~~
  - ~~{(H) Water Supply Protection Specialist Endorsement (Journeyman)--\$14;}~~
  - ~~{(I) Water Supply Protection Specialist Endorsement (Master)--\$55;}~~
  - ~~{(J) Water Supply Protection Specialist Endorsement (Inspector)--\$27.50;}~~
  - ~~{(K) Plumbing Inspector with a Master and/or Journeyman License--\$55;}~~
  - ~~{(L) Master Plumber with Journeyman Plumber License--\$75;}~~
  - ~~{(M) Tradesman Plumber-Limited License--\$35;}~~
  - ~~{(N) Plumber's Apprentice Registration--\$15;}~~
  - ~~{(O) Residential Utilities Installer Registration--\$18;}~~
  - ~~{(P) Drain Cleaner Registration--\$18; and}~~
  - ~~{(Q) Drain Cleaner-Restricted Registration--\$18;}~~
  - ~~{(R) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Master)--\$55;}~~
  - ~~{(S) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Journeyman)--\$14;}~~
  - ~~{(T) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Inspector)--\$27.50;}~~

(4) Other Fees.

- (A) Late renewal
  - (i) Responsible Master Plumber License:
    - (I) less than 90 days--one-half renewal fee--\$150;
    - (II) more than 90 days--renewal fee--\$300;
  - (ii) Master Plumber License:
    - (I) less than 90 days--one-half renewal fee--\$37.50;
    - (II) more than 90 days--renewal fee--\$75;
  - ~~{(iii) Medical Gas Piping Installation Endorsement (Master):}~~
    - ~~{(I) less than 90 days--one half renewal fee--\$27.50;}~~
    - ~~{(II) more than 90 days--renewal fee--\$55;}~~

- ~~{(iv) Medical Gas Piping Installation Endorsement (Journeyman):}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$7;}~~
  - ~~{(II) more than 90 days--renewal fee--\$14;}~~
- ~~{(v) Medical Gas Piping Installation Endorsement (Inspector):}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$13.75;}~~
  - ~~{(II) more than 90 days--renewal fee--\$27.50;}~~
- ~~{(iii) [(vi)] Journeyman Plumber License:}~~
  - ~~{(I) less than 90 days--one-half renewal fee--\$20;}~~
  - ~~{(II) more than 90 days--renewal fee--\$40;}~~
- ~~{(vii) Water Supply Protection Specialist Endorsement (Journeyman):}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$7;}~~
  - ~~{(II) more than 90 days--renewal fee--\$14;}~~
- ~~{(viii) Water Supply Protection Specialist Endorsement (Master):}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$27.50;}~~
  - ~~{(II) more than 90 days--renewal fee--\$55;}~~
- ~~{(ix) Water Supply Protection Specialist Endorsement (Inspector):}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$13.75;}~~
  - ~~{(II) more than 90 days--renewal fee--\$27.50;}~~
- ~~{(iv) [(x)] Plumbing Inspector License:}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$27.50;}~~
  - ~~{(II) more than 90 days--renewal fee--\$55;}~~
- ~~{(v) [(xi)] Master Plumber License with Journeyman Plumber License:}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$37.50;}~~
  - ~~{(II) more than 90 days--renewal fee--\$75;}~~
- ~~{(vi) [(xii)] Plumbing Inspector License with Master and/or Journeyman Plumber License:}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$27.50;}~~
  - ~~{(II) more than 90 days--renewal fee--\$55;}~~
- ~~{(vii) [(xiii)] Tradesman Plumber-Limited License:}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$17.50;}~~
  - ~~{(II) more than 90 days--renewal fee--\$35;}~~
- ~~{(viii) [(xiv)] Plumber's Apprentice Registration:}~~
  - ~~{(I) less than 90 days--one half renewal fee--\$7.50;}~~
  - ~~{(II) more than 90 days--renewal fee--\$15;}~~

(ix) [(xv)] Residential Utilities Installer Registration:

- (I) less than 90 days--one half renewal fee--\$9;
- (II) more than 90 days--renewal fee--\$18;

(x) [(xvi)] Drain Cleaner Registration:

- (I) less than 90 days--one half renewal fee--\$9;
- (II) more than 90 days--renewal fee--\$18;

(xi) [(xvii)] Drain Cleaner-Restricted Registration:

- (I) less than 90 days--one half renewal fee--\$9;
- (II) more than 90 days--renewal fee--\$18.

~~[(xviii)] [Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Master):]~~

~~[(I)] less than 90 days--one half renewal fee--\$27.50;]~~

~~[(II)] more than 90 days--renewal fee--\$55;]~~

~~[(xix)] [Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Journeyman):]~~

~~[(I)] less than 90 days--one half renewal fee--\$7;]~~

~~[(II)] more than 90 days--renewal fee--\$14;]~~

~~[(xx)] [Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Inspector):]~~

~~[(I)] less than 90 days--one half renewal fee--\$13.75;]~~

~~[(II)] more than 90 days--renewal fee--\$27.50;]~~

(B) Instructor Certification Training (Per Day)--\$150.

(C) Duplicate Pocket Card--\$25.

(D) Returned check--\$25.

(E) Fees for a provisional license issued under §1301.358 of the Plumbing License Law are equal to the initial license fees established in paragraph (1) of this subsection.

(F) Fees for a provisional registration issued under §53.0211(c) of the Texas Occupations Code are equal to the initial registration fees established in paragraph (1) of this subsection.

(G) Transfer of License--\$500.

(H) License Verification--\$15.

(c) Methods of payment

(1) Fees paid electronically through the Texas Online website, which may be accessed from the Texas State Board of Plumbing Examiners' website, may be made in the form of credit card or check.

(2) Fees paid by mail or in person may be made in the form of money order, cashier's check, personal check, business check, or the exact amount of cash (cash payments by mail are not recommended).

(3) An individual shall pay the appropriate examination fee prior to the time of examination, or, the appropriate initial licensure or renewal fee prior to issuance of a license, registration, endorsement or renewal.

(4) The Board, under any special circumstances it finds appropriate, may:

(A) waive any requirements concerning the method or timing of payment of any fee;

(B) refund any fee; or

(C) waive payment of any fee not required by statute.

(5) Any fee paid for a license, endorsement or registration, which has been denied or revoked due to a criminal conviction under §363.15 of the Board Rules or any violation of the Plumbing License Law or Board Rules shall not be refunded.

§361.10. *Historically Underutilized Business (HUB) Program.*

The Board adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program). These rules were promulgated by the Texas Comptroller of Public Accounts under Government Code §2161.002. [The Texas State Board of Plumbing Examiners adopts the rules of the Texas Facilities Commission relating to the Historically Underutilized Business (HUB) Program and codified at 1 Texas Administrative Code §§111.20-111.33.]

§361.12. *Advisory Committees.*

[(a)] The Board may appoint Advisory Committees as it considers necessary for the primary function of advising the Board.

[(b)] Advisory Committees are subject to §1301.258 of the Plumbing License Law and Chapter 2110 of the Texas Government Code and shall:

[(1)] be composed of a reasonable number of members not to exceed twenty-four (24) members who provide a balanced representation between:

[(A)] individuals regulated or directed affected by the Board; and]

[(B)] consumers of services provided by the Board or the plumbing industry; and]

[(2)] select from among its members a presiding officer who shall preside over the advisory committee and report to the Board; and]

[(3)] serve without compensation or reimbursement;]

[(e)] If the board appoints an advisory committee, it shall adopt rules that:]

[(1)] state the purpose of the committee;]

[(2)] describe the task of the committee and the manner in which the committee will report to the Board; and]

[(3)] the date on which the committee will automatically be abolished (not to exceed four years from its creation) unless the Board votes to continue the committee in existence;]

[(d)] If the Board appoints an advisory committee it shall evaluate annually:]

[(1)] the committee's work;]

[(2)] the committee's usefulness; and]

[(3)] the costs related to the committee's existence, including the cost of Board staff time spent in support of the committee's activities;]

[(e)] The Board shall report to the Legislative Budget Board the information developed in the evaluation required in subsection (d) of this section. The Board shall file the report biennially in connection with the agency's request for appropriations;]

§361.15. *Election of Board Officers.*

(a) The governor shall designate a member of the board as the presiding officer of the Board to serve in that capacity at the pleasure of the governor.

(b) The Board shall elect a secretary from its membership.

~~[(1) The election may be held every two years during the July Board meeting.]~~

~~[(2) The elected Board Secretary shall take office on the first day of September following the election held at the July Board meeting.]~~

~~[(3) If the office becomes vacant for any reason, a special election shall be held at the next regularly scheduled Board meeting to fill the office for the unexpired term.]~~

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

Filed with the Office of the Secretary of State on February 8, 2023.

TRD-202300597

Lynn Latombe

General Counsel

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: March 26, 2023

For further information, please call: (512) 936-5216



## PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

### CHAPTER 575. PRACTICE AND PROCEDURE

#### 22 TAC §575.26

The Texas Board of Veterinary Medical Examiners (Board) proposes this new rule §575.26, deferred disciplinary action for minor violations to first time offenders.

The purpose of the new proposed rule is to offer to first time Class C offenders the ability to fulfill a condition that demonstrates they understand and see how their act or omission violated the Board's rule, but that it will not appear on their disciplinary record.

#### *Fiscal Note*

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

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

#### *Public Benefit and Cost Note*

Mr. Hargis has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice in the veterinary medicine profession. There is no anticipated economic cost to persons who are required to comply with the rule.

#### *Local Employment Impact Statement*

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

#### *Economic Impact Statement and Regulatory Flexibility Analysis*

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

#### *Takings Impact Assessment*

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

#### *Government Growth Impact Statement*

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

#### *Request for Public Comments*

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

#### *Statutory Authority*

The rule is proposed under the authority of Occupations Code, §801.151(a), (b), and (c) Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession, and that the Board may adopt rules to protect the public. Cross-reference to Statute: Occupations Code, §801.408; Occupations Code §801.205.

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

#### §575.26. Deferred Disciplinary Action.

(a) For Class C Violations, the Board may offer respondents deferred disciplinary action in lieu of disciplinary action. If the respondent successfully completes the terms of the deferred disciplinary action within 60 days, the complaint will be recommended for dismissal at a subsequent public Board meeting.

(b) Deferred disciplinary action is an option only available for the Board and Staff and it will not be available as an option in a proceeding before the State Office of Administrative Hearings.

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

Filed with the Office of the Secretary of State on February 7, 2023.

TRD-20230575

John Hargis

General Counsel

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 26, 2023

For further information, please call: (512) 305-7565



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 330. MUNICIPAL SOLID WASTE SUBCHAPTER O. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING AND FINANCIAL ASSISTANCE GENERAL PROVISIONS

##### 30 TAC §330.647

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §330.647.

##### Background and Summary of the Factual Basis for the Proposed Rules

In Texas, 24 regional planning commissions, also known as councils of governments (COGs), have the primary responsibility under Texas Health and Safety Code (THSC), §363.0615 for regional solid waste management planning. All 24 COGs submitted regional solid waste management plans to TCEQ and TCEQ reviewed the plans in accordance with THSC, Chapter 363, Subchapter D. This rulemaking proposes to adopt the approved regional solid waste management plans in compliance with THSC, §363.062(f), which states the commission will adopt the plans by rule. THSC, §363.062 and 30 Texas Administrative Code (TAC) §330.641 describe the procedures for submission and approval of the regional solid waste management plans.

These new regional solid waste management plans would replace existing regional plans developed in 2002. The period for the existing regional solid waste management plans is from 2002 to 2022. All 24 COGs would continue to reference the goals and strategies in their existing plans in implementation activities and projects until the proposed plans are fully adopted.

The regional solid waste management plans include goals and strategies for implementing and promoting proper waste disposal management, waste diversion from landfills, recycling, and waste minimization, as well as initiatives for reducing illegal dumping of waste in each planning region. The regional solid waste management plans also describe the regions' current

and anticipated activities as required by 30 TAC §330.643(a)(3). Plan requirements include documenting and estimating future growth for the region's population and commercial and industrial base; estimating future solid waste amounts by type; descriptions of current and planned waste management activities; and assessment and adequacy of existing waste management facilities, practices, and programs. The regional solid waste management plan also requires assessment of current and future efforts of source reduction and waste minimization activities, as well as reuse and recycling of waste.

The regional solid waste management plans were developed by each COG using the most recent population, business, industry, and solid waste management data available from the State of Texas, universities, and financial and business entities. Local stakeholders were also surveyed to solicit feedback and ideas on goals and strategies.

Notice of the plans' availability for public review were published in local newspapers and/or media pages and public comment meetings were scheduled and held in all 24 COG areas. The final regional solid waste management plans were approved by each COG's Solid Waste Advisory Committee and Boards of Directors.

##### Section by Section Discussion

##### §330.647, *Approved Regional and Local Solid Waste Management Plans*

The commission proposes to amend §330.647(a) to specify that subsection (d) contains the adopted regional solid waste management plans.

The commission proposes to add §330.647(d)(1)-(24) to incorporate the new approved regional solid waste management plans by reference.

##### Fiscal Note: Costs to State and Local Government

Jené Bearse, Deputy Director of the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

##### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be compliance with state law, the potential for increased access to proper waste disposal, waste diversion, and recycling, and a reduction in illegal dumping of waste. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

##### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

##### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply



statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a state government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not positively or negatively impact the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the statute. A "Major environmental rule" is a rule that is specifically intended 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. This proposed rulemaking is administrative in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking is procedurally required for the commission to adopt the approved regional solid waste management plans by rule in accordance with the THSC, §363.062(f).

Furthermore, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, or adopt a rule solely under the general powers of the commission

but is authorized by specific sections of the Texas Water Code, the Texas Government Code, and the Texas Health and Safety Code, which are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of this proposed rulemaking is to adopt the new regional solid waste management plans for the 2022-2042 planning period that the commission has approved to replace the existing regional solid waste management plans from the 2002-2022 planning period, in accordance with THSC, §363.062(f) which states that the commission shall adopt an approved regional solid waste management plan by rule. The proposed rules would substantially advance this stated purpose by amending 30 TAC §330.647(a) and adding §330.647(d)(1)-(24) to incorporate the new approved regional solid waste management plans by reference into 30 TAC Chapter 330, Subchapter O.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. In other words, the proposed rulemaking would not burden private real property because the proposed rule is not directed at private real property owners but plans reflecting goals and objectives for solid waste management that regional and local councils of government submit to the commission for review. Therefore, the proposed rule would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4), (relating to Actions and Rules Subject to the Coastal Management Program (CMP)), and would, therefore, require that goals and polices of the Texas CMP be considered during the rulemaking process.

The commission reviewed this action for consistency with the CMP goals and polices in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and would have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and polices.

The commission invites public comment regarding the consistency of this rulemaking with the CMP goals and policies during the public comment period. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on March 23, 2023, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

#### Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, March 21, 2023. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, March 22, 2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at: [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MmVIZTk4YTMtNDhjNC00YjhkL-WJhYTkMWMYyE3MjA3NmZk%40thread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atruer%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MmVIZTk4YTMtNDhjNC00YjhkL-WJhYTkMWMYyE3MjA3NmZk%40thread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atruer%7d)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2022-035-330-WS. The comment period closes on March 27, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). Copies of the proposed regional solid waste management plans are available for public review on the commission's website at [www.tceq.texas.gov/goto/waste-grant](http://www.tceq.texas.gov/goto/waste-grant). For further information, please contact Jessica Uramkin, Business and Program Services, (512) 239-6685, [jessica.uramkin@tceq.texas.gov](mailto:jessica.uramkin@tceq.texas.gov) (include "RSWMP Comment" in the email subject line).

#### Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC), §5.102 (relating to General Powers), which provides the commission the power to perform any acts necessary and convenient to the commission's exercise of its jurisdiction and powers as provided in this code and other laws; TWC, §5.103 (relating to Rules), which authorizes the commission to adopt any

rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105 (relating to General Policy), which provides the commission with the authority to establish and approve by rule all general policy of the commission; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; and Texas Health and Safety Code (THSC), §363.062 (relating to Regional Solid Waste Management Plan), which authorizes the commission to consider for approval and to adopt by rule an approved regional solid waste management plan that is developed and submitted to the commission for review in accordance with THSC, §363.0615 (relating to Responsibility for Regional Planning).

The proposed rulemaking implements THSC, Chapter 363, Subchapter D (relating to Regional and Local Solid Waste Management Plans).

*§330.647. Approved Regional and Local Solid Waste Management Plans.*

(a) Plans approved. The current effective regional solid waste management plan for each region or local solid waste management plan for a local government is the latest plan, including plan amendments, that has been adopted by the commission or approved by the executive director. Copies of approved plans shall be kept on file and available for public review at the Texas Commission on Environmental Quality library. Those plans, including the regional solid waste management plans adopted in subsection (d) of this section, and any adopted amendments to the plans, are incorporated into this subchapter. Updates to an approved regional or local plan that do not require official adoption by the commission, as specified under §330.641(f) of this title (relating to Procedures for Regional and Local Plan Submission, Approval, and Distribution), may be incorporated into an approved plan for informational purposes, as each update is approved by the executive director. Each plan's effectiveness applies only for the geographical area described in the plan and for the period designated in the plan.

(b) Conflicting provisions. By adopting a regional or local plan, the commission determined that the plan has been developed according to commission rules and does not conflict with the state plan. If it should later be determined that provisions of an adopted plan do conflict with provisions of the state plan, then provisions of the state plan shall prevail.

(c) Agency responsibilities. It shall be the responsibility of the council of governments to coordinate the implementation of regional policies and recommended actions in an approved regional plan and coordinate local planning efforts. It shall be the responsibility of affected local governments to implement the policies and recommended actions of adopted regional and local plans and to maintain policies and activities that do not conflict with provisions in current state, regional, and local solid waste management plans.

(d) Approved plans. The following plans, and their effective dates are adopted by reference.

- (1) Alamo Area Council of Governments (2022-2042)
- (2) Ark-Tex Council of Governments (2022-2042)
- (3) Brazos Valley Council of Governments (2022-2042)
- (4) Capital Area Council of Governments (2022-2042)
- (5) Central Texas Council of Governments (2022-2042)
- (6) Coastal Bend Council of Governments (2022-2042)
- (7) Concho Valley Council of Governments (2022-2042)

- (8) Deep East Texas Council of Governments (2022-2042)
- (9) East Texas Council of Governments (2022-2042)
- (10) Golden Crescent Regional Planning Commission (2022-2042)
- (11) Heart of Texas Council of Governments (2022-2042)
- (12) Houston-Galveston Area Council (2022-2042)
- (13) Lower Rio Grande Valley Development Council (2022-2042)
- (14) Middle Rio Grande Development Council (2022-2042)
- (15) Nortex Regional Planning Commission (2022-2042)
- (16) North Central Texas Council of Governments (2022-2042)
- (17) Panhandle Regional Planning Commission (2022-2042)
- (18) Permian Basin Regional Planning Commission (2022-2042)
- (19) Rio Grande Council of Governments (2022-2042)
- (20) South East Texas Regional Planning Commission (2022-2042)
- (21) South Plains Association of Governments (2022-2042)
- (22) South Texas Development Council (2022-2042)
- (23) Texoma Council of Governments (2022-2042)
- (24) West Central Texas Council of Governments (2022-2042)

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

Filed with the Office of the Secretary of State on February 10, 2023.

TRD-202300653  
 Guy Henry  
 Acting Deputy Director, Environmental Law Division  
 Texas Commission on Environmental Quality  
 Earliest possible date of adoption: March 26, 2023  
 For further information, please call: (512) 239-2678



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 15. TEXAS VETERANS COMMISSION**

**CHAPTER 452. ADMINISTRATIVE GENERAL PROVISIONS**

**40 TAC §452.2**

The Texas Veterans Commission (commission) proposes amendment to Chapter 452, §452.2, Advisory Committees.

**PART I. PURPOSE AND BACKGROUND**

The proposed amendment is made to change existing language to more closely align the method of selection of Committee Chair to the selection of the Commission Chair and to replace the language that reflects the current method of video conference for remote participation by committee members and delete the term "telephone conference".

**PART II. EXPLANATION OF SECTIONS**

Section 452.2 Advisory Committees.

Subsection (a) (3) separates the chair and vice chair appointment process and adds "The Commission shall select the Chair of each Committee." and "The committee chair shall serve for the term of their appointment."

Subsection (a) (7) Changes the language on meeting requirements and deletes the word "telephone" replacing it with "video".

**PART III. IMPACT STATEMENTS**

**FISCAL NOTE**

Coretta Briscoe, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

**COSTS TO REGULATED PERSONS**

Ms. Briscoe, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

**LOCAL EMPLOYMENT IMPACT**

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

**SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT**

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

**PUBLIC BENEFIT**

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule are in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

**GOVERNMENT GROWTH IMPACT STATEMENT**

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

- (1) The proposed rule amendments will not create or eliminate a government program.

(2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.

(3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) No fees will be created by the proposed rule amendments.

(5) The proposed rule amendments will not require new regulations.

(6) The proposed rule amendments have no effect on existing regulations.

(7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments have no effect on this state's economy.

#### PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration and Texas Government Code Section §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

No other statutes, articles or codes are affected by these rules.

##### §452.2. *Advisory Committees.*

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

(1) - (2) (No change.)

(3) Committee chair and vice chair.

(A) Committee chair will be selected by the Commission. The committee chair shall serve a term as determined by the Commission. The committee chair determines the agenda for each meeting.

(B) The [chair and] vice chair of each advisory committee is selected by the committee's voting members. Committee [chair and] vice chair term lengths are one or two-year terms as determined by the committee's voting members and are limited to two years of service as the [chair or] vice chair during their appointment to the committee. [The committee chair determines the agenda for each meeting.] The vice chair shall perform the chair duties when the chair is unavailable or unable to perform.

(4) - (6) (No change.)

(7) Meetings. Each advisory committee shall meet as needed [quarterly unless otherwise directed] by the commission. Advisory committee meetings may be conducted by video [telephone] conference. Each advisory committee shall be subject to meeting at the call of the committee chair or designee. A quorum shall consist

of a majority of the committee membership. The committees shall comply with Open Meetings Act requirements as provided in Texas Government Code, Chapter 551.

(8) - (10) (No change.)

(b) - (d) (No 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.

Filed with the Office of the Secretary of State on February 10, 2023.

TRD-202300651

Cory Scanlon

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: March 26, 2023

For further information, please call: (737) 320-4167



## CHAPTER 459. TRANSPORTATION SUPPORT SERVICES

### 40 TAC §§459.1 - 459.6

REPEALING CHAPTER 459 TO REPEAL AN UNNECESSARY RULE RESULTING FROM THE EXPIRATION OF A PROGRAM.

The Texas Veterans Commission (commission) finds it necessary to propose the repeal of §§459.1 - 459.6, relating to Transportation Support Services codified under Title 40, Texas Administrative Code, Part 15

#### PART I. PURPOSE AND BACKGROUND

The proposed repeal is made to eliminate a rule that is no longer applicable.

#### PART II. EXPLANATION OF SECTION

Sections 459.1 through 459.6 govern the implementation of the Transportation Support Services program that provided transportation assistance to veterans receiving employment services from the commission through Veteran Employment Representatives.

#### Purpose

The purpose of the repeal is to remove a series of rules that no longer have effect, as the Transportation Services Program has been terminated by the commission.

#### PART III. IMPACT STATEMENTS

##### FISCAL NOTE

Coretta Briscoe, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule repeal will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the rule repeal.

##### COSTS TO REGULATED PERSONS

Coretta Briscoe, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule repeal.

#### LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state because of the proposed rule repeal.

#### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

#### PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule repeal is in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

- (1) The proposed rule repeal will not create or eliminate a government program.
- (2) Implementation of the proposed rule repeal will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed rule repeal will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule repeal.
- (5) The proposed rule repeal will not require new regulations.
- (6) The proposed rule repeal has no effect on existing regulations.
- (7) The proposed rule repeal has no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule repeal has no effect on this state's economy.

#### PART IV. COMMENTS

Comments on the proposed rule repeal rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). For comments submitted electronically, please include "Chapter 457 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### PART V. STATUTORY AUTHORITY

The rule repeal is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration. No other statutes, articles, or codes are affected by this proposal.

No other statutes, articles or codes are affected by these rules.

§459.1. *Purpose.*

§459.2. *Definitions.*

§459.3. *Eligibility.*

§459.4. *Priority for Receipt of Transportation Support Services (TSS).*

§459.5. *Use of Transportation Support Services (TSS) Funds.*

§459.6. *Implementation.*

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

Filed with the Office of the Secretary of State on February 10, 2023.

TRD-202300652

Cory Scanlon

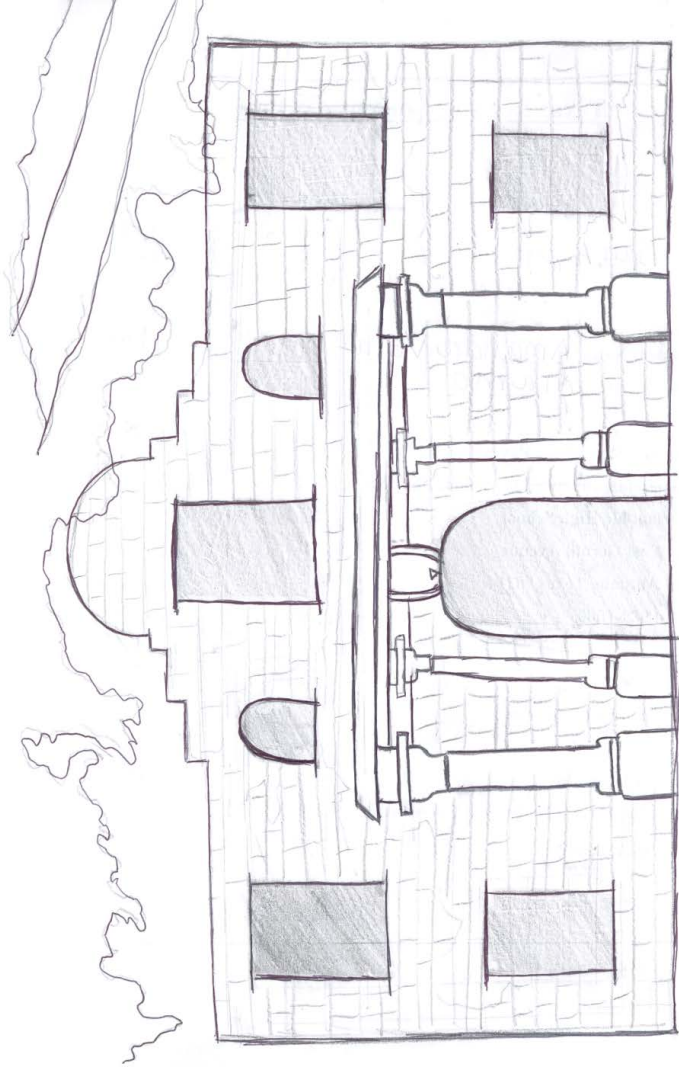
General Counsel

Texas Veterans Commission

Earliest possible date of adoption: March 26, 2023

For further information, please call: (737) 320-4167

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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 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §372.355, concerning Treatment of Resources in SNAP; §372.406, concerning Countable and Excluded Income in SNAP; and §372.410, concerning Allowable Deductions from Countable Income in SNAP.

The amendments to §§372.355, 372.406, and 372.410 are adopted without changes to the proposed text as published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6949). The rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The amendment aligns the rule with the Food and Nutrition Service (FNS) decision to discontinue the Texas Integrated Eligibility Redesign System (TIERS) Rules Waiver. This waiver allowed HHSC to modify certain eligibility criteria for SNAP to align agency SNAP policy and system functionality with other HHSC programs. Because the waiver expired, HHSC must now follow federal regulations.

#### COMMENTS

The 31-day comment period ended November 21, 2022.

During this period, HHSC did not receive any comments regarding the proposed rule.

#### SUBCHAPTER B. ELIGIBILITY

##### DIVISION 6. RESOURCES

###### 1 TAC §372.355

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §33.002, which requires the Executive Commissioner to adopt rules related to distribution of SNAP benefits.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2023.

TRD-202300561

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 26, 2023

Proposal publication date: October 21, 2022

For further information, please call: (512) 206-4621



##### DIVISION 7. INCOME

###### 1 TAC §372.406, §372.410

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §33.002, which requires the Executive Commissioner to adopt rules related to distribution of SNAP benefits.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2023.

TRD-202300562

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 26, 2023

Proposal publication date: October 21, 2022

For further information, please call: (512) 206-4621



##### SUBCHAPTER F. BENEFITS

##### DIVISION 1. BENEFITS IN GENERAL

###### 1 TAC §372.1507

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §372.1507, concerning TANF Supplemental Relative Payment.

The amendment to §372.1507 is adopted without changes to the proposed text as published in the October 14, 2022, issue

of the *Texas Register* (47 TexReg 6710). This rule will not be republished.

## BACKGROUND AND JUSTIFICATION

The amendment is necessary to comply with Senate Bill (S.B.) 263, 87th Texas Legislature, Regular Session, 2021, which required HHSC to expand who may receive a one-time \$1,000 TANF Supplemental Payment from only grandparents to eligible caretakers, including aunts, uncles, and siblings.

## COMMENTS

The 31-day comment period ended November 14, 2022.

During this period, HHSC did not receive any comments regarding the proposed rule.

## STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §31.003, which requires the Executive Commissioner to adopt rules related to distribution of TANF benefits.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2023.

TRD-202300676

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: March 5, 2023

Proposal publication date: October 14, 2022

For further information, please call: (512) 206-4621



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 2. LICENSING

##### SUBCHAPTER B. CONSOLIDATED LICENSES

###### 4 TAC §2.10

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code §2.10, concerning Definitions. The repeal is adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8176) and will not be republished.

The Department identified the need for the repeal of this rule during its rule review of 4 Texas Administrative Code, Chapter 2, (Licensing), Subchapter B (Consolidated Licenses) conducted pursuant to Texas Government Code, §2001.039, the adoption for which can be found in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8283).

The Department adopts the repeal of §2.10 because it unnecessarily duplicates a provision of Texas Agriculture Code §12.033.

The Department received no comments regarding the proposed repeal.

The repeal is adopted under Section 12.016 of the Texas Agriculture Code (Code), which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2023.

TRD-202300566

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: February 27, 2023

Proposal publication date: December 16, 2022

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



## CHAPTER 9. SEED QUALITY

The Texas Department of Agriculture (Department), adopts amendments to 4 Texas Administrative Code §9.1, concerning Definitions; §9.2, concerning Agricultural Seed; §9.3, concerning Vegetable Seed; §9.4, concerning Procedures and Tolerances; §9.5, concerning Seed Testing; §9.7, concerning Vegetable Seed; §9.9, concerning Noxious Weed Seed; §9.11, concerning Hermetically-Sealed Containers; and §9.12, concerning Seed Sampling Procedures. The amendments are adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8177) and will not be republished.

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption for which was published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8284).

The amendments to §9.1 remove an outdated reference to Chapter 61 of the Texas Agriculture Code; add a cross reference to §9.9, the rule addressing noxious weed seeds, to the definition of "noxious weed seeds" to improve that definition's clarity; and remove unnecessary definitions.

The amendments to §9.2 correct grammatical errors, and make editorial changes to improve the rule's readability.

The amendments to §9.3 add subsection (g), the substance of which currently appears as §9.7(h), because it concerns vegetable seed licensing matters and is more logically placed in this section, make references to "vegetable seed licenses" lowercase as used in Chapter 61 of the Texas Agriculture Code and changes "firm" to "person."

The amendments to §9.4 change "Texas Department of Agriculture" to "department" where appropriate as that term is otherwise used throughout this chapter and correct grammatical and spelling errors.



The amendments to §9.5 correct grammatical errors.

The amendments to §9.7 remove subsection (h) as its provisions are more appropriate under §9.3, and correct spelling and grammatical errors.

The amendments to §9.9 update certain scientific names in the two attached graphics and modify certain common names in them to eliminate possible confusion for non-Texas seed labs in determining what Texas considers noxious weed seeds for labeling purposes, eliminate unnecessary language, and correct a spelling error.

The amendment to §9.11 changes a reference to Chapter 61 of the Texas Agriculture Code for clarity.

The amendments to §9.12 remove an unnecessary reference to seed screenings and correct a grammatical error.

The Department received no comments in response to the proposed amendments published in the *Texas Register*.

Pursuant to Section 61.002 of the Texas Agriculture Code, the Department conducted a public hearing on the proposed amendments via the Microsoft TEAMS application on January 13, 2023. The Department gave notice of this hearing in the December 30, 2022 issue of the *Texas Register* (47 TexReg 9055). No comments were received at the public hearing.

## SUBCHAPTER A. DEFINITIONS

### 4 TAC §9.1

The amendments are adopted pursuant to Section 61.002 of the Texas Agriculture Code, which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or 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 February 10, 2023.

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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## SUBCHAPTER B. CLASSIFICATION OF LICENSES

### 4 TAC §9.2, §9.3

The amendments are adopted pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments; Section 61.011 of the Code, which allows the Department to set inspection fees for the sale of agricultural seed, the methods of paying such fees, and the manner of showing the information on an agricultural seed label required by Section 61.004 of the Code; and Section

61.013 of the Code, which allows the Department to set and collect fees for the issuance of a vegetable seed license.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## SUBCHAPTER C. SEED TESTING

### 4 TAC §9.4, §9.5

The amendments are adopted pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments; Section 61.009 of the Code, which allows the Department to set fees for germination and purity testing of seeds; and Section 61.010 of the Code, which allows the Department to adopt rules governing the methods of sampling, inspection, analysis, and testing and the tolerances to be allowed in the administration of Chapter 61.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## SUBCHAPTER D. LABELING PROVISIONS

### 4 TAC §9.7

The amendments are adopted pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments; Section 61.005 of the Code, which allows the Department to have vegetable seed labels show expiration dates in lieu of calendar months and years of germination testing or the year for which the seed was packaged; and Section 61.009 of the Code, which allows the Department to set fees for germination and purity testing of seeds and allows the Department to set periods of time to for testing beyond the nine-month limit prior to sales.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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## SUBCHAPTER E. SPECIAL PROVISIONS FOR LABELING

### 4 TAC §9.9, §9.11

The amendments are adopted pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments; Section 61.008 of the Code, which allows the Department to classify noxious weeds and set rates for the inclusion or exclusion of them in containers of seeds; and Section 61.009 of the Code, which allows the Department to set fees for germination and purity testing of seeds and allows the Department to set periods of time to for testing beyond the nine-month limit prior to sales.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## SUBCHAPTER F. SAMPLING PROCEDURES

### 4 TAC §9.12

The amendments are adopted pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments, and Section 61.010 of the Code, which allows the Department to adopt rules governing the methods of sampling, inspection, analysis, and testing and the tolerances to be allowed in the administration of Chapter 61.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## CHAPTER 12. WEIGHTS AND MEASURES

The Texas Department of Agriculture (Department) adopts amendments to 4 Texas Administrative Code §12.1 (Definitions), §12.10 (Standards), §12.11 (Registration of Commercial Weighing and Measuring Devices), §12.12 (Fee Schedule for Commercial Weighing and Measuring Devices and Consumer Information Stickers), §12.13 (Devices Subject to Registration and Inspection; Exemptions), §12.14 (Inspection and Testing Requirements for Hopper Scales), §12.15 (Records), §12.21 (Standards), §12.30 (Metrology Services), §12.40 (License Requirements), §12.41 (Application and Renewal Procedure), §12.42 (Authority and Responsibilities), §12.60 (Registration Requirement and Procedure), §12.61 (Authority and Responsibilities), §12.71 (Application Procedure), §12.72 (Bond), §12.73 (Fees), and §12.74 (Records), and the repeal of §12.70 (General Requirement). The amendments and repeal are adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8369) and will not be republished.

The Department identified the need for the amendments and repeal during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8764).

The amendments to §12.1 delete unnecessary definitions for the terms, "anniversary date," "food for immediate consumption," "NCWM," and "place in service" because those terms are no longer used in this chapter; remove definitions for the terms, "public weigher," "service company," and "service technician" as these terms are defined in Chapter 13 of the Texas Agriculture Code (Code); update the definition for "device" by remove pumps, liquid measuring devices, and bulk meters to reflect the types of devices the Department currently regulates; make a conforming change to the definition of "immediate consumption food scale" for consistency with Section 13.1002 of the Code; modify the composition of the standard weights in the definition for "test kit" to allow for only one one-pound weight to reflect the composition of test kits currently available on the market; delete the definition for "Handbook 44" and replace it with "NIST Handbook 44" for consistency with internal references in this chapter; change Department references to "department" for consistency with usage in Title 4, Part 1; change a reference to the Code to make it the same as its definition in this rule; revise references to Service Technician to read "service technician" for consistency with usage in this chapter and Chapter 13 of the Code; correct grammatical errors; and remove redundant language.

The amendments to §12.10 remove outdated and unnecessary contact information on obtaining Handbook 44, now known as

NIST Handbook 44, from the National Institute of Standards and Technology (NIST) as the handbook is readily available online at [www.nist.time.gov](http://www.nist.time.gov).

The amendments to §12.11 change references to the Code to conform to its definition in §12.1, clarify that forms required to register commercial measuring and weighing devices under this section are prescribed by the Department, and update Department contact information.

The amendments to §12.12 make grammatical changes for consistency within this chapter.

The amendments to §12.13 remove unnecessary references to Section 13.029 of the Code and correct citations to the Code.

The amendments to §12.14 add LPG meters to hopper scale inspection and testing requirements to reflect the Department's policy of applying the same requirements to both types of devices; update language to reflect current reporting requirements, namely that service companies file inspection reports with the Department within 10 days of placing these devices back into service rather than device operators within 30 days; remove outdated subsections providing requirements for hopper scales inspected and tested within four years preceding this rule's adoption; update Department contact information; and make editorial changes to language on inspection and testing requirements for these devices to improve the rule's readability.

The amendment to §12.15 changes a Department references to "department" for consistency with usage in Title 4, Part 1.

The amendments to §12.21 update references to sets of uniform regulations in NIST Handbooks 130 and 133, remove outdated and unnecessary language, and correct a grammatical error.

The amendments to §12.30 remove outdated and unnecessary language on obtaining information from NIST; change Department references to "department" for consistency with usage in Title 4, Part 1; make grammatical corrections; and make editorial changes to language on metrology calibration services and fees to improve the rule's readability.

The amendments to §12.40 update a reference to the NIST's Handbook 105 series and remove unnecessary language.

The amendments to §12.41 specify the type of form on which service company applications must be submitted, clarify a general reference to "the law" to read Chapter 13 of the Code and this chapter, and correct a grammatical error.

The amendments to §12.42 remove unnecessary language about service companies' insurance requirements appearing verbatim in Section 13.460 of the Code and replace it with a reference to that section; change a Department reference to "department" for consistency with usage in Title 4, Part 1; and make editorial changes to language on insurance requirements to improve the rule's readability.

The amendments to §12.60 correct grammatical errors and make editorial changes to language on registration requirements and procedures to improve the rule's readability.

The amendments to §12.61 change a reference to the Code to utilize a defined term in §12.1 and correct a grammatical error.

The repeal of §12.70 is adopted because its provisions are included verbatim in Section 13.255 of the Code and consequently are unnecessary.

The amendments to §12.71 relocate language on licensing application requirements to its own subsection and make related editorial changes to language on these requirements to improve the rule's clarity.

The amendments to §12.72 update a reference to the Texas Department of Insurance, add a subsection to ensure certified public weighers maintain bonding coverage, and remove unnecessary language.

The amendment to §12.73 corrects a grammatical error.

The amendments to §12.74 update recordkeeping requirements for public weighers to allow them to maintain issued official certificates in either physical or electronic format due to the prevalence of electronic business.

The Department received no comments regarding the proposed amendments or repeal.

## SUBCHAPTER A. DEFINITIONS

### 4 TAC §12.1

The amendments are adopted under Section 13.002 of the Texas Agriculture Code, which requires the Department to enforce Chapter 13.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## SUBCHAPTER B. DEVICES

### 4 TAC §§12.10 - 12.15

The amendments are adopted under Section 13.002 of the Texas Agriculture Code (Code), which requires the Department to enforce Chapter 13; Section 13.021 of the Code, which allows the Department to adopt rules for administering and ensuring standard weights and measures and for bringing about uniformity between the standards for weights and measures established under the Code and those established by federal law; Section 13.1011 of the Code, which allows the Department to adopt rules related to registering a weighing or measuring device for commercial transactions; and Section 13.113 of the Code, which allows the Department to adopt rules regulating the frequency and place of inspection for weighing or measuring devices.

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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Texas Department of Agriculture  
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For further information, please call: (512) 936-9360



## SUBCHAPTER C. PACKAGES AND PRICE VERIFICATION

### 4 TAC §12.21

The amendments are adopted under Section 13.002 of the Texas Agriculture Code (Code), which requires the Department to enforce Chapter 13, and Section 13.021 of the Code, which allows the Department to adopt rules for administering and ensuring standard weights and measures and for bringing about uniformity between the standards for weights and measures established under the Code and those established by federal law.

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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Texas Department of Agriculture  
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For further information, please call: (512) 936-9360



## SUBCHAPTER D. METROLOGY

### 4 TAC §12.30

The amendments are adopted pursuant to Section 13.021 of the Texas Agriculture Code (Code) which allows the Department to adopt rules for administering and ensuring standard weights and measures and for bringing about uniformity between the standards for weights and measures established under the Code and those established by federal law; and Section 13.115 of the Code, which allows the Department to collect fees for tests of weighing and measuring devices.

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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Texas Department of Agriculture  
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For further information, please call: (512) 936-9360



## SUBCHAPTER E. SERVICE COMPANIES

### 4 TAC §§12.40 - 12.42

The amendments are adopted under Section 13.002 of the Texas Agriculture Code (Code), which requires the Department to enforce Chapter 13; Section 13.453 of the Code, which allows the Department to adopt rules for licensing service technicians and companies, and the regulation of device maintenance activities; and Section 13.457 of the Code, which allows the Department to require additional documentation for licensure as a service technician or company.

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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Texas Department of Agriculture  
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For further information, please call: (512) 936-9360



## SUBCHAPTER G. SERVICE TECHNICIANS

### 4 TAC §12.60, §12.61

The amendments are adopted under Section 13.002 of the Texas Agriculture Code (Code), which requires the Department to enforce Chapter 13; Section 13.453 of the Code, which allows the Department to adopt rules for licensing service technicians and companies, and the regulation of device maintenance activities; Section 13.457 of the Code, which allows the Department to determine documentation submitted to obtain a service technician license; and Section 13.458 of the Code, which allows the Department to make rules setting certain requirements for licensing service technicians.

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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Texas Department of Agriculture  
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For further information, please call: (512) 936-9360



## SUBCHAPTER H. PUBLIC WEIGHERS

### 4 TAC §12.70

The repeal is adopted under Section 13.002 of the Texas Agriculture Code (Code), which requires the Department to enforce Chapter 13, and Section 13.258 of the Code, which allows the Department to adopt rules necessary to administer the certification of public weighers.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



#### 4 TAC §§12.71 - 12.74

The amendments are adopted under Section 13.002 of the Texas Agriculture Code (Code), which requires the Department to enforce Chapter 13; Section 13.258 of the Code; which requires the Department to adopt rules necessary to administer the certification of public weighers; and Section 13.261 of the Code, which requires the Department to adopt rules governing bonding requirements for public weighers and to set fees related to public weighers.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



### CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code, Title 4, Part 1, Chapter 20 (Cotton Pest Control), §20.1 (Definitions), §20.3 (Violations and Enforcement Actions), §20.12 (Suppressed Areas), §20.13 (Functionally Eradicated Areas), §20.14 (Eradicated Areas), §20.15 (Regulated Articles), §20.17 (Inspections and Certificates), §20.30 (Hostable Cotton in Commercial Cotton Fields), and §20.31 (Hostable Volunteer and Other Noncommercial Cotton in Locations Other Than Commercial Cotton Fields). The amendments are adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8381) and will not be republished.

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the December 23, 2022 issue of the *Texas Register* (47 TexReg 8765).

The amendments to §20.1 remove a definition for a term already defined in statute (Texas Agriculture Code (Code), Section 74.002), correct a cross reference to the Code, Section 74.0032, remove unnecessary information in a reference to the Code, Section 74.119, remove unnecessary internal references within this chapter, and make grammatical and editorial changes to improve the rule's readability.

The amendment to §20.3 corrects a spelling error.

The amendments to §20.12 replace references to the "Department" with "department" for consistency with the remaining chapters in Title 4, Part 1 and make a reference to the location of the definition for "suppressed area" more specific by adding a cross reference to §20.1.

The amendments to §20.13 change references to the Upper Coastal Bend (UCB) and South Texas Winter Garden Boll Weevil Eradication Zones to their complete titles, add a cross reference to §3.117, the rule providing for the UCB, replace a reference to the "Commissioner" with "commissioner" for consistency with general usage in Title 4, Part 1 and Chapter 74 of the Code, make a reference to the location of the definition for "functionally eradicated area" more specific by adding a cross reference to §20.1, and make an editorial change to language to improve the rule's readability.

The amendments to §20.14 replaces references to the "Commissioner" with "commissioner" as "commissioner" is the term generally used in Title 4, Part 1 and Chapter 74 of the Code, add the phrase "of this title" to cross references to rules in Chapter 3, and make a reference to the location of the definition for "eradicated area" more specific by adding a cross reference to §20.1.

The amendments to §20.15 clarify internal references within this chapter, incorporate a statutory citation to a definition, and make grammatical changes to improve the rule's readability.

The amendments to §20.17 make grammatical changes to improve the rule's readability.

The amendments to §20.30 change cross references to §§20.12 - 20.14 and make grammatical changes to improve the rule's readability.

The amendments to §20.31 update a cross reference to §3.53 and §§20.11 - 20.14, clarify internal references within this chapter; revise the phrase, "pest management zone," to conform with usage in the Code, Chapter 74; and makes grammatical changes.

The Department received no comments regarding the proposed amendments.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 4 TAC §20.1, §20.3

The amendments are adopted under Section 74.006 of the Texas Agriculture Code (Code), which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program, and Section 74.004 of the Code, which provides the Department with the authority to establish regulated areas, dates, and appro-

ropriate methods of destruction of cotton stalks, other cotton parts, and products of host plants for cotton pests.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## SUBCHAPTER B. QUARANTINE REQUIREMENTS

### 4 TAC §§20.12 - 20.15, 20.17

The amendments are adopted under Section 74.006 of the Texas Agriculture Code (Code), which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program; Section 74.010 of the Code, which requires the Department to inspect substances susceptible to cotton pest contamination that are being carried from quarantined territory into, through, or within this state; and Section 74.004 of the Code, which provides the Department with the authority to establish regulated areas, dates, and appropriate methods of destruction of cotton stalks, other cotton parts, and products of host plants for cotton pests.

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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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## SUBCHAPTER D. REGULATION OF VOLUNTEER AND OTHER NONCOMMERCIAL COTTON; HOSTABLE COTTON FEE

### 4 TAC §20.30, §20.31

The amendments are adopted under Section 74.006 of the Texas Agriculture Code (Code), which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program,

and Section 74.004 of the Code, which provides the Department with the authority to establish regulated areas, dates, and appropriate methods of destruction of cotton stalks, other cotton parts, and products of host plants for cotton pests.

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-202300675

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

#### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §1.11

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §1.11 Definition of Service-Enriched Housing, without changes to the proposed text as published in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8006). The rule amendments are listing additional populations that access Service-Enriched Housing and providing references to TDHCA TAC rules that govern Multifamily properties. This rule will not be republished.

**FISCAL NOTE.** Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Mr. Wilkinson also has determined that, for the first five years the adopted amendment would be in effect:

1. The adopted amendment to the rule will not create or eliminate a government program;
2. The adopted amendment to the rule will not require a change in the number of employees of the Department;
3. The adopted amendment to the rule will not require additional future legislative appropriations;
4. The adopted amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The adopted amendment to the rule will not create a new regulation;

6. The adopted amendment to the rule will not repeal an existing regulation;
7. The adopted amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The adopted amendment to the rule will neither positively nor negatively affect this state's economy.

**PUBLIC BENEFIT/COST NOTE.** Mr. Wilkinson also has determined that, for each year of the first five years the adopted amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the clarification of a required definition. There will not be any economic cost to any individuals required to comply with the adopted amendment.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES.** The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

**SUMMARY OF PUBLIC COMMENT.** Public comment was accepted from November 25, 2022, through December 27, 2022. No comment was received.

**STATUTORY AUTHORITY.** The adoption of this action is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the action affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300639  
 Bobby Wilkinson  
 Executive Director  
 Texas Department of Housing and Community Affairs  
 Effective date: March 1, 2023  
 Proposal publication date: December 2, 2022  
 For further information, please call: (512) 475-3959



## CHAPTER 7. HOMELESSNESS PROGRAMS

### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

#### 10 TAC §7.8

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC §7.8, Records Retention, without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7823). The rule will not be republished. The purpose of the repeal is to remove an outdated regulation citation while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. **GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Homeless Programs.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect this state's economy.

b. **ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

The Department has evaluated this repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. **LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Emergency Solutions Grants Program. There will not be economic costs to individuals required to comply with the repealed section.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between November 25, 2022, to December 27, 2022. Comments regarding the proposed repeal were accepted in writing and by e-mail with no comment to the repeal of this section received.

The Board adopted the final order adopting the repeal on February 9, 2023.

STATUTORY AUTHORITY. The adopted repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300644

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## 10 TAC §7.8

The Texas Department of Housing and Community Affairs (the Department) adopts the new 10 TAC §7.8, Records Retention without changes to the text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7824). The rule will not be republished. The purpose of the new section is to provide clarification and updates to requirements related to the adherence to updated State regulation.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the reoption of this rule, which makes changes to the existing administration of the Homeless Programs.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule does not require additional future legislative appropriations.
4. The rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not expand, limit, or repeal an existing regulation.

7. The rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being replaced.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for



each year of the first five years the new subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program is included in eligible activities.

**SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE.** The Department accepted public comment between November 25, 2022 and December 27, 2022. Comments regarding the proposed rule were accepted in writing and by e-mail with no comment received regarding the adoption of this section.

The Board adopted the final order adopting the new rule on February 9, 2023.

**STATUTORY AUTHORITY.** The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## **SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)**

### **10 TAC §7.25**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of section 10 TAC §7.25 Program Income without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7825). The rule will not be republished. The purpose of the repeal is to remove an outdated definition while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

#### **a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Homeless Programs.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal

significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

**c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

**d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

**e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Emergency Solutions Grants Program. There will not be economic costs to individuals required to comply with the repealed section.

**f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE.** The Department accepted public comment between November 25, 2022 and December 27, 2022, comments regarding the proposed repeal were accepted in writing and by e-mail with no comment received regarding the repeal of this section.

The Board adopted the final order adopting the repeal on February 9, 2023.

STATUTORY AUTHORITY. The adopted repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## 10 TAC §7.25

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §7.25, Program Income without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7826). The rule will not be republished. The purpose of the new section is to update the definition of Program Income to align with State regulations.

Tex. Gov't Code §2001.0045(b) does not apply to the rule for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to an existing administration of the Homeless Programs.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule does not require additional future legislative appropriations.
4. The rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not expand, limit, or repeal an existing regulation.
7. The rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the proposed rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being replaced.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program are included in eligible activities.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment be-

tween November 25, 2022 and December 27, 2022, comments regarding the proposed rule were accepted in writing and by e-mail with no comment received regarding the adoption of this section.

The Board adopted the final order adopting the new rule on February 9, 2023.

**STATUTORY AUTHORITY.** The new subchapter is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

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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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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## SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

### 10 TAC §§7.34, 7.36, 7.39, 7.40

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC §7.34, Continuing Awards; 10 TAC §7.36, General Threshold Criteria; §7.39, Uniform Selection Criteria; and §7.40, Competitive Program Participant Services Selection Criteria without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7827). The rules will not be republished. The purpose of the repeal is to remove ambiguity in eligibility determination in the rule and streamlining the application requirements while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

#### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Emergency Solutions Grants (ESG) Program.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. **ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

The Department has evaluated this repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. **LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Emergency Solutions Grants Program. There will not be economic costs to individuals required to comply with the repealed section.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT AND REASONED RESPONSE.** The Department accepted public comment between November 25, 2022 and December 27, 2022, comments regarding the proposed repeal were accepted in writing and e-mail with no comment received regarding the repeal of these sections.

The Board adopted the final order adopting the repeal on February 9, 2023.

**STATUTORY AUTHORITY.** The adopted repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed sections affect no other code, article, or statute.

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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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## 10 TAC §§7.34, 7.36, 7.39, 7.40

The Texas Department of Housing and Community Affairs (the Department) adopts new sections 10 TAC §7.34, Continuing Awards; 10 TAC §7.36, General Threshold Criteria; §7.39, Uniform Selection Criteria; and 10 TAC §7.40, Competitive Program Participant Services Selection Criteria without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7828). The rules will not be republished. The purpose of the new sections is to provide clarifications and updates to requirements related to the award process for the ESG Program, including updating threshold requirements and updating scoring processes and award procedures for award cycles.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to an existing activity, administration of the Emergency Solutions Grants or Emergency Solutions Grants CARES programs.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule does not require additional future legislative appropriations.
4. The rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not expand, limit, or repeal an existing regulation.
7. The rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the proposed rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at the sections being replaced.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program are included in eligible activities.

SUMMARY OF PUBLIC COMMENT AND REASONED STAFF RESPONSE. The Department accepted public comment be-

tween November 25, 2022 and December 27, 2022. Comment regarding the proposed rule was accepted in writing and e-mail with comment received from:(1) Bill Schlesinger of Project Vida, (2) Ashley Brundage and Joli Angel Robinson of Dallas City & County, Irving CoC, (3) Adam Dominguez and Camille Castillo of El Paso Coalition for the Homeless CoC, (4) Eric Samuels of Texas Homeless Network, (5) Meagan Biscamp of Ending Community Homelessness Coalition, (6) Mark Smith of Coalition for the Homeless of Houston/Harris County, and (7) Dianna Grey of City of Austin.

#### §7.36(a)(7) General Threshold Criteria

COMMENT SUMMARY: Commenters (1), (2), (3), (4), and (5) noted concern with the removal of the Continuum of Care (CoC) consultation requirement from the Application process. Commenters generally stated that CoC consultation is critical in ensuring collaboration among all projects in order to address homelessness in a comprehensive and coordinated way, while minimizing duplication of services. They recommend the Department maintain this requirement. Commenter (6) noted concerns with the removal of the CoC consultation as it could result in potentially funding a program that provides an inefficient delivery of services and using funds that do not align with community goals.

Commenters (2) and (6) cited federal regulations [24 CFR §§576.400(a), 91.100(d), 91.215(l), 91.220(4)(vi)], that require ESG recipients to consult with each CoC that serves the recipient's jurisdiction in determining how to allocate ESG funds. In addition, Commenters (2), (3), (4), and (5) noted that CoC consultation is a consistent requirement with HUD's CoC Program competition. Commenters (3) and (4) noted that the CoC consultation requirement is the first step in sharing responsibility for providing training and technical assistance as well as serving as a proactive measure for handling corrective actions.

STAFF RESPONSE: Staff appreciates the comments received and agrees that ESG recipients are required to consult with CoCs when determining how to allocate ESG funds. The federal consultation requirements at 24 CFR §576.400(a) require consultation regarding the allocation of ESG, the performance standards for and evaluation of the ESG Program, and development of funding, policies, and procedures for the administration of the Homeless Management Information System (HMIS). The Department is committed to continuing this consultation through the consolidated planning process and the rule making process, which both include formalized public input procedures. Informal, ongoing consultation includes, at a minimum, roundtable sessions and participation in the Texas Interagency Council for the Homeless (TICH). It is important to note that no changes are being proposed to the allocation of ESG funds. The recommended rule change is meant to remove additional administrative burden placed on Applicants; it does not affect the ongoing communication and collaboration between the CoCs and homeless service providers.

Additionally, the regulations governing HUD's CoC Program Competition are not applicable to the ESG program. Staff greatly appreciates the willingness from the CoC to share in the Department's responsibilities for training and technical assistance. The rule change does not affect the requirement to use HMIS (or comparable database for victim service providers or legal service providers) for all reporting and staff is committed to continuing an open communication with CoCs and HMIS leads to ensure proper reporting. Staff has carefully reviewed the comments, and no changes are recommended in response to these comments.

#### RULE §7.39(2) Uniform Selection Criteria

COMMENT SUMMARY: Commenter (7) is proposing that organizational or management experience be expanded to include locally funded homeless programs in order to allow for more eligible recipients.

STAFF RESPONSE: Staff appreciates the input and perspective shared. Due to the highly competitive nature of these funds, staff believes allowing applicants that have specific experience administering federal or State homeless programs to receive more points on their application as it demonstrates the likelihood that those applicant will more easily implement the layered administrative requirements that come with administering ESG funding. Staff also notes that experience providing homeless services is a scoring item in Section 7.40; entities that administer locally funded homeless programs will still have an opportunity to claim points based on their experience. Staff has carefully reviewed the comment, and no changes are recommended in response to this comment.

#### RULE §7.39(3) Uniform Selection Criteria

COMMENT SUMMARY: Commenter (7) is requesting to update the scoring criteria to provide Applicants the ability to claim all available points if they have not been previously awarded an ESG contract. Making the requested update will allow for a more diverse recipients.

STAFF RESPONSE: Staff understands the importance of having a diverse collection of recipients. However, as these funds are limited, highly competitive, and have strict expenditure deadlines it is important to have criteria that place a heavier weight on Applicants that have demonstrated an ability to assist households and expend their funds in the most effective and efficient manner. Staff has carefully reviewed the comment, and no changes are recommended in response to this comment.

#### RULE §7.39(4)(D)-(E) Uniform Selection Criteria

COMMENT SUMMARY: Commenter (7) is recommending increasing the minimum amounts of months to maintain housing to 6 months or more in order to better align with federal system performance measures.

STAFF RESPONSE: Staff appreciates the recommendation, and has reviewed the referenced measures. The measure included in the tracking mechanism referenced does not align with the requirement in the TDHCA ESG rule, and is not measured in the same way. The referenced measure looks to HMIS to determine whether an assisted household or person has reentered homelessness by seeking services within the same CoC, and that effort recorded into HMIS. The scoring criterion outlined in the rule requires the ESG subrecipient to verify that the household actually maintained housing rather than assuming that housing was maintained because information to the contrary was not reported. These are similar criteria, but distinct in the amount of direct client follow up required. These measures are not intended to directly align, and are an additional measure for which points may be awarded. Staff has carefully reviewed the comment, and no changes are recommended in response to this comment.

#### RULE §7.40 Competitive Program Participant Services Selection Criteria

COMMENT SUMMARY: Commenter (7) recommends introducing a scoring criterion related to an Applicant's error rate when

completing required reporting in HMIS submitted for the Consolidated Evaluation Report (CAPER).

**STAFF RESPONSE:** Staff reviewed this recommendation and does not agree that adding an additional scoring criterion would enhance the Department's subrecipient selection process. The Department's CAPER is submitted and reviewed annually by HUD, including the HMIS data referenced, and HUD has not indicated that there are significant errors in the data that would require further Department review of the CAPER data. Staff has carefully reviewed the comment, and no changes are recommended in response to this comment.

**COMMENT SUMMARY:** Commenter (7) is very supportive of having performance expectations and incentives within the scoring criteria. However, they are recommending replacing the target percentages within this subchapter with a calculation determined by using the average performance of the metrics across all recipients to establish the average score, then set the minimum targets for greater points based on the average score.

**STAFF RESPONSE:** The rule proposed makes no changes to the percentages previously adopted for these scoring criteria. Prior to the establishment of these percentages, staff conducted roundtables and extensive outreach sessions, and these metrics have been in place for multiple application cycles. While staff may consider revisiting the performance expectations in future rulemaking and proposing changes after careful analysis of subrecipient success in achieving the benchmarks proposed, it is in the interest of subrecipients and applicants to have an established, codified scoring criteria for both transparency and accountability that can be relied upon. Staff has carefully reviewed the comment, and no changes are recommended in response to this comment.

**RULE §7.40(b)(4)** Street outreach staff qualifications, (c)(4) Emergency shelter staff qualifications, (d)(4) Homeless Prevention staff qualifications, and (e)(4) Rapid re-housing staff qualifications.

**COMMENT SUMMARY:** Commenter (7) suggests that only a small number of points are awarded for applicants who incorporate persons with lived experiences of homelessness on staff or in program design processes. The commenter recommends that the state consider how to incorporate questions and adjust the scoring for this staff qualification.

**STAFF RESPONSE:** Staff has evaluated the recommendation and agrees that providing points for an applicant who employs an individual with lived experience of homelessness is still a beneficial scoring criterion, but does not agree that placing further restrictions on the ability of an Applicant to claim these points is needed to ensure that program participants will be receiving services from staff with similar demographics and life experiences. Staff has carefully reviewed the comment, and no changes are recommended in response to this comment.

**RULE §7.40(b)(7)** Experience providing street outreach, (c)(7) Experience providing emergency shelter, (d)(7) Homeless Prevention, and (e)(7) Experience providing rapid re-housing or tenant-based rental assistance services.

**COMMENT SUMMARY:** Commenter (7) suggests reducing the scoring interval from 2 year increments to yearly increments in order to increase the competitiveness for younger but high performing applicants.

**STAFF RESPONSE:** Staff has evaluated the recommendation and believes that providing points for an applicant that has only

provided services for one year is not sufficient to determine whether they will be more likely to succeed in implementing an ESG program. By requiring a minimum of two years of documented service delivery, there is less risk to funds as the entity will have a more familiarity with the types of eligible services. Funding more experienced providers is also more beneficial given the limited resources available for intensive training and program development; which would be needed for newer subrecipients. Staff has carefully reviewed the comment, and no changes are recommended in response to this comment.

**RULE §7.40(d)(5)** Homeless prevention maintaining housing and (e)(5) Rapid re-housing maintaining housing

**COMMENT SUMMARY:** Commenter (7) recommends increasing the minimum number of months for maintaining housing from three to six months in order to use the HMIS System Performance Measure Report; commenter noted that basing scoring on a three month minimum could result in significant time and financial resources to amend.

**STAFF RESPONSE:** Staff appreciates the recommendation, and has reviewed the referenced measures. The measure included in the tracking mechanism referenced does not align with the requirement in the TDHCA ESG rule, and is not measured in the same way. The referenced measure looks to HMIS to determine whether an assisted household or person has reentered homelessness by seeking services within the same CoC, and that effort is recorded into HMIS. The scoring criterion outlined in the rule requires the ESG subrecipient to verify that the household actually maintained housing rather than assuming that housing was maintained because information to the contrary was not reported. These are similar criteria, but distinct in the amount of direct client follow up required. These measures are not intended to directly align, and are an additional measure for which points may be awarded. Staff has carefully reviewed the comment, and no changes are recommended in response to this comment.

The Board adopted the final order adopting the rule on February 9, 2023.

**STATUTORY AUTHORITY.** The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300648

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 1, 2023

Proposal publication date: November 25, 2022

For further information, please call: (512) 475-3959

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**TITLE 13. CULTURAL RESOURCES**

# PART 9. TEXAS HOLOCAUST, GENOCIDE, AND ANTISEMITISM ADVISORY COMMISSION

## CHAPTER 191. COMMISSION PROCEDURES

### 13 TAC §§191.1, 191.3 - 191.9

On behalf of the Texas Holocaust, Genocide and Antisemitism Advisory Commission (THGAAC), the Texas Historical Commission (THC) adopts the repeal of Chapter 191, THGAAC, relating to the THGAAC Commission Procedures, §§191.1, 191.3 - 191.9. The repeal is adopted without changes to the text as published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7634). These rules will not be republished.

This repeal is required as part of the THC's overall effort to align with H.B. 3257 which eliminated the Texas Holocaust and Genocide Commission, created the new THGAAC and clarified the THC's statutory authority. In a separate action, the THC contemporaneously proposes a new Chapter 18, TAC Title 13, Part 2, relating to the Texas Holocaust, Genocide and Antisemitism Advisory Commission which will replace the repealed section.

No comments were received regarding the proposed repeal.

This repeal is adopted under the authority of Texas Government Code (TGC), section 442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, (TGC), section 448.001 which provides statutory responsibility of the THGAAC to the THC, including a provision (TGC, section 448.102) to adopt rules.

No other statutes, articles, or codes are affected by this repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2023.

TRD-202300567

Mark Wolfe

Executive Director

Texas Holocaust, Genocide, and Antisemitism Advisory Commission

Effective date: February 27, 2023

Proposal publication date: November 18, 2022

For further information, please call: (512) 463-6100



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

The State Board of Education (SBOE) adopts the repeal of §§33.1, 33.5, 33.10, 33.15, 33.20, 33.25, 33.30, 33.35, 33.40, 33.45, 33.50, 33.55, 33.60, 33.65, and 33.67 and new §§33.3, 33.4, and 33.6 - 33.8, concerning statement of investment objectives, policies, and guidelines of the Texas Permanent School Fund (PSF). The repeal of §§33.1, 33.5, 33.10, 33.15, 33.20,

33.25, 33.30, 33.35, 33.40, 33.45, 33.50, 33.55, 33.60, 33.65, and 33.67 and new §§33.3, 33.4, and 33.8 are adopted without changes to the proposed text as published in the December 23, 2022 issue of the *Texas Register* (47 TexReg 8430) and will not be republished. New §33.6 and §33.7 are adopted with changes to the proposed text as published in the December 23, 2022 issue of the *Texas Register* (47 TexReg 8430) and will be republished. The new rules include changes to the existing rules relating to the Bond Guarantee Program, including changes to the reserve. The revisions also organize the rules in Chapter 33 by creating new Subchapter B, Texas Permanent School Fund Corporation Rules, which contains §33.21.

**REASONED JUSTIFICATION:** In accordance with statute, the rules in Chapter 33 establish investment objectives, policies, and guidelines for the Texas PSF.

Senate Bill (SB) 1232, 87th Texas Legislature, Regular Session, 2021, allows the SBOE to create the Texas PSF Corporation and delegate its authority to manage the PSF to the Texas PSF Corporation.

Existing §§33.5, 33.20, 33.65, and 33.67 were repealed. The sections were renumbered and amended as follows.

New §33.3, Duties and Responsibilities of the State Board of Education Related to the Texas Permanent School Fund Corporation, replaces existing §33.20. The following significant changes were made from the existing rule. The new rule updates the duties and responsibilities of the SBOE to align with SB 1232, including the repeal of provisions that are no longer applicable. The remaining provisions specify the role of the SBOE as fiduciary of the PSF and the duties and responsibilities of the SBOE with respect to the Texas PSF Corporation, as set forth in SB 1232 and the Texas PSF Corporation's governing documents.

New §33.4, Ethical Standards for Members of the State Board of Education, replaces existing §33.5. The following significant changes were made from the existing rule. The new rule changes most of the ethical provisions related to the investment and management of the PSF because under SB 1232, the PSF Corporation now has strategic and operational control of PSF investments. The SBOE will no longer hire companies and individuals to manage the PSF. The SBOE's role concerning the PSF has significantly changed. The PSF Corporation has developed an ethics policy as required by SB 1232. The provisions of the new rule provide ethical standards for SBOE members, the commissioner of education, Texas Education Agency staff, and persons who provide services to the SBOE relating to the PSF.

New §33.6, Bond Guarantee Program for School Districts, replaces existing §33.65. The following significant changes were made from the existing rule. The commissioner has the authority to increase or decrease the multiplier, and changes were made to the fund's reserve to (1) allow the SBOE to establish an amount of capacity held in reserve of up to 5.0% of the fund's capacity; (2) remove the limitations on the use of the reserve capacity; and (3) provide the commissioner or SBOE the ability to increase or decrease the amount held in reserve. Additionally, the changes allow applications for districts that experience unforeseen catastrophes or emergencies to be prioritized.

At adoption, a technical edit was made in §33.6(e)(2) that adds commas to the phrase "cost value, asset allocation, and risk in the portfolio."

New §33.7, Bond Guarantee Program for Charter Schools, replaces existing §33.67. As proposed, the new rule would have

required the commissioner to hold up to 5.0% of the charter school available capacity in reserve each month. Based on public comment, §33.7(d)(1) was modified at adoption to replace the 5.0% reserve amount with a reference to the reserve amount adopted by the SBOE for school districts under §33.6.

At adoption, a non-substantive, conforming edit was made in §33.7(m)(1) that specifies that the commissioner must notify the Texas PSF Corporation immediately after receiving a notice of default under §33.7(k).

New §33.8, Compliance with Securities and Exchange Commission (SEC) Rule 15c2-12 Pertaining to Disclosure of Information Relating to the Bond Guarantee Program, codifies the SEC Rule 15c2-12 undertaking in Chapter 33. Additionally, the new rule adds a definition of Texas PSF Corporation and specifies that the annual report is prepared by the Texas PSF Corporation.

Existing §§33.1, 33.10, 33.15, 33.25, 33.30, 33.35, 33.40, 33.45, 33.50, 33.55, and 33.60 are repealed because they are no longer applicable to the SBOE due to the implementation of SB 1232 and the delegation of the authority to manage and invest the PSF to the Texas PSF Corporation.

In accordance with Texas Education Code, §43.0031(c), a copy of proposed new 19 TAC §33.4, Ethical Standards for Members of the State Board of Education, was submitted to the Texas Ethics Commission and the State Auditor's Office (SAO) for review and comment following SBOE approval of the proposed new section for first reading and filing authorization at the November 2022 meeting. The SBOE is to consider any comments from the Texas Ethics Commission or SAO received prior to final adoption. The SAO sent a letter dated January 13, 2023, stating that the SAO has no comments on the proposed new rule. No comments were received from the Texas Ethics Commission.

The SBOE approved the revisions for first reading and filing authorization at its November 18, 2022 meeting and for second reading and final adoption at its February 3, 2023 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the revisions for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will allow the rules to align with statute as soon as possible. The effective date is 20 days after filing as adopted with the *Texas Register*.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began December 23, 2022, and ended at 5:00 p.m. on January 27, 2023. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2023 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

**Comment.** Texas Public Charter Schools Association (TPCSA) suggested amending §33.7(d)(1) to specify that the commissioner shall set the charter reserve at the percentage established by the SBOE under §33.6(e)(2) for independent school districts (ISDs). TPCSA stated that this change would clarify that the bond guarantee reserve capacity percentage for charter schools is the same as the reserve capacity percentage for ISDs. TPCSA also provided a letter from Uplift Education recommending that the SBOE set the PSF reserve limit to 0%.

**Response.** The SBOE agrees with the recommendation to clarify that the reserve capacity is the same for charter schools and

ISDs and has modified §33.7(d)(1) at adoption to require that the commissioner set the charter reserve percentage at the amount established by the SBOE for ISDs. The SBOE disagrees that it is necessary at this time to change the reserve limit in the rule to 0%. However, the SBOE took action to adjust the Bond Guarantee Program amount of capacity to be held in reserve under Chapter 33 to 0.25% of the fund's capacity contingent upon the adoption and effective date of the revisions to Chapter 33.

## SUBCHAPTER A. STATE BOARD OF EDUCATION RULES

### **19 TAC §§33.1, 33.5, 33.10, 33.15, 33.20, 33.25, 33.30, 33.35, 33.40, 33.45, 33.50, 33.55 33.60, 33.65, 33.67**

**STATUTORY AUTHORITY.** The repeals are adopted under Texas Constitution, Article VII, §5(a), which authorizes the State Board of Education (SBOE) to make distributions from the Permanent School Fund (PSF) to the available school fund with certain limits; Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent person standard and make investments it deems appropriate; Texas Education Code (TEC), §43.001, which describes the PSF as a perpetual endowment; TEC, §43.0031, which requires the SBOE to adopt an ethics policy; and Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021, which allows the SBOE to create the Texas PSF Corporation and delegate its authority to manage the PSF to the Texas PSF Corporation.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Constitution, Article VII, §5(a) and (f); Texas Education Code, §43.001 and §43.0031; and Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300611

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 1, 2023

Proposal publication date: December 23, 2022

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



### **19 TAC §§33.3, 33.4, 33.6 - 33.8**

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Constitution, Article VII, §5(a), which authorizes the State Board of Education (SBOE) to make distributions from the Permanent School Fund (PSF) to the available school fund with certain limits; Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent person standard and make investments it deems appropriate; Texas Education Code (TEC), §43.001, which describes the PSF as a perpetual endowment; TEC, §43.0031, which requires the SBOE to adopt an ethics policy; and Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021, which allows the SBOE to create the Texas PSF Corporation and delegate its authority to manage the PSF to the Texas PSF Corporation.



CROSS REFERENCE TO STATUTE. The new sections implement Texas Constitution, Article VII, §5(a) and (f); Texas Education Code, §43.001 and §43.0031; and Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021.

§33.6. *Bond Guarantee Program for School Districts.*

(a) Statutory provision. The commissioner of education must administer the guarantee program for school district bonds according to the provisions of Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for school district bonds.

(1) Annual debt service--payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the guarantee is sought as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the district has outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) The annual debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the Texas Education Agency (TEA) has sufficient evidence of the discharge or defeasance of such debt.

(C) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement, or if there is no official statement, debt service amounts based on the maximum rate permitted by the bond order or other bond proceeding that establishes a maximum interest rate for the bonds.

(2) Application deadline--the last business day of the month in which an application for a guarantee is filed. Applications must be submitted electronically through the website of the MAC of Texas or its successor by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.

(3) Average daily attendance (ADA)--total refined average daily attendance as defined by TEC, §42.005.

(4) Bond--a debt security issuance approved by the attorney general, issued under TEC, §45.003 or §45.004, to provide long-term financing with a maturity schedule of at least three years.

(5) Bond Guarantee Program (BGP)--the guarantee program that is described by this section and established under TEC, Chapter 45, Subchapter C.

(6) Bond order--the order adopted by the governing body of a school district that authorizes the issuance of bonds and the pricing certificate, if any, establishing the terms of the bonds executed pursuant to such order.

(7) Combination issue--an issuance of bonds for which an application for a guarantee is filed that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(8) Enrollment growth--growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.

(9) Nationally recognized investment rating firm--an investment rating firm that is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization (NRSRO) and is demonstrating that it has:

(A) had its current NRSRO designation for at least three consecutive years;

(B) provided credit ratings to each of the following:

(i) fifteen or more fixed income securities denominated in United States dollars and issued during the immediately preceding three years; and

(ii) ten or more school districts in the United States; and

(C) a documented separation of duties between employees involved in credit analysis and employees involved in business relationships with clients.

(10) New money issue--an issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. An issuance of bonds for the purpose of constructing teacher or student housing is eligible for the guarantee for new money only if it is an integral part of the educational mission of the school district as determined by the commissioner. Eligibility for the guarantee for new money issues is limited to the issuance of bonds authorized under TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

(A) time warrants or loans entered under TEC, Chapter 45, Subchapter E; or

(B) any other type of loan or warrant that is not supported by bond taxes as defined by TEC, §45.003.

(11) Notes issued to provide interim financing--an issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the guarantee under this section, the notes must be:

(A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;

(B) approved by the attorney general or issued in accordance with proceedings that have been approved by the attorney general; and

(C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.

(12) Refunding issue--an issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing,

that are supported by bond taxes as defined by TEC, §45.003. Eligibility for the guarantee for refunding issues is limited to refunding issues that refund bonds, including notes issued to provide interim financing, that were authorized by a bond election under TEC, §45.003.

(13) Total debt service--total outstanding principal and interest on bonded debt.

(A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline, if the district has outstanding bonded indebtedness.

(B) The total debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that TEA has sufficient evidence of the discharge or defeasance of such debt.

(C) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement, or if there is no official statement, debt service amounts based on the maximum rate permitted by the bond order or other bond proceeding that establishes a maximum interest rate for the bonds.

(c) Data sources.

(1) The following data sources will be used for purposes of prioritization:

(A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;

(B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;

(C) debt service information reported by the MAC of Texas or its successor as of the date of the application deadline; and

(D) enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.

(2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.

(d) Bond eligibility.

(1) Only those combination, new money, and refunding issues as defined in subsection (b)(7), (10), and (12), respectively, of this section are eligible to receive the guarantee.

(2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds, except that subparagraph (C) of this paragraph does not apply to a refunding issue that provides long-term financing for notes issued to provide interim financing.

(A) As with any district applying for approval for the guarantee, the district issuing the refunding bonds must meet the requirements for initial approval specified in subsection (g)(2)(A) of this section.

(B) The bonds to be refunded must have been:

(i) previously guaranteed by the Permanent School Fund (PSF) or approved for credit enhancement under §61.1038 of this title (relating to School District Bond Enhancement Program);

(ii) issued on or after November 1, 2008, and before January 1, 2010; or

(iii) issued as notes to provide interim financing as defined in subsection (b)(11) of this section.

(C) The district must demonstrate that issuing the refunding bond(s) will result in a present value savings to the district and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds. If the commissioner approves refunding bonds for the guarantee based on evidence of present value savings but at the time of the sale of the refunding bonds a present value savings is not realized, the commissioner may revoke the approval of the bonds for the guarantee.

(D) The refunding transaction must comply with the provisions of subsection (g)(4)(A)-(C) of this section.

(3) If a district files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this section. As part of its application, the applicant district must present data that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.

(e) Determination of PSF capacity to guarantee bonds.

(1) Each month the commissioner will estimate the available capacity of the PSF. If necessary, the commissioner will confirm that the PSF has sufficient capacity to guarantee the bonds before the issuance of the final approval for the guarantee in accordance with subsection (g)(3) of this section. The calculation of capacity will be based on a multiplier of three and one-half times the cost value of the PSF with the proviso that under no circumstances could the capacity of the fund exceed the limits set by federal regulation. The commissioner may increase or decrease the multiplier to prudently manage fund capacity and preserve the AAA credit rating of the PSF. Changes to the multiplier made by the commissioner are to be ratified or rejected by the State Board of Education (SBOE) at the next meeting for which the item can be posted.

(2) The SBOE may establish an amount of capacity to be held in reserve of up to 5.0% of the fund's capacity. The amount to be held in reserve may be increased or decreased by a majority vote of the SBOE based on changes in the cost value, asset allocation, and risk in the portfolio, or may be increased or decreased by the commissioner as necessary to prudently manage fund capacity and preserve the AAA credit rating of the PSF. Changes to the amount held in reserve made by the commissioner are to be ratified or rejected by the SBOE at the next meeting for which the item can be posted.

(3) The net capacity of the PSF to guarantee bonds is determined by subtracting the amount to be held in reserve, as determined

under paragraph (2) of this subsection, from the total available capacity, as described in paragraph (1) of this subsection.

(f) Application process and application processing.

(1) Application submission and fee. A district must apply to the commissioner for the guarantee of eligible bonds or the credit enhancement of eligible bonds as authorized under §61.1038 of this title by submitting an application electronically through the website of the MAC of Texas or its successor. The district must submit the information required under TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

(A) The application fee is \$1,500.

(B) The fee is due at the time the application for the guarantee or the credit enhancement is submitted. An application will not be processed until the fee has been remitted according to the directions provided on the website of the MAC of Texas or its successor and received by TEA.

(C) The fee will not be refunded to a district that:

(i) is not approved for the guarantee or the credit enhancement; or

(ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.

(D) The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee or the credit enhancement.

(2) Application prioritization and processing. Applications will be prioritized based on districts' property wealth per ADA, with the application of a district with a lower property wealth per ADA prioritized before that of a district with a higher property wealth per ADA. Applications may also be prioritized for districts that experience unforeseen catastrophes or emergencies that require the renovation or replacement of school facilities as described in TEC, §44.031(h). All applications received during a calendar month will be held until up to the 15th business day of the subsequent month. On or before the 15th business day of each month, the commissioner will announce the results of the prioritization and process applications for initial approval for the guarantee, up to the available net capacity as of the application deadline, subject to the requirements of this section.

(A) Approval for guarantees will be awarded each month beginning with the districts with the lowest property wealth per ADA until the PSF reaches its net capacity to guarantee bonds.

(B) Approval for guarantees will be awarded based on the fund's capacity to fully guarantee the bond issue for which the guarantee is sought. Applications for bond issues that cannot be fully guaranteed will not receive an award. The amount of bond issue for which the guarantee was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee during the award process. If PSF net capacity has been exhausted, the commissioner will process the application for approval of the credit enhancement as specified in §61.1038 of this title.

(C) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (g) of this section.

(D) An applicant school district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(9) of this section is the same as or higher than that of the PSF.

(3) Late application. An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(4) Notice of application status. Each district that submits a valid application will be notified of the application status within 15 business days of the application deadline.

(5) Reapplication. If a district does not receive approval for the guarantee or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (g)(4) of this section, the district may reapply in a subsequent month. Applications that were denied approval for the guarantee will not be retained for consideration in subsequent months.

(g) Approval for the guarantee; district responsibilities on receipt of approval.

(1) Initial and final approval provisions.

(A) If, during the monthly estimation of PSF capacity described in subsection (e)(1) of this section, the commissioner determines that the available capacity of the PSF is 10% or less, the commissioner may require an applicant school district to obtain final approval for the guarantee as described in paragraph (3) of this subsection.

(B) If the commissioner has not made such a determination:

(i) the commissioner will consider the initial approval described in paragraph (2) of this subsection as both the initial and final approval; and

(ii) an applicant school district that has received notification of initial approval for the guarantee, as described in paragraph (2) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.

(2) Initial approval.

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new money, refunding, or combination issue. Under TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for initial approval by the commissioner. The commissioner's review will include the following:

(i) the purpose of the bond issue;

(ii) the district's accreditation status as defined by §97.1055 of this title (relating to Accreditation Status) in accordance with the following:

(I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the guarantee;

(II) if the district's accreditation status is Accredited-Warning or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the guarantee; or

(III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the guarantee;

(iii) the district's compliance with statutes and rules of TEA; and

(iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the attorney general under the provisions of TEC, §45.0031 and §45.005.

(B) The following limitation applies to applications for new money issues of bonds for which the election authorizing the issuance of the bonds was called after July 15, 2004. The commissioner will limit approval for the guarantee to a district that has, at the time of the application for the guarantee, less than 90% of the annual debt service of the district with the highest annual debt service per ADA, as determined by the commissioner annually, or less than 90% of the total debt service of the district with the highest total debt service per ADA, as determined by the commissioner annually. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(8) of this section, of at least 25%, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by subsection (b)(1) of this section. The total debt service amount is the amount defined by subsection (b)(13) of this section.

(C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant district whose application has received initial approval for the guarantee written notice of initial approval.

(3) Final approval. The provisions of this paragraph apply only as described in paragraph (1) of this subsection. A district must receive final approval before completing the sale of the bonds for which the district has received notification of initial approval.

(A) A district that has received initial approval must provide a written notice to TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The district must receive written confirmation from TEA that the capacity continues to be available before proceeding with the public or private offer to sell bonds.

(ii) TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A district that received confirmation from TEA in accordance with subparagraph (A) of this paragraph must provide written notice to TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the school board of trustees no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the board to a pricing officer or committee, notice must be given to TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The district must receive written confirmation from TEA that the capacity continues to be available for the bond sale before the approval of the sale by the school board of trustees or by the pricing officer or committee.

(ii) TEA will provide this notification within one business day before the date that the district expects to complete the sale by official action of the board or of a pricing officer or committee.

(C) TEA will process requests for final approval from districts that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) A district may provide written notification as required by this paragraph by facsimile transmission or by email in a manner prescribed by the commissioner.

(4) District responsibilities on receipt of approval.

(A) Once a district is awarded initial approval for the guarantee, each issuance of the bonds must be approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee. The initial approval for the guarantee will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the district or the attorney general before the expiration of the 180-day period.

(B) If the bonds are not approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee, the commissioner will consider the application withdrawn, and the district must reapply for a guarantee.

(C) If applicable, the district must comply with the provisions for final approval described in paragraph (3) of this subsection to maintain approval for the guarantee.

(D) A district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee.

(h) Financial exigency. The following provisions describe how a declaration of financial exigency under §109.2001 of this title (relating to Financial Exigency) affects a district's application for guarantee approval or a district's previously granted approval.

(1) Application for guarantee of new money issue. The commissioner will deny approval of an application for the guarantee of a new money issue if the applicant school district has declared a state of financial exigency for the district's current fiscal year. The denial of approval will be in effect for the duration of the applicable fiscal year unless the district can demonstrate financial stability.

(2) Approval granted before declaration. If in a given district's fiscal year the commissioner grants approval for the guarantee of a new money issue and the school district subsequently declares a state of financial exigency for that same fiscal year, the district must immediately notify the commissioner and may not offer the bonds for sale unless the commissioner determines that the district may proceed.

(3) Application for guarantee of refunding issue. The commissioner will consider an application for the guarantee of a refunding issue that meets all applicable requirements specified in this section even if the applicant school district has declared a state of financial exigency for the district's current fiscal year. In addition to fulfilling all applicable requirements specified in this section, the applicant school district must also describe, in its application, the reason financial exigency was declared and how the refunding issue will support the district's financial recovery plan.

(i) Allocation of specific holdings. If necessary to successfully operate the BGP, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will not prejudice the right of the SBOE to dispose of

the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

(j) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond order. If bonds guaranteed by the BGP are defeased, the district must notify the commissioner in writing within ten calendar days of the action.

(k) Bonds issued before August 15, 1993. For bonds issued before August 15, 1993, a school district seeking the guarantee of eligible bonds must certify that, on the date of issuance of any bond, no funds received by the district from the Available School Fund (ASF) are reasonably expected to be used directly or indirectly to pay the principal or interest on, or the tender or retirement price of, any bond of the political subdivision or to fund a reserve or placement fund for any such bond.

(l) Bonds guaranteed before December 1, 1993. For bonds guaranteed before December 1, 1993, if a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent solely from the PSF and not from the ASF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, excluding payments from the ASF.

(m) Bonds issued after August 15, 1993, and guaranteed on or after December 1, 1993. If a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent from the PSF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, regardless of source, including the ASF.

(n) Payments. For purposes of the provisions of TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with the terms of the bond order. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(o) Guarantee restrictions. The guarantee provided for eligible bonds under the provisions of TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee applies to all matured interest on eligible bonds, whether the bonds were issued with a fixed or variable interest rate and whether the interest rate changes as a result of an interest reset provision or other bond order provision requiring an interest rate change. The guarantee does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(p) Notice of default. A school district that has determined that it is or will be unable to pay maturing or matured principal or interest

on a guaranteed bond must immediately, but not later than the fifth business day before maturity date, notify the commissioner.

(q) Payment from PSF.

(1) Immediately after the commissioner receives the notice described in subsection (p) of this section, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(2) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the PSF.

(3) Following full reimbursement to the PSF with interest, the comptroller will further cancel the bond or coupon and forward it to the school district for which payment was made. Interest will be charged at the rate determined under the Texas Government Code, §2251.025(b). Interest will accrue as specified in the Texas Government Code, §2251.025(a) and (c).

(r) Bonds not accelerated on default. If a school district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the school district's default.

(s) Reimbursement of PSF. If payment from the PSF is made on behalf of a school district, the school district must reimburse the amount of the payment, plus interest, in accordance with the requirements of TEC, §45.061.

(t) Repeated failure to pay. If a total of two or more payments are made under the BGP or the credit enhancement program authorized under §61.1038 of this title on the bonds of a school district, the commissioner will take action in accordance with the provisions of TEC, §45.062.

### §33.7. *Bond Guarantee Program for Charter Schools.*

(a) Statutory provision. The commissioner of education must administer the guarantee program for open-enrollment charter school bonds according to the provisions of Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for open-enrollment charter school bonds.

(1) Amortization expense--the annual expense of any debt and/or loan obligations.

(2) Annual debt service--payments of principal and non-capitalized interest on outstanding bonded debt scheduled to occur during a charter district's fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the charter district is responsible for outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the charter district as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement or, if there is no official statement, debt service amounts based on the maximum rate permitted by the bond resolution or other bond proceeding that establishes a maximum interest rate for the bonds.

(C) Annual debt service includes required payments into a sinking fund as authorized under 26 United States Code (USC)

§54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter district.

(3) Application deadline--the last business day of the month in which an application for a guarantee is filed. Applications must be submitted electronically through the website of the MAC of Texas or its successor by 5:00 p.m. on the last business day of the month to be considered in that month's application processing. This application deadline does not apply to applications for issues to refund bonds previously guaranteed by the Bond Guarantee Program.

(4) Board resolution--the resolution adopted by the governing body of an open-enrollment charter holder that:

(A) requests guarantee of bonds through the Bond Guarantee Program; and

(B) authorizes the charter holder's administration to pursue bond financing.

(5) Bond--a debt security issuance approved by the attorney general, issued under TEC, Chapter 53, to provide long-term financing with a maturity schedule of at least three years.

(6) Bond Guarantee Program (BGP)--the guarantee program that is described by this section and established under TEC, Chapter 45, Subchapter C.

(7) Bond resolution--the resolution, indenture, or other instrument adopted by the governing body of an issuer of bonds authorizing the issuance of bonds for the benefit of a charter district.

(8) Charter district--an open-enrollment charter holder designated as a charter district under subsection (e) of this section, as authorized by TEC, §12.135.

(9) Combination issue--an issuance of bonds for which an application for a guarantee is filed that includes both a new money portion and a refunding portion, as permitted by TEC, Chapter 53. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(10) Debt service coverage ratio--a measure of a charter district's ability to pay interest and principal with cash generated from current operations. The debt service coverage ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses plus interest expense plus depreciation expense plus amortization expense, all divided by annual debt service. The calculation can be expressed as:  $(\text{Excess of revenues over expenses} + \text{interest expense} + \text{depreciation expense} + \text{amortization expense}) / \text{annual debt service}$ .

(11) Depreciation expense--the audited amount of depreciation that was expensed during the fiscal period.

(12) Educational facility--a classroom building, laboratory, science building, faculty or administrative office building, or other facility used exclusively for the conduct of the educational and administrative functions of a charter school.

(13) Foundation School Program (FSP)--the program established under TEC, Chapters 41, 42, and 46, or any successor program of state appropriated funding for school districts in the state of Texas.

(14) Long-term debt--any debt of the charter district that has a term of greater than three years and is secured on a parity basis with the bonds to be guaranteed.

(15) Maximum annual debt service--as of any date of calculation, the highest annual debt service requirements with respect to all outstanding long-term debt for any succeeding fiscal year.

(16) Nationally recognized investment rating firm--an investment rating firm that is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization (NRSRO) and is demonstrating that it has:

(A) had its current NRSRO designation for at least three consecutive years;

(B) provided credit ratings to each of the following:

(i) fifteen or more fixed income securities denominated in United States dollars and issued during the immediately preceding three years;

(ii) ten or more school districts in the United States;

(iii) one or more charter schools in the United States;

and

(C) a documented separation of duties between employees involved in credit analysis and employees involved in business relationships with clients.

(17) New money issue--an issuance of revenue bonds under TEC, Chapter 53, for the purposes of:

(A) the acquisition, construction, repair, or renovation of an educational facility of an open-enrollment charter school and equipping real property of an open-enrollment charter school, provided that any bonds for student or teacher housing must meet the following criteria:

(i) the proposed housing is contemplated in the charter or charter application; and

(ii) the proposed housing is an essential and integral part of the educational program included in the charter contract; or

(B) the refinancing of one or more promissory notes executed by an open-enrollment charter school, each in an amount in excess of \$500,000, that evidence one or more loans from a national or regional bank, nonprofit corporation, or foundation that customarily makes loans to charter schools, the proceeds of which loans were used for a purpose described in subparagraph (A) of this paragraph; or

(C) both.

(18) Open-enrollment charter--this term has the meaning assigned in §100.1001 of this title (relating to Definitions).

(19) Open-enrollment charter holder--this term has the meaning assigned to the term "charter holder" in TEC, §12.1012.

(20) Open-enrollment charter school--this term has the meaning assigned to the term "charter school" in §100.1001 of this title.

(21) Open-enrollment charter school campus--this term has the meaning assigned to the term "charter school campus" in §100.1001 of this title.

(22) Refunding issue--an issuance of bonds under TEC, Chapter 53, for the purpose of refunding:

(A) bonds that have previously been issued under that chapter and have previously been approved by the attorney general; or

(B) bonds that have previously been issued for the benefit of an open-enrollment charter school under Vernon's Civil Statutes,

Article 1528m, and have previously been approved by the attorney general.

(c) Bond eligibility.

(1) Only those combination, new money, and refunding issues as defined in subsection (b)(9), (17), and (22), respectively, of this section are eligible to receive the guarantee. The bonds must, without the guarantee, be rated as investment grade by a nationally recognized investment rating firm and must be issued on or after September 28, 2011.

(2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds.

(A) As with any open-enrollment charter holder applying for approval for the guarantee, the charter holder for which the refunding bonds are being issued must meet the requirements for charter district designation specified in subsection (e)(2) of this section and the requirements for initial approval specified in subsection (f)(3)(A) of this section.

(B) The charter holder must demonstrate that issuing the refunding bond(s) will result in a present value savings to the charter holder. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds. If the commissioner approves refunding bonds for the guarantee based on evidence of present value savings but at the time of the sale of the refunding bonds a present value savings is not realized, the commissioner may revoke the approval of the bonds for the guarantee.

(C) For issues that refund bonds previously guaranteed by the BGP, the charter holder must demonstrate that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded.

(D) The refunding transaction must comply with the provisions of subsection (f)(5)(A)-(C) and (E) of this section.

(3) If an open-enrollment charter holder files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this section. As part of its application, the charter holder making the application must present data that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.

(d) Determination of Permanent School Fund (PSF) capacity to guarantee bonds for charter districts.

(1) Each month the commissioner will estimate the available capacity of the PSF to guarantee bonds for charter districts. This capacity is determined by multiplying the net capacity determined under §33.6 of this title (relating to Bond Guarantee Program for School Districts) by the percentage of the number of students enrolled in open-enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner. The commissioner's determination of the number of students enrolled in open-enrollment charter schools in this state

and the number of students enrolled in all public schools in this state is based on the enrollment data submitted by school districts and charter schools to the Public Education Information Management System (PEIMS) during the most recent fall PEIMS submission. Annually, the commissioner will post the applicable student enrollment numbers and the percentage of students enrolled in open-enrollment charter schools on the Texas Education Agency (TEA) web page related to the BGP. The commissioner shall hold the percentage established by the State Board of Education (SBOE) under §33.6(e)(2) of this title of the charter school available capacity in reserve each month.

(2) Up to half of the total capacity of the PSF to guarantee bonds for charter districts may be used to guarantee charter district refunding bonds.

(e) Application process and application processing. An open-enrollment charter holder must apply to the commissioner for the guarantee of eligible bonds by submitting an application electronically through the website of the MAC of Texas or its successor. Before an application for the guarantee will be considered, a charter holder must first be determined by the commissioner to meet criteria for designation as a charter district for purposes of this section. The application submitted through the website of the MAC of Texas or its successor will serve as both a charter holder's application for designation as a charter district and its application for the guarantee.

(1) Application submission and fee. As part of its application, an open-enrollment charter holder must submit the information required under TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The open-enrollment charter holder may not submit an application for a guarantee before the governing body of the charter holder adopts a board resolution as defined in subsection (b)(4) of this section.

(A) The amount of the application fee is the amount specified in §33.6 of this title.

(B) The fee is due at the time the application for charter district designation and the guarantee is submitted. An application will not be processed until the fee has been remitted according to the directions provided on the website of the MAC of Texas or its successor and received by TEA.

(C) The fee will not be refunded to an applicant that:

- (i) is designated a charter district but is not approved for the guarantee; or
- (ii) receives approval for the guarantee but does not sell its bonds before the expiration of its approval for the guarantee.

(D) The fee may be transferred to a subsequent application for the guarantee by a charter district that has been approved for the guarantee if the charter district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee.

(2) Eligibility to be designated a charter district.

(A) To be designated a charter district and have its application for the guarantee considered by the commissioner, an open-enrollment charter holder must:

- (i) have operated at least one open-enrollment charter school in the state of Texas for at least three years and have had students enrolled in the school for those three years;

(ii) identify in its application for which open-enrollment charter school and, if applicable, for which open-enrollment charter school campus the bond funds will be used;

(iii) in its application, agree that the bonded indebtedness for which the guarantee is sought will be undertaken as an obligation of all entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness, provided that an entity that does not operate a charter school in Texas is subject to this subparagraph only to the extent that it has received state funds from the open-enrollment charter holder;

(iv) not have an unresolved corrective action that is more than one year old, unless the open-enrollment charter holder has taken appropriate steps, as determined by the commissioner, to begin resolving the action;

(v) have had, for the past three years, an audit as required by §100.1047 of this title (relating to Accounting for State and Federal Funds) that was completed with unqualified or unmodified opinions;

(vi) have received an investment grade credit rating from a nationally recognized investment rating firm as defined in subsection (b)(16) of this section as specified by TEC, §45.0541, within the last year; and

(vii) not have materially violated a covenant relating to debt obligation in the immediately preceding three years.

(B) For an open-enrollment charter holder to be designated a charter district and have its application for the guarantee considered by the commissioner, each open-enrollment charter school operated under the charter must not have an accreditation rating of Not Accredited-Revoked and must have a rating of met standard or met alternative standard as its most recent state academic accountability rating. However, if an open-enrollment charter school operated under the charter is not yet rated because the school is in its first year of operation, that fact will not impact the charter holder's eligibility to be designated a charter district and apply for the guarantee.

(3) Application processing. All applications received during a calendar month that were submitted by open-enrollment charter holders determined to meet the criteria in paragraph (2) of this subsection will be held until the 15th business day of the subsequent month. On the 15th business day of each month, the commissioner will announce the results of the pro rata allocation of available capacity, if pro rata allocation is necessary, and process applications for initial approval for the guarantee, up to the available capacity as of the application deadline, subject to the requirements of this section.

(A) If the available capacity is insufficient to guarantee the total value of the bonds for all applicant charter districts, the commissioner will allocate the available capacity on a pro rata basis to each applicant charter district. For each applicant, the commissioner will determine the percentage of the total amount of all applicants' proposed bonds that the applicant's proposed bonds represent. The commissioner will then allocate to that applicant the same percentage of the available capacity, but in no event will an allocation be equal to an amount less than \$500,000.

(B) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (f) of this section.

(C) An applicant charter district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(16) of this section is the same as or higher than that of the PSF.

(4) Late application. An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting open-enrollment charter holder before the end of the subsequent month.

(5) Notice of application status. Each open-enrollment charter holder that submits a valid application will be notified of the application status within 15 business days of the application deadline.

(6) Reapplication. If an open-enrollment charter holder does not receive designation as a charter district, does not receive approval for the guarantee, or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (f)(5) of this section, the charter holder may reapply in a subsequent month. An application that was denied approval for the guarantee or that was submitted by a charter holder that the commissioner determined did not meet the criteria for charter district designation will not be retained for consideration in subsequent months. A reapplication fee will be required unless the conditions described in subsection (e)(1)(D) of this section apply to the charter holder.

(f) Approval for the guarantee; charter district responsibilities on receipt of approval.

(1) Approval for the guarantee and charter renewal or amendment.

(A) If an open-enrollment charter holder applies for the guarantee within the 12 months before the charter holder's charter is due to expire, application approval will be contingent on successful renewal of the charter, and the bonds for which the open-enrollment charter holder is applying for the guarantee may not be issued before the successful renewal of the charter.

(B) If an open-enrollment charter holder proposes to use the proceeds of the bonds for which it is applying for the guarantee for an expansion that requires a charter amendment, application approval will be contingent on approval of the amendment, and the bonds may not be issued before approval of the amendment.

(2) Initial and final approval provisions.

(A) The commissioner may require an applicant charter district to obtain final approval for the guarantee as described in paragraph (4) of this subsection if:

(i) during the monthly estimation of PSF capacity described in §33.6 of this title, the commissioner determines that the available capacity of the PSF as described in §33.6 of this title is 10% or less; or

(ii) during the monthly estimation of the available capacity of the PSF to guarantee bonds for charter districts described in subsection (d) of this section, the commissioner determines that the available capacity of the PSF to guarantee bonds for charter districts is 10% or less.

(B) If the commissioner has not made such a determination:

(i) the commissioner will consider the initial approval described in paragraph (3) of this subsection as both the initial and final approval; and

(ii) an applicant charter district that has received notification of initial approval for the guarantee, as described in paragraph (3) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.



(3) Initial approval.

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new money, refunding, or combination issue. Under TEC, §45.056, the commissioner will investigate the financial status of the applicant charter district and the accreditation status of all open-enrollment charter schools operated under the charter. For the charter district's application to be eligible for initial approval by the commissioner, each open-enrollment charter school operated under the charter must be accredited, and the charter district must be financially sound. The commissioner's review will include review of the following:

- (i) the purpose of the bond issue;
- (ii) the accreditation status, as defined by §97.1055 of this title (relating to Accreditation Status), of all open-enrollment charter schools operated under the charter in accordance with the following, except that, if an open-enrollment charter school operated under the charter has not yet received an accreditation rating because it is in its first year of operation, that fact will not impact the charter district's eligibility for consideration for the guarantee:
  - (I) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the charter district will be eligible for consideration for the guarantee;
  - (II) if the accreditation status of any open-enrollment charter school operated under the charter is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the charter district will not be eligible for consideration for the guarantee; or
  - (III) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited-Revoked, the charter district will not be eligible for consideration for the guarantee;
- (iii) the charter district's financial status and stability, regardless of each open-enrollment charter school's accreditation rating, including approval of the bonds by the attorney general under the provisions of TEC, §53.40;
- (iv) whether TEA has required the charter district to submit a financial plan under §109.1101 of this title (relating to Financial Solvency Review) in the last three years;
- (v) the audit history of the charter district and of all open-enrollment charter schools operated under the charter;
- (vi) the charter district's compliance with statutes and rules of TEA and with applicable state and federal program requirements and the compliance of all open-enrollment charter schools operated under the charter with these statutes, rules, and requirements;
- (vii) any interventions and sanctions to which the charter district has been subject; to which any of the open-enrollment charter schools operated under the charter has been subject; and, if applicable, to which any of the open-enrollment charter school campuses operated under the charter has been subject;
- (viii) formal complaints received by TEA that have been made against the charter district, against any of the open-enrollment charter schools operated under the charter, or against any of the open-enrollment charter school campuses operated under the charter;
- (ix) the state academic accountability rating of all open-enrollment charter schools operated under the charter and the

campus ratings of all open-enrollment charter school campuses operated under the charter;

- (x) any unresolved corrective actions that are less than one year old; and
- (xi) whether the charter district is considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation.

(B) The commissioner will limit approval for the guarantee to a charter district with a historical debt service coverage ratio, based on annual debt service, of at least 1.1 for the most recently completed fiscal year and a projected debt service coverage ratio, based on projected revenues and expenses and maximum annual debt service, of at least 1.2. If the bond issuance for which an application has been submitted is the charter district's first bond issuance, the commissioner will evaluate only projected debt service coverage. Projections of revenues and expenses are subject to approval by the commissioner.

(C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant charter district whose application has received initial approval for the guarantee written notice of initial approval.

(4) Final approval. The provisions of this paragraph apply only as described in paragraph (2) of this subsection. A charter district must receive final approval before completing the sale of the bonds for which the charter district has received notification of initial approval.

(A) A charter district that has received initial approval must provide a written notice to TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The charter district must receive written confirmation from TEA that the capacity continues to be available and must continue to meet the requirements of subsection (e)(2) of this section before proceeding with the public or private offer to sell bonds.

(ii) TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A charter district that received confirmation from TEA in accordance with subparagraph (A) of this paragraph must provide written notice to TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the bond issuer's board of directors no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the issuer to a pricing officer or committee, notice must be given to TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The charter district must receive written confirmation from TEA that the capacity continues to be available for the bond sale before the approval of the sale by the bond issuer or by the pricing officer or committee.

(ii) TEA will provide this notification within one business day before the date that the bond issuer expects to complete the sale by official action of the bond issuer or of a pricing officer or committee.

(C) TEA will process requests for final approval from charter districts that have received initial approval on a first come, first

served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) A charter district may provide written notification as required by this paragraph by facsimile transmission, by email, or in another manner prescribed by the commissioner.

(5) Charter district responsibilities on receipt of approval.

(A) Once a charter district is awarded initial approval for the guarantee, each issuance of the bonds must be approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee. The initial approval for the guarantee will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the charter district or the attorney general before the expiration of the 180-day period.

(B) If applicable, the charter district must comply with the provisions for final approval described in paragraph (4) of this subsection to maintain approval for the guarantee.

(C) If the bonds are not approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee, the commissioner will consider the application withdrawn, and the charter district must reapply for a guarantee.

(D) A charter district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee.

(E) The charter district must provide evidence of the final investment grade rating of the bonds to TEA after receiving initial approval but before the distribution of the preliminary official statement for the bonds or, if the bonds are offered in a private placement, before approval of the bond sale by the governing body of the charter district.

(F) A charter district must identify by legal description any educational facility purchased or improved with bond proceeds no later than 30 days after entering into a binding commitment to expend bond proceeds for that purpose. The charter district must identify at that time whether and to what extent debt service will be paid with any source of revenue other than state funds.

(g) Allocation of specific holdings. If necessary to successfully operate the BGP, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will not prejudice the right of the SBOE to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

(h) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond resolution. If bonds guaranteed by the BGP are defeased, the charter district must notify the commissioner in writing within ten calendar days of the action.

(i) Payments. For purposes of the provisions of TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to

an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(j) Guarantee restrictions. The guarantee provided for eligible bonds under the provisions of TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee applies to all matured interest on eligible bonds, whether the bonds were issued with a fixed or variable interest rate and whether the interest rate changes as a result of an interest reset provision or other bond resolution provision requiring an interest rate change. The guarantee does not extend to any obligation of a charter district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(k) Notice of default. A charter district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the fifth business day before the maturing or matured principal or interest becomes due, notify the commissioner.

(l) Charter District Bond Guarantee Reserve Fund. The Charter District Bond Guarantee Reserve Fund is a special fund in the state treasury outside the general revenue fund and is managed by the SBOE in the same manner that the PSF is managed by the SBOE.

(m) Payment from Charter District Bond Guarantee Reserve Fund and PSF.

(1) Immediately after the commissioner receives the notice described in subsection (k) of this section, the commissioner will notify the Texas PSF Corporation of the notice of default and instruct the comptroller to transfer from the Charter District Bond Guarantee Reserve Fund established under TEC, §45.0571, to the charter district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(2) If money in the reserve fund is insufficient to pay the amount due on a bond under paragraph (1) of this subsection, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the charter district's paying agent the amount necessary to pay the balance of the unpaid maturing or matured principal or interest.

(3) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the fund or funds from which payment was made.

(4) To ensure that the charter district reimburses the reserve fund and the PSF, if applicable, the commissioner will withhold from state funds otherwise payable to the charter district the amount that the charter district owes in reimbursement.

(5) Funds intercepted for reimbursement under paragraph (4) of this subsection will be used to fully reimburse the PSF before any funds reimburse the reserve fund. If the funds intercepted under paragraph (4) of this subsection are insufficient to fully reimburse the PSF with interest, subsequent payments into the reserve fund will first be applied to any outstanding obligation to the PSF.

(6) Following full reimbursement to the reserve fund and the PSF, if applicable, with interest, the comptroller will further cancel the bond or coupon and forward it to the charter district for which payment was made. Interest will be charged at the rate determined under the Texas Government Code (TGC), §2251.025(b). Interest will

accrue as specified in the TGC, §2251.025(a) and (c). For purposes of this section, the "date the payment becomes overdue" that is referred to in the TGC, §2251.025(a), is the date that the comptroller makes the payment to the charter district's paying agent.

(n) Bonds not accelerated on default. If a charter district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the charter district's default.

(o) Reimbursement of Charter District Bond Guarantee Reserve Fund or PSF. If payment from the Charter District Bond Guarantee Reserve Fund or the PSF is made on behalf of a charter district, the charter district must reimburse the amount of the payment, plus interest, in accordance with the requirements of TEC, §45.061.

(p) Repeated failure to pay. If a total of two or more payments are made under the BGP on the bonds of a charter district, the commissioner may take action in accordance with the provisions of TEC, §45.062.

(q) Report on the use of funds and confirmation of use of funds by independent auditor. A charter district that issues bonds approved for the guarantee must report to TEA annually in a form prescribed by the commissioner on the use of the bond funds until all bond proceeds have been spent. The charter district's independent auditor must confirm in the charter district's annual financial report that bond funds have been used in accordance with the purpose specified in the application for the guarantee.

(r) Failure to comply with statute or this section. An open-enrollment charter holder's failure to comply with the requirements of TEC, Chapter 45, Subchapter C, or with the requirements of this section, including by making any material misrepresentations in the charter holder's application for charter district designation and the guarantee, constitutes a material violation of the open-enrollment charter holder's charter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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



## **TITLE 26. HEALTH AND HUMAN SERVICES**

### **PART 1. HEALTH AND HUMAN SERVICES COMMISSION**

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

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code Title 26, Part 1, Chapter

262, Texas Home Living (TxHmL) Program and Community First Choice (CFC), new Subchapters A - I, comprising new §§262.1 - 262.9, 262.101 - 262.107, 262.201, 262.202, 262.301 - 262.304, 262.401, 262.501 - 262.508, 262.601, 262.602, 262.701, and 262.801.

Sections 262.3, 262.5, 262.6, 262.8, 262.9, 262.103, 262.105, 262.106, 262.201, 262.202, 262.302, 262.401, 262.501, 262.502, 262.508, 262.601, 262.701, and 262.801 are adopted with changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5636). These rules will be republished.

Sections 262.1, 262.2, 262.4, 262.7, 262.101, 262.102, 262.104, 262.107, 262.301, 262.303, 262.304, 262.503, 262.504, 262.505, 262.506, 262.507, and 262.602 are adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5636). These rules will not be republished.

#### **BACKGROUND AND JUSTIFICATION**

The TxHmL 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 an eligible individual as an alternative to services provided in an institutional setting. The adopted rules move certain TxHmL Program rules from 40 TAC Chapter 9, Subchapter N to 26 TAC Chapter 262. The repeal of §§9.551, 9.552, 9.554, 9.556, 9.558, 9.560 - 9.563, 9.566 - 9.568, 9.570, 9.571, 9.573 - 9.575, 9.582, and 9.583 in 40 TAC Chapter 9, Subchapter N are proposed elsewhere in this issue of the *Texas Register*.

The adopted rules do not include §§9.572, 9.576, 9.578 - 9.581, and §§9.584 - 9.587. HHSC will propose rules containing the certification standards for the TxHmL Program in a different rule project.

The adopted rules ensure that the TxHmL Program complies with the requirements in Title 42, Code of Federal Regulations (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 fully comply with the requirements in 42 CFR §441.301(c)(1) - (5). The adopted 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 Setting, §441.535, regarding Assessment of functional need; and §441.540 regarding the Person-centered service plan, for Community First Choice (CFC) services because CFC services are available to individuals enrolled in the TxHmL Program.

The adopted 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-language pathology as a telehealth service.

The adopted rules require the initial TxHmL eligibility assessments to be conducted in person and the CFC personal assistance services/habilitation (PAS/HAB) assessment to be completed in person unless certain conditions exist in which case the assessment may be completed by telehealth, telephone, or

video conferencing. These requirements help ensure the assessments are thorough and accurate.

The adopted rules include provisions regarding the denial, suspension, reduction, or termination of an individual's TxHmL Program services to explain HHSC's process in taking one of these actions. The adopted rules change the existing service coordination monitoring requirement from 90 days to 30 days during an individual's suspension.

The adopted rules require a program provider and local intellectual and developmental disability authority (LIDDA) to submit a translation of non-English documentation submitted to HHSC. The purpose of the adopted rule is to help ensure that HHSC's reviews of documentation are efficient.

The adopted rules require a registered nurse (RN) to complete a comprehensive nursing assessment of an individual in person under specified circumstances. This requirement is included to ensure the comprehensive nursing assessment is clinically effective, thorough, and accurate and to help ensure the health and safety of an individual.

The adopted rules codify current practice related to individuals in the TxHmL Program transferring to another program provider or choosing a different service delivery option.

The adopted rules provide that HHSC may allow program providers and service coordinators 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 helps ensure that providers and service coordinators are able to provide services effectively during a disaster.

#### COMMENTS

The 31-day comment period ended October 17, 2022.

During the 31-day comment period that ended October 17, 2022, and the public hearing held on September 26, 2022, HHSC received comments regarding the proposed rules from four commenters, including Helen Farabee Centers, LTO Ventures, and Texas Council of Community Centers.

COMMENT: One commenter requested that HHSC provide the entire definition of a term instead of including a reference to another rule.

RESPONSE: HHSC declines to make changes in response to this comment. HHSC references another rule to define a term instead of providing the entire definition to avoid inconsistent definitions if the definition of the term in the other rule changes.

COMMENT: One commenter requested that HHSC include "integrated" in the term "competitive employment" or in its definition.

RESPONSE: HHSC declines to make changes in response to this comment. The term "competitive employment" is used only in the description of "supported employment" in proposed §262.5. In that context, "competitive employment" means employment that pays an individual at least minimum wage if the individual is not self-employed and does not necessarily include employment integrated into the community.

COMMENT: One commenter recommended that HHSC create a separate definition for "representative payee" that is independent of the "legally authorized representative (LAR)" definition because using both terms synonymously in the rules is confusing.

RESPONSE: HHSC declines to make changes in response to this comment because a "representative payee" is a type of LAR.

COMMENT: One commenter requested that HHSC remove the reference to "applicant" in the person-directed plan (PDP) definition.

RESPONSE: HHSC declines to make changes in response to this comment because the requirement for a PDP applies to an applicant.

COMMENT: One commenter requested that transportation be added as a component of the CFC service because it is vital in fulfilling CFC activities such as community integration.

RESPONSE: Based on the Medicaid State Plan, proposed §262.6 includes a description of CFC PAS/HAB and the description does not include transportation as a CFC PAS/HAB activity. In addition, transportation is an available service through community support in the TxHmL Program. HHSC declines to make changes in response to this comment because the requested revisions are inconsistent with the Medicaid State Plan and would require additional analysis and a change to the Medicaid State Plan with CMS approval.

COMMENT: One commenter expressed concern about the integrity of translated information by a LIDDA and that LIDDAs may not have adequate resources to translate. The commenter suggested that HHSC delete this provision or clarify what it means by "documentation."

RESPONSE: HHSC proposed §262.7 requiring a program provider and a LIDDA to provide HHSC a translation of information in English to help ensure that HHSC staff can perform utilization review functions timely and efficiently. HHSC believes it is the program provider's or LIDDA's responsibility to provide documentation to HHSC that does not require translation by HHSC staff, and that program providers and LIDDAs are capable of providing accurate translations. The word "documentation" in proposed §262.7 means any documentation submitted to HHSC by a program provider or LIDDA and, therefore, no clarification is needed. HHSC declines to make changes in response to these comments.

COMMENT: One commenter requested that HHSC revise the HHSC comprehensive nursing assessment form to align with the requirements in proposed §262.8.

RESPONSE: HHSC will consider revising the HHSC comprehensive nursing assessment form as requested when that form is under review by HHSC.

COMMENT: Several commenters disagreed with the requirements in proposed §262.103(k)(1)(A)(i)(I) and §262.103(k)(1)(B)(i) for a LIDDA to conduct a determination of intellectual disability (DID) and an inventory for client and agency planning (ICAP) in person. The commenters expressed that these requirements would limit or delay access to services for individuals. These commenters requested that HHSC consider the established validity of several psychological assessments conducted remotely and allow an authorized provider/clinician to use their clinical judgment in deciding the best modality for conducting the DID and ICAP. One commenter requested that synchronous audiovisual interactions be considered an appropriate alternative to in-person meetings when the practitioner determines such remote interaction to be clinically appropriate. The commenter also asked to include in proposed 262.103(k)(1)(B)(i) that the LIDDA conduct an "initial" ICAP assessment in person or "via synchronous audiovisual

interaction that allows for a real-time interface to ensure validity of the results." The commenter asked to add "initial" because subsequent ICAPs are conducted by providers.

RESPONSE: HHSC declines to make changes in response to these comments. HHSC believes that initial assessments for waiver program eligibility, including the standardized measures of an individual's intellectual functioning, adaptive abilities, and deficits that informs the DID and the ICAP, must be conducted in person to ensure the assessments are thorough and accurate. HHSC declines to add "initial" before ICAP assessment, because the additional wording is not needed to understand the purpose of the assessment.

COMMENT: One commenter suggested that HHSC replace the phrase "for completing" to "to complete" in proposed §262.103(k)(4)(A). The commenter also suggested adding "or transmits the signed and dated document" for clarity in proposed §262.103(o)(4).

RESPONSE: HHSC agrees with the requested changes and revised the proposed rules for clarity. Specifically, HHSC replaced "for completing" with "to complete" in proposed §262.103(k)(4)(A) and §262.302(a)(2)(A). HHSC also revised proposed §262.103(o)(4) and §262.302(a)(6)(B) to clarify that an applicant or LAR provides a signed and dated individual plan of care (IPC) to the service coordinator in person, electronically, by fax, or by United States mail.

COMMENT: One commenter requested revision to proposed §262.105(f) that outlines the supporting documentation that must be submitted to HHSC to effectively demonstrate a recommended level of need (LON) to HHSC.

RESPONSE: HHSC declines to make changes in response to this comment. The documentation requirements for demonstrating a recommended LON to HHSC are lengthy and listed on the HHSC website.

COMMENT: One commenter suggested HHSC develop a process to allow for a temporary LON increase when an individual exhibits dangerous behavior that manifests quickly and requires immediate increase in support and services. The commenter also suggested that HHSC remove the documentation requirement in proposed §262.105(h)(3) showing more service providers are available than would be needed if the individual did not exhibit dangerous behavior.

RESPONSE: HHSC declines to make changes in response to this comment. Developing a process to allow a temporary increase in LON would require additional analysis. The documentation required to demonstrate an individual's dangerous behavior, as described in proposed §262.105(h), is reasonable and necessary to justify an increase in an individual's LON.

COMMENT: One commenter requested that HHSC clarify and provide training regarding the person-centered planning process, including what requirements must be documented.

RESPONSE: HHSC did not make changes in response to this comment. HHSC currently has person-centered planning and person-centered thinking trainings available on the HHS Learning Portal.

COMMENT: One commenter requested that HHSC clarify proposed §262.201(d)(6) regarding the requirement of the person-centered planning process to use strategies for solving conflict or disagreement within the person-centered planning process.

RESPONSE: HHSC declines to make changes in response to this comment. Proposed §262.201(d)(6) is based on 42 CFR §441.301(c)(1)(v) and this language allows for varying strategies for solving conflict or disagreement as needed.

COMMENT: One commenter requested that HHSC remove the requirement in proposed §262.201(d)(7)(B) because LIDDA staff do not have the qualifications of service providers to provide to individuals or LARs. Two commenters requested HHSC clarify if proposed §262.201(d)(7)(B) is referring to the name and qualifications of TxHmL program providers or service providers.

RESPONSE: HHSC declines to make changes in response to these comments. Proposed §262.201(d)(7)(B) requires that the person-centered planning process provide an individual or LAR with the name and qualifications of the individual's service providers in writing and, therefore, the LIDDA and program provider must ensure this requirement is met. "Service provider" is defined in proposed §262.3(79). Also, a program provider must make available all records, reports, and other information related to the delivery of TxHmL Program services and CFC services as requested by other authorized agencies, including the LIDDA, in accordance with 40 TAC §9.178(g).

COMMENT: Several commenters requested that proposed §262.202(a) be revised to require that a home and community-based setting allow individuals to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS, that the setting be selected by the individual among setting options as defined and documented in the person-centered service plan, and that the setting facilitate individual choice regarding services and supports and service providers.

Response: HHSC agrees with the requested changes and revised proposed §262.202(a) to be in compliance with 42 CFR §441.301(c)(4). The revisions include specifying that subsection (a) describes the qualities of a "home and community-based setting." HHSC also revised proposed §262.202(a) to use the term "home and community-based setting." HHSC changed the title of proposed §262.202 from "Requirements for Service Settings" to "Requirements for Home and Community-Based Settings" so that the section title more accurately reflects the contents of the section. Because of the change made in the title of proposed §262.202, HHSC changed the title of Subchapter C, from "Person-Centered Planning and Service Settings" to "Person-Centered Planning and Home and Community-Based Settings." HHSC also revised the definition of "PDP" in proposed §262.3(60) by adding that the PDP includes the setting selected by an individual or LAR for each service."

COMMENT: One commenter requested that proposed §262.202(a)(2) regarding the setting supporting "the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program" be revised to support the individual's access to the greater community to the same degree as a person living "in the same community" and not enrolled in a Medicaid waiver program.

RESPONSE: HHSC declines to make a change in response to this comment because proposed §262.202(a)(1), reformatted as subsection (a)(2), is based on 42 CFR §441.301(c)(4).

COMMENT: One commenter requested HHSC remove the provision in proposed §262.301(a)(2) because non-waiver services are already documented in the PDP and the IPC is an authorization document.

RESPONSE: Based on the TxHmL waiver application, proposed §262.301(a)(2) provides that the IPC must be based on the PDP and specify the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services during an IPC year. HHSC declines to make changes in response to this comment because the requested revision is inconsistent with the TxHmL waiver application and would require a change to the TxHmL waiver application with CMS approval.

COMMENT: One commenter suggested HHSC ensure the Texas Medicaid and Healthcare Partnership system allows service coordinators and providers to update IPC information if details change before the start of the IPC.

RESPONSE: HHSC declines to make changes in response to this comment because it is outside the scope of this rule project.

COMMENT: One commenter requested HHSC revise proposed §262.302(a)(4) to allow an individual or LAR to sign the finalized PDP electronically.

RESPONSE: HHSC declines to make changes in response to this comment because 40 TAC §49.305 addresses policies related to electronic signatures.

COMMENT: One commenter suggested that HHSC revise proposed §262.501(a) and §262.502(a) to delineate the process of a transfer when a service coordinator receives information from an individual or LAR that the individual wants to transfer or the LAR wants the individual to transfer to a different program provider or FMSA, or that an individual, or LAR wants the individual to begin to receive a service through the consumer directed services (CDS) option, from the process when the service coordinator receives the information from a different person.

RESPONSE: HHSC agrees with the commenter and revised proposed §262.501(a) and §262.202(a) to clarify the service coordinator's required activities after receiving information, from an individual or LAR or another person, about a desire to transfer to a different program provider or to receive services through the CDS option.

COMMENT: One commenter suggested that the written statement required in proposed §262.508(a)(3) be signed by the LAR in appropriate circumstances.

RESPONSE: HHSC agrees with the commenter and revised proposed §262.508(a)(3), as requested by the commenter, to provide that the written statement that the individual no longer wants TxHmL Program services be signed by the individual "or LAR."

COMMENT: One commenter requested that HHSC revise proposed §262.701(j)(3) to require the service coordinator to use an HHSC form to document the provision to the individual or LAR of the booklet, "Your Rights In the Texas Home Living (TxHmL) Program," and an oral explanation of the rights in the booklet.

RESPONSE: HHSC declines to make changes in response to this comment because a form with the information described has not been developed. HHSC will consider developing a form when updating handbooks and forms.

COMMENT: One commenter requested that to ensure consistent documentation among service coordinators, HHSC develop booklets and forms for service coordinators to use when informing applicants and individuals about responsibilities related to electronic visit verification, as required by proposed §262.701(u).

RESPONSE: HHSC declines to make changes in response to this comment. As described in proposed §262.701(u)(1)(A), §262.701(u)(2)(A), and §262.701(u)(3)(A), HHSC requires service coordinators to use HHSC form 8516, Electronic Visit Verification Responsibilities and Additional Information to explain information to applicants and individuals about responsibilities related to electronic visit verification. This form is available on HHSC's website.

COMMENT: One commenter requested that HHSC revise proposed §262.701(o) to require a service coordinator to have contact to provide service coordination during a month in which "the service coordinator is aware" that an individual "might" not receive an TxHmL Program service because service coordinators are not always informed when an individual's plans change and are unaware to make the required contact. Additionally, the commenter suggested a service coordinator contact should not be required during a month in which it is anticipated that the individual will not receive an TxHmL Program service because of being on an extended vacation.

RESPONSE: HHSC declines to make changes in response to this comment. In accordance with proposed §262.101(a)(9) and the TxHmL waiver application, an individual requires the provision of at least one TxHmL Program service per month or a monthly monitoring visit by a service coordinator to be eligible for the TxHmL Program. Further, HHSC does not believe that the requested revision to proposed §262.701(o) results in a meaningful change to the proposed provision.

COMMENT: One commenter requested that HHSC revise proposed §262.801(i)(3)(B)(iii)(II) to prohibit only the parent, sibling, or child of an individual, not the relative of an individual, from being the vendor used to repair an adaptive aid that was damaged because of the disaster.

RESPONSE: The prohibition on a relative being an adaptive aid vendor in proposed §262.801(i)(3)(B)(iii)(II) is based on the TxHmL waiver application. HHSC declines to make changes in response to this comment because the requested revision is inconsistent with the TxHmL waiver application and would require additional analysis and a change to the TxHmL waiver application with CMS approval.

COMMENT: One commenter requested that HHSC revise proposed §262.801(g) to provide that a service coordinator is not required to ensure that an individual who resides in the disaster area or LAR signs "any documentation that requires a wet signature, including documentations for enrollment activities, targeted case management activities and rights of an individual," during an executive order or proclamation declaring a state of disaster.

RESPONSE: HHSC declines to make changes in response to this comment because the change would require additional analysis and, in part, is beyond the scope of this project. Requirements for signatures of an individual or LAR on documentation related to targeted case management are not included in these proposed rules.

In addition to the changes made to the rules in response to comments, HHSC made changes to the rules that are not in response to comments.

HHSC revised the definition of "implementation plan" in proposed §262.3(38) for clarity.

HHSC moved the definition of "in person or in-person" in proposed §262.3(42) to §262.3(39) for alphabetization.

HHSC revised the definition of "service planning team" in proposed §262.3(78) to reflect current practice.

HHSC replaced the term, "practice" with "provision" in the description of "occupational therapy" in proposed §262.5(a)(4) to make it consistent with the descriptions of other therapy services in the TxHmL rules.

HHSC removed the requirement for an RN to complete a comprehensive nursing assessment of an "applicant" in person in proposed §262.8(a)(1) because nursing is not provided to an "applicant." Instead HHSC clarified that an RN must complete a comprehensive nursing assessment of an "individual" if the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment.

In addition, HHSC revised proposed §262.8(a)(2)(A), reformatted as subsection (a)(2), to further refine the circumstances of when an RN is required to complete a comprehensive nursing assessment in person if an individual's health status changes. Specifically, proposed §262.8(a)(2) was revised to require an RN to complete a comprehensive nursing assessment in person if there is a significant change in an individual's health or functional status, that, (1) based on a determination by the RN, will not normally resolve itself without further intervention and (2) requires review or revision of the IPC. This change was made because HHSC determined that it is not always clinically necessary for an RN to complete a comprehensive nursing assessment when the health status of an individual changes.

HHSC revised proposed §262.8(b) to provide that a comprehensive nursing assessment required to be completed in person in accordance with proposed §262.8(a)(2)(D), reformatted as subsection (a)(5), does not have to be completed in person "if the comprehensive nursing assessment is not the annual comprehensive nursing assessment (in addition to "if an unlicensed service provider is not performing a delegated nursing task or a health maintenance activity for the individual"). This change was made to be consistent with the requirements in subsection (a)(3) that the annual comprehensive nursing assessment must be completed in person if a nursing service is on the individual's renewal IPC.

Further, HHSC revised proposed §262.8(c) to allow an RN to document a comprehensive nursing assessment using the HHSC Comprehensive Nursing Assessment form "or a form that contains all of the same elements as the HHSC Comprehensive Nursing Assessment form." This change was made to make the proposed rule consistent with current practice.

HHSC revised §262.801(d) to remove "except as provided in subsection (e) of this section" because subsection (e) does not refer to a comprehensive nursing assessment.

HHSC revised proposed §262.106(c)(3) and §262.106(d) to clarify that HHSC notifies the service coordinator in the HHSC data system that the recommended LON has been denied. This revision was made to be consistent with the revision made to the adopted Home and Community-based Services Program rules in response to a comment.

Based on direction from CMS regarding the heightened scrutiny process, HHSC revised proposed §262.202(b) to include descriptions of additional settings that are presumed to have the qualities of an institution, including a setting located in a building in which a certified ICF/IID operated by a LIDDA or state supported living center is located but is distinct from the ICF/IID and

a setting located in a building in which a licensed private ICF/IID, a hospital, a nursing facility, or other institution is located but is distinct from the ICF/IID, hospital, nursing facility, or other institution.

HHSC changed the title of Subchapter F, from "Transfers, Denials, Suspensions, Reduction, and Termination" to "Transfers, Denials, Suspensions, Reductions, and Terminations." This change was made for clarification.

HHSC revised proposed §262.501(a)(3)(A) to clarify that an FMSA does not have a service capacity limit in the HHSC data system.

HHSC updated references to 40 TAC Chapter 2, Subchapter L in the adopted TxHmL rules because rules in 40 TAC Chapter 2, Subchapter L were administratively transferred to 26 TAC Chapter 331.

HHSC also made minor editorial changes for clarity.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §§262.1 - 262.9

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

#### §262.3. Definitions.

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

- (1) Abuse--
  - (A) physical abuse;
  - (B) sexual abuse; or
  - (C) verbal or emotional abuse.
- (2) Actively involved--Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:
  - (A) interactions with the applicant or individual;
  - (B) availability to the applicant or individual for assistance or support when needed; and
  - (C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.
- (3) ADLs--Activities of daily living. Basic personal everyday activities including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
- (4) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.
- (5) Applicant--A Texas resident seeking services in the Texas Home Living (TxHmL) Program.
- (6) Audio-only--An interactive, two-way audio communication platform that only uses sound.
- (7) 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.

(8) 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).

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

(10) CDS option--Consumer directed services option. A service delivery option as defined in 40 TAC §41.103 (relating to Definitions).

(11) CFC--Community First Choice.

(12) CFC ERS--CFC emergency response services.

(13) CFC FMS--The term used for financial management services on the individual plan of care (IPC) of an applicant or individual if the applicant will receive or the individual receives only CFC personal assistance services (PAS)/habilitation (HAB) through the CDS option.

(14) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant will receive or the individual receives only CFC PAS/HAB through the CDS option.

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

(16) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(17) Comprehensive nursing assessment--A comprehensive physical and behavioral assessment of an individual, including the individual's health history, current health status, and current health needs, that is completed by a registered nurse (RN).

(18) Contract--A provisional contract or a standard contract.

(19) Delegated nursing task--A nursing task delegated by a registered nurse to an unlicensed person in accordance with:

(A) 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); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

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

(21) DID--Determination of intellectual disability. This term has the meaning set forth in §304.102 of this title (relating to Definitions).

(22) DID report--Determination of intellectual disability report. This term has the meaning set forth in §304.102 of this title.

(23) EVV--Electronic visit verification. This term has the meaning set forth in 1 TAC §354.4003 (relating to Definitions).

(24) 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.

(25) FMS--Financial management services.

(26) FMSA--Financial management services agency. As defined in 40 TAC §41.103, an entity that provides FMS to an individual participating in the CDS option.

(27) 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.

(28) HCS--Home and Community-based Services. Services provided through the HCS Program operated by the Texas Health and Human Services Commission (HHSC) as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(29) Health maintenance activities--This term has the meaning set forth in 22 TAC §225.4 (relating to Definitions).

(30) Health-related tasks--Specific tasks related to the needs of an individual, which 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. This includes tasks delegated by an RN; health maintenance activities, that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

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

(32) Hospital--A public or private institution licensed or exempt from licensure in accordance with Texas Health and Safety Code (THSC) Chapters 13, 241, 261, or 552.

(33) 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.

(34) ICAP--Inventory for Client and Agency Planning. An instrument designed to assess a person's needs, skills, and abilities.

(35) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(36) 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.

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



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

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

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

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

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

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

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

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

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

(39) In person or in-person--Within the physical presence of another person who is awake. In person or in-person does not include using videoconferencing or a telephone.

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

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

(42) Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464, Facilities Treating Persons with a Chemical Dependency.

(43) Intellectual disability--This term has the meaning set forth in §304.102 of this title.

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

(A) states:

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

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

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

(B) is authorized by HHSC.

(45) IPC cost--Estimated annual cost of TxHmL Program services included on an IPC.

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

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

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February

28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.

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

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

(48) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

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

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

(51) Managed care organization--This term has the meaning set forth in Texas Government Code §536.001.

(52) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(53) 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.

(54) Mental health facility--A facility licensed in accordance with THSC Chapter 577, Private Mental Hospitals and Other Mental Health Facilities.

(55) 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.

(56) 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.

(57) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who voluntarily assist an individual to achieve the individual's identified goals.

(58) 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.

(59) Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(60) PDP--Person-directed plan. A plan developed with an applicant or individual and LAR using an HHSC form that:

(A) describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety; and

(B) includes the setting for each service, which must be selected by the individual or LAR from setting options.

(61) Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC §533A.035.

(62) 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.

(63) Platform--This term has the meaning set forth in Texas Government Code §531.001(4-d).

(64) Post-move monitoring visit--A visit conducted by the service coordinator in accordance with the Intellectual and Developmental Disability Preadmission Screening and Resident Review (IDD-PASRR) Handbook.

(65) Pre-move site review--A review conducted by the service coordinator in accordance with HHSC's IDD PASRR Handbook.

(66) Professional therapies--Services that consist of the following:

(A) audiology services;

(B) behavioral support;

(C) dietary services;

(D) occupational therapy services;

(E) physical therapy services; and

(F) speech and language pathology.

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

(68) Provisional contract--A contract that HHSC enters into with a program provider in accordance with 40 TAC §49.208 (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with 40 TAC §49.208(e).

(69) Related condition--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 age 22;

(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.

(70) 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 TxHmL Program Billing Requirements.

(71) Renewal IPC--An IPC developed for an individual in accordance with §262.302(a) of this chapter (relating to Renewal and Revision of an Individual's IPC).

(72) Residential child care facility--The term has the meaning set forth in Texas Human Resources Code §42.002.

(73) Revised IPC--An IPC that is revised during an IPC year in accordance with §262.302 of this chapter to add a new TxHmL Program service or CFC service or change the amount of an existing service.

(74) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code Chapter 301.

(75) Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(76) Service coordination--A service as defined in §331.5 of this title (relating to Definitions).

(77) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(78) Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraph (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) the service coordinator; and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or ICF/IID or has enrolled in the TxHmL Program as a diversion from admission to an institution, including a nursing facility or ICF/IID, for 180 days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) the service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(79) Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

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

(A) sexual exploitation of an individual;

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

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

(81) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(82) 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.

(83) Staff member--An employee or contractor of a TxHmL Program provider.

(84) Standard contract--A contract that HHSC enters into with a program provider 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 40 TAC §49.209(d).

(85) 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.

(86) Store and forward technology--This term has the meaning set forth in Texas Occupations Code §111.001(2).

(87) 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.

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

(89) Telehealth service--This term has the meaning set forth in Texas Occupations Code §111.001.

(90) Temporary Admission--A stay in a facility listed in §262.505(a) of this chapter (relating to Suspension of TxHmL Program Services and CFC Services) for 270 calendar days or less or, if an extension is granted in accordance with §262.505(h) of this chapter, a stay in such a facility for more than 270 calendar days.

(91) THSC--Texas Health and Safety Code. Texas statute relating to health and safety.

(92) Transfer IPC--An IPC that is developed in accordance with §262.501 of this chapter (relating to Process for Individual to Transfer to a Different Program Provider or FMSA) or §262.502 of this chapter (relating to Process for Individual to Receive a Service Through the CDS Option that the Individual is Receiving from a Program Provider) when an individual transfers to another program provider or chooses a different service delivery option.

(93) Transition plan--A written plan developed in accordance with §303.701 of this title (relating to Transition Planning for a Designated Resident) for an applicant residing in a nursing facility who is enrolling in the TxHmL Program.

(94) Transportation plan--A written plan based on person-directed planning and developed with an applicant or individual using HHSC Individual Transportation Plan form available on the HHSC website. A transportation plan is used to document how community support will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(95) TxHmL Program--The Texas Home Living Program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act. The TxHmL Program provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(96) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(97) 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.

(98) 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.

(99) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

§262.5. *Description of TxHmL Program Services.*

(a) TxHmL Program services are described in this section and in Appendix C of the TxHmL Program waiver application approved by CMS.

(1) Adaptive aids include devices, controls, or items that are necessary to address specific needs identified in an individual's service plan. Adaptive aids enable an individual to maintain or increase the ability to perform ADLs or the ability to perceive, control, or communicate with the environment in which the individual lives.

(2) Audiology is the provision of audiology as defined in the Texas Occupations Code Chapter 401.

(3) Speech and language pathology is the provision of speech-language pathology as defined in the Texas Occupations Code Chapter 401.

(4) Occupational therapy is the provision of occupational therapy as described in the Texas Occupations Code Chapter 454.

(5) Physical therapy is the provision of physical therapy as defined in the Texas Occupations Code Chapter 453.

(6) Dietary is the provision of nutrition services as defined in the Texas Occupations Code Chapter 701.

(7) Behavioral support is the provision of specialized interventions that:

(A) assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life; and

(B) improve an individual's quality of life.

(8) Day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual. Day habilitation does not include in-home day habilitation.

(9) In-home day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in the individual's residence.

(10) Dental treatment is:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia.

(11) Minor home modifications are physical adaptations to an individual's residence to address specific needs identified by an individual's service planning team.

(12) Licensed vocational nursing is the provision of licensed vocational nursing as defined in the Texas Occupations Code Chapter 301.

(13) Registered nursing is the provision of professional nursing as defined in the Texas Occupations Code Chapter 301.

(14) Specialized registered nursing is the provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(15) Specialized licensed vocational nursing is the provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(16) Community support provides transportation to an individual.

(17) Respite provides temporary relief for an unpaid caregiver of an individual in a location other than the individual's residence.

(18) In-home respite provides temporary relief for an unpaid caregiver of an individual in the individual's residence.

(19) Employment assistance provides assistance to help an individual locate paid employment in the community.

(20) Supported employment provides assistance, in order 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.

(b) The services described in this subsection are for an individual who is receiving at least one TxHmL Program service through the CDS option.

(1) FMS is a service defined in 40 TAC §41.103 (relating to Definitions).

(2) Support consultation is a service defined in 40 TAC §41.103.

§262.6. *Description of CFC Services.*

CFC services are described in this subsection and in the Medicaid State Plan approved by CMS and available on the HHSC website.

(1) CFC PAS/HAB:

(A) consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and 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 that 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, such as:

- (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.

(2) CFC support management provides training to an individual or LAR on how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the TxHmL Handbook, if:

(A) the individual is receiving CFC PAS/HAB; and

(B) the individual or LAR requests to receive CFC support management.

(3) CFC ERS consists of backup systems and supports used to ensure continuity of services and supports, including electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices and is provided only to an individual 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.

§262.8. *Comprehensive Nursing Assessment.*

(a) An RN must complete a comprehensive nursing assessment of an individual in person:

(1) if the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment as described in §262.103(o)(1) of this chapter (relating to Process for Enrollment of Applicants);

(2) if there is a significant change in an individual's health or functional status:

(A) that, based on a determination by the RN, will not normally resolve itself without further intervention; and

(B) requires review or revision of the IPC;

(3) at least annually if a nursing service is on the individual's renewal IPC;

(4) before an unlicensed service provider performs a delegated nursing task; and

(5) if the RN who completed the most recent comprehensive nursing assessment of the individual is no longer providing a nursing service to the individual, except as provided in subsection (b) of this section.

(b) The comprehensive nursing assessment required to be completed in accordance with subsection (a)(5) of this section does not have to be completed in person if:

(1) the comprehensive nursing assessment is not the annual comprehensive nursing assessment; and

(2) an unlicensed service provider is not performing a delegated nursing task or a health maintenance activity for the individual.

(c) An RN must document a comprehensive nursing assessment required by subsection (a) of this section using the HHSC Comprehensive Nursing Assessment form or a form that contains all of the same elements as the HHSC Comprehensive Nursing Assessment form.

§262.9. *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 program provider 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 program provider 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 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300615

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**SUBCHAPTER B. ELIGIBILITY,  
ENROLLMENT, AND REVIEW**

**26 TAC §§262.101 - 262.107**

**STATUTORY AUTHORITY**

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

*§262.103. Process for Enrollment of Applicants.*

(a) HHSC notifies a LIDDA in writing, when the opportunity for enrollment in the TxHmL Program becomes available in the LIDDA's local service area and directs the LIDDA to offer enrollment to the applicant:

(1) whose interest list date, assigned in accordance with §262.102 of this subchapter (relating to TxHmL Interest List), is earliest on the statewide interest list for the TxHmL Program as maintained by HHSC;

(2) whose name is not coded in the HHSC data system as having been determined ineligible for the TxHmL Program and who is receiving services from the LIDDA that are funded by general revenue in an amount that would allow HHSC to fund the services through the TxHmL Program; or

(3) who is a member of a target group identified in the approved TxHmL waiver application.

(b) Except as provided in subsection (c) of this section, a LIDDA must offer enrollment in the TxHmL Program in writing and deliver it to the applicant or LAR by United States mail or by hand delivery.

(c) A LIDDA must offer enrollment in the TxHmL Program to an applicant described in subsection (a)(2) or (3) of this section in accordance with HHSC's procedures.

(d) A LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of enrollment in the TxHmL Program within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of enrollment in the TxHmL Program, the LIDDA terminates those services that are similar to services provided in the TxHmL Program; and

(2) the HHSC Deadline Notification form, which is available on the HHSC website.

(e) If an applicant or LAR responds to an offer of enrollment in the TxHmL Program, a LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports, using the HHSC Explanation of Services and Supports document which is available on the HHSC website;

(2) provide the applicant and LAR both an oral and a written explanation of all TxHmL Program services and CFC services using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website; and

(3) give the applicant or LAR the HHSC Waiver Program Verification of Freedom of Choice form, which is available on the HHSC website to document the applicant's choice between the TxHmL Program or the ICF/IID Program.

(f) A LIDDA must withdraw an offer of enrollment in the TxHmL Program made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of enrollment in the TxHmL Program;

(2) within seven calendar days after the applicant or LAR receives the HHSC Waiver Program Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(3) of this section, the applicant or LAR does not use the form to document the applicant's choice of the TxHmL Program;

(3) within 30 calendar days after the applicant or LAR receives the contact information regarding all available program providers in the LIDDA's local service area in accordance with subsection (k)(2)(A) of this section, the applicant or LAR does not document a choice of a program provider using the HHSC Documentation of Provider Choice form, which is available on the HHSC website;

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and HHSC has approved the withdrawal of the offer; or

(5) the applicant has moved out of the State of Texas.

(g) If a LIDDA withdraws an offer of enrollment in the TxHmL Program made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If an applicant is currently receiving services from a LIDDA that are funded by general revenue and the applicant declines the offer of enrollment in the TxHmL Program, the LIDDA must terminate those services that are similar to services provided in the TxHmL Program.

(i) If a LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with 40 TAC §2.46 (relating to Notification and Appeals Process).

(j) A LIDDA must retain in an applicant's record:

(1) the HHSC Waiver Program Verification of Freedom of Choice form;

- (2) the HHSC Documentation of Provider Choice form;
- (3) the HHSC Deadline Notification form; and
- (4) any correspondence related to the offer of enrollment in the TxHmL Program.

(k) If an applicant or LAR accepts the offer of enrollment in the TxHmL Program, the LIDDA must compile and maintain information necessary to process the applicant's request for enrollment in the TxHmL Program.

(1) The LIDDA must complete an ID/RC Assessment in accordance with §262.104(a)(1) of this subchapter (relating to LOC Determination).

(A) The LIDDA must:

(i) do one of the following:

(I) conduct a DID in accordance with §304.401 of this title (relating to Conducting a Determination of Intellectual Disability) except that the following activities must be conducted in person:

(-a-) a standardized measure of the individual's intellectual functioning using an appropriate test based on the characteristics of the individual; and

(-b-) a standardized measure of the individual's adaptive abilities and deficits reported as the individual's adaptive behavior level; or

(II) review and endorse a DID report in accordance with §304.403 of this title (relating to Review and Endorsement of a Determination of Intellectual Disability Report); and

(ii) determine whether the applicant has been diagnosed by a licensed physician as having a related condition.

(B) The LIDDA must:

(i) conduct an ICAP assessment in person; and

(ii) recommend an LON assignment to HHSC in accordance with §262.105 of this subchapter (relating to LON Assignment).

(C) The LIDDA must enter the information from the completed ID/RC Assessment in the HHSC data system and electronically submit the information to HHSC in accordance with §262.104(a)(2) of this subchapter and §262.105(a) of this subchapter and submit supporting documentation as required by §262.106 of this subchapter (relating to HHSC Review of LON).

(2) The LIDDA must:

(A) provide names and contact information to the applicant or LAR for all program providers in the LIDDA's local service area;

(B) arrange for meetings or visits with potential program providers as requested by the applicant or the LAR; and

(C) ensure that the applicant's or LAR's choice of a program provider is documented on the HHSC Documentation of Provider Choice form and that the form is signed by the applicant or LAR and retained by the LIDDA in the applicant's record.

(3) The LIDDA must assign a service coordinator who, together with other members of the service planning team, must:

(A) develop a PDP; and

(B) if CFC PAS/HAB is included on the PDP, complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form, which

is available on the HHSC website, to determine the number of CFC PAS/HAB hours the applicant needs.

(4) The CFC PAS/HAB assessment form required by paragraph (3)(B) of this subsection must be completed in person with the individual unless the following conditions are met, in which case the form may be completed by videoconferencing or telephone:

(A) the service coordinator gives the individual the opportunity to complete the form in person in lieu of completing it by videoconferencing or telephone and the individual agrees to the form being completed by videoconferencing or telephone; and

(B) the individual receives appropriate in-person support during the completion of the form by videoconferencing or telephone.

(l) A service coordinator must:

(1) in accordance with 40 TAC Chapter 41, Subchapter D (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the applicant or LAR of the applicant's right to participate in the CDS option; and

(B) inform the applicant or LAR that the applicant or LAR may choose to have one or more services provided through the CDS option, as described in 40 TAC §41.108 (relating to Services Available Through the CDS Option); and

(2) if the applicant or LAR chooses to participate in the CDS option, comply with §262.701(r) of this chapter (relating to LIDDA Requirements for Providing Service Coordination in the TxHmL Program).

(m) The service coordinator must develop an initial IPC with the applicant or LAR based on the PDP and in accordance with §262.301 of this chapter (relating to IPC Requirements).

(n) If an applicant or LAR chooses to receive a TxHmL Program service or CFC service provided by a program provider, the service coordinator must review the initial IPC with potential program providers as requested by the applicant or the LAR.

(o) A service coordinator must:

(1) ensure that the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment, unless:

(A) nursing services are not on the initial IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on the HHSC Nursing Task Screening Tool form; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician;

(2) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the initial IPC for the program provider's RN to perform a comprehensive nursing assessment as required by paragraph (1) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs community support, day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB from the program provider, will result in the applicant not receiving the service unless:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the initial IPC for a comprehensive nursing assessment by the program provider's RN in the applicant's record;

(3) negotiate and finalize the initial IPC and the date services will begin with the selected program provider, consulting with HHSC if necessary to reach agreement with the selected program provider on the content of the initial IPC and the date services will begin;

(4) ensure that the applicant or LAR signs and dates the initial IPC and provides the signed and dated IPC to the service coordinator in person, electronically, by fax, or by United States mail;

(5) ensure that the selected program provider signs and dates the initial IPC, demonstrating agreement that the services will be provided to the applicant; and

(6) sign and date the initial IPC to demonstrate that the service coordinator agrees that the requirements described in §262.301(c) of this chapter have been met.

(p) A service coordinator must:

(1) provide an oral and written explanation to the applicant or LAR of the following information using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website:

(A) the eligibility requirements for TxHmL Program services as described in §262.101(a) of this subchapter (relating to Eligibility Criteria for TxHmL Program Services and CFC Services); and

(B) if the applicant's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §262.101(b) of this subchapter to applicants who do not receive MAO Medicaid; and

(ii) the eligibility requirements for CFC services as described in §262.101(c) of this subchapter to applicants who receive MAO Medicaid; and

(2) provide an oral and written explanation to the applicant or LAR of:

(A) the reasons TxHmL Program services may be terminated as described in §262.507 of this chapter (relating to Termination of TxHmL Program Services and CFC Services with Advance Notice) and §262.508 of this chapter (relating to Termination of TxHmL Program Services and CFC Services without Advance Notice); and

(B) if the applicant's PDP includes CFC services, the reasons CFC services may be terminated as described in §262.507 and §262.508 of this chapter.

(q) After an initial IPC is finalized and signed in accordance with subsection (o) of this section, the LIDDA must:

(1) enter the information from the initial IPC in the HHSC data system and electronically submit the information to HHSC;

(2) keep the original initial IPC in the individual's record;

(3) ensure the information from the initial IPC entered in the HHSC data system and electronically submitted to HHSC contains information identical to the information on the initial IPC; and

(4) submit other required enrollment information to HHSC;

(r) HHSC notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's enrollment. If the enrollment is approved, HHSC authorizes the applicant's enrollment in the TxHmL Program through the HHSC data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the TxHmL Program.

(s) The selected program provider and the individual or LAR must develop:

(1) an implementation plan for:

(A) TxHmL Program services, except for community support, that is based on the individual's PDP and initial IPC; and

(B) CFC services, except for CFC support management, that is based on the individual's PDP, IPC, and if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(2) a transportation plan, if community support is included on the PDP.

(t) Before the applicant's service begin date, a LIDDA must provide to the selected program provider and FMSA, if applicable:

(1) copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations;

(2) the completed ID/RC Assessment;

(3) the IPC;

(4) the applicant's PDP; and

(5) if CFC PAS/HAB is included on the PDP, a copy of the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(u) In accordance with §262.401(a)(5)(N) of this chapter (relating to Program Provider Reimbursement), if a selected program provider provides services before the date of an applicant's enrollment into the TxHmL Program, HHSC does not pay the program provider for the services.

#### §262.105. LON Assignment.

(a) A LIDDA must request that HHSC assign an LON for an applicant or individual by entering the information from the completed ID/RC Assessment in the HHSC data system and electronically submitting the information to HHSC that includes the recommended LON and, as appropriate, submitting supporting documentation in accordance with §262.106(b) of this subchapter (relating to HHSC Review of LON). The electronically submitted ID/RC Assessment must contain information identical to the information on the signed and dated ID/RC Assessment.

(b) A LIDDA must, in accordance with §262.106(a) of this subchapter, submit supporting documentation to HHSC as requested by HHSC for a review of a recommended or assigned LON.

(c) A LIDDA must maintain the applicant's or individual's ICAP assessment booklet supporting the recommended LON in the applicant's or individual's record and other documentation supporting the requested LON, including:



- (1) the individual's PDP, including the deliberations and conclusions of the applicant's or individual's service planning team;
- (2) assessments and interventions by qualified professionals; and
- (3) behavior support plans.

(d) If a pervasive plus LON (LON 9) is recommended, a LIDDA must maintain documentation that proves:

- (1) the applicant or individual exhibits extremely dangerous behavior that could be life threatening to the applicant or individual or to others;
- (2) a written behavior support plan has been implemented that meets HHSC guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the extremely dangerous behavior occurs;
- (3) management of the applicant's or individual's behavior requires a person to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;
- (4) the person supervising the individual has no other duties or activities during the period of supervision; and
- (5) the individual's ID/RC Assessment is correctly scored with a "2" in the "Behavior" section.

(e) HHSC assigns an LON for an individual based on the individual's ICAP service level score, information reported on the individual's ID/RC Assessment, and required supporting documentation.

(f) A LIDDA must submit documentation supporting a recommended LON to HHSC in accordance with HHSC instructions regarding LON packet submission available on the HHSC website.

(g) HHSC assigns one of five LONs as follows:

- (1) an intermittent LON (LON 1) is assigned if the individual's ICAP service level score equals 7, 8, or 9;
- (2) a limited LON (LON 5) is assigned if the individual's ICAP service level score equals 4, 5, or 6;
- (3) an extensive LON (LON 8) is assigned if the individual's ICAP service level score equals 2 or 3;
- (4) a pervasive LON (LON 6) is assigned if the individual's ICAP service level score equals 1; and
- (5) regardless of an individual's ICAP service level score, an LON 9 is assigned if the individual meets the criteria set forth in subsection (i) of this section.

(h) An LON 1, 5, or 8, determined in accordance with subsection (g) of this section, is increased to the next LON by HHSC, due to an individual's dangerous behavior, if supporting documentation submitted to HHSC proves that:

- (1) the individual exhibits dangerous behavior that could cause serious physical injury to the individual or others;
- (2) a written behavior support plan has been implemented that meets HHSC guidelines and is based on ongoing written data, targets the dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;
- (3) more service providers are needed and available than would be needed if the individual did not exhibit dangerous behavior;

(4) service providers are constantly prepared to physically prevent the dangerous behavior or intervene when the behavior occurs; and

(5) the individual's ID/RC Assessment is correctly scored with a "1" in the "Behavior" section.

(i) HHSC assigns an LON 9 if supporting documentation submitted to HHSC proves that:

- (1) the individual exhibits extremely dangerous behavior that could be life threatening to the individual or to others;
- (2) a written behavior support plan has been implemented that meets HHSC guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;
- (3) management of the individual's behavior requires a service provider to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;
- (4) the service provider assigned to supervise the individual has no other duties during such assignment; and
- (5) the individual's ID/RC Assessment is correctly scored with a "2" in the "Behavior" section.

(j) A service coordinator must conduct an ICAP assessment in accordance with this subsection.

(1) A service coordinator must conduct an ICAP assessment of an individual:

- (A) within three years after the individual's enrollment and every third year thereafter;
- (B) if changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or
- (C) if the individual's skills and behavior are inconsistent with the individual's assigned LON.

(2) If the results of an ICAP assessment demonstrate that the individual's LON assignment may not be accurate, the service coordinator must submit a completed ID/RC Assessment to HHSC recommending a revision of the individual's LON assignment.

(k) A LIDDA must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment.

*§262.106. HHSC Review of LON.*

(a) HHSC may review a recommended or assigned LON at any time to determine if it is appropriate. If HHSC reviews an LON, a LIDDA must submit documentation supporting the LON to HHSC in accordance with HHSC's request. Based on its review, HHSC may modify an LON.

(b) Documentation supporting a recommended LON must be submitted by the LIDDA and received by HHSC within seven calendar days after the LIDDA has entered the information from the completed ID/RC Assessment in the HHSC data system and electronically submitted the information to HHSC.

(c) Within 21 calendar days after receiving the supporting documentation, HHSC:

- (1) requests additional documentation;

(2) electronically approves the recommended LON and establishes the effective date; or

(3) notifies the service coordinator in the HHSC data system that the recommended LON has been denied.

(d) HHSC reviews any additional documentation submitted in accordance with HHSC request and electronically approves the recommended LON or notifies the service coordinator in the HHSC data system that the recommended LON has been denied.

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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Health and Human Services Commission

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



## SUBCHAPTER C. PERSON-CENTERED PLANNING AND SERVICE SETTINGS

### 26 TAC §262.201, §262.202

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

#### §262.201. *Person-Centered Planning Process.*

(a) Person-centered planning is a process that empowers an applicant or individual to plan the applicant's or individual's services and supports to achieve desired outcomes.

(b) The service coordinator and program provider must ensure the person-centered planning process is led by the individual to the maximum extent possible. The 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 a PDP, implementation plan, initial IPC, renewal IPC, revised IPC, service backup plan, and transportation plan.

(d) The person-centered planning process must:

(1) include people chosen by the applicant, individual, or LAR;

(2) provide the information and support the applicant or individual needs to lead the planning process and make informed choices and decisions;

(3) occur at a time and location convenient to the applicant or individual and LAR;

(4) consider the applicant's or individual's cultural preferences;

(5) provide information in plain language to the applicant or individual in a manner that is accessible to:

(A) the applicant or individual through the provision of an auxiliary aid at no cost to the applicant or individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act; and

(B) the applicant or individual with limited English proficiency through the provision of language services at no cost to the applicant or individual, including oral interpretation and written translations;

(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:

(A) a written and oral description of the services available in the TxHmL Program; and

(B) the name and qualifications of the individual's service providers in writing; and

(8) inform the individual or LAR that the individual or LAR may request revisions to the PDP, implementation plan, initial IPC, renewal IPC, revised IPC, service backup plan, and transportation plan at any time by communicating the request to the service coordinator or the program provider.

(e) A program provider must participate in a service planning team meeting if requested by the individual or LAR.

#### §262.202. *Requirements for Home and Community-Based Settings.*

(a) A home and community-based setting is a setting in which an individual receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.

(1) The setting 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 to:

(A) seek employment and work in a competitive integrated setting;

(B) engage in community life;

(C) control personal resources; and

(D) receive services in the community.

(2) The setting is selected by the individual from among setting options, including non-disability specific settings. The setting options are identified and documented in the PDP and are based on the individual's needs and preferences.

(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.

(5) The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports.

(b) Except as provided in subsection (c) of this section, a program provider must ensure that TxHmL 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 in which a certified ICF/IID operated by a LIDDA or state supported living center is located but is distinct from the ICF/IID;

(2) is located in a building on the grounds of, or immediately adjacent to, a certified ICF/IID operated by a LIDDA or state supported living center;

(3) is located in a building in which a licensed private ICF/IID, a hospital, a nursing facility, or other institution is located but is distinct from the ICF/IID, hospital, nursing facility, or other institution;

(4) is located in a building on the grounds of, or immediately adjacent to, a hospital, a nursing facility, or other institution except for a licensed private ICF/IID; or

(5) has the effect of isolating individuals from the broader community of persons not receiving Medicaid HCBS.

(c) A program provider may provide a TxHmL 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.

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 D. DEVELOPMENT AND REVIEW OF AN IPC

### 26 TAC §§262.301 - 262.304

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

§262.302. *Renewal and Revision of an Individual's IPC*

(a) Renewal and Revision of an IPC. At least annually, and before the expiration of an individual's IPC, the individual's IPC must be renewed and revised in accordance with this subsection and HHSC's instructions.

(1) At least 30 but no more than 90 calendar days before the expiration of an individual's IPC, the service coordinator must:

(A) notify the service planning team that the individual's PDP must be reviewed and updated;

(B) convene a meeting with the service planning team to:

(i) review and update the individual's PDP and develop a renewal IPC; and

(ii) if CFC PAS/HAB is included on the PDP, complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs;

(C) ensure the individual or LAR signs the finalized PDP; and

(D) use the HHSC Understanding Program Eligibility and Services form to provide an individual or LAR both an oral and a written explanation of:

(i) the eligibility requirements for the TxHmL Program as described in §262.101(a) of this chapter (relating to Eligibility Criteria for TxHmL Program Services and CFC Services);

(ii) if the individual's PDP includes CFC services:

(I) the eligibility requirements for CFC services as described in §262.101(b) of this chapter to individuals who do not receive MAO Medicaid; and

(II) the eligibility requirements for CFC services as described in §262.101(c) of this chapter to individuals who receive MAO Medicaid;

(iii) all TxHmL Program services as described in §262.5 of this chapter (relating to Description of TxHmL Program Services) and all CFC services as described in §262.6 of this chapter (relating to Description of CFC Services);

(iv) the reasons TxHmL Program services may be terminated as described in §262.507 of this chapter (relating to Termination of TxHmL Program Services and CFC Services with Advance Notice) and §262.508 of this chapter (relating to Termination of TxHmL Program Services and CFC Services without advance notice) or suspended as described in §262.505 of this chapter (relating to Suspension of TxHmL Program Services and CFC Services); and

(v) if the individual's PDP includes CFC services, the reasons CFC services may be terminated as described §262.507 of this chapter and §262.508 of this chapter or suspended as described in §262.505 of this chapter.

(2) The HHSC HCS/TxHmL CFC PAS/HAB Assessment form required by paragraph (1)(B)(ii) of this subsection must be completed in person with the individual unless the following conditions are met, in which case the form may be completed by videoconferencing or telephone:

(A) the service coordinator gives the individual the opportunity to complete the form in person in lieu of completing it by videoconferencing or telephone and the individual agrees to the form being completed by videoconferencing or telephone; and

(B) the individual receives appropriate in-person support during the completion of the form by videoconferencing or telephone.

(3) The service coordinator must convene a meeting with the service planning team to develop a revised IPC and update the PDP if:

(A) a new service is being added to or a current service is being removed from the IPC; or

(B) the amount of a service is being increased or decreased and requires the addition of, removal of, or a change to an outcome in the PDP.

(4) The service coordinator must ensure that the updated finalized PDP is signed by the individual or LAR.

(5) If the amount of an existing service on an IPC is being increased or decreased or a requisition fee is added or removed and the addition of, removal of, or a change to an outcome in the PDP is not required, the service coordinator is not required to convene a meeting with the service planning team to develop a revised IPC, but must document the reasons for the revised IPC.

(6) A service coordinator must:

(A) sign and date the renewal or revised IPC;

(B) ensure that the individual or LAR signs and dates the renewal or revised IPC and provides the signed and dated IPC to the service coordinator in person, electronically, by fax, or by United States mail;

(C) ensure that the program provider signs and dates the renewal or revised IPC demonstrating agreement that the services will be provided to the individual;

(D) after the renewal or revised IPC is signed and dated, enter information from the renewal or revised IPC in the HHSC data system and electronically submit the information to HHSC;

(E) ensure that the information entered in the HHSC data system and electronically submitted to HHSC is identical to the information on the original signed and dated renewal or revised IPC; and

(F) keep the original signed and dated renewal or revised IPC in the individual's record.

(7) The service coordinator, within 10 calendar days after the PDP is updated, must send a copy of the following to the program provider, the individual or LAR and, if applicable, the FMSA:

(A) the updated PDP;

(B) the renewal or revised IPC; and

(C) if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(8) The program provider must convene a meeting with the individual or LAR to develop, before the effective date of the renewal IPC or revised IPC:

(A) an implementation plan for:

(i) TxHmL Program services, except for community support, that is based on the individual's PDP and renewal IPC; and

(ii) CFC services, except for CFC support management, that is based on the individual's PDP, and renewal or revised IPC, and if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) a transportation plan, if community support is included on the PDP.

(b) If an individual or LAR requests support management during an IPC year, the service coordinator must revise the IPC as described in subsection (a)(3) of this section.

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## SUBCHAPTER E. REIMBURSEMENT BY HHSC

### 26 TAC §262.401

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

§262.401. *Program Provider Reimbursement.*

(a) Program provider reimbursement.

(1) HHSC pays a program provider for services as described in this paragraph.

(A) HHSC pays for community support, nursing, in-home respite, respite, day habilitation, in-home day habilitation, employment assistance, supported employment, professional therapies, and CFC PAS/HAB in accordance with the reimbursement rate for the specific service.

(B) HHSC pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item or service and, if requested, a requisition fee in accordance with the TxHmL Program Billing Requirements available on the HHSC website.

(C) HHSC pays for CFC ERS based on the actual cost of the service not to exceed the reimbursement rate ceiling for CFC ERS.

(2) To be paid for the provision of a service, a program provider must submit a service claim that meets the requirements in 40 TAC §49.311 (relating to Claims Payment) and the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers.

(3) If an individual's TxHmL Program services or CFC services are suspended or terminated, a program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination except the program provider may

submit a claim for a service provided on the first calendar day of the suspension or termination.

(4) If a program provider submits a claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by HHSC in the TxHmL Program Billing Requirements and other documentation as required by the TxHmL Program Billing Requirements.

(5) HHSC does not pay a program provider for a service or recoups any payments made to the program provider for a service if:

(A) the individual receiving the service was, at the time the service was provided, ineligible for the TxHmL Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) the service was not included on the signed and dated IPC of the individual in effect at the time the service was provided;

(C) the service was not provided in accordance with the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(D) the service was not documented in accordance with the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

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

(F) the claim for the service was not prepared and submitted in accordance with the TxHmL Program Billing Requirements or the CFC Billing Requirements Guidelines for HCS and TxHmL Program Providers;

(G) the program provider did not have the documentation described in subsection (a)(4) of this section;

(H) before including employment assistance on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment assistance was not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §701 et seq.) or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(I) before including supported employment on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that supported employment was not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(J) HHSC determines that the service would have been paid for by a source other than the TxHmL Program;

(K) the service was provided by a service provider who did not meet the qualifications to provide the service as described in the TxHmL Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(L) the service was not provided in accordance with a signed and dated IPC meeting the requirements set forth in §262.301 of this subchapter (relating to IPC Requirements);

(M) the service was not provided in accordance with the PDP or the implementation plan;

(N) the service was provided before the individual's date of enrollment into the TxHmL Program;

(O) for community support, the service was not provided in accordance with a transportation plan and §262.5(a)(16) of this chapter (relating to Description of TxHmL Program Services);

(P) the service was not provided; or

(Q) for CFC PAS/HAB, in-home day habilitation, and in-home respite, if the service claim for the service did not match the EVV visit transaction as required by 1 TAC §354.4009(a)(4) (relating to Requirements for Claims Submission and Approval).

(6) A program provider must refund to HHSC any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from HHSC, whichever is earlier.

(7) Except as provided in paragraph (8) of this subsection, if HHSC approves an LOC requested in accordance with §262.104(b)(3) of this chapter (relating to LOC Determination), HHSC pays a program provider for services provided to an individual for a period of not more than 180 calendar days after the individual's previous ID/RC Assessment expires.

(8) If HHSC determines that an ID/RC Assessment was submitted more than 180 calendar days after the expiration date of the previous ID/RC Assessment because of circumstances beyond a program provider's control, HHSC may pay the program provider for a period of more than 180 calendar days after the individual's previous ID/RC Assessment expires.

(9) HHSC does not withhold payments to a program provider if a LIDDA fails to enter information from an individual's renewal IPC and the program provider continues to provide services in accordance with the most recent IPC authorized by HHSC.

(b) Provider fiscal compliance reviews.

(1) HHSC conducts provider fiscal compliance reviews to determine a program provider is in compliance with:

(A) this chapter;

(B) the TxHmL Program Billing Requirements;

(C) the CFC Billing Requirements for HCS and TxHmL Program Providers;

(D) 40 TAC Chapter 49, Subchapter C; and

(E) the program provider's Community Services Contract-Provider Agreement.

(2) HHSC conducts provider fiscal compliance reviews in accordance with the Provider Fiscal Compliance Review Protocol set forth in the TxHmL Program Billing Requirements and the CFC Billing Requirements for HCS and TxHmL Program Providers. As a result of a provider fiscal compliance review, HHSC may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with HHSC's instructions, a corrective action plan that improves the program provider's billing practices.

(3) A corrective action plan required by HHSC in accordance with paragraph (2)(B) of this subsection must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to HHSC within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by HHSC before implementation.

(4) Within 30 calendar days after HHSC receives a corrective action plan, HHSC notifies the program provider if HHSC approves the corrective action plan or if the plan requires changes.

(5) If HHSC requires a program provider to develop and submit a corrective action plan in accordance with paragraph (2)(B) of this subsection and the program provider requests an administrative hearing for the recoupment in accordance with §262.602 of this chapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. HHSC notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(6) If a program provider does not submit a corrective action plan or complete a required corrective action within the time frames described in paragraph (3) of this subsection, HHSC may impose a vendor hold on payments due to the program provider until the program provider takes the corrective action.

(7) If a program provider does not submit a corrective action plan or complete a required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (6) of this subsection, HHSC may terminate the contract.

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 F. TRANSFERS, DENIALS, SUSPENSIONS, REDUCTIONS, AND TERMINATIONS

### 26 TAC §§262.501 - 262.508

#### STATUTORY AUTHORITY

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

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

§262.501. *Process for Individual to Transfer to a Different Program Provider or FMSA.*

(a) If a service coordinator receives information that an individual wants to transfer to a different program provider or FMSA, or that an LAR wants the individual to transfer to a different program provider or FMSA, the service coordinator must:

(1) if the information was received from the individual or LAR, document the date the information was received in the individual's record;

(2) if the information was received from a person other than the individual or LAR, within three business days after the information was received:

(A) contact the individual or LAR to confirm whether the individual wants to transfer or the LAR wants the individual to transfer to a different program provider or FMSA; and

(B) if the service coordinator makes the confirmation described in subparagraph (A) of this paragraph, document such confirmation in the individual's record; and

(3) within three business days after receiving information from the individual or LAR that the individual wants to transfer or the LAR wants the individual to transfer to a different program provider or FMSA or making the confirmation described in paragraph (2)(A) of this subsection:

(A) explain to the individual or LAR that the individual may transfer to a program provider whose enrollment has not reached its service capacity in the HHSC data system or FMSA of the individual's or LAR's choice; and

(B) provide the individual or LAR the names and contact information of all program providers or FMSAs in the geographic location preferred by the individual or LAR.

(b) After the individual or LAR selects a different program provider or FMSA, the service coordinator must coordinate with the individual, LAR, the transferring program provider or FMSA, and the receiving program provider or FMSA to determine a transfer effective date that is:

(1) not earlier than the date of the meeting described in subsection (c)(2) of this section; and

(2) agreed to by the service coordinator, the individual or LAR, and the receiving program provider.

(c) On or before the transfer effective date, the service coordinator must:

(1) take action to complete the HHSC Request for Transfer of Waiver Program Services form in accordance with the TxHmL Handbook;

(2) convene a meeting with the individual or LAR and the receiving program provider or receiving FMSA to develop a transfer IPC;

(3) send the individual's IPC, ID/RC Assessment, and PDP to the receiving program provider or the receiving FMSA;

(4) if the individual is transferring to a different program provider, request the following records of the individual from the transferring program provider;

(A) pertinent medication records and medical information;

- (B) Medicaid card;
- (C) Medicare information, if applicable;
- (D) the ICAP assessment booklet and computer scoring sheet;
- (E) trust fund/financial records and any money due the individual;
- (F) behavior support plan, if applicable;
- (G) guardianship information, if applicable; and
- (H) any other pertinent information to ensure health and safety or continuity of services;

(5) within two business days after receipt of the records requested in accordance with paragraph (4) of this subsection, send the records to the receiving program provider; and

(6) if, within three business days after requesting that the program provider provide records as described in paragraph (4) of this subsection, the service coordinator does not receive all of the records requested, notify HHSC that the records were not received.

(d) Within 10 business days after the transfer effective date, the service coordinator must:

(1) complete data entry into the HHSC data system in accordance with the TxHmL Handbook after the activities described in subsection (c) of this section are completed; and

(2) send the transfer IPC and HHSC Request for Transfer of Waiver Program Services form to HHSC.

*§262.502. Process for Individual to Receive a Service Through the CDS Option that the Individual is Receiving from a Program Provider.*

(a) If a service coordinator receives information that an individual wants to receive a service through the CDS option that the individual is receiving from a program provider or that an LAR wants the individual to receive a service through the CDS option that the individual is receiving from a program provider, the service coordinator must:

(1) if the information was received from the individual or LAR, document the date the information was received in the individual's record;

(2) if the information was received from a person other than the individual or LAR, within three business days after the information was received:

(A) contact the individual or LAR to confirm whether the individual wants to receive or the LAR wants the individual to receive a service through the CDS option that the individual is receiving from a program provider; and

(B) if the service coordinator makes the confirmation described in subparagraph (A) of this paragraph, document such confirmation in the individual's record; and

(3) within three business days after receiving information from the individual or LAR that the individual wants to receive or the LAR wants the individual to receive a service through the CDS option that the individual is receiving from a program provider or making the confirmation described in paragraph (2) of this subsection:

(A) explain to the individual or LAR that the individual may select an FMSA of the individual's or LAR's choice; and

(B) provide the individual or LAR the names and contact information of all FMSAs in the geographic location preferred by the individual or LAR.

(b) After the individual or LAR selects an FMSA, the service coordinator must coordinate with the individual, LAR, the transferring program provider and the receiving FMSA to determine a transfer effective date that is:

(1) not earlier than the date of the meeting described in subsection (c)(2) of this section; and

(2) agreed to by the service coordinator, the individual or LAR, and the receiving FMSA.

(c) On or before the transfer effective date, the service coordinator must:

(1) take action to complete HHSC Request for Transfer of Waiver Program Services form in accordance with the TxHmL Handbook;

(2) convene a meeting with the individual or LAR to develop a transfer IPC; and

(3) send the individual's IPC to the receiving FMSA and obtain the signature of the receiving FMSA on the IPC and Request for Transfer of Waiver Program Services form.

(d) Within 10 business days after the transfer effective date, the service coordinator must:

(1) complete data entry in the HHSC data system in accordance with the TxHmL Handbook after the activities described in subsection (c) of this section are completed; and

(2) send the transfer IPC and HHSC Request for Transfer of Waiver Program Services form to HHSC.

*§262.508. Termination of TxHmL Program Services and CFC Services without Advance Notice.*

(a) HHSC terminates an individual's TxHmL Program services and CFC services if any of the following situations exists:

(1) the individual is admitted to one of the facilities listed in §262.505(a)(1) - (9) of this subchapter (relating to Suspension of TxHmL Program Services and CFC Services):

(A) for more than 270 consecutive calendar days; and

(B) HHSC has not extended the individual's suspension in accordance with §262.505(h) of this subchapter;

(2) the service coordinator or program provider has factual information confirming the death of the individual;

(3) the service coordinator or program provider receives a clear written statement signed by the individual or LAR that the individual no longer wants TxHmL Program services;

(4) the individual's whereabouts are unknown, and the post office returns mail directed to the individual by the service coordinator or program provider without indicating a forwarding address; or

(5) HHSC establishes that the individual has been accepted for Medicaid services by another state.

(b) If a service coordinator becomes aware that a situation described in subsection (a) of this section exists, the service coordinator must request that HHSC terminate the individual's services. To make this request, the service coordinator must complete HHSC Request for Termination of Services form and submit the form to HHSC.

(c) If HHSC receives a form from a service coordinator requesting that HHSC terminate the individual's services, HHSC sends written notice to the individual or LAR of the termination of TxHmL Program services and CFC services. The notice includes the individ-

ual's right to request a fair hearing in accordance with §262.601 of this chapter (relating to Fair Hearing).

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## SUBCHAPTER G. HEARINGS

### 26 TAC §262.601, §262.602

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

#### §262.601. Fair Hearing.

An applicant whose request for eligibility for the TxHmL Program is denied or is not acted upon with reasonable promptness, or an individual whose TxHmL Program services or CFC services have been terminated, suspended, denied, or reduced by HHSC, receives notice of the right to request a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

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## SUBCHAPTER H. LIDDA REQUIREMENTS

### 26 TAC §262.701

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies, and Texas 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.

#### §262.701. LIDDA Requirements for Providing Service Coordination in the TxHmL Program.

(a) A LIDDA must offer TxHmL Program services to an applicant in accordance with §262.103 of this chapter (relating to Process for Enrollment of Applicants).

(b) A LIDDA must process enrollments of individuals in the TxHmL Program in accordance with §262.103 of this chapter.

(c) A LIDDA must be objective in the process to assist an individual or LAR in the selection of a program provider or FMSA and train all LIDDA staff who may assist an individual or LAR in the process.

(d) A LIDDA must, upon the enrollment of an individual and annually thereafter, inform the individual or LAR orally and in writing of the following:

(1) the telephone number of the LIDDA to file a complaint;

(2) the toll-free telephone number of the HHSC IDD Ombudsman, 1-800-252-8154, to file a complaint; and

(3) the toll-free telephone number of DFPS, 1-800-647-7418, to report an allegation of abuse, neglect, or exploitation.

(e) A LIDDA must maintain for each individual for an IPC year:

(1) a copy of the IPC;

(2) the PDP and, if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form;

(3) a copy of the ID/RC Assessment;

(4) documentation of the activities performed by the service coordinator in providing service coordination; and

(5) any other pertinent information related to the individual.

(f) For an individual receiving TxHmL Program services and CFC services within a LIDDA's local service area, the LIDDA must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC Assessment.

(g) A LIDDA must ensure that a service coordinator is an employee of the LIDDA and meets the requirements of this subsection.

(1) A service coordinator must meet the minimum qualifications and LIDDA staff training requirements described in Chapter 331 of this title (relating to LIDDA Service Coordination), except as described in paragraph (2) of this subsection.

(2) Notwithstanding §331.19(b) of this title (relating to Staff Person Training), a service coordinator must complete a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the service coordinator's date of hire, unless an extension of the six month timeframe is granted by HHSC.

(3) A service coordinator must receive training about the following within the first 90 calendar days after beginning service coordination duties:

(A) rules governing the TxHmL Program and CFC; and

(B) 40 TAC Chapter 41 (relating to Consumer Directed Services Option).



(h) A LIDDA must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-centered planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP, including:

(A) scheduling service planning team meetings; and

(B) documenting on the PDP whether, for each TxHmL Program service or CFC service identified on the PDP, the service is critical to meeting the individual's health and safety as determined by the service planning team;

(2) coordinates the development and implementation of the individual's PDP;

(3) coordinates and develops an individual's IPC based on the individual's PDP;

(4) coordinates and monitors the delivery of TxHmL Program services and CFC services and non-TxHmL Program and non-CFC services; and

(5) document whether an individual progresses toward desired outcomes identified on the individual's PDP from the individual's and LAR's perspectives.

(i) A LIDDA must inform an individual or LAR of the name of the individual's service coordinator and how to contact the service coordinator.

(j) A service coordinator must:

(1) assist the individual or LAR or actively involved person in exercising the legal rights of the individual;

(2) provide an individual, LAR, or family member with a written copy of the booklet, *Your Rights in the Texas Home Living (TxHmL) Program*, available on the HHSC website, and an oral explanation of the rights described in the booklet:

(A) at the time the individual enrolls in the TxHmL Program;

(B) when the booklet is revised;

(C) upon request of the individual, LAR, or family member; and

(D) if one of the following occurs:

(i) the individual becomes 18 years of age;

(ii) a guardian is appointed for the individual; or

(iii) a guardianship for the individual ends;

(3) document compliance with paragraph (2) of this subsection in the individual's record and include:

(A) the signature of the individual or LAR; and

(B) the signature of the service coordinator;

(4) ensure that the individual and LAR participate in developing a PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated annually and if the individual's needs or outcomes change;

(5) if a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, discuss with the service planning team to determine whether the techniques will be approved by the service planning team;

(6) if notified by the program provider that an individual or LAR has refused a comprehensive nursing assessment and that the

program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of community support, day habilitation, in-home day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) community support, day habilitation, in-home day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(7) inform the individual or LAR of decisions regarding denial, suspension, reduction, or termination of services and the individual's or LAR's right to request a fair hearing as described in §262.601 of this chapter (relating to Fair Hearing); and

(8) in accordance with §262.501 (relating to Process for Individual to Transfer to a Different Program Provider or FMSA), manage the process to transfer an individual's TxHmL Program services and CFC services from one program provider to another or transfer from one FMSA to another.

(k) When a service coordinator becomes aware that a change to an individual's PDP or IPC may be needed, the service coordinator must discuss the need for the change with the individual or LAR, the individual's program provider, and other appropriate persons.

(l) At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP with the individual's service planning team; and

(2) if the individual receives a TxHmL Program service or a CFC service from a program provider, submit to the program provider and the individual or LAR:

(A) the updated PDP; and

(B) if CFC PAS/HAB is included on the PDP, a copy of the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(m) A service coordinator must:

(1) complete the HHSC TxHmL Service Coordination Notification form with the individual or LAR and provide a copy of the completed form to the individual or LAR:

(A) upon receipt of HHSC approval of the enrollment of the individual;

(B) if the form is revised;

(C) at the request of the individual or LAR; and

(D) if one of the following occurs:

(i) the individual becomes 18 years of age;

(ii) a guardian is appointed for the individual; or

(iii) a guardianship for the individual ends; and

(2) retain a copy of the completed form in the individual's record.

(n) A service coordinator must conduct:

(1) a pre-move site review for an applicant 21 years of age or older who is enrolling in the TxHmL Program from a nursing facility or as a diversion from admission to a nursing facility; and

(2) post-move monitoring visits for an individual 21 years of age or older who enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility.

(o) A service coordinator must have contact with an individual in person, by videoconferencing, or telephone to provide service coordination during a month in which it is anticipated that the individual will not receive a TxHmL Program service unless:

(1) the individual's TxHmL Program services have been suspended; or

(2) the service coordinator had an in-person contact with the individual that month to comply with §331.11(d) of this title (relating to LIDDA's Responsibilities).

(p) In addition to the requirements described in Chapter 331 of this title (relating to LIDDA Service Coordination), a LIDDA must:

(1) comply with:

(A) this subchapter;

(B) 40 TAC Chapter 41; and

(C) 40 TAC Chapter 4, Subchapter L, (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(2) ensure that a rights protection officer, as required by 40 TAC §4.113 (relating to Rights Protection Officer at a State MR Facility or MRA), 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), gives a copy of the report to the individual's service coordinator.

(q) A service coordinator must:

(1) at least annually, in accordance with 40 TAC Chapter 41, Subchapter D (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the individual or LAR of the individual's right to participate in the CDS option; and

(B) inform the individual or LAR that the individual or LAR may choose to have one or more services provided through the CDS option, as described in 40 TAC §41.108 (relating to Services Available Through the CDS Option); and

(2) document compliance with paragraph (1) of this subsection in the individual's record.

(r) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR of all FMSAs providing services in the LIDDA's local service area;

(2) document the individual's or LAR's choice of FMSA on HHSC Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the services provided through the CDS option; and

(4) develop with the individual or LAR and other members of the service planning team a transportation plan if an individual's PDP includes community support to be delivered through the CDS option.

(s) For an individual participating in the CDS option, a service coordinator must recommend that HHSC terminate the individual's participation in the CDS option if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health, safety, or welfare; or

(2) the individual, LAR, or designated representative has not complied with 40 TAC Chapter 41, Subchapter B (relating to Responsibilities of Employers and Designated Representatives).

(t) To make a recommendation described in subsection (s) of this section, a service coordinator must submit the following documentation to HHSC:

(1) the services the individual receives through the CDS option;

(2) the reason why the recommendation is made;

(3) a description of the attempts to resolve the issues before making the recommendation; and

(4) any other supporting documentation, as appropriate.

(u) A service coordinator must do the following regarding responsibilities related to EVV:

(1) for an applicant who will receive a service that requires the use of EVV from the program provider or through the CDS option:

(A) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the applicant or LAR;

(B) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(C) provide the individual or LAR with a copy of the signed form;

(D) perform the activities described in subparagraph (A) - (C) of this paragraph before the individual's enrollment; and

(E) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record;

(2) for an individual who will receive a service that requires the use of EVV from the program provider or who is transferring to another program provider or LIDDA and will receive a service that requires the use of EVV from the program provider or through the CDS option:

(A) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(B) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(C) provide the individual or LAR with a copy of the signed form;

(D) perform the activities described in subparagraphs (A)-(C) of this paragraph on or before the effective date of the transfer to another program provider or LIDDA; and

(E) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record; and

(3) for an individual who will receive a service that requires the use of EVV through the CDS option or who will transfer to another FMSA and is receiving a service requiring the use of EVV:

(A) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(B) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(C) provide the individual or LAR with a copy of the signed form;

(D) perform the activities described in subparagraphs (A)-(C) of this paragraph before the individual receives the EVV required service through the CDS option or on or before the effective date of the transfer to another FMSA; and

(E) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record.

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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Health and Human Services Commission

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## SUBCHAPTER I. DECLARATION OF DISASTER

### 26 TAC §262.801

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

§262.801. *Exceptions to Certain Requirements During Declaration of Disaster.*

(a) HHSC may allow program providers and service coordinators to use one or more of the exceptions described in subsections (c) - (j) 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 and LIDDAs:

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

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

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

(c) Notwithstanding the definition of "implementation plan" in §262.3 of this chapter (relating to Definitions), the signature of an individual who resides in the disaster area is not required on the individual's implementation plan, if:

(1) the meeting required by §262.302(a)(8) of this chapter (relating to Renewal and Revision of an Individual's IPC) is conducted by videoconferencing or telephone;

(2) the individual or LAR orally agrees with the implementation plan; and

(3) the program provider documents the individual's or LAR's oral agreement on the implementation plan.

(d) Notwithstanding §262.8(a) of this chapter (relating to Comprehensive Nursing Assessment), the comprehensive nursing assessment completed by an RN is not required to be completed in person for an individual who resides in the disaster area, if the RN conducts the assessment as a telehealth service or by telephone.

(e) Notwithstanding §262.103(k)(1)(A)(i)(I)(-a-) and (-b-) of this chapter (relating to Process for Enrollment of Applicants), a LIDDA is not required to conduct a standardized measure of intellectual functioning in person, or to conduct a standardized measure of adaptive abilities in person for an individual who resides in the disaster area, if the LIDDA conducts the standardized measures by videoconferencing.

(f) Notwithstanding §262.103(k)(1)(B)(i) of this chapter, a LIDDA is not required to conduct an ICAP assessment in person for an individual who resides in the disaster area if the LIDDA conducts the ICAP assessment by videoconferencing.

(g) Notwithstanding §262.302(a)(1)(C) and (a)(4) of this chapter, a service coordinator is not required to ensure that an individual who resides in the disaster area or LAR sign the PDP, if:

(1) the meeting required by §262.302(a)(1)(B) and (a)(3) of this chapter is conducted by videoconferencing or telephone;

(2) the service coordinator documents on the PDP the reason for and the topics discussed at the meeting;

(3) the individual or LAR orally agrees with the PDP; and

(4) the service coordinator documents the individual's or LAR's oral agreement on the PDP.

(h) Notwithstanding §262.302(a)(6)(B) of this chapter, a service coordinator is not required to ensure that an individual who resides in the disaster area or LAR signs and dates a renewal or revised IPC, if:

(1) the meeting required by §262.302(a)(1)(B) and (a)(3) of this chapter is conducted by videoconferencing or telephone;

(2) the service coordinator documents on the renewal or IPC the reason for and the topics discussed at the meeting;

(3) the individual or LAR orally agrees with the renewal or revised IPC; and

(4) the service coordinator documents the individual's or LAR's oral agreement on the renewal or the revised IPC.

(i) Notwithstanding §262.304(a)(1) of this chapter (relating to Service Limits), the service limit for adaptive aids for an individual who resides in the disaster area may be exceeded if:

(1) the requested adaptive aid that causes the service limit to be exceeded is:

(A) an adaptive aid that replaces an adaptive aid destroyed as a result of the disaster; or

(B) the repair of an adaptive aid that was damaged as a result of the disaster;

(2) the addition of the requested adaptive aid to the individual's IPC does not result in:

(A) the service limit of adaptive aids being exceeded by more than \$5,000; or

(B) the individual's IPC cost limit for TxHmL program services being exceeded as described in §262.101(a)(4) of this chapter (relating to Eligibility Criteria for TxHmL Program Services and CFC Services);

(3) the program provider:

(A) includes the cost of the requested adaptive aid on the revised IPC; and

(B) submits to HHSC, within 180 days after the effective date of the order or proclamation described in subsection (a) of this section, a written request to HHSC to approve the requested adaptive aid that includes:

(i) a description of the adaptive aid that is replacing the adaptive aid destroyed as a result of the disaster, which may include pictures or other descriptive information from a catalog, website, or brochure;

(ii) a description of the repair to an adaptive aid that was damaged as a result of the disaster;

(iii) one bid for the requested adaptive aid from a vendor that includes:

(I) the total cost of the requested adaptive aid; and

(II) the name, address, and telephone number of the vendor who must not be a relative of the individual; and

(iv) a statement from the program provider that the adaptive aid is not available through a third party resource; and

(4) the requested adaptive aid is approved by HHSC.

(j) Notwithstanding §262.304(a)(3) of this chapter, the service limit for minor home modifications for an individual who resides in the disaster area may be exceeded if:

(1) the requested minor home modification 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) the repair of a minor home modification that was damaged as a result of the disaster;

(2) the addition of the requested minor home modification to the individual's IPC does not result in:

(A) the service limit of minor home modification being exceeded by more than \$3,750; or

(B) the individual's IPC cost limit for TxHmL program services being exceeded as described in §262.101(a)(4) of this chapter;

(3) the program provider:

(A) includes the cost of the requested minor home modification on the revised IPC;

(B) submits to HHSC, within 180 days after the effective date of the order or proclamation described in subsection (a) of this section, a written request to HHSC to approve the requested minor home modification that includes:

(i) a description of the minor home modification that is replacing the minor home modification destroyed as a result of the disaster, which may include pictures or other descriptive information from a catalog, website, or brochure;

(ii) a description of the repair to a minor home modification that was damaged as a result of the disaster;

(iii) one bid for the requested minor home modification from a vendor that includes:

(I) the total cost of the requested minor home modification; and

(II) the name, address, and telephone number of the vendor who must not be a relative of the individual; and

(iv) a statement from the program provider that the minor home modification is not available through a third party resource; and

(4) the requested minor home modification is approved by HHSC.

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) 438-4639



## CHAPTER 263. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

The Texas Health and Human Services Commission (HHSC) adopts Title 26, Part 1, new Chapter 263, Home and Community-based Services (HCS) Program and Community First Choice (CFC), consisting of Subchapters A - K, comprising

new §§263.1 - 263.9; 263.101 - 263.108; 263.201; 263.301 - 263.304; 263.401; 263.501 - 263.503; 263.601; 263.701 - 263.708; 263.801; 263.802; 263.901 - 263.903; and 263.1000.

Sections 263.3, 263.5, 263.8, 263.9, 263.104, 263.107, 263.201, 263.302, 263.501, 263.502, 263.503, 263.601, 263.701, 263.702, 263.707, 263.708, 263.901, 263.902 and 263.1000 are adopted with changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5667). These rules will be republished.

Sections 263.1, 263.2, 263.4, 263.6, 263.7, 263.101, 263.102, 263.103, 263.105, 263.106, 263.108, 263.301, 263.303, 263.304, 263.401, 263.703, 263.704, 263.705, 263.706, 263.801, 263.802, and 263.903 are adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5667). These rules will not be republished.

## BACKGROUND AND JUSTIFICATION

The HCS 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 an eligible individual as an alternative to services provided in an institutional setting. One purpose of the new sections is to move certain HCS Program rules from 40 TAC Chapter 9, Subchapter D to 26 TAC Chapter 263. The repeals of §§9.151, 9.152, 9.154 - 9.170, 9.186, and 9.189 - 9.192 in 40 TAC Chapter 9, Subchapter D, are adopted elsewhere in this issue of the *Texas Register*.

The adopted rules do not include program provider certification principles that are currently in 40 TAC Chapter 9, Subchapter D, §§9.173 - 9.175 and §§9.177 - 9.183. HHSC will propose rules containing the certification standards for the HCS Program in 26 TAC Chapter 565 in a different rule project.

The adopted rules are necessary to comply with Title 42, Code of Federal Regulations (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 settings and person-centered planning. CMS has given states until March 17, 2023, to fully comply with the requirements in 42 CFR §441.301(c)(1) - (5). The adopted rules also ensure compliance with the requirements in 42 CFR Chapter IV, Subchapter C, Part 441, Subpart K, §441.530, regarding Home and Community-Based Setting; §441.535, regarding Assessment of functional need; and §441.540, regarding the Person-centered service plan, for Community First Choice (CFC) services because CFC services are available to individuals enrolled in the HCS Program.

The adopted 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-language pathology as a telehealth service.

The adopted rules require the initial HCS eligibility assessments to be conducted in person and the CFC personal assistance services/habilitation (PAS/HAB) assessment to be completed in person unless certain conditions exist in which case the assessment may be completed by telehealth, telephone, or video conferenc-

ing. These requirements help ensure the assessments are thorough and accurate.

The adopted rules include provisions regarding the denial, suspension, reduction, or termination of an individual's services in the HCS Program to explain HHSC's process in taking one of these actions. The adopted rules also change the existing service coordination monitoring requirement from 90 days to 30 days during an individual's suspension.

The adopted rules require a program provider and local intellectual and developmental disability authority (LIDDA) to submit a translation of non-English documentation submitted to HHSC. The adopted rules help ensure that HHSC's reviews of documentation are efficient.

The adopted rules require a registered nurse (RN) to complete a comprehensive nursing assessment of an individual in person under specified circumstances. This requirement is included to ensure the comprehensive nursing assessment is clinically effective, thorough, and accurate and to help ensure the health and safety of an individual.

The adopted rules codify HHSC's current practice of increasing a level of need (LON) 1, 5, or 8 to the next LON because of an individual's high medical needs if the individual meets certain criteria. The adopted rules also codify current practice related to individuals in the HCS Program transferring to another program provider or choosing a different service delivery option.

The adopted rules provide that HHSC may allow program providers and service coordinators 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 helps to ensure that program providers and service coordinators are able to provide services effectively during a disaster.

## COMMENTS

The 31-day comment period ended October 17, 2022.

During the 31-day comment period that ended October 17, 2022, and the public hearing held on September 26, 2022, HHSC received comments regarding the proposed rules from 197 commenters, including the Coalition of Texans with Disabilities; Disability Rights Texas; EveryChild, Inc.; Greenleaf Neurodiversity Community Center; Families for Effective Autism Treatment - Houston; Helen Farabee Centers; Lifetime Living Inc.; LTO Ventures; Providers Alliance for Community Services Texas (PACSTX); Private Providers Association of Texas (PPAT); Texas Council of Community Centers; Texas Parent to Parent; 29 Acres; and families and advocates of individuals with autism and neurodiversity.

A summary of comments relating to the rules and HHSC's responses follows.

COMMENT: One commenter suggested that the terms and definitions in proposed §263.3 and the terms and definitions in the HCS Billing Requirements be consistent and expressed concerns about the complexity that inconsistent definitions cause. Another commenter requested that HHSC provide the entire definition of a term instead of including a reference to another rule.

RESPONSE: HHSC declines to make changes in response to these comments. The commenter suggesting the need for consistent definitions did not identify the terms and definitions in question, however, some terms in the HCS Billing Requirements may have different definitions than those in proposed §263.3 be-

cause the context in which the terms are used in the HCS Billing Requirements is different than that in proposed Chapter 263. HHSC will take this comment under consideration when reviewing the HCS Billing Requirements. HHSC references another rule to define a term instead of providing the entire definition to avoid inconsistent definitions if the definition of the term in the other rule changes.

COMMENT: One commenter requested that HHSC revise the definition of "auxiliary aid" to allow the use of an auxiliary aid when an individual is communicating with others, not just during the person-centered planning process.

RESPONSE: HHSC declines to make changes in response to this comment because the term "auxiliary aid" is only used in §263.201 regarding the Person-Centered Planning Process.

COMMENT: Two commenters requested that HHSC include "integrated" in the term "competitive employment" or in its definition.

RESPONSE: HHSC declines to make changes in response to this comment. The term "competitive employment" is used only in the description of "supported employment" in §263.5. In that context, "competitive employment" means employment that pays an individual at least minimum wage if the individual is not self-employed and does not necessarily include employment integrated into the community.

COMMENT: One commenter recommended that HHSC create a separate definition for "representative payee" that is independent of the definition for "legally authorized representative (LAR)" because using both terms synonymously in the rules is confusing.

RESPONSE: HHSC declines to make changes in response to this comment because a representative payee is a type of LAR.

COMMENT: One commenter expressed appreciation that HHSC modified the "natural supports" definition to clarify that assistance provided by a natural support is voluntary and helps to achieve an individual's identified goals.

RESPONSE: HHSC appreciates the commenter's support for the proposed rule.

COMMENT: One commenter requested that HHSC remove the requirement to use an HHSC form for the person-directed plan (PDP) and add that the outcome of the PDP ensures the applicant or individual's "quality of life." The commenter also requested that HHSC restructure the definition. Another commenter requested that HHSC remove the reference to "applicant" in the PDP definition.

RESPONSE: HHSC declines to remove the requirement for an HHSC form for a PDP because requiring the HHSC form helps ensure that service coordinators are consistent in the documentation of information on the PDP and assists in timely and efficient HHSC reviews. HHSC declines to add "quality of life" to the PDP definition because the requirement in the definition for documentation of an individual's desired outcomes addresses ensuring a quality of life for the individual. HHSC declines to restructure the definition because the proposed structure is clear. HHSC also declines to remove the reference to an "applicant" because the requirement for a PDP applies to an applicant.

COMMENT: One commenter requested that HHSC remove the word "severe" used in the definition of "related condition" because "severe" is a subjective term.

RESPONSE: HHSC declines to make this change because the inclusion of "severe" in the definition of "related condition" is consistent with the definition of "persons with related condition" in 42 CFR §435.1010.

COMMENT: One commenter requested that HHSC revise the definition of "service planning team" to include a permanency planner. Another commenter suggested that the word "for" be changed to "to" in the definition of "service planning team".

RESPONSE: HHSC agrees with the commenter and revised the definition of "service planning team" in §263.3 to include a permanency planner as a member of the service planning team for an applicant or individual under 22 years of age in certain situations. In addition, HHSC added a definition for "permanency planner" in proposed §263.3. HHSC declines to make the grammatical change requested because it is unnecessary.

COMMENT: One commenter expressed appreciation that HHSC included "integration" in the description of HCS Program services.

RESPONSE: HHSC appreciates the commenter's support for the proposed rule.

COMMENT: One commenter requested that HHSC expand the description of adaptive aids to include enabling an individual to maintain or increase the ability to perform "instrumental activities of daily living (IADLS) and health related tasks." Another commenter suggested including iPads/tablets in the list of billable adaptive aid items.

RESPONSE: The description of adaptive aids in proposed §263.5(a)(1), which provides that adaptive aids enable an individual to maintain or increase the ability to perform activities of daily living (ADLs) or the ability to perceive, control, or communicate with the environment in which the individual lives, is based on the HCS waiver application. HHSC declines to revise proposed §263.5(a)(1) in response to this comment because the requested revision is inconsistent with the HCS waiver application and would require additional analysis and a change to the HCS waiver application with CMS approval. HHSC declines to make changes in response to the second comment because it is outside the scope of this rule project. The list of billable adaptive aids is addressed in the HCS Billing Requirements and not the program rules.

COMMENT: One commenter expressed appreciation that HHSC added that behavioral support "improve an individual's quality of life." The commenter also requested that HHSC allow a pre-enrollment behavioral assessment because having an assessment completed post enrollment delays an individual's access to behavior support.

Response: HHSC declines to make changes in response to this comment. A behavioral assessment is a billable activity of behavioral support. The requested change is inconsistent with the HCS waiver application and would require additional analysis and an amendment to the HCS waiver application with CMS approval to allow for the provision of behavioral support before an individual enrolls in the HCS Program.

COMMENT: One commenter requested allowing in-home day habilitation to be provided outside of the residence of an individual to allow an individual who receives in-home day habilitation to participate in community activities when appropriate.

RESPONSE: HHSC declines to make changes in response to this comment because the primary characteristic of in-home day

habilitation is that it be provided in the individual's residence. Day habilitation is an HCS Program service that is provided outside of an individual's residence.

COMMENT: One commenter requested replacing "provision of residential services" with "provision of personal assistant services and habilitation" in the description of host home/companion care.

RESPONSE: HHSC declines to make changes in proposed §263.5(a)(19) in response to this comment. Host home/companion care is described as "residential assistance" in proposed §263.5(a)(19), not the "provision of residential services." This broad description is used because host home/companion care includes a variety of activities and is not limited to "personal assistant services and habilitation."

COMMENT: One commenter requested that remote supervision be included as a covered service in the HCS Program. Another commenter requested including protective supervision as a component of supported home living.

RESPONSE: HHSC declines to make changes in response to these comments. Revising the rules to add remote supervision as a new service in the HCS Program and include protective supervision as a component of supported home living is inconsistent with the HCS waiver application and would require additional analysis and a change to the HCS waiver application with CMS approval.

COMMENT: One commenter requested renaming "respite" as "out-of-home respite" for clarity. The commenter also requested allowing individuals living in host home/companion care settings to access respite.

RESPONSE: HHSC declines to make changes to rename "respite" as "out-of-home respite" because the service description for respite in proposed §263.5(a)(22) specifies that it must be provided in a location other than the individual's home and is distinguished from the service description for in-home respite. In addition, changing the name of the service would require numerous changes in other HHSC publications including rules and handbooks. HHSC declines to make changes to allow individuals living in host home/companion care settings to have access to respite because respite provides temporary relief only to unpaid caregivers.

COMMENT: A commenter requested that HHSC remove the word "intensive" from the description of supported employment because it is subjective and may lead to confusion.

RESPONSE: The description of supported employment in proposed §263.5(a)(25), which provides that "supported employment is assistance, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support," is based on language in the HCS waiver application. HHSC declines to revise §263.5(a)(25) in response to this comment because the requested revision is inconsistent with the HCS waiver application and would require additional analysis and a change to the HCS waiver application with CMS approval.

COMMENT: One commenter requested that HHSC revise the proposed rules to allow an applicant to receive transition assistance services (TAS) if the applicant is being discharged from a psychiatric hospital or residential treatment center (in addition to being discharged from an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), nursing facility, or general residential operation) and enrolling into the HCS Program. Another commenter expressed a concern

with grouping host home services and companion care services together in the HCS Program. Specifically, the commenter requested that HHSC revise the rules to allow an applicant who is moving into a host home/companion care residence that is the applicant's residence, not the service provider's residence, to receive the same amount of TAS as an applicant who is moving into their own residence but not receiving host home/companion care.

RESPONSE: Based on the HCS waiver application, proposed §263.5(a)(26) describes TAS as assistance to an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a general residential operation and proposed §263.5(a)(26)(B) describes the specific benefits covered under TAS depending on whether residential support, supervised living, or host home/companion care is on the applicant's initial individual plan of care (IPC). HHSC declines to make changes in response to these comments because the requested revisions are inconsistent with the HCS waiver application and would require additional analysis and a change to the HCS waiver application with CMS approval.

COMMENT: One commenter expressed concern that HHSC is discriminating against HCS participants by prohibiting qualified household members from providing CFC services.

RESPONSE: HHSC did not make changes in response to this comment because it is outside the scope of this rule project. Qualifications of service providers in the HCS Program are not addressed in these proposed rules.

COMMENT: One commenter requested that transportation be added as a component of the CFC service because it is vital in fulfilling CFC activities such as community integration.

RESPONSE: Based on the Medicaid State Plan, proposed §263.6 includes a description of CFC PAS/HAB and the description does not include transportation as a CFC PAS/HAB activity. In addition, transportation is an available service through supported home living in the HCS Program. HHSC declines to make changes in response to this comment.

COMMENT: One commenter requested that HHSC remove the phrase "in a clean, sanitary, and safe environment" in proposed §263.6(a)(1)(A)(i)(II) regarding the definition of CFC PAS/HAB and the provision of household chores, because it is unnecessary. The commenter also requested that HHSC add "and to help people be integrated into the community" in proposed §263.6(a)(1)(A)(ii)(IX) regarding the description of CFC HAB.

RESPONSE: Based on the Medicaid State Plan, Attachment 3.1-K, proposed §263.6(a)(1)(A)(i)(II) provides that CFC personal assistance services consist of household chores necessary to maintain the home in a clean, sanitary, and safe environment; and proposed §263.6(a)(1)(A)(ii)(IX), provides that CFC habilitation include reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks. HHSC declines to make changes in response to these comments because the requested revisions are inconsistent with the HCS waiver application and would require additional analysis and a change to the Medicaid State Plan with CMS approval.

COMMENT: Several commenters expressed concern about the cost to program providers and LIDDAs to translate non-English information that is submitted to HHSC to English as required by proposed §263.7. Two commenters expressed concern about the integrity of translated information by a program provider or

LIDDA and a commenter suggested that HHSC hire multi or bilingual translators to complete the translations. Another commenter suggested that HHSC delete this provision or clarify what it means by "documentation."

RESPONSE: HHSC proposed §263.7 requiring a program provider and a LIDDA to provide HHSC a translation of information in English to help ensure that HHSC staff can perform utilization review functions timely and efficiently. HHSC believes it is the program provider's or LIDDA's responsibility to provide documentation to HHSC that does not require translation by HHSC staff, and that program providers and LIDDAs are capable of providing accurate translations. The word "documentation" in proposed §263.7 means any documentation submitted to HHSC by a program provider or LIDDA and, therefore, no clarification is needed. HHSC declines to make changes in response to these comments.

COMMENT: One commenter requested that HHSC revise proposed §263.8 to require a comprehensive nursing assessment if an individual has a need for nursing services, instead of requiring the assessment if an individual's initial IPC includes a sufficient number of RN nursing units to perform a comprehensive nursing assessment. The commenter requested this change because they believed it is unclear what is meant by "a sufficient number of RN nursing units."

RESPONSE: HHSC declines to make changes in response to this comment. Proposed §263.8(a)(1) requires an RN to complete a comprehensive nursing assessment if the initial IPC includes a sufficient number of RN nursing units as described in proposed §263.104(k)(9). Proposed §263.104(k)(9) requires a service coordinator to include a sufficient number of RN units on an initial IPC if an applicant or LAR want to receive certain specified services.

COMMENT: One commenter suggested HHSC allow a pre-enrollment comprehensive nursing assessment to accelerate an individual's access to nursing service. The commenter also requested that HHSC not exempt host home/companion care providers from access to delegated nursing services or the appropriate nursing service for an individual regardless of the individual's age.

RESPONSE: HHSC declines to make changes in response to the comments because the change to allow for the performance of a comprehensive nursing assessment, a registered nursing service, before an individual enrolls in the HCS Program would require additional analysis and an amendment of the HCS waiver application. HHSC is unclear what the commenter means by the request for HHSC not to "exempt host home/companion care providers from access to delegated nursing services or the appropriate nursing service for an individual regardless of the individual's age." The proposed HCS rules do not include an exemption to the provision of nursing services based on an individual's residential type or age. In accordance with 40 TAC §9.174(a)(31), nursing services are provided in accordance with an individual's PDP; IPC; implementation plan; Texas Occupations Code Chapter 301; 22 TAC Chapter 217; 22 TAC Chapter 224; and 22 TAC Chapter 225.

COMMENT: One commenter requested that the comprehensive nursing assessment requirement in proposed §263.8 be removed and included only in the HCS Program certification principles or be removed from the certification principles and included only in proposed §263.8. The commenter suggested that if HHSC decides to maintain the comprehensive nursing

assessment requirements in both sets of rules then each set of rules should cross-reference each other. Another commenter requested that HHSC revise the HHSC comprehensive nursing assessment form to align with the requirements in proposed §263.8.

RESPONSE: HHSC declines to make changes in response to the comments about the comprehensive nursing assessment requirement in proposed §263.8. The certification principles are included in rules that are not part of this project and that may be proposed in a future issue of the *Texas Register* HHSC will consider revising the HHSC comprehensive nursing assessment form as requested when that form is under review by HHSC.

COMMENT: One commenter expressed concern that proposed §263.9(b)(3) requires informed consent of the individual or LAR before providing a telehealth service even though consent would have already been obtained for the provision of the service.

RESPONSE: HHSC declines to make changes in response to this comment because the requirement to obtain consent from an individual or LAR before delivering a service as a telehealth service is based on Texas Occupations Code §111.002.

COMMENT: One commenter expressed concern that an individual may have to change Medicaid coverage type to be eligible to receive HCS services.

RESPONSE: HHSC did not make changes in response to this comment because this comment is outside the scope of the project.

COMMENT: One commenter suggested that decisions about IPC cost caps and rates of services should be indexed to inflation. Another commenter recommended replacing the specific dollar amounts assigned as LON cost caps with 200% of the ICF/IID cost. Another commenter expressed concern that the IPC cost cap for a LON 6 is insufficient to meet the staffing needs for an individual with a LON 6.

RESPONSE: HHSC did not make changes in response to these comments because the comments are outside the scope of this rule project. The provision in proposed §263.101(a)(3) that lists the IPC cost limits for each LON is based on the HCS waiver application.

COMMENT: Several commenters expressed strong support of HHSC's decision to remove the provision in §263.101(a)(5)(J) that includes as a prohibited residential setting, a setting in which two or more dwellings create a distinguishable residential area, and instead adding provisions in proposed §263.501 consistent with 42 CFR §441.301(c)(5)(v) regarding home and community-based settings, settings that are presumed to have the qualities of an institution, and that address a heightened scrutiny review conducted by CMS.

RESPONSE: HHSC appreciates the support.

COMMENT: Several commenters expressed disagreement with HHSC's decision to not include the provision from 40 TAC §9.155(a)(5)(H) that prohibits an individual from living in a setting in which two or more dwellings create a distinguishable residential area, because this type of setting is not home and community-based. Two commenters expressed concerns about HHSC including "intentional communities" as an eligible setting to receive HCS service. The commenters requested that HHSC be precise in its definition of "intentional communities" and prohibit any "intentional community" whose policies violate the HCS principles to serve any eligible person who selects the



"intentional community" as a program provider or has a preponderance of residents of people with disabilities. One commenter expressed concern about the inequity of allowing "intentional communities" to be eligible for HCS funding considering that HCS rates are significantly higher than the inadequate rates in the Community Living Assistance & Support Services Program. Another commenter expressed that heightened scrutiny is an inadequate safeguard to prevent the provision of an HCS Program service or CFC service in "segregated intentional communities."

RESPONSE: HHSC believes that the heightened scrutiny process described in 42 CFR §441.301(c)(5)(v) and included in proposed 26 TAC §263.501 will be a fair and effective method to determine whether a setting that is presumed to have the qualities of an institution, including one identified as an intentional community, does not have institutional qualities and qualifies as a home and community-based setting. Further, the heightened scrutiny process may allow for a greater number of residential options for an individual. An HCS program provider is required to comply with all HCS program rules including 40 TAC §9.174(a)(1) which requires a program provider to serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity. HHSC declines to make changes in response to these comments.

COMMENT: One commenter suggested HHSC revise proposed §263.103(d) to allow an applicant who is residing in an ICF/IID or nursing facility to maintain their HCS interest list date if the HCS interest list date is an earlier date than the date of admission to the ICF/IID or nursing facility.

RESPONSE: HHSC declines to make changes in response to this comment. If an applicant is on the HCS interest list with an interest list date that is earlier than the date of admission to the ICF/IID or nursing facility, HHSC would not need to add the name of the applicant on the HCS interest list again with the later interest list date.

COMMENT: One commenter requested that HHSC revise proposed §263.103(h) and (i) to require that HHSC add an applicant's name back to the HCS interest list using the HCS interest list date that was in effect at the time the applicant's name was removed from the list by HHSC, regardless of whether the applicant's request to add the name back is the applicant's first request. The commenter requested this change because some families making these requests may have chaotic and complicated lives.

RESPONSE: HHSC declines to make changes in response to this comment. The reason for limiting use of the HCS interest list date in effect at the time the applicant's name was removed from the list, as described in proposed §263.103(h)-(j), is to discourage an applicant from repeatedly declining a written offer of HCS Program services.

COMMENT: One commenter requested that HHSC clarify the difference between "regular United States mail" and "United States mail." The commenter also asked if references to United States mail precludes the use of Federal Express or United Parcel Service.

RESPONSE: The term "United States mail" refers to mail delivered by the United States Postal Service. "Regular United States mail" as used in 40 TAC Chapter 9, Subchapter D referred to first class mail delivered by the United States Postal Service. References to "United States mail" do not include delivery by a carrier

other than the United States Postal Service. HHSC declines to make changes in response to this comment.

COMMENT: One commenter requested adding a requirement to §263.104(e) for a LIDDA to provide information about permanency planning and family-based-alternatives when an applicant under the age of 22 or LAR responds to an offer of enrollment. The commenter also requested that the permanency planner be required to participate as part of the service planning team in the development of the PDP and determination of an individual's need for TAS.

RESPONSE: HHSC agrees with the commenter and revised §263.902 that describes the permanency planning process. Specifically, HHSC revised §263.902(b) to require a LIDDA to, during the enrollment process, provide information about permanency planning and the benefits of living in a family setting to an applicant under 22 years of age moving from a family setting and requesting supervised living or residential support. HHSC also revised the definition of "service planning team" in §263.3(89) to include a permanency planner as a member of the service planning team for an applicant or individual under 22 years of age in certain situations. This change ensures that the permanency planner is involved in the development of service plans, including the PDP and IPC.

COMMENT: One commenter requested that HHSC revise proposed §263.104(f)(2) to allow 14 calendar days, instead of seven calendar days, for an applicant or LAR to document the applicant's choice on the HHSC Waiver Program Verification of Freedom of Choice form because of delayed postal delivery.

RESPONSE: HHSC declines to make a change in response to this comment because seven calendar days is a reasonable timeframe for an applicant or LAR to document an applicant's choice of HHSC waiver program on the HHSC Waiver Program Verification of Freedom of Choice form.

COMMENT: Several commenters disagreed with the requirements in proposed §263.104(j)(2)(A)(i)(I) and (B)(i) for a LIDDA to conduct a determination of intellectual disability (DID) and an inventory for client and agency planning (ICAP) in person. The commenters expressed that these requirements would limit or delay access to services for individuals. These commenters requested that HHSC consider the established validity of several psychological assessments conducted remotely and allow an authorized provider/clinician to use their clinical judgement in deciding the best modality for conducting the DID and ICAP. One commenter requested that synchronous audiovisual interactions be considered an appropriate alternative to in-person meetings when the practitioner determines such remote interaction to be clinically appropriate. The commenter also asked to include in proposed §263.104(j)(2)(B)(i) that the LIDDA conduct an "initial" ICAP assessment in person or "via synchronous audiovisual interaction that allows for a real-time interface to ensure validity of the results." The commenter asked to add "initial" because subsequent ICAPs are conducted by providers.

RESPONSE: HHSC declines to make changes in response to these comments. HHSC believes that initial assessments for waiver program eligibility, including the standardized measures of an individual's intellectual functioning, adaptive abilities, and deficits that informs the DID and the ICAP, must be conducted in person to ensure the assessments are thorough and accurate. HHSC declines to add "initial" before ICAP assessment, because the additional wording is not needed to understand the purpose of the assessment.

COMMENT: One commenter suggested that HHSC replace the phrase "for completing" to "to complete" in §263.104(j)(5)(A). The commenter also suggested adding "or transmits the signed and dated document" for clarity in §263.104(k)(11).

RESPONSE: HHSC agrees with the commenter and revised the proposed rules for clarity. Specifically, HHSC replaced "for completing" with "to complete" in proposed §263.104(j)(5)(A), §263.302(a)(2)(A) and §263.302(b)(4)(A). HHSC also revised proposed §263.104(k)(11) and 263.302(e)(1)(B) to clarify that an applicant or LAR provides a signed and dated IPC to the service coordinator in person, electronically, by fax, or by United States mail.

COMMENT: Two commenters expressed concerns about assigning LONs based on an individual's ICAP service level score. One of the commenters noted that the ICAP does not effectively capture an individual's high behavioral needs and requested revision to the HHSC ICAP scoring guideline to count an individual's behaviors in the scoring model regardless of the presence of a behavior support plan. The other commenter expressed that an ICAP does not capture the needs of individuals with high physical or medical needs, and as such, LON assigned to individuals are often inadequate to meet their needs.

RESPONSE: The ICAP is the current instrument utilized by HHSC to determine an individual's needs. Based on the HCS waiver application, proposed §263.106(h) provides that HHSC assigns a certain LON to an individual based on the individual's ICAP service level. HHSC declines to revise proposed §263.106(h) in response to this comment because the requested revision is inconsistent with the HCS waiver application and would require additional analysis and a change to the HCS waiver application with CMS approval. HHSC declines to revise the HHSC ICAP scoring guidelines in response to the second comment because it is outside the scope of this project.

COMMENT: One commenter requested that HHSC revise proposed §263.106(g) to outline the supporting documentation that must be submitted to HHSC in accordance with HHSC guidelines.

RESPONSE: HHSC declines to make changes in response to this comment because the documentation requirements for demonstrating an individual has a high medical or behavioral need are lengthy and listed on the HHSC website.

COMMENT: One commenter requested increased staffing for individuals with high behavior needs such as one staff to one individual or one staff to two individuals.

RESPONSE: HHSC will increase an individual's LON to the next LON or assign an individual an LON 9 requiring a 1:1 staffing ratio if the individual exhibits certain dangerous behaviors, in accordance with proposed §263.106(i) and §263.106(j). HHSC declines to make changes in response to this comment because this revision would require additional analysis and funding.

COMMENT: Two commenters expressed concerns about the documentation requirements to support a request for an increase in LON due to an individual's dangerous behavior in proposed §263.106(i), because the process to obtain the required documentation can take months and puts the HCS placements of an individual at risk. One of the commenters suggested HHSC develop a process to allow for a temporary LON increase when an individual exhibits dangerous behavior that manifest quickly and requires immediate increase in support and services. One of the commenters also suggested

that HHSC remove the documentation requirement in proposed §263.106(i)(3) showing more service providers are available than would be needed if the individual did not exhibit dangerous behavior.

RESPONSE: The documentation required to demonstrate an individual's dangerous behavior, as described in proposed §263.106(i), is reasonable and necessary to justify an increase in an individual's LON and in the payment rate to the program provider, therefore, HHSC declines to make changes in proposed §263.106(i) in response to these comments.

COMMENT: One commenter suggested that HHSC make an exception in proposed §263.106(j)(3) relating to supporting documentation that must be submitted to HHSC to request an LON 9 to prove that a service provider must exclusively and constantly supervise the individual during the individual's waking hours which must be at least 16 hours per day, because school-aged individuals are away from home for at least six hours on weekdays.

RESPONSE: HHSC declines to make changes in response to this comment because making an exception in proposed §263.106(j)(3) for a school-aged individual would require additional analysis. When reviewing a request for a LON 9 for a school-aged individual, HHSC considers the supervision needs of the school-aged individual when the individual is not in school.

COMMENT: Two commenters expressed concerns that an individual with high medical needs cannot secure consistent and adequate support because of HHSC basing assignment for an increased LON due to high medical needs primarily on the provision of 181 minutes or more of in-person nursing services per week, as provided in proposed §263.106(k). The commenters recommended that HHSC remove the in-person requirement and allow the consideration of the provision of any delegated nursing service, treatments, or interventions provided by a non-licensed person in addition to the provision of nursing services. One of the commenters also suggested that HHSC develop a process that allows a temporary LON increase when an individual's medical needs increase quickly and requires immediate increase in supports and services to allow time for the provider to collect required documentation and for HHSC to review the request. The other commenter suggested HHSC consider using an assessment tool that reflects the medical needs of an individual.

RESPONSE: HHSC determined that 181 minutes or more per week of an HCS Program nursing service provided in person, in-person nursing services provided by another source, or a combination of these nursing services is necessary to justify that an individual has high medical needs. Developing a process to allow a temporary increase in LON and developing an assessment tool would require additional analysis. Therefore, HHSC declines to make changes in response to these comments.

COMMENT: One commenter requested that HHSC revise proposed §263.107(b) to require HHSC to review documentation if an LON requested is a decrease from the individual's current LON to ensure that the LON decrease is appropriate.

RESPONSE: HHSC declines to make changes in response to this comment. An LON is an assignment given to an individual upon which reimbursement to a program provider is based and HHSC prioritizes utilization review resources for LON changes that result in an increase in payment to a program provider. An LON assignment does not impact the amount of services an individual receives.

COMMENT: Two commenters requested that HHSC specify in §263.107(c)(1)(C) and §263.107(c)(2)(B) that all impacted parties, including the individual and LAR, be notified if a recommended LON has been denied.

RESPONSE: HHSC revised proposed §263.107(c)(1)(C) and §263.107(c)(2)(B) to clarify that HHSC notifies the program provider and the service coordinator in the HHSC data system that the recommended LON has been denied. The program provider or service coordinator may provide the information to the individual or LAR. HHSC does not notify the individual or LAR of the denial because the denial is an action that impacts payment to the program provider. The denial does not affect the amount of HCS Program services on an individual's IPC. Therefore, HHSC declines to make changes in response to the comments to send written notification of a recommended LON denial to the individual or LAR.

COMMENT: One commenter suggested HHSC develop a process to allow a temporary LON increase if HHSC requires additional time to approve an LON increase request.

RESPONSE: Proposed §263.107(c)(1) provides that within 21 days after receiving support documentation, HHSC requests additional documentation, approves the recommended LON, or sends a written notification that the recommended LON has been denied. In addition, developing a process to allow a temporary increase in LON would require additional analysis. Therefore, HHSC declines to make changes in response to this comment.

COMMENT: Two commenters requested that HHSC revise proposed §263.108(a) to allow an individual or LAR to request a reconsideration of an LON assignment. The commenters also requested that HHSC revise proposed §263.108(d) so that if the reconsideration is not approved, HHSC send written notification that the recommended LON has been denied to all impacted parties including the individual and LAR.

RESPONSE: HHSC declines to make changes in response to these comments. A denial of LON by HHSC is an action that impacts payment to the program provider. A denial does not affect the amount of HCS Program services on an individual's IPC. If an individual's services have been terminated, suspended, denied, or reduced, the individual has the right to request a fair hearing, in accordance with proposed §263.801.

COMMENT: One commenter requested that HHSC clarify and provide training regarding the person-centered planning process, including what requirements must be documented.

RESPONSE: HHSC did not make changes in response to this comment. HHSC currently has person-centered planning and person-centered thinking trainings available on the HHS Learning Portal.

COMMENT: One commenter recommended revising proposed §263.201(a) as follows: "Person-centered planning is a process that empowers an applicant or individual to direct the development of their PDP, implementation plan, initial IPC, renewal IPC, revised IPC, service backup plan, and transportation plan. The person-centered planning process is used to discover the personal outcomes, preferences, choices, and abilities of the individual and identify supports and services necessary to achieve the applicant's or individual's desired outcomes so they can reach their full potential in life."

RESPONSE: HHSC declines to make changes to the rules in response to this comment because proposed §263.201(a) - (d) ad-

resses the revision recommended by the commenter, including a description of the person-centered planning process, a requirement that the individual leads the process to the extent possible, and list of the plans that are developed using the person-centered planning process.

COMMENT: One commenter requested proposed §263.201(d)(5)(A) be revised by adding "accommodations and preferred alternative styles of communication" as ways to provide information in plain language and in a manner that is accessible to the applicant or individual.

RESPONSE: HHSC declines to make changes in response to this comment because proposed §263.201(d)(5)(A) is based on 42 CFR §441.301(c)(1) and 42 CFR §435.905(b).

COMMENT: One commenter requested that HHSC clarify proposed §263.201(d)(6) regarding the requirement of the person-centered planning process to use strategies for solving conflict or disagreement within the person-centered planning process.

RESPONSE: HHSC declines to make changes in response to this comment. Proposed §263.201(d)(6) is based on 42 CFR §441.301(c)(1)(v) which allows for varying strategies for solving conflict or disagreement as needed.

COMMENT: One commenter requested that HHSC remove the requirement in §263.201(d)(7)(B) because LIDDA staff do not have the qualifications of service providers to provide to individuals or LARs. Two commenters requested that HHSC clarify in proposed §263.201(d)(7)(B) if the rule is referring to the name and qualifications of HCS program providers or service providers.

RESPONSE: HHSC declines to make changes in response to these comments. Proposed §263.201(d)(7)(B) requires that the person-centered planning process provide an individual or LAR with the name and qualifications of the individual's service providers in writing and, therefore, the LIDDA and program provider must ensure this requirement is met. "Service provider" is defined in proposed §263.3(90). Also, a program provider must make available all records, reports, and other information related to the delivery of HCS Program services and CFC services as requested by other authorized agencies, including the LIDDA, in accordance with 40 TAC §9.178(g).

COMMENT: One commenter suggested that the information required in §263.201(d)(7)(B) and §263.201(d)(8) be provided to both the "individual and LAR", not the "individual or LAR."

RESPONSE: HHSC did not make changes in response to this comment because in some situations, an LAR is granted broad authority under state law to make decisions related to an individual's care and support.

COMMENT: One commenter requested HHSC remove the provision in §263.301(a)(2) because non-waiver services are already documented in the PDP and the IPC is an authorization document.

RESPONSE: Based on the HCS waiver application, proposed §263.301(a)(2) provides that the IPC must be based on the PDP and specify the services and supports to be provided to the individual through resources other than HCS Program services or CFC services during an IPC year. HHSC declines to make changes in response to this comment because the requested revision is inconsistent with the HCS waiver application and would require a change to the HCS waiver application with CMS approval.

COMMENT: One commenter requested HHSC revise proposed §263.301(c)(2) by adding "non-CFC" before "Medicaid State Plan" because the provision in proposed §263.301(c)(2) that each HCS Program service and CFC service in an IPC must not be available to the individual through any other source, including the Medicaid State Plan, is inconsistent with offering CFC services in the HCS Program. The commenter also recommended that proposed §263.301(c)(2) be revised by removing "natural supports" as an alternate source of service because it is discriminatory against people who choose to live in the community rather than an institution and serves to burn out an individual's natural supports.

RESPONSE: HHSC declines to make changes in response to these comments. Proposed §263.301(c)(2) provides that the type and amount of each HCS Program service and CFC service in an IPC must not be available to the individual through any other source, including Medicaid State Plan. This rule does not preclude a CFC service being included on an individual's IPC. It only prohibits the provision of a CFC service if that service is available through another source. CFC is a Medicaid State Plan service and is not available through another source. The definition of "natural supports" in proposed §263.5(65) provides that it is voluntary assistance to an individual to achieve the individual's identified goals. In addition, proposed §263.301(c)(2), which provides that the services in an IPC must not be available to the individual through any other source, including the individual's natural supports, is based on the HCS waiver application, therefore, revising proposed §263.301(c)(2) as requested is inconsistent with the HCS waiver application and would require additional analysis and a change to the HCS waiver application with CMS approval.

COMMENT: One commenter suggested that the list of adaptive aids not be a finite list but one that covers broad categories of adaptive aids and allows the flexibility for an individual to get an adaptive aid outside the categories if necessary.

RESPONSE: HHSC declines to make changes in response to this comment because HHSC's approved list of adaptive aids is in the HCS Billing Requirements and, therefore, outside the scope of this project.

COMMENT: One commenter requested HHSC revise the provision in §263.302(a)(1) to allow 90 days, instead of 30 days, to convene a meeting to review and update the PDP and provide the individual or LAR the information described in §263.302(a)(1)(C) because convening the service planning team is dependent on others' availability and is out of the service coordinator's control. Another commenter suggested revising §263.302(a)(1) to allow the process for renewing an IPC begin six weeks earlier than the 90 days in proposed §263.302(a)(1) because of the time it takes for Utilization Review to complete their reviews of IPCs.

RESPONSE: HHSC declines to make changes in response to these comments. Proposed §263.302(a)(1)(B) requires a service coordinator to, at least 60 but no more than 90 calendar days before the expiration of an individual's IPC, convene a meeting of the service planning team to review and update the individual's PDP. This requirement is included to ensure that there is sufficient time before an individual's IPC expires for development and review of a renewal IPC. Allowing the service planning team meeting in proposed §263.302(a)(1)(B) to occur 135 days before the expiration of the IPC, as requested by one commenter, may result in the PDP and IPC being based on outdated information at the time the IPC is renewed.

COMMENT: Two commenters suggested that HHSC revise §263.302(a)(5), regarding the development of an implementation plan before the effective date of a renewal IPC, to allow an exception to "backdate the IPC" if there are circumstances that delay holding the IPC renewal meeting until after the expiration of an individual's IPC.

RESPONSE: Proposed §263.601(5)(A)(ii)(I) prohibits payments to a program provider for a service provided during a period for which there was not a signed, dated, and authorized IPC for the individual. Additionally, proposed §263.302(a)(5) pertains to the development of the implementation plan, not the IPC. Therefore, HHSC declines to make changes in response to this comment.

COMMENT: One commenter suggested HHSC ensure the Texas Medicaid and Healthcare Partnership system allows service coordinators and providers to update IPC information if details change before the start of the IPC.

RESPONSE: HHSC declines to make changes in response to this comment because it is not a request to revise the proposed rules and, therefore, is outside the scope of this rule project.

COMMENT: Two commenters requested that HHSC revise §263.303(a)(1) to increase the threshold for HHSC that necessitates HHSC's review of an IPC from 100 percent of the estimated annualized average per capita cost for ICF/IID Program services to 200 percent.

RESPONSE: In the HCS waiver application, HHSC makes an assurance that, for any year that the HCS waiver is in effect, the average per capita expenditures under the HCS waiver will not exceed 100 percent of the average per capita expenditures that would have been made under the Medicaid state plan for the levels of care specified for this waiver had the waiver not been granted. To ensure compliance with the waiver application, HHSC reviews IPCs that exceed 100 percent of the estimated annualized average per capita cost for ICF/IID Program services. Therefore, HHSC declines to make changes in response to this comment.

COMMENT: One commenter suggested that for individuals who participate in the consumer directed services (CDS) option, services should not be suspended while HHSC Utilization Review completes a review of the IPC.

RESPONSE: HHSC declines to make changes in response to this comment because it is outside the scope of this rule project. The provision that prohibits a financial management services agency (FMSA) from paying for services until receipt of approved documentation is in 40 TAC §41.241(d), not the proposed HCS Program rules.

COMMENT: Several commenters requested HHSC remove the service limit of \$7,500 for minor home modification (MHM) during the time an individual is enrolled in the HCS Program, as proposed in §263.304(a)(3)(A), and instead, make the MHM service limit an annual limit. Several commenters also requested that HHSC increase the \$7,500 limit for MHM because of the increase in cost of materials and labor that creates a deficit for program providers after paying contractors the actual cost to complete the MHM.

RESPONSE: The service limit for MHM in proposed §263.304(a)(3)(A), which provides that the limit for MHM is \$7,500 during the time an individual is enrolled in the HCS Program, is based on the HCS waiver application. HHSC declines to make changes in response to this comment because the requested revision is inconsistent with the HCS waiver

application and would require additional analysis and a change to the HCS waiver application with CMS approval.

COMMENT: Two commenters requested HHSC remove the service limit of 300 hours during an IPC year for respite and in-home respite combined, as proposed in §263.304(a)(4), to provide flexibly to meet an individual's needs.

RESPONSE: The service limit for respite and in-home respite combined in proposed §263.304(a)(4), which provides that the limit for respite and in-home respite combined, 300 hours during an IPC year, is based on the HCS waiver application. HHSC declines to make changes in response to this comment because the requested revision is inconsistent with the HCS waiver application and would require additional analysis and a change to the HCS waiver application with CMS approval.

COMMENT: One commenter expressed concern about proposed §263.304(b) that provides that an individual may receive TAS only once in the individual's lifetime, because some individuals would need TAS more than once in a lifetime due to moving in and out of facilities several times.

RESPONSE: Based on the HCS waiver application, proposed §263.304(b) provides that an individual may receive TAS only once in the individual's lifetime. HHSC declines to make changes in response to this comment because the suggested change is inconsistent with the HCS waiver application and would require additional analysis and a change to the HCS waiver application with CMS approval.

COMMENT: One commenter suggested that proposed §263.401(e) be revised to remove the requirement to document in the individual's PDP, that the service coordinator inform the individual or LAR about the individual's right to participate or discontinue participation in the CDS option at any time and provide names and contact information of all FMSAs providing services in the LIDDA's local service area because LIDDAs have developed forms to document this activity.

RESPONSE: HHSC declines to make changes in response to this comment. Completion of the PDP includes documentation of the individual's choice of service delivery and therefore, it is appropriate for the service coordinator to document in the PDP that the information in proposed §263.401(c) and (d)(1) was provided to the individual or LAR.

COMMENT: One commenter requested that HHSC explicitly specify "representative payee" throughout proposed Subchapter F, especially in proposed §263.503 regarding Residential Agreements.

RESPONSE: HHSC declines to make changes in response to this comment because a representative payee is a type of LAR.

COMMENT: Two commenters expressed concerns that the provisions in proposed Subchapter F regarding Requirements for Home and Community-based Settings and Program Provider Owned or Controlled Residential Settings, have the potential to result in irreparable harm to both program providers and individuals and asked that HHSC meet with stakeholders to discuss their concerns in detail.

RESPONSE: HHSC has met with external stakeholders about the proposed HCS rules and will continue discussions with external stakeholders to address their concerns about the rules. HHSC did not make changes to the proposed rules in response to this comment.

COMMENT: Several commenters expressed support for rules in proposed §§263.501 - 263.503, noting it broadens housing options for individuals with intellectual or developmental disability (IDD) and other neurodiversity.

RESPONSE: HHSC appreciates the support.

COMMENT: Several commenters requested that proposed §263.501(a) be revised to require that a home and community-based setting allow individuals to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS, that the setting be selected by the individual among setting options as defined and documented in the person-centered service plan, and that the setting facilitate individual choice regarding services and supports and service providers.

Response: HHSC agrees with the commenters and revised proposed §263.501(a) to be in compliance with 42 CFR §441.301(c)(4). The revisions include specifying that subsection (a) describe the qualities of a "home and community-based setting." HHSC also revised §263.501(a) to use the term "home and community-based setting." HHSC changed the title of §263.501 from "Requirements for Service Settings" to "Requirements for Home and Community-Based Settings" so that the section title more accurately reflects the contents of the section. Because of the change made in the title of §263.501, HHSC changed the title of Subchapter F, from "Requirements for Service Settings and Program Provider Owned or Controlled Residential Settings" to "Requirements for Home And Community-Based Settings and Program Provider Owned or Controlled Residential Settings." HHSC also revised the definition of "PDP" in §263.3(68) by adding that the PDP includes the setting selected by an individual or LAR for each service.

COMMENT: One commenter requested that proposed §263.501(a)(2) regarding the setting supporting "the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program" be revised to support the individual's access to the greater community to the same degree as a person living "in the same community" and not enrolled in a Medicaid waiver program.

RESPONSE: HHSC declines to make a change in response to this comment because proposed §263.501(a)(2), reformatted as subsection (a)(1), is based on 42 CFR §441.301(c)(4).

COMMENT: Several commenters requested that proposed §263.502 be revised to include the requirements in 42 CFR 441.301(c)(4)(vi)(D) and (E), that provides that, in a program provider owned or controlled setting, individuals can have visitors of their choosing at any time and the setting is physically accessible to the individual.

RESPONSE: HHSC agrees with the commenters and revised proposed §263.502(a), reformatted as subsection (b), by adding paragraphs (7) and (8), that provides that in each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must allow the individual to receive visitors at any time and ensure that the residence is physically accessible, in accordance with 42 CFR §441.301(c)(4)(vi)(D) and (E). In addition, to comply with §441.301(c)(4)(vi), HHSC added a new subsection (a) in proposed §263.502 to clarify that the requirements for program provider owned or controlled residential settings are in addition to the requirements that apply to all settings described in §263.501. Because of the changes made in this section, HHSC

corrected the reference to proposed §263.502(a) in proposed §263.901(e)(21).

COMMENT: One commenter requested that HHSC revise proposed §263.502 to exempt residences where subletting or modifying the residence is prohibited from complying with §263.502.

RESPONSE: HHSC declines to make changes in response to this comment because §263.502 is based on 42 CFR §441.301(c)(4)(vi).

COMMENT: Two commenters expressed concerns regarding the provision in proposed §263.502(a)(2) because it will cause unnecessary burdens to program providers to offer single bedrooms to individuals especially in four-person residences where individuals typically share at least a bedroom. The commenter also expressed concern that this provision will cause an increased burden for individuals who must cover the increased cost for a single room.

RESPONSE: Proposed §263.502(a)(2), reformatted as subsection (b)(2), requiring a program provider to ensure that an individual have the option not to share a bedroom with a roommate, is based on 42 CFR 441.301(c)(4)(ii). This federal regulation requires that an individual have the option for a private unit in a residential setting. HHSC declines to make changes in response to this comment because §263.502(b)(2) is necessary for compliance with 42 CFR §441.301(c)(4)(ii).

COMMENT: Two commenters asked whether individuals can choose the persons who move into their residence. The provision in §263.502(a)(3) provides that an individual sharing a bedroom has a choice of roommates.

RESPONSE: HHSC did not make changes in response to this comment. The provision in proposed §263.502(a)(3), reformatted as subsection (b)(3), requires a program provider to ensure that an individual sharing a bedroom have a choice of roommates in a residence in which residential support, supervised living, or host home/companion care is provided. The proposed rule does not require a program provider to ensure that an individual have a choice about other persons living in the residence. However, current rule at 40 TAC §9.173(b)(27) provides that an individual in the HCS Program has the right to participate in decisions regarding the individual's living environment, including other individuals residing in the residence.

COMMENT: One commenter requested that proposed §263.502(a)(4), which requires that a lock is installed on an individual's bedroom door at no cost to the individual, be revised to provide that "an individual has a right to have a lock installed on the individual's bedroom door at no cost to the individual." Two commenters disagreed with the provision in proposed §263.502(a)(4) because the failure to have a lock on an individual's bedroom door appears to be a rights restriction instead of personal choice. The commenters also disagreed with this provision because it requires the program provider to provide locks on an individual's bedroom door at no cost to the individual. The commenters requested that a program provider be allowed to charge an individual or LAR for a more expensive lock than offered by the provider if the individual or LAR requests the more expensive lock. The commenters also requested that HHSC allow adaptive aids funds to be used to purchase an adapted lock if an adapted lock is needed to meet an individual's needs. These commenters also suggested documentation requirements different than those in proposed §263.502(b) for a modification for an individual who chooses not to have a lock on the individual's bedroom door.

RESPONSE: HHSC declines to make changes in response to these comments. Proposed §263.502(a)(4), reformatted as subsection (b)(4), which provides that the program provider must ensure an operable lock is installed on the individual's bedroom door at no cost to the individual, is based on 42 CFR §441.301(c)(4). This federal regulation allows for an exception to the operable lock requirement based only on a specific assessed need of the individual, not because an individual does not want a lock. An individual or LAR may choose for the individual's bedroom door to be unlocked. An individual or LAR may choose to upgrade the lock that was installed by the program provider on the individual's bedroom door but would have to pay for the upgraded lock. An adapted lock is included on the HHSC approved list of adaptive aids in the *HCS Program Billing Requirements*, and, therefore, an individual may request that an adapted lock be purchased as an adaptive aid.

COMMENT: Two commenters requested that HHSC revise proposed §263.502(a)(6)(B) to require that a program provider ensure that an individual, while in the residence, have access to food at any time "unless contraindicated in the PDP."

RESPONSE: HHSC declines to make changes in response to this comment because proposed §263.502 ensures compliance with 42 CFR §441.301(c)(2)(xiii). Proposed §263.502(a)(6)(B), reformatted as subsection (b)(6)(B), requires a program provider to ensure that while in the residence, an individual has the freedom and support to have access to food at any time, except as provided in proposed §263.502(b), reformatted as subsection (c). Proposed §263.502(b)-(d), reformatted as subsections (c)-(e) addresses how a modification to the requirements in proposed §263.502(a)(1)-(6), reformatted as (b)(1)-(7), may be implemented and is based on 42 CFR §441.301(c)(2)(xiii). Section 263.502(c)-(e) requires certain activities, including documenting information in the PDP such as a description of the specific and individualized assessed need that justifies the modification; a description of the positive interventions and supports that were tried but did not work; and a description of the less intrusive methods of meeting the need that were tried but did not work.

COMMENT: One commenter requested that proposed §263.502(b) be revised to exclude a program provider from notifying the service coordinator of a needed modification and providing the service coordinator with information described in proposed §263.901(e)(21) of this chapter.

RESPONSE: HHSC declines to make changes in response to this comment. Proposed §263.502(b), reformatted as subsection (c), requires a program provider to notify the service coordinator of a needed modification and provide the service coordinator with information described in proposed §263.901(e)(21) of this chapter because the service coordinator needs this information to convene a service planning team meeting to update the PDP as described in proposed §263.901(e)(21).

COMMENT: One commenter requested proposed §263.503 be revised to require that program providers write the residential agreements in plain language so that individuals or LARs understand the terms of the residential agreement.

RESPONSE: HHSC declines to make changes in response to this comment. It is not clear what is meant by "plain language" for purposes of the residential agreement. The parties to the residential agreement may want to consult with their own legal counsel regarding this issue.

COMMENT: One commenter requested that proposed §263.503 be revised to add a provision that protects individuals from increases to their room or board payments.

RESPONSE: HHSC declines to make changes in response to this comment because provisions about how the cost of room or board is determined are not part of this rule project. In particular, current rule at 40 TAC §9.178(m)(5)(A) provides that a program provider must not charge an individual a room and board amount that exceeds an amount determined in accordance with the provisions in 40 TAC §9.178(m)(1) - (3). Also, §9.178(m)(4) provides that a program provider must not increase the charge for room and board because a resident moves from the residence.

COMMENT: Two commenters requested that the residential agreement requirement in proposed §263.503 reference the room and board requirements in the certification principles to eliminate program provider confusion and to ensure program providers are aware that the room and board requirements in the certification principles still apply.

RESPONSE: HHSC agrees with the commenters and revised proposed §263.503(c)(9) and (10) to clarify that the amount for room or board is determined in accordance with the rules governing the HCS Program. HHSC declines to include the current rule citation containing the room and board requirements in §263.503(c)(9) and (10) because the citation will change in an upcoming rule project.

COMMENT: One commenter suggested rearranging the order of proposed §263.503 to improve the flow.

RESPONSE: HHSC declines to make changes in response to this comment because HHSC believes that the current order of proposed §263.503 is clear.

COMMENT: One commenter requested that HHSC add a provision to proposed §263.503 that limits the program provider from seeking more than the delinquent room or board payment accrued before the date an individual was evicted from a residence.

RESPONSE: HHSC declines to make changes in response to this comment. HHSC does not want to limit the ability of the program provider or service provider of host home/companion care to recover monetary damages as the result of an eviction.

COMMENT: One commenter requested that HHSC revise proposed §263.503 to hold LARs accountable for refusing to pay an individual's room and board and to specify ways that HHSC will provide direct assistance to resolve issues arising from non-payment of room or board.

RESPONSE: HHSC declines to make changes in response to this comment. Proposed §263.503(j) provides that if an LAR does not pay the delinquent room or board within the period required by the proposed notice of eviction, the program provider must report the failure to pay to the Social Security Administration; the probate court that appointed the individual's guardian; or DFPS as an allegation of the LAR's exploitation or neglect of the individual. Further, in accordance with 26 TAC §331.5(36)(A), service coordination activities include assisting an individual or LAR to secure services and supports to prevent or manage a crisis.

COMMENT: Several commenters requested that HHSC revise proposed §263.503(a) to include, as one of the listed residential setting options available in the HCS Program, any residence of an individual's choosing.

RESPONSE: HHSC declines to make changes in response to this comment. The purpose of proposed §263.503(a) is to require a service coordinator to inform an individual or LAR of the settings available if the individual is interested in receiving residential assistance. The only residential assistance settings available in the HCS Program are a residence in which an individual receives host home/companion care, a three-person residence in which the individual receives residential support or supervised living, and a four-person residence in which the individual receives residential support or supervised living.

COMMENT: One commenter requested that HHSC revise proposed §263.503(a)(3) and §263.503(c)(18) to allow eviction only if the individual or LAR "refuses" to pay room or board as required by a residential agreement. The commenter also requested that HHSC include a provision to ensure an individual is not evicted if a portion of room and board is being paid because the individual cannot afford the full amount. The commenter expressed that an individual with delinquent room or board payments should not be punished for the actions of their LAR or representative payee and suggested that provisions be added to §263.503 that prevents an eviction if an individual changes the payee source (LAR or representative payee) because the payee source refuses to pay the individual's room and board. Two commenters expressed opposition to evictions and suggested that it is essential HHSC use a comprehensive approach to resolve issues of non-payments.

RESPONSE: HHSC declines to make changes in response to the comments from the first commenter. It is unclear what it means for an individual to "refuse" to pay room or board and such wording may result in different interpretations. In addition, the provision in proposed §263.503(a)(3) and §263.503(c)(18), that allows an eviction if the individual or LAR does not pay room or board as required by a residential agreement, was added to comply with 42 CFR §441.301(c)(4)(vi)(A) that provides that an individual has, at a minimum, the same responsibilities that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. HHSC interprets 42 CFR §441.301(c)(4)(vi)(A) to include payment of room or board as required by the residential agreement. HHSC revised §263.503(h)(2) to clarify that the options to prevent an eviction should be discussed during the meeting convened by the program provider with the individual or LAR and the service coordinator to discuss the alleged non-payment of room or board.

COMMENT: One commenter requested that HHSC revise proposed §263.503(a)(4) to require a service coordinator to provide a copy of, and review with the individual or LAR, an HHSC publication that outlines the eviction process a program provider or service provider of host home/companion care may pursue if an individual or LAR refuses to pay the delinquent room or board, including notification that if an individual is evicted, HHSC will deny the individual residential support, supervised living, or host home/companion care until the individual or LAR pays the delinquent room or board; available protections for individuals who are evicted; and housing options for individuals who are evicted.

RESPONSE: HHSC declines to make changes in response to this comment because a publication with the information described has not been developed. HHSC will consider developing an informational publication when updating handbooks and forms.

COMMENT: Two commenters opposed the provision in proposed §263.503(a)(4) because denying an individual residential support, supervised living, or host home/companion care after

an individual or LAR has been evicted may result in homelessness or institutionalization. The commenters suggested that instead of denying residential assistance, HHSC help an individual locate resources that can alleviate the delinquent room or board situation and maintain access to affordable, integrated, and accessible housing. The commenters also requested HHSC clarify the authority and legal basis it has to deny residential services to an eligible HCS participant.

RESPONSE: HHSC declines to make changes in response to this comment. The provision allowing HHSC to deny residential assistance services if an individual is evicted by a program provider or service provider of host home/companion care was included to deter an individual who consistently does not pay room and board from moving from one program provider to another. HHSC is authorized by Texas Government Code §531.0055(e) and Texas Human Resources Code §32.021 to adopt rules and policies for the operation of and provision of health and human services by the health and human services system and rules necessary for the proper and efficient operation of the Medicaid program.

COMMENT: Two commenters suggested that HHSC revise proposed §263.503(c)(7) to include a reference to the Texas Fair Housing Act Chapter 301, regarding protection from a hostile housing environment. The commenters also requested that HHSC include a citation to 40 TAC §819.136 regarding prohibited housing practices. The commenters also requested that HHSC add provisions to ensure a standard policy on how to handle individuals' reasonable accommodation requests.

RESPONSE: HHSC agrees with the commenters and revised proposed §263.503(c)(7) to specify that the residential agreement includes a provision that the individual or LAR is not waiving any right or remedy provided to tenants under state law, including the Texas Fair Housing Act in Texas Property Code Chapter 301. HHSC does not believe it is necessary to include a citation for 40 TAC §819.136 because the rules at 40 TAC Chapter 819 implement the Texas Fair Housing Act and because 40 TAC §819.136 does not describe rights or remedies, only prohibited actions. HHSC declines to add provisions to ensure a standard policy on how to handle individuals' reasonable accommodation requests because §263.502(b)(8) requires a program provider to ensure that a residence in which host home/companion care, supervised living, or residential support is provided is physically accessible to the individual. In addition, the HCS certification principle in 40 TAC §9.178(c) requires a program provider to ensure that, based on the individual's needs, the environment in which host home/companion care, supervised living, or residential support is provided is suited for the individual's abilities.

COMMENT: Two commenters expressed concerns that proposed §263.503(c)(7) references Texas Property Code Chapters 24, 91, and 92 because the provisions in these chapters could conflict with program rules and would be confusing for program providers, individuals, and family members who do not have experience in residential tenancy laws. The commenters included examples of provisions in Chapter 92 that could be inconsistent with the HCS program rules such as allowing for attorney's fees to be covered in a suit that could include damages caused by the individual to be billed to the individual; prohibiting a landlord from preventing individuals and guests to keep firearms in the residence; requiring landlords to keep hot water devices functioning at no less than 120 degrees while program rules disallows water temperatures exceeding 120 degrees; and differing provisions related to smoke alarms, fire extinguishers,

and security deposits. Another commenter suggested that HHSC ensure the Texas Property Code and Texas Rules of Civil Procedure are appropriate for the HCS program.

RESPONSE: HHSC references Texas Property Code Chapters 24, 91, and 92 because 42 CFR §441.301(c)(4)(vi)(a) requires that the individual has the same responsibilities and protections from eviction under the landlord/tenant law of the state. HHSC revised proposed §263.503(c) by removing paragraph (22) regarding the program provider, service provider of host home/companion care, and the individual or LAR not being entitled to reimbursement for attorney's fees arising out of any dispute relating to the residential agreement. HHSC is making this change because Texas Property Code §92.005 allows a party to a lease to recover attorney's fees in certain circumstances. HHSC will conduct further analysis to determine how the Texas Property Code impacts the HCS certification principles and whether future rule amendments are needed.

COMMENT: One commenter requested that proposed §263.503(c)(8) regarding "right or remedy provided to tenants under state law" and "notice period that is shorter than the notice period to which tenants are entitled under state law," be revised to specify the relevant provisions from the state law.

RESPONSE: HHSC revised proposed §263.503(c)(8) to reference the Texas Fair Housing Act in Texas Property Code Chapter 301 but for purposes of brevity, did not include references to other state laws.

COMMENT: One commenter requested that proposed §263.503(c)(9) and §263.503(c)(10) be revised to include protections prohibiting a provider from requiring an individual to pay in kind if the individual does not pay the full room or board amount.

RESPONSE: HHSC declines to make changes in response to this comment because the proposed rules do not require an individual or LAR to agree to pay for room or board in kind in the residential agreement.

COMMENT: Several commenters requested that late fees should not be imposed, as proposed in §263.503(c)(12), because an individual who is delinquent in room or board may not be able to catch up on payments if late fees are added.

RESPONSE: Proposed §263.503 does not prohibit a late fee to be charged because late fees are a reasonable incentive for the timely payment of room and board. Proposed §263.503(c)(12) does include some limitations for the imposition of late fees, however. In particular, this provision specifies the maximum amount of late fee that can be charged, when it can be charged, and ensures that the individual or LAR agrees to the late fee charge before the charges are assessed. Therefore, HHSC declines to make changes in response to this comment.

COMMENT: Several commenters requested that the provision that the program provider or service provider of host home/companion care agrees to refund to the individual or LAR an amount for board paid to the program provider or service provider for the days that the individual was temporarily away from the residence for at least one 24-hour period, in proposed §263.503(c)(14), be removed from the proposed rules because the provision is administratively and financially burdensome for program providers, particularly when the temporary absences are unplanned, and food was already purchased. Two commenters expressed that in a host home/companion care residence where the service provider is a family member, trips away from the



residence are typically taken together, therefore, the individual and service provider are both temporarily absent from the residence. The commenters expressed that this provision exceeds the requirements described in the federal HCBS Settings Rule. One commenter suggested that if the provision in proposed §263.503(c)(14) is not removed, then, §263.503(c)(14) be revised to require a refund only if the individual is temporarily away from the residence for at least 7 calendar day period.

RESPONSE: HHSC agrees that the provision in proposed §263.503(c) would be administratively and financially burdensome to program providers and revised proposed §263.503(c) by removing the provision in proposed §263.503(c)(14) regarding refunding an amount for board paid for the days that an individual was temporarily away from the residence for at least one 24-hour period.

COMMENT: One commenter requested that HHSC revise proposed §263.503(c)(15), to require that the program provider or service provider of host home/companion care agrees to refund to the individual or LAR an amount for room and board paid to the program provider or services provider for the days that the individual was away from the residence because the individual permanently moved from the residence "and removed all personal belongings from the residence."

RESPONSE: HHSC declines to make changes in response to this comment because if an individual permanently moves from a residence the removal of their belongings from the residence is inferred.

COMMENT: One commenter requested that HHSC revise proposed §263.503(c)(17) to prohibit an individual from being responsible for the repair of damage to property resulting from the individual's disability especially if the damage is considered negligent, accidental, or abuse of the premises, equipment, or chattel.

RESPONSE: HHSC declines to make changes in response to this comment. In accordance with 42 CFR §441.301(c)(4)(vi)(A), an individual, or the LAR on behalf of the individual, has the same responsibilities that tenants have under state landlord/tenant laws.

COMMENT: One commenter requested that HHSC revise proposed §263.503(c)(17) to exempt an individual's property from the provision that requires a program provider or service provider of host home/companion care to be responsible for repairs to the residence resulting from normal wear and tear, as defined in Texas Property Code §92.001.

RESPONSE: HHSC agrees with the commenter and revised proposed §263.503(c)(17), reformatted as subsection (c)(16), to clarify that, the program provider or service provider of host home/companion care agrees to be responsible for all repairs to the residence "of the program provider or service provider of host home/companion care, including the program provider's or service provider's real property or personal property," resulting from normal wear and tear, as defined in Texas Property Code §92.001.

COMMENT: One commenter suggested that repairs for normal wear and tear should be included in the program provider's residential rates.

RESPONSE: HHSC did not make changes in response to the comments because the comment is outside the scope of this project. The rate methodologies for HCS Program services are not addressed in the proposed rules.

COMMENT: Two commenters requested that HHSC revise proposed §263.503(c)(19), regarding a notice of proposed eviction that allows the individual or LAR at least 60 calendar days to pay the delinquent room or board, to require that the notice be consistent with state and federal law, including laws related to disasters and public health emergencies.

RESPONSE: HHSC is unclear which state and federal laws the commenter is referring to and does not think this revision is necessary to require a program provider or service provider of host home/companion care to comply with laws applicable to the notice required by proposed §263.503(c)(19), reformatted as subsection(c)(18). HHSC did not make changes in response to this comment.

COMMENT: One commenter suggested proposed §263.503(d)(1) be revised to change the three calendar days timeframe for an individual or LAR to review, request changes, and sign the residential agreement because the timeframe is inadequate. The commenter also requested that HHSC clarify what, if any, consequence could arise if the LAR does not sign the residential agreement in the established timeframe. Two commenters requested that proposed §263.503(d)(1) be revised to give the individual or LAR at least three calendar days to review, request changes, and sign the residential agreement "prior to choosing the provider and residence."

RESPONSE: HHSC declines to make changes in response to these comments. Proposed §263.503(d)(1) sets the minimum number of days the program provider must give an individual or LAR to review, request changes, and sign the residential agreement. The program provider may give the individual or LAR more than three days to perform these activities. Except in the event of an emergency, an individual may not begin to live in a three-person residence, four-person residence, or a residence in which host home/companion care is provided, until the residential agreement is fully executed, as provided in proposed §263.503(d)(2). If an individual or LAR does not sign the residential agreement in the established timeframe, the individual cannot move into the residence and the program provider is under no obligation to hold the vacancy in the residence for the individual. It is unclear how an individual could review, request changes, and sign a residential agreement prior to choosing the program provider and residence.

COMMENT: One commenter requested that HHSC include a provision that describes the process to resolve situations where an individual or LAR disagrees with a term of a provider's residential agreement.

RESPONSE: HHSC declines to make changes in response to this comment. An individual or LAR may report any unresolved complaint about the HCS Program to the HHSC IDD Ombudsman. Proposed §263.901(e)(4)(B) and current rule at 40 TAC §9.173(b)(42) require the program provider and LIDDA to provide information to the individual about the IDD Ombudsman office.

COMMENT: One commenter suggested that HHSC revise proposed §263.503(d)(3)(B) to increase the seven-calendar day timeframe required for an individual to fully execute a residential agreement if the individual begins living in a three-person, four-person, or host home/companion care residence before a residential agreement is fully executed because of a natural disaster.

RESPONSE: HHSC declines to make a change in response to this comment because the requested revision would require additional analysis.

COMMENT: One commenter suggested that HHSC revise proposed §263.503(d)(4) to increase the three-calendar day timeframe required for a program provider to provide one copy of the residential agreement to the individual or LAR because the timeframe is inadequate.

RESPONSE: HHSC agrees with the commenter and revised proposed §263.503(d)(4) to require the program provider to provide a copy of the residential agreement to the individual or LAR within three business days after the date the residential agreement is fully executed.

COMMENT: One commenter requested that proposed §263.503(e) be revised by replacing the reference to proposed §263.503(c)(16) with the actual rule language it references.

RESPONSE: HHSC agrees with the commenter and revised §263.503(e) by replacing the reference to proposed §263.503(c)(16) with "the provision in the residential agreement that the individual may furnish and decorate the individual's bedroom."

COMMENT: One commenter requested that proposed §263.503(h) be revised to include a provision for program providers to notify HHSC if the program provider wants to evict the individual.

RESPONSE: HHSC declines to make changes in response to this comment because there is no action for HHSC to take if a program provider wants to evict an individual. In accordance with proposed §263.503(h)(1), a program provider is required to notify an individual's service coordinator if the program provider wants to evict the individual and the service coordinator can assist the individual if necessary.

COMMENT: One commenter requested that proposed §263.503(h)(1) be revised to reference 40 TAC §9.178(m)(2)(B) which provides that a program provider is not required to collect a monthly amount for board from an individual if collecting such an amount may make the individual ineligible for the Supplemental Nutrition Assistance Program operated by HHSC.

RESPONSE: HHSC declines to include a reference to 40 TAC §9.178(m)(2)(B) in proposed §263.503(h)(1). HHSC revised proposed §263.503(c)(10) to provide that the amount the individual or LAR is paying for board is determined in accordance with the rules governing the HCS Program. In instances where a program provider is not collecting board as provided in 40 TAC §9.178(m)(2)(B) and (C), the residential agreement should reflect that there is no board amount.

COMMENT: One commenter requested that HHSC revise proposed §263.503(h)(2) to include a provision that addresses the process for an individual to transfer to another program provider after the eviction process has begun but the eviction is not yet complete.

RESPONSE: HHSC declines to make a change in response to this comment. The process for an individual to transfer to a different program provider under any circumstance is described in proposed §263.701.

COMMENT: Two commenters suggested revising proposed §263.503(h)(3) to include a provision that allows 45 days to develop a "comprehensive plan" to resolve the delinquent payment of room and board. The commenters requested proposed

§263.503(h)(3) be further revised to include a provision that provides support and assistance to implement the "comprehensive plan" and allows the individual or LAR 60 days from the date of the agreed upon comprehensive plan to pay the delinquent room or board. The commenters requested that, if after the implementation of the comprehensive plan, the program provider or service provider intends to proceed to evict the individual, the provision should require the program provider or service provider to give the individual or LAR, a written notice of proposed eviction that allows the individual or LAR to request an administrative appeal of a written notice of proposed eviction.

RESPONSE: HHSC declines to revise proposed §263.503(h)(3) to allow for the development of a comprehensive plan to address the delinquent payment of room or board. HHSC revised proposed §263.503(h)(2) to require the program provider to discuss options to prevent an eviction with the individual or LAR at the meeting convened to discuss the alleged non-payment of room or board. A program provider and individual or LAR may choose to enter into a plan for payment or other actions as a result of this meeting. HHSC also declines to revise proposed §263.503 to require a program provider or service provider to allow the individual or LAR to request an administrative appeal of a written notice of proposed eviction. It is unclear what type of administrative appeal the commenter had in mind, however, an individual has the right to challenge an eviction through the court system described in state law. In addition, an individual or LAR has the right to request a Medicaid fair hearing for a denial of residential service including when the service is denied because the individual has been evicted and the individual or LAR has not paid the delinquent room or board.

COMMENT: Two commenters expressed concern that proposed §263.503(j)(1)(C) which requires a program provider to report the failure of an individual's LAR to pay delinquent room or board, would be ineffective because DFPS has a backlog of cases.

RESPONSE: HHSC did not make changes in response to this comment. Proposed §263.503(j)(1)(C) was added to initiate a process for DFPS to investigate the reasons why a LAR is not paying the individual's room or board. As part of this process, DFPS staff can identify the extent to which the alleged exploitation or neglect adversely affects the individual and implement services, if appropriate, to mitigate the effects of the neglect, or financial exploitation. A potential backlog of cases at DFPS is not justification for HHSC to remove the requirement to report an allegation of exploitation or neglect from this section.

COMMENT: One commenter suggested HHSC add a provision to proposed §263.503(l) that outlines the responsibilities of program providers, service coordinators and HHSC when an individual who is evicted does not have an alternative living setting.

RESPONSE: HHSC declines to make changes in response to this comment. In accordance with 26 TAC §331.5(36)(A), service coordination activities include assisting an individual or LAR to secure services and supports to prevent or manage a crisis.

COMMENT: Several commenters requested that HHSC provide a residential agreement template that program providers and service providers of host home/companion care can use.

RESPONSE: HHSC declines to make changes in response to this comment because it is not a request to revise the proposed rules and, therefore, is outside the scope of this rule project.

COMMENT: One commenter suggested that HHSC revise proposed §263.701(a) and §263.702(a) to delineate the process of a

transfer when a service coordinator receives information from an individual or LAR that the individual wants to transfer or the LAR wants the individual to transfer to a different program provider or FMSA, or that an individual, or the LAR wants the individual to begin to receive a service through the CDS option, from the process when the service coordinator receives the information from a different person.

RESPONSE: HHSC agrees with the commenter and revised proposed §263.701(a) and §263.702(a) to clarify the service coordinator's required activities after receiving information, from an individual or LAR or another person, about a desire to transfer to a different program provider or to receive services through the CDS option.

COMMENT: One commenter expressed that while the provision in proposed §263.701(a)(3)(A), that provides that an individual may transfer to a program provider or FMSA of choice whose enrollment has not reached its service capacity in the HHSC data system, is understood, allowing service capacities for program providers is problematic for individuals, particularly for individuals who live in rural areas.

RESPONSE: HHSC declines to make changes in response to this comment. The provision in 40 TAC §9.174(a)(1) that requires a program provider to serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity is in an HCS Program rule that is not part of this rule project.

COMMENT: One commenter requested that proposed §263.705 be revised to include a provision requiring a written notification to the individual and their LAR if an individual's HCS Program services or CFC services are suspended.

RESPONSE: HHSC declines to make changes but will review its internal notification processes related to suspensions. An individual or LAR is informed annually of the reasons HCS Program services and CFC services may be suspended, in accordance with proposed §263.302(a)(1)(C)(iv).

COMMENT: One commenter requested that HHSC revise proposed §263.708(a)(3) to require a service coordinator to contact the individual and the LAR to discuss the written statement that the individual no longer wants HCS Program services before HHSC terminates the individual's HCS Program services and CFC services. Another commenter suggested that the written statement required in proposed §263.708 (a)(3) be signed by the LAR in appropriate circumstances.

RESPONSE: HHSC declines to revise proposed §263.708(a)(3) to require a service coordinator to contact the individual and the LAR to discuss the written statement that the individual no longer wants HCS Program services because proposed §263.901(e)(24) addresses the commenter's concern. Specifically, proposed §263.901(e)(24) requires the service coordinator, within ten calendar days after the individual request termination of all HCS Program services or all CFC services, to inform the individual or LAR of the individual's option to transfer to another program provider, the consequences of terminating HCS Program services and CFC services, and possible service resources upon termination. HHSC revised proposed §263.708(a)(3), as requested by the commenter, to provide that the written statement that the individual no longer wants HCS Program services be signed by the individual "or LAR." COMMENT: One commenter requested that HHSC revise §263.901(e)(3) to require the service coordinator to use an HHSC form to document the provision to the individual or LAR

of the booklet, "Your Rights In the Home and Community-based Services (HCS) Program" and the HHSC HCS Rights Addendum form, and an oral explanation of the rights in the booklet and the form.

RESPONSE: HHSC declines to make changes in response to this comment because a form with the information described has not been developed. HHSC will consider developing a form when updating handbooks and forms.

COMMENT: One commenter requested HHSC revise proposed §263.901(e)(9) to allow an individual or LAR to sign the finalized PDP electronically.

RESPONSE: HHSC declines to make changes in response to this comment because 40 TAC §49.305 addresses policies related to electronic signatures.

COMMENT: One commenter suggested that HHSC develop a process for program providers to update the residential agreements with the requirements in proposed §263.901(e)(21)(A)-(H) and to update the individual's record with the information required in proposed §263.901(e)(21)(A)-(H). The commenter suggested that the service planning team would then review the provider's activities and documentation to agree or disagree with the proposed modifications.

RESPONSE: HHSC declines to make changes in response to these comments. To comply with 42 CFR 441.301(c)(2)(xiii) and (4)(vi)(F), proposed §263.901(e)(21) requires that an individual's PDP, a part of the individual's record, include specific information if certain requirements in proposed §263.502 or §263.503 need to be modified. The federal regulation does not include a requirement that the modifications be included in the residential agreement. Further, in accordance with proposed §263.901(e)(21), one of the informational elements that must be included in the PDP if a requirement is modified is the individual's or LAR's signature evidencing informed consent to the modification.

COMMENT: One commenter suggested removing the provision in proposed §263.901(e)(32), that provides that a service coordinator must ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency, because service coordinators are not always notified when an individual is relocated, and a residential relocation does not require a PDP update. The commenter suggested making this requirement a program provider responsibility.

RESPONSE: HHSC declines to make changes in response to this comment because in accordance with 40 TAC §9.174(a)(23)(F), the program provider is required to ensure that an individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency. In addition, a service coordinator must monitor the provision of HCS Program services in accordance with proposed §263.901(e)(15) and, therefore, should be involved in activities related to the relocation of an individual.

COMMENT: One commenter suggested that HHSC remove the provision in proposed §263.901(e)(36), that requires the service coordinator to, within three business days after initiating supervised living or residential support to an individual under 22 years of age, provide certain information to the community resource coordination group (CRCG) and the local school district and instead, make it a program provider responsibility.

RESPONSE: HHSC declines to make changes in response to this comment. In accordance with 26 TAC §331.5(36)(D), service coordination activities include identifying, arranging,

advocating, collaborating with other agencies, and linking for the delivery of services and supports that address the individual's needs and desires.

COMMENT: One commenter requested that to ensure consistent documentation among service coordinators, HHSC develop booklets and forms for service coordinators to use when informing applicants and individuals about responsibilities related to electronic visit verification (EVV), as required by §263.901(e)(39).

RESPONSE: HHSC declines to make changes in response to this comment. As described in proposed §263.901(e)(39)(A)(i), §263.901(e)(39)(B)(i), and §263.901(e)(39)(C)(i), HHSC requires service coordinators to use HHSC form 8516, Electronic Visit Verification Responsibilities and Additional Information to explain information to applicants and individuals about responsibilities related to EVV. This form is available on HHSC's website.

COMMENT: One commenter requested that HHSC revise proposed §263.901(e)(40) to require a service coordinator to have contact to provide service coordination during a month in which "the service coordinator is aware" that an individual "might" not receive an HCS Program service because service coordinators are not always informed when an individual's plans change and are unaware to make the required contact. Additionally, the commenter suggested a service coordinator contact should not be required during a month in which it is anticipated that the individual will not receive an HCS Program service because of being on an extended vacation.

RESPONSE: HHSC declines to make changes in response to this comment. In accordance with proposed §263.101(a)(6) and the HCS waiver application, an individual requires the provision of at least one HCS Program service per month or a monthly monitoring visit by a service coordinator to be eligible for the HCS Program. Further, HHSC does not believe that the requested revision to proposed §263.901(e)(40) results in a meaningful change to the proposed provision.

COMMENT: One commenter requested that HHSC revise proposed §263.902 to make the permanency goals the same for an applicant under 18 years of age and an applicant who is at least 18 years of age and under 22 years of age because the permanency goals for all applicants under 22 years of age are the same.

RESPONSE: HHSC agrees with the commenter and revised proposed §263.902 to remove §263.902(a)(2)(C)(ii), regarding permanency planning goals for an applicant who is at least 18 years of age and under 22 years of age, and rewrote proposed §263.902(a)(2)(C)(i), reformatted as subsection (c)(1), to make the permanency planning goals for an applicant who is under 18 years of age also apply to an applicant who is at least 18 years of age and under 22 years of age.

COMMENT: One commenter requested that HHSC revise proposed §263.902(a)(2)(C)(i)(II)(-c-) to make the provision consistent with state law and to better describe what a family-based alternative is. Specifically, the commenter requested that HHSC replace "enduring, positive relationship" with "long-term, enduring, nurturing parental relationship" and delete the phrase, "who will be an advocate for the applicant."

RESPONSE: HHSC agrees to revise proposed §263.902(a)(2)(C)(i)(II)(-c-), reformatted as subsection (c)(1)(B)(iii), to make the provision consistent with Texas Government Code §531.151. HHSC did not include "long-term"

as requested by the commenter because this word is not included in the statutory provision.

COMMENT: One commenter suggested that HHSC revise proposed §263.902(a)(2)(D) to make it clearer. Proposed §263.902(a)(2)(D) requires the permanency planning meeting participants to discuss and identify the items listed in proposed §263.902(a)(2)(D) to accomplish an applicant's permanency planning goals. Specifically, the commenter requested that HHSC replace the items in proposed §263.902(a)(2)(D) with different items including "the things that are important to the child/young adult including their likes and dislikes" and "relationships that are important to the child/young adult". The items suggested by the commenter exclude items in proposed §263.902(a)(2)(D) such as "barriers to having the applicant reside in the family home" and "actions that must be taken to overcome the barriers."

RESPONSE: HHSC declines to make changes in response to this comment. The commenter did not explain why the suggested provisions are clearer than the language in proposed §263.902(a)(2)(D), reformatted as subsection (c)(2), and HHSC believes §263.902(c)(2) is clear. In addition, HHSC believes it is important for the permanency meeting participants to discuss "barriers to having the applicant reside in the family home" and "actions that must be taken to overcome the barriers" in the permanency planning meeting.

COMMENT: One commenter suggested HHSC revise §263.902(a)(2)(D)(i), regarding the permanency planning meeting participants discussing and identifying the problems or issues that led the applicant or LAR to request supervised living or residential support, by removing the word, "problem" from the provision.

RESPONSE: HHSC agrees with the commenter and revised §263.902(a)(2)(D)(i), reformatted as subsection (c)(2)(A), by removing "problems or."

COMMENT: One commenter suggested deleting the provision in proposed §263.902(a)(2)(D)(viii) because it is duplicative of the provision in proposed §263.902(a)(2)(D)(xi).

RESPONSE: HHSC declines to make changes in response to this comment. Proposed §263.902(a)(2)(D)(viii), reformatted as subsection (c)(2)(I), and proposed §263.902(a)(2)(D)(xi), reformatted as subsection (c)(2)(L), are not duplicative. Section 263.902(c)(2)(I) requires the permanency planning meeting participants to discuss and identify how, after the applicant's enrollment, to facilitate regular contact between the applicant and the applicant's family and between the applicant and advocates and friends in the community. Section 263.902(c)(2)(L) requires the permanency planning meeting participants to discuss and identify assistance needed by the applicant's family in maintaining a nurturing relationship with the applicant and preparing the family for the applicant's eventual return to the family home or move to a family-based alternative.

COMMENT: One commenter expressed support for proposed §263.902(a)(2)(E) - §263.902(c) and requested that HHSC revise proposed §263.902(a)(2)(E) - §263.902(c) to include correct references if changes are made to proposed §263.902.

RESPONSE: HHSC agrees with the commenter and corrected the references to subsections or paragraphs in proposed §263.902 because HHSC revised §263.902 in response to comments.

COMMENT: One commenter requested that HHSC revise proposed §263.1000(f), regarding the exception to a LIDDA conducting an ICAP assessment in person, to use the phrase "initial ICAP assessment" instead of "ICAP assessment" because a LIDDA only conducts an initial ICAP.

RESPONSE: HHSC declines to make changes in response to this comment because the requested revision is not needed to understand the rule provision.

COMMENT: One commenter requested that HHSC revise proposed §263.1000(h)(3)(B)(iii)(II) to prohibit only the parent, sibling, or child of an individual, not the relative of an individual, from being the vendor used to repair an adaptive aid that was damaged because of the disaster.

RESPONSE: The prohibition on a relative being an adaptive aid vendor in proposed §263.1000(h)(3)(B)(iii)(II) is based on the HCS waiver application. HHSC declines to make changes in response to this comment because the requested revision is inconsistent with the HCS waiver application and would require additional analysis and a change to the HCS waiver application with CMS approval.

COMMENT: One commenter requested that HHSC revise proposed §263.1000(j) to provide that a service coordinator is not required to ensure that an individual who resides in the disaster area or LAR signs "any documentation that requires a wet signature, including documentations for enrollment activities, targeted case management activities and rights of an individual," during an executive order or proclamation declaring a state of disaster.

RESPONSE: HHSC declines to make changes in response to this comment because the change would require additional analysis and, in part, is beyond the scope of this project. Requirements for signatures of an individual or LAR on documentation related to targeted case management are not included in these proposed rules.

COMMENT: Two commenters requested that HHSC move the effective date for the proposed HCS rules to a date in early 2023 to allow time for HHSC to provide additional training and guidance to providers, and for providers to make necessary changes, particularly changes related to the residential agreement requirements.

RESPONSE: HHSC did not make changes in response to this comment. The HCS Program rules are expected to be effective in March 2023.

COMMENT: One commenter expressed concern that the three-month timeframe for LIDDAs to update the service plan, for every individual in the HCS Program, to reflect compliance with the home and community-based settings rule change is not feasible.

RESPONSE: HHSC is unclear what three-month time frame the commenter is referring to regarding this rule project. The proposed rules do not require service plans to be updated within a three-month timeframe. HHSC did not make changes in response to this comment.

COMMENT: One commenter expressed concerns that the proposed rules do not allow an individual to leave the state for more than 30 days per trip, or to leave the state for more than 30 days per year.

RESPONSE: HHSC declines to make changes in response to this comment because the proposed HCS rules do not address an individual leaving the state.

COMMENT: One commenter requested that a service provider be paid for the time it takes to travel to an individual's home to assist with the individual's ADLs.

RESPONSE: HHSC did not make changes in response to this comment. The comment is outside the scope of this project because the rate methodologies for HCS Program services are not addressed in this rule project.

COMMENT: One commenter suggested that the new EVV interface should include a pay-period summary of the kinds of work, courses, goals, and activities the client was involved in during the month. Another commenter requested that HHSC eliminate the need for a service provider to call as part of the EVV requirements when switching the service being provided. The commenter also requested less documentation during transportation requiring EVV due to concerns about HIPPA.

RESPONSE: HHSC declines to make changes to the rules in response to these comments because requirements related to EVV are not included in the proposed rules and, therefore, are outside of the scope of this rule project.

COMMENT: One commenter expressed concerns than there is no medical transportation in the HCS Program.

RESPONSE: HHSC declines to make changes to the rules in response to this comment because an individual may receive transportation through supported home living, an HCS Program service or through residential assistance in the HCS Program. Supported home living transportation or transportation through residential assistance includes transportation to medical appointments.

COMMENT: One commenter suggested that site assessments should be completed on all program provider owned or controlled settings, including service providers of host home/companion care who are family members of the individual. Another commenter suggested that to ensure a uniform process, HHSC develop an HHS "Action Plan Form" that list the information and documentation a program provider must provide during a site assessment.

RESPONSE: HHSC did not make changes to the rules in response to this comment because the comment is outside the scope of this project.

COMMENT: One commenter requested HHSC revamp the HCS Program, including addressing the issue of program providers declining services to eligible individuals.

RESPONSE: HHSC did not make changes to the rules in response to this comment. HHSC is unclear by what the commenter means by a request to "revamp the HCS Program." The provision in 40 TAC §9.174(a)(1) that requires the program provider to serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity is not included in these proposed rules.

COMMENT: One commenter expressed concern that the rates adopted for individualized skills and socialization are not adequate.

RESPONSE: HHSC declines to make changes to the rules in response to this comment because the comment is outside the scope of this project. The rules addressing individualized skills and socialization are not included in this rule project.

In addition to the changes made to the rules in response to comments, HHSC made changes to the rules that are not in response to comments.

HHSC revised the definition of "implementation plan" in proposed §263.3(46) for clarity.

HHSC moved the definition of "in person or in-person" in proposed §263.3(51) to §263.3(47) for alphabetization.

HHSC replaced the term, "practice" with "provision" in the description of occupational therapy in proposed §263.5(a)(4) to make it consistent with the descriptions of other therapy services in the HCS rules.

HHSC revised the description of host home/companion care in proposed §263.5(a)(19) to be consistent with the HCS waiver application by adding that host home/companion care must be provided in a residence that is owned or leased by the service provider of host home/companion care or the individual.

HHSC removed the requirement for an RN to complete a comprehensive nursing assessment of an "applicant" in person in proposed §263.8(a)(1) because nursing is not provided to an "applicant." Instead HHSC clarified that an RN must complete a comprehensive nursing assessment of an "individual" if the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment. In addition, HHSC revised proposed §263.8(a)(2)(A), reformatted as subsection (a)(2), to further refine the circumstances of when an RN is required to complete a comprehensive nursing assessment in person if an individual's health status changes. Specifically, §263.8(a)(2) was revised to require an RN to complete a comprehensive nursing assessment in person if there is a significant change in an individual's health or functional status, that, (1) based on a determination by the RN, will not normally resolve itself without further intervention and (2) requires review or revision of the IPC. This change was made because HHSC determined that it is not always clinically necessary for an RN to complete a comprehensive nursing assessment when the health status of an individual changes.

HHSC revised proposed §263.8(b) to provide that a comprehensive nursing assessment required to be completed in person in accordance with proposed §263.8(a)(2)(D), reformatted as subsection (a)(5), does not have to be completed in person if the comprehensive nursing assessment is not the annual comprehensive nursing assessment (in addition to "if an unlicensed service provider is not performing a delegated nursing task or a health maintenance activity for the individual"). This change was made to be consistent with the requirements in subsection (a)(3) that the annual comprehensive nursing assessment must be completed in person if a nursing service is on the individual's renewal IPC.

Further, HHSC revised proposed §263.8(c) to allow an RN to document a comprehensive nursing assessment using the HHSC Comprehensive Nursing Assessment form "or a form that contains all of the same elements as the HHSC Comprehensive Nursing Assessment form." This change was made to make the proposed rule consistent with current practice.

Based on direction from CMS regarding the heightened scrutiny process, HHSC revised proposed §263.501(b) to include descriptions of additional settings that are presumed to have the qualities of an institution, including a setting located in a building in which a certified ICF/IID operated by a LIDDA or state supported living center is located but is distinct from the ICF/IID and

a setting located in a building in which a licensed private ICF/IID, a hospital, a nursing facility, or other institution is located but is distinct from the ICF/IID, hospital, nursing facility, or other institution.

HHSC revised proposed §263.503(c)(12) to allow a late fee to be charged only if room and board is not paid by the third day after it is due, instead of by the day room and board is due to be consistent with §92.019(a)(3) of the Texas Property Code. HHSC also revised proposed §263.503(c)(12) by adding "if any" after "the amount of a late fee" to clarify that assessing a late fee as part of the residential agreement is optional.

HHSC revised proposed §263.503(c)(21), reformatted as subsection (c)(20), to clarify the provision prohibiting the program provider or service provider of host home/companion care from demanding the entire balance of the unpaid room or board owed under the remainder of the term of the residential agreement for violation of the agreement.

HHSC revised proposed §263.503(c) to add new paragraph (21) that requires the residential agreement to include the signature of the program provider or service provider of host home/companion care in the residential agreement because the program provider or service provider is a party to the agreement.

HHSC changed the title of Subchapter H, from "Transfer, Denials, Suspension, Reduction, and Termination" to "Transfers, Denials, Suspensions, Reductions, and Terminations." This change was made for clarification.

HHSC revised proposed §263.701(a)(3)(A) to clarify that an FMSA does not have a service capacity limit in the HHSC data system.

HHSC revised proposed §263.901(e)(36) for clarification. Specifically, HHSC replaced the word "initiating" with the phrase, "begins receiving," and moved the phrase, "an individual under 22 years of age" to before "begins receiving."

HHSC updated references to 40 TAC Chapter 2, Subchapter L in the proposed HCS rules because rules in 40 TAC Chapter 2, Subchapter L were administratively transferred to 26 TAC Chapter 331.

HHSC reformatted proposed §263.902 for clarity. In addition, HHSC removed titles to proposed subsections and paragraphs in this section because the titles are unnecessary. HHSC also revised proposed §263.902(b)(2)(B), reformatted as subsection (g)(3), by adding the name of the form, HHSC Permanency Planning Instrument for Children Under 22 Years of Age form, used to develop a permanency planning plan. Because the section was reformatted, HHSC corrected the reference to proposed §263.902 in proposed §263.104(l) and proposed §263.901(e)(33).

HHSC also made minor editorial changes for clarity.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §263.1 - 263.9

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

§263.3. *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 applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:
  - (A) interactions with the applicant or individual;
  - (B) availability to the applicant or individual for assistance or support when needed; and
  - (C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.
- (3) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
- (4) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.
- (5) ALF--Assisted living facility. A facility licensed in accordance with Texas Health and Safety Code Chapter 247, Assisted Living Facilities.
- (6) Applicant--A Texas resident seeking services in the Home and Community-Based Services Program.
- (7) Audio-only--An interactive, two-way audio communication platform that only uses sound.
- (8) 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.
- (9) Business day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).
- (10) Calendar day--Any day, including weekends and holidays.
- (11) CDS option--Consumer directed services option. A service delivery option as defined in 40 TAC §41.103 (relating to Definitions).
- (12) CFC--Community First Choice.
- (13) CFC ERS--CFC emergency response services.
- (14) CFC FMS--The term used for financial management services on the individual plan of care (IPC) of an applicant or individual if the applicant will receive or the individual receives only CFC personal assistance services (PAS)/habilitation (HAB) through the CDS option.
- (15) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant will receive or the individual receives only CFC PAS/HAB through the CDS option.
- (16) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health

and Human Services that administers the Medicare and Medicaid programs.

- (17) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.
- (18) Comprehensive nursing assessment--A comprehensive physical and behavioral assessment of an individual, including the individual's health history, current health status, and current health needs, that is completed by a registered nurse (RN).
- (19) Contract--A provisional contract or a standard contract.
- (20) CRCG--Community resource coordination group. A local interagency group, composed of public and private agencies, that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Texas Health and Human Services Commission (HHSC) website.
- (21) Delegated nursing task--A nursing task delegated by an RN to an unlicensed person in accordance with:
  - (A) 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); and
  - (B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
- (22) Designated Representative--This term has the meaning set forth in 40 TAC §41.103.
- (23) DFPS--The Department of Family and Protective Services.
- (24) DID--Determination of intellectual disability. This term has the meaning set forth in §304.102 of this title (relating to Definitions).
- (25) DID report--Determination of intellectual disability report. This term has the meaning set forth in §304.102 of this title.
- (26) Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in a risk to the health and safety of an individual or another person.
- (27) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the legally authorized representative (LAR) should be informed, such as an individual:
  - (A) needing emergency medical care;
  - (B) being removed from the individual's residence by law enforcement;
  - (C) leaving the individual's residence without notifying a staff member or service provider and not being located; and
  - (D) being moved from the individual's residence to protect the individual (for example, because of a hurricane, fire, or flood).
- (28) EVV--Electronic visit verification. This term has the meaning set forth in 1 TAC §354.4003 (relating to Definitions).

(29) **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.

(30) **Family-based alternative**--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(31) **FMS**--Financial management services.

(32) **FMSA**--Financial management services agency. As defined in 40 TAC §41.103, an entity that provides financial management services to an individual participating in the CDS option.

(33) **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.

(34) **Four-person residence**--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a setting described in §263.501(b) of this chapter (relating to Requirements for Home and Community-Based Service Settings).

(35) **GRO**--General residential operation. This term has the meaning set forth in Texas Human Resources Code §42.002.

(36) **HCS**--Home and Community-based Services. Services provided through the HCS Program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(37) **Health maintenance activities**--This term has the meaning set forth in 22 TAC §225.4 (relating to Definitions).

(38) **Health-related tasks**--Specific tasks related to the needs of an individual, which 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. This includes tasks delegated by an RN; health maintenance activities, that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

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

(40) **Hospital**--A public or private institution licensed or exempt from licensure in accordance with Texas Health and Safety Code (THSC) Chapters 13, 241, 261, or 552.

(41) **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.

(42) **ICAP**--Inventory for Client and Agency Planning. An instrument designed to assess a person's needs, skills, and abilities.

(43) **ICF/IID**--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(44) **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.

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

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

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

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

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

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

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

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

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

(F) the signature and date of the individual, LAR, and the program provider.

(47) **In person or in-person**--Within the physical presence of another person who is awake. In person or in-person does not include using videoconferencing or a telephone.

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

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



(50) Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464, Facilities Treating Persons with a Chemical Dependency.

(51) Intellectual disability--This term has the meaning set forth in §304.102 of this title.

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

(A) states:

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

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

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

(B) is authorized by HHSC.

(53) IPC cost--Estimated annual cost of HCS Program services included on an IPC.

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

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

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

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

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

(56) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

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

(58) LON--Level of need. An assignment given by HHSC to an individual upon which reimbursement for host home/companion care, supervised living, residential support, in-home day habilitation, and day habilitation is based.

(59) Managed care organization--This term has the meaning set forth in Texas Government Code §536.001.

(60) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies fi-

nancially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(61) 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.

(62) Mental health facility--A facility licensed in accordance with THSC Chapter 577, Private Mental Hospitals and Other Mental Health Facilities.

(63) 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.

(64) 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.

(65) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who voluntarily assist an individual to achieve the individual's identified goals.

(66) 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.

(67) Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(68) PDP--Person-directed plan. A plan developed with an applicant or individual and LAR using an HHSC form that:

(A) describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety; and

(B) includes the setting for each service, which must be selected by the individual or LAR from setting options.

(69) Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC §533A.035.

(70) Permanency planner--A person who:

(A) develops a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form; and

(B) performs other permanency planning activities for an applicant or individual under 22 years of age.

(71) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(72) 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.

(73) Platform--This term has the meaning set forth in Texas Government Code §531.001(4-d).

(74) Post-move monitoring visit--A visit conducted by the service coordinator in accordance with the Intellectual and Developmental Disability Preadmission Screening and Resident Review (IDD-PASRR) Handbook.

(75) Pre-enrollment minor home modifications assessment--An assessment performed by a licensed professional as required by the HCS Program Billing Requirements to determine the need for pre-enrollment minor home modifications.

(76) Pre-move site review--A review conducted by the service coordinator in accordance with HHSC's IDD PASRR Handbook.

(77) Professional therapies--Services that consist of the following:

- (A) audiology;
- (B) occupational therapy;
- (C) physical therapy;
- (D) speech and language pathology;
- (E) behavioral support;
- (F) cognitive rehabilitation therapy;
- (G) dietary services; and
- (H) social work.

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

(79) Provisional contract--A contract that HHSC enters into with a program provider in accordance with 40 TAC §49.208 (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with 40 TAC §49.208(e).

(80) Related condition--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 age 22;

(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.

(81) 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 HCS Program Billing Requirements.

(82) Renewal IPC--An IPC developed for an individual in accordance with §263.302(a) of this chapter (relating to Renewal and Revision of an IPC).

(83) Residential child care facility--This term has the meaning set forth in Texas Human Resources Code §42.002.

(84) Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §263.302(b) or (d) of this chapter to add a new HCS Program service or CFC service or change the amount of an existing service.

(85) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code Chapter 301.

(86) Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(87) Service coordination--A service as defined in §331.5 of this title (relating to Definitions).

(88) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(89) Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraph (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant or individual or LAR, for example, a staff member of the program provider, a family member, a friend, a teacher, or if applicable, the permanency planner;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) the service coordinator;

(iii) if the applicant is at least 21 years of age but younger than 22 years of age, the permanency planner;

(iv) a staff member of the program provider;

(v) providers of specialized services;

(vi) a nursing facility staff person who is familiar with the applicant's needs;

(vii) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(viii) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or ICF/IID or has enrolled in the HCS Program as a diversion from admission to an institution, including a nursing facility or ICF/IID, for 365 calendar days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) the service coordinator;

(iii) if the individual is at least 21 years of age but younger than 22 years of age and resides in a three-person residence or four-person residence, the permanency planner;

(iv) a staff member of the program provider;

(v) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(vi) at the discretion of the LIDDA and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(90) Service provider--A person, who may be a staff member, who directly provides an HCS Program service or CFC service to an individual.

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

(A) sexual exploitation of an individual;

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

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

(92) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(93) 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.

(94) Specialized services--This term has the meaning set forth in §303.102 of this title (relating to Definitions).

(95) Staff member--An employee or contractor of an HCS program provider.

(96) Standard contract--A contract that HHSC enters into with a program provider 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).

(97) 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 medi-

cal 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.

(98) Store and forward technology--This term has the meaning set forth in Texas Occupations Code §111.001(2).

(99) Supported Decision-Making Agreement--This term has the meaning set forth in Texas Estates Code §1357.002(4).

(100) 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.

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

(102) TANF--Temporary Assistance for Needy Families.

(103) TAS--Transition assistance services.

(104) Telehealth service--This term has the meaning set forth in Texas Occupations Code §111.001.

(105) Temporary admission--A stay in a facility listed in §263.705(a) of this chapter (relating to Suspension of HCS Program Services and CFC Services) for 270 calendar days or less or, if an extension is granted in accordance with §263.705(h) of this chapter, a stay in such a facility for more than 270 calendar days.

(106) Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a setting described in §263.501(b) of this chapter.

(107) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(108) Transfer IPC--An IPC that is developed in accordance with §263.701 of this chapter (relating to Process for Individual to Transfer to a Different Program Provider or FMSA) and §263.702 of this chapter (relating to Process for Individual to Receive a Service Through the CDS Option that the Individual is Receiving from a Program Provider) when an individual transfers to another program provider or chooses a different service delivery option.

(109) Transition plan--A written plan developed in accordance with §303.701 of this title (relating to Transition Planning for a

Designated Resident) for an applicant residing in a nursing facility who is enrolling in the HCS Program.

(110) Transportation plan--A written plan based on person-directed planning and developed with an applicant or individual using the HHSC Individual Transportation Plan form available on the HHSC website. A transportation plan is used to document how supported home living will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(111) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(112) 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.

(113) 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.

(114) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

#### §263.5. Description of HCS Program Services.

(a) HCS Program services are described in this section and in Appendix C of the HCS Program waiver application approved by CMS and available on the HHSC website.

(1) Adaptive aids are devices, controls, or items that are necessary to address specific needs identified in an individual's service plan. Adaptive aids enable an individual to maintain or increase the ability to perform ADLs or the ability to perceive, control, or communicate with the environment in which the individual lives.

(2) Audiology is the provision of audiology as defined in the Texas Occupations Code Chapter 401.

(3) Speech and language pathology is the provision of speech-language pathology as defined in the Texas Occupations Code Chapter 401.

(4) Occupational therapy is the provision of occupational therapy as described in the Texas Occupations Code Chapter 454.

(5) Physical therapy is the provision of physical therapy as defined in the Texas Occupations Code Chapter 453.

(6) Dietary services are the provision of nutrition services as defined in the Texas Occupations Code Chapter 701.

(7) Behavioral support is the provision of specialized interventions that:

(A) assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life; and

(B) improve an individual's quality of life.

(8) Social work is the provision of social work as defined in Texas Occupations Code Chapter 505.

(9) Cognitive rehabilitation therapy is assistance to an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells/chemistry in order to enable the individual to compensate for the lost cognitive functions, including reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(10) Day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual. Day habilitation does not include in-home day habilitation.

(11) In-home day habilitation is assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in an individual's residence.

(12) Dental treatment is:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia.

(13) Minor home modifications are physical adaptations to an individual's home to address specific needs identified by an individual's service planning team and include pre-enrollment minor home modifications which are modifications completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(14) Licensed vocational nursing is the provision of licensed vocational nursing as defined in the Texas Occupations Code Chapter 301.

(15) Registered nursing is the provision of professional nursing as defined in the Texas Occupations Code Chapter 301.

(16) Specialized registered nursing is the provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(17) Specialized licensed vocational nursing is the provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(18) Supported home living is transportation of an individual with a residential type of "own/family home."

(19) Host home/companion care is residential assistance provided in a residence that is owned or leased by the service provider of host home/companion care or the individual and is not owned or leased by the program provider. The service provider of host home/companion care must live in the same residence as the individual receiving the service.

(20) Supervised living is residential assistance provided in a three-person residence or four-person residence in which service

providers are present in the residence and are able to respond to the needs of individuals during normal sleeping hours.

(21) Residential support is residential assistance provided in a three-person residence or four-person residence in which service providers are present and awake in the residence whenever an individual is present in the residence.

(22) Respite is temporary relief for an unpaid caregiver in a location other than the individual's home for an individual who has a residential type of "own/family home."

(23) In-home respite is temporary relief for an unpaid caregiver in the individual's home for an individual who has a residential type of "own/family home."

(24) Employment assistance is assistance to help an individual locate paid employment in the community.

(25) Supported employment is assistance, in order 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.

(26) TAS is assistance to an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program and consists of:

(A) for an applicant whose initial IPC does not include residential support, supervised living, or host home/companion care:

(i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;

(ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home;

(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial IPC includes residential support, supervised living, or host home/companion care:

(i) purchasing bedroom furniture;

(ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(b) The services described in this subsection are for an individual who is receiving at least one HCS Program service through the CDS option.

(1) FMS is a service defined in 40 TAC §41.103 (relating to Definitions).

(2) Support consultation is a service defined in 40 TAC §41.103.

#### §263.8. *Comprehensive Nursing Assessment.*

(a) An RN must complete a comprehensive nursing assessment of an individual in person:

(1) if the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment as described in §263.104(k)(9) of this chapter (relating to Process for Enrollment of Applicants);

(2) if there is a significant change in an individual's health or functional status:

(A) that, based on a determination by the RN, will not normally resolve itself without further intervention; and

(B) requires review or revision of the IPC;

(3) at least annually if a nursing service is on the individual's renewal IPC;

(4) before an unlicensed service provider performs a delegated nursing task; and

(5) if the RN who completed the most recent comprehensive nursing assessment of the individual is no longer providing a nursing service to the individual, except as provided in subsection (b) of this section.

(b) The comprehensive nursing assessment required to be completed in accordance with subsection (a)(5) of this section does not have to be completed in person if:

(1) the comprehensive nursing assessment is not the annual comprehensive nursing assessment; and

(2) an unlicensed service provider is not performing a delegated nursing task or a health maintenance activity for the individual.

(c) An RN must document a comprehensive nursing assessment required by subsection (a) of this section using the HHSC Comprehensive Nursing Assessment form or a form that contains all of the same elements as the HHSC Comprehensive Nursing Assessment form.

#### §263.9. *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 program provider 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 program provider must ensure that a service provider of physical therapy, occupational therapy, or speech and language pathol-

ogy performs services in person, as required by the Texas Medicaid Provider Procedures Manual. Such services 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.

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 B. ELIGIBILITY, ENROLLMENT, AND REVIEW

### 26 TAC §§263.101 - 263.108

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

#### §263.104. *Process for Enrollment of Applicants.*

(a) HHSC notifies a LIDDA, in writing, when the opportunity for enrollment in the HCS Program becomes available in the LIDDA's local service area and directs the LIDDA to offer enrollment to an applicant:

(1) whose interest list date, assigned in accordance with §263.103 of this subchapter (relating to HCS Interest List), is earliest on the statewide interest list for the HCS Program maintained by HHSC; or

(2) who is a member of a target group identified in the HCS Program waiver application approved by CMS.

(b) Except as provided in subsection (c) of this section, a LIDDA must offer enrollment in the HCS Program in writing and deliver it to the applicant or LAR by United States mail or by hand delivery.

(c) A LIDDA must offer enrollment in the HCS Program to an applicant described in subsection (a)(2) of this section in accordance with HHSC's procedures.

(d) A LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of enrollment in the HCS Program within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of enrollment in the HCS Program, the LIDDA terminates those services funded by general revenue that are similar to services provided in the HCS Program; and

(2) the HHSC Deadline Notification form, which is available on the HHSC website.

(e) If an applicant or LAR responds to an offer of enrollment in the HCS Program, a LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member if possible, both an oral and written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program, both state supported living centers and community-based facilities, waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports, using the HHSC Explanation of Services and Supports document, which is available on the HHSC website;

(2) provide the applicant and LAR both an oral and a written explanation of all HCS Program services and CFC services using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website; and

(3) give the applicant or LAR the HHSC Waiver Program Verification of Freedom of Choice form, which is available on the HHSC website, to document the applicant's choice between the HCS Program or the ICF/IID Program.

(f) A LIDDA must withdraw an offer of enrollment in the HCS Program made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of enrollment in the HCS Program;

(2) within seven calendar days after the applicant or LAR receives the HHSC Waiver Program Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(3) of this section, the applicant or LAR does not use the form to document the applicant's choice, the HCS Program or the ICF/IID Program;

(3) within 30 calendar days after the applicant or LAR receives the contact information for all program providers in the LIDDA's local service area in accordance with subsection (j)(3) of this section, the applicant or LAR does not document the choice of a program provider using the HHSC Documentation of Provider Choice form, which is available on the HHSC website;

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and HHSC has approved the withdrawal of the offer; or

(5) the applicant has moved out of the State of Texas.

(g) If a LIDDA withdraws an offer of enrollment in the HCS Program made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If an applicant is currently receiving services from a LIDDA that are funded by general revenue and the applicant or LAR declines the offer of enrollment in the HCS Program, the LIDDA must terminate those services funded by general revenue that are similar to services provided in the HCS Program.

(i) If a LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with 40 TAC §2.46 (relating to Notification and Appeals Process).

(j) If an applicant or LAR accepts the offer of enrollment in the HCS Program, the LIDDA must compile and maintain information necessary to process the applicant's request for enrollment.

(1) If the applicant's financial eligibility for the HCS Program must be established, the LIDDA must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The LIDDA must complete an ID/RC Assessment in accordance with §263.105 of this subchapter (relating to LOC Determination) and §263.106 of this subchapter (relating to LON Assignment).

(A) The LIDDA must:

(i) do one of the following:

(I) conduct a DID in accordance with §304.401 of this title (relating to Conducting a Determination of Intellectual Disability) except that the following activities must be conducted in person:

(-a-) a standardized measure of the individual's intellectual functioning using an appropriate test based on the characteristics of the individual; and

(-b-) a standardized measure of the individual's adaptive abilities and deficits reported as the individual's adaptive behavior level; or

(II) review and endorse a DID report in accordance with §304.403 of this title (relating to Review and Endorsement of a Determination of Intellectual Disability Report); and

(ii) determine whether the applicant has been diagnosed by a licensed physician as having a related condition.

(B) The LIDDA must:

(i) conduct an ICAP assessment in person; and

(ii) recommend an LON assignment to HHSC in accordance with §263.106 of this subchapter.

(C) The LIDDA must enter the information from the completed ID/RC Assessment and electronically submit the information to HHSC for approval in accordance with §263.105(a) of this subchapter and §263.106(a) of this subchapter and, if applicable, submit supporting documentation as required by §263.107(c) of this subchapter (relating to HHSC Review of LON).

(3) The LIDDA must provide names and contact information to the applicant or LAR for all program providers in the LIDDA's local service area.

(4) The LIDDA must assign a service coordinator who, together with other members of the applicant's service planning team, must:

(A) develop a PDP;

(B) if CFC PAS/HAB is included on the PDP, complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form, which is available on the HHSC website, to determine the number of CFC PAS/HAB hours the applicant needs; and

(C) develop an initial IPC in accordance with §263.301(c) of this chapter (relating to IPC Requirements).

(5) The CFC PAS/HAB Assessment form required by paragraph (4)(B) of this subsection must be completed in person with the individual unless the following conditions are met in which case the form may be completed by videoconferencing or telephone:

(A) the service coordinator gives the individual the opportunity to complete the form in person in lieu of completing it by videoconferencing or telephone and the individual agrees to the form being completed by videoconferencing or telephone; and

(B) the individual receives appropriate in-person support during the completion of the form by videoconferencing or telephone.

(6) A service coordinator must discuss the CDS option with the applicant or LAR in accordance with §263.401(a) and (b) of this chapter (relating to CDS Option).

(k) A service coordinator must:

(1) arrange for meetings and visits with potential program providers as requested by an applicant or LAR;

(2) review the initial IPC with potential program providers as requested by the applicant or LAR;

(3) ensure that the applicant's or LAR's choice of a program provider is documented on the HHSC Documentation of Provider Choice form and that the form is signed by the applicant or LAR;

(4) negotiate and finalize the initial IPC and the date services will begin with the selected program provider, consulting with HHSC if necessary to reach agreement with the selected program provider on the content of the initial IPC and the date services will begin;

(5) determine whether the applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO; and

(B) anticipates needing TAS;

(6) if the service coordinator determines that the applicant meets the criteria described in paragraph (5) of this subsection:

(A) complete, with the applicant or LAR and the selected program provider, the HHSC Transition Assistance Services (TAS) Assessment and Authorization form, which is available on the HHSC website, in accordance with the form's instructions, which includes:

(i) identifying the TAS the applicant needs; and

(ii) estimating the monetary amount for each transition assistance service identified, which must be within the service limit described in §263.304(a)(6) of this chapter (relating to Service Limits);

(B) submit the completed form to HHSC to determine if TAS is authorized;

(C) send the form authorized by HHSC to the selected program provider; and

(D) include the TAS and the monetary amount authorized by HHSC on the applicant's initial IPC;

(7) determine whether an applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;

(B) has not met the maximum service limit for minor home modifications as described in §263.304(a)(3)(A) of this chapter; and

(C) anticipates needing pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment;

(8) if the service coordinator determines that an applicant meets the criteria described in paragraph (7) of this subsection:

(A) complete, with the applicant or LAR and selected program provider, the HHSC Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form, which is available on the HHSC website, in accordance with the form's instructions, which includes:

(i) identifying the pre-enrollment minor home modifications the applicant needs;

(ii) identifying the pre-enrollment minor home modifications assessments conducted by the program provider; and

(iii) based on documentation provided by the program provider as required by the *HCS Program Billing Requirements*, stating the cost of:

(I) the pre-enrollment minor home modifications identified on the form, which must be within the service limit described in §263.304(a)(3)(A) of this chapter; and

(II) the pre-enrollment minor home modifications assessments conducted;

(B) submit the completed form to HHSC to determine if pre-enrollment minor home modification and pre-enrollment minor home modifications assessments are authorized;

(C) send the form authorized by HHSC to the selected program provider; and

(D) include the pre-enrollment minor home modifications, pre-enrollment minor home modifications assessments, and the monetary amount for these services authorized by HHSC on the applicant's initial IPC;

(9) if an applicant or LAR chooses a program provider to deliver supported home living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance, supported employment, in-home day habilitation, day habilitation, or CFC PAS/HAB, ensure that the initial IPC includes a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment unless:

(A) nursing services are not on the IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on the HHSC Nursing Task Screening Tool form; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician;

(10) if an applicant or LAR refuses to include on the initial IPC a sufficient number of RN nursing units for the program provider's RN to perform a comprehensive nursing assessment as required by paragraph (9) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, in-home day habilitation, day habilitation, or CFC PAS/HAB from the program provider, will result in the individual not receiving that service unless:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the initial IPC for a comprehensive nursing assessment by the program provider's RN in the applicant's record;

(11) ensure that the applicant or LAR signs and dates the initial IPC and provides the signed and dated IPC to the service coordinator in person, electronically, by fax, or by United States mail;

(12) ensure that the selected program provider signs and dates the initial IPC, demonstrating agreement that the services will be provided to the applicant;

(13) sign and date the initial IPC, which indicates that the service coordinator agrees that the requirements described in §263.301(c) of this chapter have been met;

(14) using the HHSC Understanding Program Eligibility and Services form, which is available on the HHSC website, provide an oral and written explanation to the applicant or LAR:

(A) of the eligibility requirements for HCS Program services as described in §263.101(a) of this subchapter (relating to Eligibility Criteria for HCS Program Services and CFC Services);

(B) if the applicant's PDP includes CFC services:

(i) of the eligibility requirements for CFC services as described in §263.101(c) of this subchapter to applicants who do not receive MAO Medicaid; and

(ii) of the eligibility requirements for CFC services as described in §263.101(d) of this subchapter to applicants who receive MAO Medicaid;

(C) that HCS Program services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §263.101(a) of this subchapter; or

(ii) the individual or LAR requests termination of HCS Program services; and

(D) if the applicant's PDP includes CFC services, that CFC services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §263.101(c) or (d) of this subchapter; or

(ii) the individual or LAR requests termination of CFC services.



(l) A LIDDA must conduct permanency planning in accordance with §263.902(a) - (f) of this chapter (relating to Permanency Planning).

(m) After an initial IPC is finalized and signed in accordance with subsection (k) of this section, the LIDDA must:

- (1) enter the information from the initial IPC in the HHSC data system and electronically submit it to HHSC;
- (2) keep the original initial IPC in the individual's record;
- (3) ensure the information from the initial IPC entered in the HHSC data system and electronically submitted to HHSC contains information identical to the information on the initial IPC; and
- (4) submit other required enrollment information to HHSC.

(n) HHSC notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's enrollment. When the enrollment is approved, HHSC authorizes the applicant's enrollment in the HCS Program through the HHSC data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the HCS Program.

(o) Before the applicant's service begin date, the LIDDA must provide to the selected program provider and FMSA, if applicable:

- (1) copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations;
- (2) the completed ID/RC Assessment;
- (3) the initial IPC;
- (4) the applicant's PDP; and
- (5) if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(p) Except for the provision of TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment, the selected program provider must not initiate services until notified of HHSC's approval of the applicant's enrollment.

(q) The selected program provider and the individual or LAR must develop:

- (1) an implementation plan for:
  - (A) HCS Program services, except for supported home living, that is based on the individual's PDP and IPC; and
  - (B) CFC services, except for CFC support management, that is based on the individual's PDP, IPC, and if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(2) a transportation plan, if supported home living is included on the PDP.

(r) A LIDDA must retain in an applicant's record:

- (1) the HHSC Waiver Program Verification of Freedom of Choice form;
- (2) the HHSC Documentation of Provider Choice form, if applicable;
- (3) the HHSC Deadline Notification form; and
- (4) any other correspondence related to the offer of enrollment in the HCS Program.

§263.107. *HHSC Review of LON.*

(a) HHSC may review a recommended or assigned LON at any time to determine if it is appropriate. If HHSC reviews an LON, documentation supporting the LON must be submitted to HHSC in accordance with HHSC's request. HHSC may modify an LON and recoup or deny payment based on its review.

(b) Before assigning an LON, HHSC reviews documentation supporting the recommended LON if:

- (1) an LON is requested that is an increase from the individual's current LON;
- (2) an LON 9 is requested in accordance with §263.106(j) of this subchapter (relating to LON Assignment);
- (3) an LON is requested in accordance with §263.106(i) of this subchapter; or
- (4) an LON is requested in accordance with §263.106(k) and (l) of this subchapter.

(c) Documentation supporting a recommended LON described in subsection (b) of this section must be submitted to HHSC and received by HHSC within seven calendar days after electronically submitting the recommended LON.

(1) Within 21 calendar days after receiving the supporting documentation, HHSC:

- (A) requests additional documentation;
- (B) electronically approves the recommended LON; or
- (C) notifies the program provider and the service coordinator in the HHSC data system that the recommended LON has been denied.

(2) HHSC reviews any additional documentation submitted in accordance with HHSC's request and:

- (A) electronically approves the recommended LON; or
- (B) notifies the program provider and the service coordinator in the HHSC data system that the recommended LON has been denied.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER C. PERSON-CENTERED PLANNING**

**26 TAC §263.201**

**STATUTORY AUTHORITY**

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

§263.201. *Person-Centered Planning Process.*

(a) Person-centered planning is a process that empowers an applicant or individual to plan the applicant's or individual's services and supports to achieve desired outcomes.

(b) The service coordinator and program provider must ensure the person-centered planning process is led by the individual to the maximum extent possible. The 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 a PDP, implementation plan, initial IPC, renewal IPC, revised IPC, service backup plan, and transportation plan.

(d) The person-centered planning process must:

- (1) include people chosen by the applicant, individual, or LAR;
- (2) provide the information and support the applicant or individual needs to lead the planning process and make informed choices and decisions;
- (3) occur at a time and location convenient to the applicant or individual and LAR;
- (4) consider the applicant's or individual's cultural preferences;
- (5) provide information in plain language to the applicant or individual in a manner that is accessible to:

(A) the applicant or individual through the provision of an auxiliary aid at no cost to the applicant or individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act; and

(B) the applicant or individual with limited English proficiency through the provision of language services at no cost to the applicant or individual, including oral interpretation and written translations;

(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:

(A) a written and oral description of the services available in the HCS Program; and

(B) the name and qualifications of the individual's service providers, in writing; and

(8) inform the individual or LAR that the individual or LAR may request revisions to the PDP, implementation plan, initial IPC, renewal IPC, revised IPC, service backup plan, and transportation plan at any time by communicating the request to the service coordinator or the program provider.

(e) A program provider must participate in a service planning team meeting if requested by the individual or LAR.

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 D. DEVELOPMENT AND REVIEW OF AN IPC

### 26 TAC §§263.301 - 263.304

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

§263.302. *Renewal and Revision of an IPC.*

(a) Renewal of an IPC. At least annually and before the expiration of an individual's IPC, an individual's IPC must be renewed in accordance with this subsection and HHSC's instructions.

(1) At least 60 but no more than 90 calendar days before the expiration of an individual's IPC, the service coordinator must:

(A) notify the service planning team that the individual's PDP must be reviewed and updated;

(B) convene a meeting of the service planning team to:

(i) review and update the individual's PDP; and

(ii) if CFC PAS/HAB is included on the PDP, complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs; and

(C) use the HHSC Understanding Program Eligibility and Services form to provide the individual or LAR both an oral and written explanation of:

(i) the eligibility requirements for the HCS Program as described in §263.101(a) of this chapter (relating to Eligibility Criteria for HCS Program Services and CFC Services);

(ii) if the individual's PDP includes CFC services:

(I) the eligibility requirements for CFC services as described in §263.101(c) of this chapter to individuals who do not receive MAO Medicaid; and

(II) the eligibility requirements for CFC services as described in §263.101(d) of this chapter to individuals who receive MAO Medicaid;

(iii) all HCS Program services and CFC services as described in §263.4 of this chapter (relating to Description of the HCS Program and CFC);

(iv) the reason HCS Program services and CFC services may be suspended as described in §263.705(a) of this chapter (relating to Suspension of HCS Program Services and CFC Services); and

(v) the reason HCS Program services and CFC services may be terminated as described in §263.707 of this chapter (relating to Termination of HCS Program Services and CFC Services with Advance Notice) and §263.708 of this chapter (relating to Termination of HCS Program Services and CFC Services Without Advance Notice).

(2) The HHSC HCS/TxHmL CFC PAS/HAB Assessment form required by paragraph (1)(B)(ii) of this subsection must be completed in person with the individual unless the following conditions are met, in which case the form may be completed by videoconferencing or telephone:

(A) the service coordinator gives the individual the opportunity to complete the form in person in lieu of completing it by videoconferencing or telephone and the individual agrees to the form being completed by videoconferencing or telephone; and

(B) the individual receives appropriate in-person support during the completion of the form by videoconferencing or telephone.

(3) The service coordinator, within 10 calendar days after the PDP is updated, must send a copy of the following to the program provider, the individual or LAR and, if applicable, the FMSA:

(A) the updated PDP; and

(B) if CFC PAS/HAB is included on the PDP, a copy of the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(4) The program provider must ensure that a meeting between the service planning team and the program provider occurs at least 30 but no more than 60 calendar days before the expiration of the individual's IPC to:

(A) review the PDP and, if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) develop the renewal IPC that meets the requirements described in §263.301(c) of this subchapter (relating to IPC Requirements), including completion of the CDS option portion of the renewal IPC, if applicable, and the non-HCS Program services and non-CFC services.

(5) The program provider must convene a meeting with the individual or LAR to develop, before the effective date of the renewal IPC:

(A) an implementation plan for:

(i) HCS Program services, except for supported home living, that is based on the individual's PDP and renewal IPC; and

(ii) CFC services, except for CFC support management, that is based on the individual's PDP, and renewal IPC, and if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) a transportation plan, if supported home living is included on the PDP.

(6) Within seven calendar days after development of the renewal IPC as required by paragraph (4) of this subsection, the program provider must comply with the requirements in subsection (e)(1) of this section.

(7) Within seven calendar days after the program provider enters the information from the renewal IPC in the HHSC data system and electronically submits the information to HHSC as required by subsection (e)(1)(C) of this section, the service coordinator must comply with the requirements in subsection (e)(2) of this section.

(8) The program provider must provide HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on:

(i) the individual's PDP;

(ii) the renewal IPC; and

(iii) if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) a transportation plan, if supported home living is included on the PDP.

(b) Revisions to an IPC. Except as provided in subsection (f) of this section, a service coordinator or a program provider may determine whether an individual's IPC needs to be revised to add a new HCS Program service or CFC service or change the amount of an existing service.

(1) The service coordinator must notify the program provider if the service coordinator determines that the IPC needs to be revised.

(2) The program provider must notify the service coordinator if the program provider determines that the IPC needs to be revised.

(3) Within 14 calendar days after the notification required by paragraph (1) or (2) of this subsection:

(A) if the IPC needs to be revised to add CFC PAS/HAB, the service planning team must complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form in order to determine the number of CFC PAS/HAB hours the individual needs;

(B) if the IPC needs to be revised to change the amount of CFC PAS/HAB, the service planning team must update the HHSC HCS/TxHmL CFC PAS/HAB Assessment form to reflect the amount of CFC PAS/HAB needed to meet the individual needs;

(C) the service coordinator must send a copy of the completed or updated HHSC HCS/TxHmL CFC PAS/HAB Assessment form to the program provider for review;

(D) if a new service is being added or a current service is being removed from the IPC or the amount of a service is being increased or decreased and requires the addition of, removal of, or a change to an outcome in the PDP:

(i) the service coordinator must convene a meeting with the service planning team to update the PDP; and

(ii) the service planning team and the program provider must convene a meeting to develop a revised IPC;

(E) if the amount of an existing service is being increased or decreased or a requisition fee is added or removed and does not require the addition of, removal of, or a change to an outcome in the PDP:

(i) the program provider must develop a revised IPC; and

(ii) the service coordinator must document the reasons for the IPC revision;

(F) the program provider must convene a meeting with the individual or LAR to revise:

(i) the implementation plan for:

(I) HCS Program services, except for supported home living, that is based on the individual's PDP and revised IPC; and

(II) CFC services, except for CFC support management, that is based on the individual's PDP, revised IPC, and if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(ii) the transportation plan, if supported home living is modified on the PDP or IPC; and

(G) the program provider must comply with the requirements in subsection (e)(1) of this section.

(4) The CFC PAS/HAB Assessment form required by paragraph (3)(A) of this subsection must be completed in person with the individual unless the following conditions are met, in which case the form may be completed by videoconferencing or telephone:

(A) the service coordinator gives the individual the opportunity to complete the form in person in lieu of completing it by videoconferencing or telephone and the individual agrees to the form being completed by videoconferencing or telephone; and

(B) the individual receives appropriate in-person support during the completion of the form by videoconferencing or telephone.

(5) The service coordinator, within 10 calendar days after the PDP is updated, must send a copy of the following to the program provider, the individual or LAR and, if applicable, the FMSA:

(A) the updated PDP; and

(B) if CFC PAS/HAB was updated on the PDP, a copy of the updated HHSC HCS/TxHmL CFC PAS/HAB Assessment form.

(6) Within seven calendar days after the program provider enters the information from the revised IPC in the HHSC data system and electronically submits the information to HHSC as required by subsection (e)(1)(C) of this section, the service coordinator must comply with the requirements in subsection (e)(2) of this section.

(7) The program provider must provide HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on:

(i) the individual's PDP;

(ii) the revised IPC; and

(iii) if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) the revised transportation plan, if revised in accordance with paragraph (3)(F)(ii) of this subsection.

(c) Revision of an IPC before delivery of services. Except as provided by subsection (d) of this section, if an individual's service planning team and program provider determine that the IPC must be revised to add a new HCS Program service or CFC service or change the amount of an existing service, the program provider must revise the IPC in accordance with subsection (b) of this section before the delivery of a new or increased service.

(d) Emergency provision of services and revision of an IPC.

(1) If an emergency necessitates the provision of an HCS Program service or CFC service to ensure the individual's health and safety and the service is not on the IPC or exceeds the amount on the IPC, the program provider may provide the service before revising the IPC. The program provider must, within one business day after providing the service:

(A) document:

(i) the circumstances that necessitated providing the new HCS Program service or CFC service or the increase in the amount of the existing HCS Program service or CFC service; and

(ii) the type and amount of the service provided;

(B) notify the service coordinator of the emergency provision of the service and that the IPC must be revised; and

(C) upon request, provide a copy of the documentation required by subparagraph (A) of this paragraph to the service coordinator.

(2) Within seven calendar days after providing the service:

(A) the service planning team and the program provider must develop a revised IPC;

(B) the service planning team must update the PDP and, if appropriate, complete the HHSC HCS/TxHmL CFC PAS/HAB Assessment form if adding CFC PAS/HAB to the IPC, or update the HHSC HCS/TxHmL CFC PAS/HAB Assessment form if changing the amount of CFC PAS/HAB on the IPC;

(C) the program provider must:

(i) revise the implementation plan that is based on the individual's PDP and revised IPC; and

(ii) develop or revise a transportation plan, if supported home living is added to or modified on the PDP or IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) of this section.

(3) Within seven calendar days after the program provider enters the information from the revised IPC in the HHSC data system and electronically submits the information to HHSC as required by subsection (e)(1)(C) of this section, the service coordinator must comply with the requirements in subsection (e)(2) of this section.

(4) The program provider must provide HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on the individual's PDP and the revised IPC; and

(B) the transportation plan developed or revised in accordance with paragraph (2)(C)(ii) of this subsection.

(e) Submitting a renewal and revised IPC to HHSC. A renewal or revised IPC must be submitted to HHSC in accordance with this subsection.

(1) A program provider must:

(A) sign and date the renewal or revised IPC;

(B) ensure that the individual or LAR signs and dates the renewal or revised IPC and provides the signed and dated IPC to the service coordinator in person, electronically, by fax, or by United States mail;

(C) after the renewal or revised IPC is signed and dated, enter information from the renewal or revised IPC in the HHSC data system and electronically submit the information to HHSC;

(D) ensure that the information entered in the HHSC data system and electronically submitted is identical to the information on the original signed and dated renewal or revised IPC;

(E) within three calendar days after entering the information in the HHSC data system and electronically submitting the information, ensure the service coordinator receives a copy of the original signed and dated renewal or revised IPC; and

(F) keep the original signed and dated renewal or revised IPC in the individual's record.

(2) The service coordinator must review the information entered and submitted in the HHSC data system from the original signed and dated renewal or revised IPC and:

(A) enter the service coordinator's name and date in the HHSC data system; and

(B) enter in the HHSC data system whether the service coordinator agrees or disagrees that the requirements described in §263.301(c) of this subchapter have been met.

(3) If the service coordinator disagrees with how the IPC was entered in the HHSC data system, the service coordinator and program provider must resolve the disagreement.

(4) If the service coordinator disagrees with the IPC for a reason other than how the IPC was entered in the HHSC data system, the service coordinator must notify the individual, LAR, HHSC and the program provider of the service coordinator's disagreement in accordance with HHSC instructions.

(f) Revision of an IPC to include CFC support management. If an individual or LAR requests CFC support management during an IPC year, the service coordinator or the program provider must revise the IPC as described in the HCS Handbook.

(g) Renewal and revision of an IPC when all services are through the CDS option. For an individual who is receiving all services through the CDS option and, therefore, does not have a program provider, the service coordinator must:

(1) perform the functions of the program provider described in this section; and

(2) is not required to comply with subsection (e)(2) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Chief Counsel

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



## SUBCHAPTER E. CDS OPTION

### 26 TAC §263.401

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

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## SUBCHAPTER F. REQUIREMENTS FOR SERVICE SETTINGS AND PROGRAM PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTINGS

### 26 TAC §§263.501 - 263.503

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

§263.501. *Requirements for Home and Community-Based Settings.*

(a) A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.

(1) The setting 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 to:

(A) seek employment and work in a competitive integrated setting;

(B) engage in community life;

(C) control personal resources; and

(D) receive services in the community.

(2) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which residential support, supervised living, or host home/companion care is provided. The setting options are identified and documented in the PDP and are based on the individ-

ual's needs, preferences, and, for settings in which residential support, supervised living, or host home/companion care is provided, resources available for room and board.

(3) The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.

(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.

(5) The setting facilitates individual choice regarding services and supports and the service providers who provide the services and supports.

(b) Except as provided in subsection (c) of this section, a program provider must ensure that HCS 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 in which a certified ICF/IID operated by a LIDDA or state supported living center is located but is distinct from the ICF/IID;

(2) is located in a building on the grounds of, or immediately adjacent to, a certified ICF/IID operated by a LIDDA or state supported living center;

(3) is located in a building in which a licensed private ICF/IID, a hospital, a nursing facility, or other institution is located but is distinct from the ICF/IID, hospital, nursing facility, or other institution;

(4) is located in a building on the grounds of, or immediately adjacent to, a hospital, a nursing facility, or other institution except for a licensed private ICF/IID; or

(5) has the effect of isolating individuals from the broader community of persons not receiving Medicaid HCBS.

(c) A program provider may provide an HCS 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.

**§263.502. Requirements for Program Provider Owned or Controlled Residential Settings.**

(a) The requirements in this section are in addition to the requirements described in §263.501 of this subchapter (relating to Requirements for Home and Community-Based Service Settings).

(b) In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (c) of this section:

(1) an individual has privacy in the individual's bedroom;

(2) an individual has the option not to share a bedroom with a roommate;

(3) an individual sharing a bedroom has a choice of roommates;

(4) a lock is installed on the individual's bedroom door at no cost to the individual and that:

(A) the lock is operable by the individual; and

(B) only the individual, a roommate of the individual, and staff designated by the program provider have keys to the individual's bedroom door;

(5) an individual can furnish and decorate the individual's bedroom;

(6) while in the residence, an individual has the freedom and support:

(A) to control the individual's schedule and activities that are not part of the implementation plan; and

(B) to have access to food at any time;

(7) an individual may have visitors of the individual's choosing at any time; and

(8) the residence is physically accessible and free of hazards to the individual.

(c) If a program provider becomes aware that a modification to a requirement described in subsection (b)(1) - (7) of this section is needed based on a specific assessed need of an individual, the program provider must:

(1) notify the service coordinator of the needed modification; and

(2) provide the service coordinator the information described in §263.901(e)(21) of this chapter relating to (LIDDA Requirements for Providing Service Coordination in the HCS Program) as requested by the service coordinator.

(d) If a service coordinator receives a notification as described in subsection (c) of this section, the service coordinator must convene a service planning team meeting to update the PDP as described §263.901(e)(21) of this chapter.

(e) After the service planning team updates the PDP as required by subsection (d) of this section, the program provider may implement the modifications.

**§263.503. Residential Agreements.**

(a) During a service planning team meeting to develop or update an individual's PDP, a service coordinator must inform an individual or LAR of the following if the individual is interested in receiving residential assistance:

(1) that the residential setting options available in the HCS Program consist of:

(A) a residence in which the individual receives host home/companion care;

(B) a three-person residence in which the individual receives residential support or supervised living; or

(C) a four-person residence in which the individual receives residential support or supervised living;

(2) that if the individual or LAR selects a residence described in paragraph (1) of this subsection, the individual or LAR will be responsible for paying room and board in accordance with a residential agreement described in subsections (b) and (c) of this section;

(3) that if the individual or LAR does not pay room or board as required by a residential agreement, the individual's program provider or service provider of host home/companion care may evict

the individual in accordance with the residential agreement and state law; and

(4) that if an individual is evicted by a program provider or service provider of host home/companion care and the individual or LAR has not paid the delinquent room or board, HHSC will deny the individual residential support, supervised living, or host home/companion care until the individual or LAR pays the delinquent room or board.

(b) An individual's program provider must ensure that:

(1) an individual living in a three-person residence or four-person residence or LAR has a written residential agreement with the program provider; and

(2) an individual living in a residence in which host home/companion care is provided or LAR has a written residential agreement with the service provider of host home/companion care if the individual does not own the residence or lease the residence from another person.

(c) The residential agreement required by subsection (b) of this section must include:

(1) the physical address of the residence;

(2) the name of the individual;

(3) if a three-person residence or four-person residence, the name of the program provider;

(4) if a residence in which host home/companion care is provided, the name of the service provider of host home/companion care;

(5) the beginning date of the residential agreement;

(6) the date the residential agreement expires;

(7) a provision that:

(A) the program provider or service provider of host home/companion care and the individual or LAR agree that the residential agreement is a "lease," as defined in Texas Property Code Chapter 92 and that they are subject to state law governing residential tenancies, including Texas Property Code Chapters 24, 91, and 92 and Texas Rules of Civil Procedure Rule 510; and

(B) to the extent allowed by law, in the event of a conflict or inconsistency between any provision of the residential agreement and any provision of state statutory law, including Texas Property Code Chapters 91 and 92, the provision in the residential agreement governs;

(8) a provision that the individual or LAR is not waiving any right or remedy provided to tenants under state law, including the Texas Fair Housing Act in Texas Property Code Chapter 301, and is not agreeing to any notice period that is shorter than the notice period to which tenants are entitled under state law;

(9) the amount the individual or LAR is paying for room determined in accordance with the rules governing the HCS Program or a description of other consideration for room, if the individual is paying in kind in lieu of a monetary amount;

(10) the amount the individual or LAR is paying for board determined in accordance with the rules governing the HCS Program or a description of other consideration for board, if the individual is paying in kind in lieu of a monetary amount;

(11) the day of the month that the amount for room and board is due, which will not be before the day of the month that an

individual receives a primary source of income, such as supplemental security income and social security disability insurance;

(12) the amount of a late fee, if any, which may be charged only once per month and will not exceed 10 percent of the amount for room and board, that the program provider or host home/companion care service provider may charge the individual or LAR if room and board is not paid by the third day after it is due;

(13) a provision that allows the individual or LAR to terminate the residential agreement before its expiration date without any obligation under the residential agreement except an obligation that accrued before the date of termination, if the individual permanently moves from the residence for any reason, including transferring to a different program provider;

(14) a provision that the program provider or service provider of host home/companion care agrees to refund to the individual or LAR an amount for room and board paid to the program provider or services provider for the days that the individual was away from the residence because the individual permanently moved from the residence using the following formula to determine the daily amount for room and board (the monthly amount for room and board ÷ the number of days in the month);

(15) a provision that the individual may furnish and decorate the individual's bedroom;

(16) a provision that the program provider or service provider of host home/companion care agrees to be responsible for all repairs to the residence of the program provider or service provider of host home/companion care, including the program provider's or service provider's real property or personal property, resulting from normal wear and tear, as defined in Texas Property Code §92.001;

(17) a provision that allows eviction of the individual only if:

(A) the individual or LAR fails to pay room or board, which does not include any late fee; or

(B) the individual's HCS Program services are terminated;

(18) a provision that the program provider or service provider of host home/companion care will, before giving the individual or LAR a notice to vacate, give the individual or LAR a notice of proposed eviction that allows the individual or LAR at least 60 calendar days to pay the delinquent room or board;

(19) a provision that if the individual or LAR pays the delinquent room or board within the period required by paragraph (18) of this subsection, the program provider or service provider of host home/companion care will not give the individual or LAR a notice to vacate or otherwise proceed to evict the individual;

(20) a provision that the program provider or service provider of host home/companion care will not accelerate the entire balance of the unpaid room or board owed under the remainder of the term of the residential agreement if the individual or LAR violates the residential agreement and the violation does not result in an eviction;

(21) the signature of the program provider or service provider of host home/companion care; and

(22) the signature of the individual or the LAR.

(d) The program provider must:

(1) give the individual or LAR at least three calendar days to review, request changes, and sign the residential agreement;

(2) ensure the residential agreement is fully executed before the individual begins living in a three-person residence, four-person residence, or a residence in which host home/companion care is provided, except that an individual may begin living in one of these residences before a residential agreement is fully executed in the event of an emergency;

(3) if an individual begins living in a three-person residence, four-person residence, or a residence in which host home/companion care is provided before a residential agreement is fully executed because of an emergency, as allowed by paragraph (2) of this subsection:

(A) document the details of the emergency; and

(B) ensure the residential agreement is fully executed within seven calendar days after the individual begins living in the residence; and

(4) provide one copy of the residential agreement to the individual or LAR within three business days after the date the residential agreement is fully executed.

(e) If a program provider becomes aware that a modification to the provision in the residential agreement that the individual may furnish and decorate the individual's bedroom is needed, based on a specific assessed need of an individual, the program provider must:

(1) notify the service coordinator of the needed modification; and

(2) provide the service coordinator the information described in §263.901(e)(21) of this chapter relating to (LIDDA Requirements for Providing Service Coordination in the HCS Program) as requested by the service coordinator.

(f) If a service coordinator receives a notification as described in subsection (e) of this section, the service coordinator must convene a meeting of the service planning team to update the PDP in accordance with §263.901(e)(21) of this chapter.

(g) After the service planning team updates the PDP as required by §263.901(e)(21) of this chapter, the program provider may implement the modification.

(h) If an individual or LAR is delinquent in payment of room or board and the program provider or service provider wants to evict the individual, the program provider must:

(1) notify the service coordinator that the individual or LAR is delinquent in the payment of room or board under the residential agreement and that the program provider or service provider wants to evict the individual;

(2) after providing the notification required by paragraph (1) of this subsection, meet with the individual or LAR, including the representative payee if one has been appointed by the Social Security Administration, and the service coordinator to discuss the alleged non-payment of room or board and options to prevent an eviction; and

(3) if the program provider or service provider intends to proceed to evict the individual at the meeting required by paragraph (2) of this subsection:

(A) give the individual or LAR a written notice of proposed eviction that allows the individual or LAR at least 60 calendar days to pay the delinquent room or board; and

(B) provide the service coordinator with a copy of the written notice of proposed eviction.

(i) If the individual or LAR pays the delinquent room or board within the period required by subsection (h)(3) of this section, the program provider or service provider of host home/companion care must not give the individual or LAR a notice to vacate or otherwise proceed to evict the individual.

(j) If the individual or LAR does not pay the delinquent room or board within the period required by subsection (h)(3) of this section, the program provider:

(1) must report the failure to pay to one of the following as appropriate:

(A) the Social Security Administration;

(B) the probate court that appointed the individual's guardian; or

(C) DFPS as an allegation of the LAR's exploitation or neglect of the individual;

(2) must meet with the individual or LAR and the service coordinator to discuss alternative living settings for the individual; and

(3) if the program provider or service provider wants to proceed to evict the individual, the program provider must:

(A) give the individual or LAR a written notice to vacate the residence in accordance with the residential agreement and state law; and

(B) send a copy of the written notice described in subparagraph (A) of this paragraph to the individual's service coordinator within one business day after the individual or LAR is given the notice.

(k) If an individual is evicted by a program provider or service provider of host home/companion care and the individual or LAR has not paid the delinquent room or board, the service coordinator must convene a meeting or meetings to update the PDP and revise the IPC as described in §263.302(b)(3)(D) of this chapter (relating to Renewal and Revision of an IPC). If the individual or LAR wants to keep residential support, supervised living, or host home/companion care on the individual's IPC, the service coordinator must inform the individual or LAR at the meeting or meetings that HHSC will deny residential support, supervised living, or host home/companion care, if included on the individual's IPC, until the individual pays the delinquent room or board.

(l) If a program provider evicts an individual who has an LAR and the LAR fails to arrange an alternative living setting for the individual, the program provider must report the LAR's failure to DFPS as neglect of the individual and notify the service coordinator that such a report was made.

(m) If an individual pays the delinquent room or board, a program provider must, within one business day after the payment, notify the individual's service coordinator that the individual is no longer delinquent.

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 G. REIMBURSEMENT BY HHSC

### 26 TAC §263.601

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

#### §263.601. Program Provider Reimbursement.

The following requirements apply to program provider reimbursement.

(1) HHSC pays a program provider as described in this paragraph.

(A) HHSC pays for supported home living, professional therapies, nursing, respite, in-home respite, employment assistance, supported employment, and CFC PAS/HAB in accordance with the reimbursement rate for the specific service.

(B) HHSC pays for host home/companion care, residential support, supervised living, in-home day habilitation and day habilitation in accordance with the individual's LON and the reimbursement rate for the specific service.

(C) HHSC pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item and, if requested, a requisition fee in accordance with the HCS Program Billing Requirements available on the HHSC website.

(D) HHSC pays:

(i) for TAS based on a Transition Assistance Services (TAS) Assessment and Authorization form authorized by HHSC and the actual cost of the TAS as evidenced by purchase receipts required by the HCS Program Billing Requirements; and

(ii) if requested, a TAS service fee in accordance with the HCS Program Billing Requirements.

(E) HHSC pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment based on a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by HHSC and the actual cost of the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, as evidenced by documentation required by the HCS Program Billing Requirements.

(F) Subject to the requirements in the HCS Program Billing Requirements, HHSC pays for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment regardless of whether the applicant enrolls with the program provider.

(G) HHSC pays for CFC ERS based on the actual cost of the service, not to exceed the reimbursement rate ceiling for CFC ERS.

(2) To be paid for the provision of a service, a program provider must submit a service claim that meets the requirements in 40 TAC §49.311 (relating to Claims Payment) and the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHML Program Providers.

(3) If an individual's HCS Program services or CFC services are suspended or terminated a program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination for the following services:

- (A) in-home day habilitation;
- (B) day habilitation;
- (C) supported home living;
- (D) in-home respite;
- (E) respite;
- (F) employment assistance;
- (G) supported employment;
- (H) professional therapies;
- (I) nursing; and
- (J) CFC PAS/HAB.

(4) If a program provider submits a claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by HHSC in the HCS Program Billing Requirements and other documentation as required by the HCS Program Billing Requirements.

(5) HHSC does not pay a program provider for:

(A) a service or recoups any payments made to the program provider for a service if:

(i) except for an individual receiving TAS, pre-enrollment minor home modifications, or a pre-enrollment minor home modifications assessment, the individual receiving the service was, at the time the service was provided, ineligible for the HCS Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(ii) except for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment:

(I) the service was provided to an individual during a period of time for which there was not a signed, dated, and authorized IPC for the individual;

(II) the service was provided during a period of time for which there was not a signed and dated ID/RC Assessment for the individual;

(III) the service was provided during a period of time for which the individual did not have an LOC determination;

(IV) the service was not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §263.301(c) of this chapter (relating to IPC Requirements);

(V) the service was not provided in accordance with the individual's PDP or implementation plan;

(VI) the service was provided before the individual's enrollment date into the HCS Program; or

(VII) the service was not included on the signed, dated, and authorized IPC of the individual in effect at the time the service was provided, except as permitted by §263.302(d) of this chapter (relating to Renewal and Revision of an IPC);

(iii) the service was not provided in accordance with the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(iv) the service was not documented in accordance with the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

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

(vi) the claim for the service was not prepared and submitted in accordance with the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(vii) the claim for the service did not meet the requirements in 40 TAC §49.311 (relating to Claims Payment) or the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(viii) the program provider does not have the documentation described in paragraph (3) of this section;

(ix) HHSC determines that the service would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service;

(x) the service was provided by a service provider who did not meet the qualifications to provide the service as described in the HCS Program Billing Requirements or the CFC Billing Requirements for HCS and TxHmL Program Providers;

(xi) the service was paid at an incorrect LON because the information entered in the HHSC data system from a completed ID/RC Assessment was not identical to the information on the completed ID/RC Assessment; or

(xii) the service was not provided;

(B) supervised living or residential support, if the program provider provided the supervised living or residential support service in a residence in which four individuals or other persons receiving similar services live without HHSC's approval as described in rules governing the HCS Program;

(C) employment assistance, if before including the employment assistance on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that employment assistance was 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.);

(D) supported employment, if before including the supported employment on an individual's IPC, the program provider did not ensure and maintain documentation in the individual's record that supported employment was not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(E) host home/companion care, residential support, or supervised living, if the host home/companion care, residential support, or supervised living was provided on the day of the individual's suspension or termination of HCS Program services;

(F) TAS, if the TAS, was not provided in accordance with a Transition Assistance Services (TAS) Assessment and Authorization form authorized by HHSC;

(G) pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, if the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, was not provided in accordance with a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by HHSC;

(H) a CFC service, if the CFC service, was provided to an individual receiving host home/companion care, supervised living, or residential support;

(I) supported home living, if the supported home living, was not provided in accordance with a transportation plan and §263.5(a)(18) of this chapter (relating to Description of HCS Program Services); or

(J) CFC PAS/HAB, in-home day habilitation provided to an individual with a residential type of "own/family home," or in-home respite, if the CFC PAS/HAB, in-home day habilitation, or in-home respite, did not match the EVV visit transaction as required by 1 TAC §354.4009(a)(4) (relating to Requirements for Claims Submission and Approval).

(6) A program provider must refund to HHSC any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from HHSC, whichever is earlier.

(7) Except as provided in paragraph (8) of this section, if HHSC approves an LOC requested in accordance with §263.105(b)(3) of this chapter (relating to LOC Determination), HHSC pays a program provider for services provided to an individual for a period of not more than 180 calendar days after the individual's previous ID/RC Assessment expires.

(8) If HHSC determines that a program provider submitted an ID/RC Assessment more than 180 calendar days after the expiration date of the previous ID/RC Assessment, because of circumstances beyond the program provider's control, HHSC may pay the program provider for a period of more than 180 calendar days after the date the individual's previous ID/RC Assessment expired.

(9) HHSC conducts provider fiscal compliance reviews to determine whether a program provider is in compliance with:

(A) this chapter;

(B) the HCS Program Billing Requirements;

(C) the CFC Billing Requirements for HCS and TxHmL Program Providers;

(D) 40 TAC §§49.301-49.313; and

(E) the program provider's Community Services Contract-Provider Agreement.

(10) HHSC conducts provider fiscal compliance reviews in accordance with the Provider Fiscal Compliance Review Protocol set forth in the HCS Program Billing Requirements and the CFC Billing Requirements for HCS and TxHmL Program Providers. As a result of a provider fiscal compliance review, HHSC may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with HHSC's instructions, a corrective action plan that improves the program provider's billing practices.

(11) A corrective action plan required by HHSC in accordance with paragraph (10)(B) of this section must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to HHSC within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by HHSC before implementation.

(12) Within 30 calendar days after HHSC receives a corrective action plan, HHSC notifies the program provider if HHSC approves the corrective action plan or if the plan requires changes.

(13) If HHSC requires a program provider to develop and submit a corrective action plan in accordance with paragraph (10)(B) of this section and the program provider requests an administrative hearing for the recoupment in accordance with §263.802 of this chapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. HHSC notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(14) If a program provider does not submit a corrective action plan or complete a required corrective action within the time frames described in paragraph (11) of this section, HHSC may impose a vendor hold on payments due to the program provider until the program provider takes the corrective action.

(15) If a program provider does not submit a corrective action plan or complete a required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (14) of this section, HHSC may terminate the contract.

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 H. TRANSFER, DENIALS, SUSPENSION, REDUCTION, AND TERMINATION

### 26 TAC §§263.701 - 263.708

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

§263.701. *Process for Individual to Transfer to a Different Program Provider or FMSA.*

(a) If a service coordinator receives information that an individual wants to transfer to a different program provider or FMSA, or that an LAR wants the individual to transfer to a different program provider or FMSA, the service coordinator must:

(1) if the information was received from the individual or LAR, document the date the information was received in the individual's record;

(2) if the information was received from a person other than the individual or LAR, within three business days after the information was received:

(A) contact the individual or LAR to confirm whether the individual wants to transfer or the LAR wants the individual to transfer to a different program provider or FMSA; and

(B) if the service coordinator makes the confirmation described in subparagraph (A) of this paragraph, document such confirmation in the individual's record; and

(3) within three business days after receiving information from the individual or LAR that the individual wants to transfer or the LAR wants the individual to transfer to a different program provider or FMSA or making the confirmation described in paragraph (2)(A) of this subsection:

(A) explain to the individual or LAR that the individual may transfer to a program provider whose enrollment has not reached its service capacity in the HHSC data system or FMSA of the individual's or LAR's choice; and

(B) provide the individual or LAR the names and contact information of all program providers or FMSAs in the geographic location preferred by the individual or LAR.

(b) After the individual or LAR selects a different program provider or FMSA, the service coordinator must coordinate with the individual, LAR, the transferring program provider or FMSA, and the receiving program provider or FMSA to determine a transfer effective date that is:

(1) not earlier than the date of the meeting described in subsection (c)(2) of this section; and

(2) agreed to by the service coordinator, the individual or LAR, and the receiving program provider.

(c) On or before the transfer effective date, the service coordinator must:

(1) take action to complete the HHSC Request for Transfer of Waiver Program Services form in accordance with the HCS Handbook;

(2) convene a meeting with the individual or LAR and the receiving program provider or receiving FMSA to develop a transfer IPC;

(3) send the individual's IPC, ID/RC, and PDP to the receiving program provider or the receiving FMSA;

(4) if the individual is transferring to a different program provider, request the following records of the individual from the transferring program provider;

(A) pertinent medication records and medical information;

(B) Medicaid card;

(C) Medicare information, if applicable;

(D) the ICAP booklet and summary sheet;

(E) trust fund/financial records and any money due the individual;

(F) behavior support plan, if applicable;

(G) guardianship information, if applicable; and

(H) any other pertinent information to ensure health and safety or continuity of services;

(5) within two business days after receipt of the records requested in accordance with paragraph (4) of this subsection, send the records to the receiving program provider; and

(6) if, within three business days after requesting that the program provider provide records as described in paragraph (4) of this subsection, the service coordinator does not receive all of the records requested, notify HHSC that the records were not received.

(d) If an individual was evicted by a program provider or service provider of host home/companion care and the individual or LAR has not paid the delinquent room or board, but wants to include residential support, supervised living, or host home/companion care on the individual's IPC, the service coordinator must inform the individual or LAR at the meeting described in subsection (c)(2) of this section that HHSC will deny residential support, supervised living, or host home/companion care, if included on the individual's IPC, until the individual pays the delinquent room or board.

(e) Within 10 business days after the transfer effective date, the service coordinator must:

(1) complete data entry into the HHSC data system in accordance with the HCS Handbook after the activities described in subsection (c) of this section are completed; and

(2) send the transfer IPC and HHSC Request for Transfer of Waiver Program Services form to HHSC.

*§263.702. Process for Individual to Receive a Service Through the CDS Option that the Individual is Receiving from a Program Provider.*

(a) If a service coordinator receives information that an individual wants to receive a service through the CDS option that the individual is receiving from a program provider or that an LAR wants the individual to receive a service through the CDS option that the individual is receiving from a program provider, the service coordinator must:

(1) if the information was received from the individual or LAR, document the date the information was received in the individual's record;

(2) if the information was received from a person other than the individual or LAR, within three business days after the information was received:

(A) contact the individual or LAR to confirm whether the individual wants to receive or the LAR wants the individual to receive a service through the CDS option that the individual is receiving from a program provider; and

(B) if the service coordinator makes the confirmation described in subparagraph (A) of this paragraph, document such confirmation in the individual's record; and

(3) within three business days after receiving information from the individual or LAR that the individual wants to receive or the LAR wants the individual to receive a service through the CDS option that the individual is receiving from a program provider or making the confirmation described in paragraph (2)(A) of this subsection:

(A) explain to the individual or LAR that the individual may select an FMSA of the individual's or LAR's choice; and

(B) provide the individual or LAR the names and contact information of all FMSAs in the geographic location preferred by the individual or LAR.

(b) After the individual or LAR selects an FMSA, the service coordinator must coordinate with the individual, LAR, the transferring program provider and the receiving FMSA to determine an transfer effective date that is:

(1) not earlier than the date of the meeting described in subsection (c)(2) of this section; and

(2) agreed to by the service coordinator, the individual or LAR, and the receiving FMSA.

(c) On or before the transfer effective date, the service coordinator must:

(1) take action to complete the HHSC Request for Transfer of Waiver Program Services form in accordance with the HCS Handbook;

(2) convene a meeting with the individual or LAR to develop a transfer IPC; and

(3) send the individual's IPC to the receiving FMSA and obtain the signature of the receiving FMSA on the IPC and the HHSC Request for Transfer of Waiver Program Services form.

(d) Within 10 business days after the transfer effective date, the service coordinator must:

(1) complete data entry in the HHSC data system in accordance with the HCS Handbook after the activities described in subsection (c) of this section are completed; and

(2) send the transfer IPC and the HHSC Request for Transfer of Waiver Program Services form to HHSC.

*§263.707. Termination of HCS Program Services and CFC Services with Advance Notice.*

(a) HHSC terminates an individual's HCS Program services and CFC services if the individual does not meet the eligibility criteria described in §263.101(a)(1) - (4), (6), (c), and (d) of this chapter (relating to Eligibility Criteria for HCS Program Services and CFC Services).

(b) If a service coordinator becomes aware that a situation described in subsection (a) of this section exists, the service coordinator must, as soon as practicable, convene a service planning team meeting to discuss the situation. If after the meeting, the service coordinator de-

termines that the situation cannot be resolved, the service coordinator must request that HHSC terminate the individual's services. To make this request, the service coordinator must complete HHSC Request for Termination of Services form and submit the form to HHSC.

(c) If HHSC receives a form from a service coordinator requesting that HHSC terminate the individual's services, HHSC sends written notice to the individual or LAR of the proposal to terminate HCS Program services and CFC services. The notice includes the individual's right to request a fair hearing in accordance with §263.801 of this chapter (relating to Fair Hearing).

(d) If the individual or LAR requests a fair hearing before the effective date of the termination of HCS Program services and CFC services, as specified in the written notice, the program provider must provide services to the individual in the amounts authorized in the IPC while the appeal is pending.

§263.708. *Termination of HCS Program Services and CFC Services Without Advance Notice.*

(a) HHSC terminates an individual's HCS Program services and CFC services if any of the following situations exists:

(1) the individual is admitted to one of the facilities listed in §263.705(a)(1) - (9) of this subchapter (relating to Suspension of HCS Program Services and CFC Services):

(A) for more than 270 consecutive calendar days; and

(B) HHSC has not extended the individual's suspension in accordance with §263.705(h) of this subchapter;

(2) the service coordinator or program provider has factual information confirming the death of the individual;

(3) the service coordinator or program provider receives a clear written statement signed by the individual or LAR that the individual no longer wants HCS Program services;

(4) the individual's whereabouts are unknown, and the post office returns mail directed to the individual by the service coordinator or program provider without indicating a forwarding address; or

(5) HHSC establishes that the individual has been accepted for Medicaid services by another state.

(b) If a service coordinator becomes aware that a situation described in subsection (a) of this section exists, the service coordinator must request that HHSC terminate the individual's services. To make this request, the service coordinator must complete HHSC Request for Termination of Services form and submit the form to HHSC.

(c) If HHSC receives a form from a service coordinator requesting that HHSC terminate the individual's services, HHSC sends written notice to the individual or LAR of the termination of HCS Program services and CFC services. The notice includes the individual's right to request a fair hearing in accordance with §263.801 of this chapter (relating to Fair Hearing).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER I. HEARINGS**

**26 TAC §263.801, §263.802**

**STATUTORY AUTHORITY**

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

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**SUBCHAPTER J. LIDDA REQUIREMENTS**

**26 TAC §§263.901 - 263.903**

**STATUTORY AUTHORITY**

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

§263.901. *LIDDA Requirements for Providing Service Coordination in the HCS Program.*

(a) In addition to the requirements described in Chapter 331 of this title (relating to LIDDA Service Coordination), a LIDDA must:

(1) comply with:

(A) this chapter;

(B) 40 TAC Chapter 41 (relating to Consumer Directed Services Option); and

(C) 40 TAC Chapter 4, Subchapter L (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(2) ensure that a rights protection officer required by 40 TAC §4.113 (relating to Rights Protection Officer at a State MR Facility or MRA), 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), gives a copy of the report to the individual's service coordinator.

(b) A LIDDA must ensure that a service coordinator is an employee of the LIDDA and meets the requirements of this subsection.

(1) A service coordinator must meet the minimum qualifications and LIDDA staff training requirements described in Chapter 331 of this title except as described in paragraph (2) of this subsection.

(2) Notwithstanding §331.19(b)(2)(B) of this title (relating to Staff Person Training), a service coordinator must complete a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the service coordinator's date of hire, unless an extension of the six month time-frame is granted by HHSC.

(3) A service coordinator must receive training about the following within the first 90 calendar days after beginning service coordination duties:

- (A) rules governing the HCS Program and CFC; and
- (B) 40 TAC Chapter 41.

(c) A LIDDA must have a process for receiving and resolving complaints from a program provider related to the LIDDA's provision of service coordination or the LIDDA's process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the LIDDA must ensure that the concern is communicated to the program provider and attempts are made to resolve the concern. The LIDDA may refer an unresolved concern to HHSC by calling the HHSC IDD Ombudsman toll-free telephone number at 1-800-252-8154.

(e) A service coordinator must:

(1) assist an individual, LAR, or actively involved person in exercising the legal rights of the individual;

(2) provide an individual, LAR, or family member with the booklet, *Your Rights In the Home and Community-based Services (HCS) Program*, available on the HHSC website, and the HHSC HCS Rights Addendum form, and an oral explanation of the rights in the booklet and the form:

- (A) upon the individual's enrollment in the HCS Program;
- (B) upon revision of the booklet or the form;
- (C) upon request; and
- (D) if one of the following occurs:
  - (i) the individual becomes 18 years of age;
  - (ii) a guardian is appointed for the individual; or
  - (iii) a guardianship for the individual ends;

(3) document the provision of the information required by paragraph (2) of this subsection, and ensure that the documentation is signed by:

- (A) the individual or LAR; and
- (B) the service coordinator;

(4) ensure that, upon enrollment of an individual and annually thereafter, the individual or LAR is informed orally and in writing of the following:

- (A) the telephone number of the LIDDA to file a complaint;
  - (B) the toll-free telephone number of the HHSC IDD Ombudsman, 1-800-252-8154, to file a complaint; and
  - (C) the toll-free telephone number of DFPS, 1-800-647-7418, to report an allegation of abuse, neglect, or exploitation;
- (5) maintain for an individual for an IPC year:
- (A) a copy of the IPC;
  - (B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form;

- (C) a copy of the ID/RC Assessment;
- (D) documentation of the activities performed by the service coordinator in providing service coordination; and

(E) any other pertinent information related to the individual;

(6) initiate, coordinate, and facilitate the person-centered planning process to meet the goals and outcomes identified by an individual and LAR in the individual's PDP, including scheduling service planning team meetings;

(7) to meet the needs of an individual as those needs are identified, develop for the individual a full range of services and resources using:

(A) providers for services other than HCS Program services and CFC services; and

(B) advocates or other actively involved persons;

(8) ensure that the PDP for an applicant or individual:

(A) is developed, reviewed, and updated in accordance with:

(i) §263.104(j)(4)(A) of this chapter (relating to Process for Enrollment of Applicants);

(ii) §263.302 of this chapter (relating to Renewal and Revision of an IPC); and

(iii) §331.11 of this title (relating to LIDDA's Responsibilities); and

(B) document, for each HCS Program service, other than supervised living and residential support, and for each CFC service, whether the service is critical to the individual's health and safety as determined by the service planning team;

(9) ensure that the updated finalized PDP is signed by the individual or LAR;

(10) participate in the development, renewal, and revision of an individual's IPC in accordance with §263.104 and §263.302 of this chapter;

(11) ensure the service planning team participates in the renewal and revision of the IPC for an individual in accordance with

§263.302 of this chapter and ensure the service planning team completes other responsibilities and activities as described in this chapter;

(12) notify the service planning team if the service coordinator receives notification from the program provider that:

(A) an individual's behavior requires the implementation of a behavior support plan; or

(B) based on an annual review by the program provider, an individual's behavior support plan needs to continue;

(13) if a change to an individual's PDP is needed, other than as required by §263.302 of this chapter:

(A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons;

(B) update the PDP as necessary; and

(C) within 10 calendar days after the PDP is updated, send a copy of the updated PDP to the program provider, the individual or LAR and, if applicable, the FMSA;

(14) provide an individual's program provider a copy of the individual's current PDP;

(15) monitor the provision of HCS Program services, CFC services, and non-HCS Program and non-CFC services to an individual;

(16) document whether an individual or LAR perceives that the individual is progressing toward desired outcomes identified on the individual's PDP;

(17) together with the program provider, ensure the coordination and compatibility of HCS Program services and CFC services with non-HCS Program and non-CFC services, including, in coordination with the program provider, assisting an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from one of the following professionals:

(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;

(18) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;

(19) if individual does not have a guardian:

(A) ensure that the service planning team determines whether the individual would benefit from having a guardian or a less restrictive alternative to a guardian;

(B) if the service planning team determines that the individual would benefit from having a less restrictive alternative to a guardian such as a supported decision making agreement, take appropriate actions to implement such an alternative; and

(C) if the service planning team determines that the individual would benefit from having a guardian, make a referral to the appropriate court if:

(i) the individual would not benefit from a less restrictive alternative to a guardian; or

(ii) the individual would benefit from having a less restrictive alternative to a guardian but implementing such an alternative is not feasible;

(20) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service or a CFC service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

(21) if notified by the program provider that a requirement described in §263.503(c)(15) of this chapter (relating to Residential Agreements) or §263.502(b)(1) - (7) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:

(A) a description of the specific and individualized assessed need that justifies the modification;

(B) a description of the positive interventions and supports that were tried but did not work;

(C) a description of the less intrusive methods of meeting the need that were tried but did not work;

(D) a description of the condition that is directly proportionate to the specific assessed need;

(E) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;

(F) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(G) the individual's or LAR's signature evidencing informed consent to the modification; and

(H) the program provider's assurance that the modification will cause no harm to the individual;

(22) if notified by the program provider that an individual or LAR has refused a comprehensive nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, in-home day habilitation, day habilitation, or CFC PAS/HAB:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual's not receiving:

(i) nursing services; or

(ii) host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, in-home day habilitation, day habilitation, or CFC PAS/HAB, if the individual needs one of those services and the program provider has determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(23) if the service coordinator determines that HCS Program services or CFC services provided for an individual should be terminated, including for a reason described in §263.104(k)(14)(C) or (D) of this chapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that services should be terminated; and

(ii) the attempts by the service coordinator to resolve the situation;

(B) send a written recommendation to terminate the individual's HCS Program services or CFC services to HHSC and include the documentation required by subparagraph (A) of this paragraph; and

(C) provide a copy of the written recommendation and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services or all CFC services, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services and CFC services; and

(iii) possible service resources upon termination, including CFC services through a managed care organization; and

(B) submit documentation to HHSC that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) be objective in assisting an individual or LAR in selecting a program provider or FMSA;

(26) at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(27) unless contraindications are documented with justification by the service planning team, ensure that a school-age individual receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(28) unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(29) unless contraindications are documented with justification by the service planning team, ensure that an individual who is 18 years or older has opportunities to participate in day activities of the individual's or LAR's choice that promote achievement of PDP outcomes;

(30) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(31) assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(32) for an individual receiving host home/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(33) if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR to assist the LIDDA in conducting permanency planning or if notified by the LIDDA that the LIDDA is unable to locate the parent or LAR in accordance with §263.902(g)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (35)(A) and (B) of this subsection; and

(B) notify HHSC, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that HHSC initiate a search for the parent or LAR;

(34) if the service coordinator determines that a parent's or LAR's contact information described in paragraph (35)(A) of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (35)(B) of this subsection; and

(B) notify HHSC, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that HHSC initiate a search for the parent or LAR;

(35) request from and encourage the parent or LAR of an individual under 22 years of age requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom HHSC or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:



(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(36) within three business days after an individual under 22 years of age begins receiving supervised living or residential support:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see the HHSC website for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the individual's residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the individual's residence is located, if the individual is under three years of age (see the HHSC website to search for an ECI program by zip code or by county); and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

(i) the individual's full name;

(ii) the individual's sex;

(iii) the individual's ethnicity;

(iv) the individual's birth date;

(v) the individual's social security number;

(vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information;

(37) for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person, by videoconferencing, or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is at least 18 years of age and under 22 years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and

(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record;

(38) in accordance with Chapter 303, Subchapter G of this title (relating to Transition Planning) conduct:

(A) a pre-move site review for an applicant 21 years of age or older who is enrolling in the HCS Program from a nursing facility or as a diversion from admission to a nursing facility; and

(B) post-move monitoring visits for an individual 21 years of age or older who enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility;

(39) do the following to inform applicants and individuals about responsibilities related to EVV:

(A) for an applicant who will receive a service that requires the use of EVV from the program provider or through the CDS option:

(i) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the applicant or LAR;

(ii) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(iii) provide the individual or LAR with a copy of the signed form;

(iv) perform the activities described in clause (i) - (iii) of this subparagraph before the individual's enrollment; and

(v) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record;

(B) for an individual who will receive a service that requires the use of EVV from the program provider or who is transferring to another program provider or LIDDA and will receive a service that requires the use of EVV from the program provider or through the CDS option:

(i) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(ii) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(iii) provide the individual or LAR with a copy of the signed form;

(iv) perform the activities described in clause (i)-(iii) of this subparagraph on or before the effective date of the IPC that includes the EVV required service or the effective date of the transfer to another program provider or LIDDA; and

(v) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record; and

(C) for an individual who will receive a service that requires the use of EVV through the CDS option or who will transfer to another FMSA and is receiving a service requiring the use of EVV:

(i) orally explain the information in the HHSC Electronic Visit Verification Responsibilities and Additional Information form to the individual or LAR;

(ii) sign the HHSC Electronic Visit Verification Responsibilities and Additional Information form to attest to explaining the information and to providing a copy to the individual or LAR;

(iii) provide the individual or LAR with a copy of the signed form;

(iv) perform the activities described in clause (i)-(iii) of this subparagraph before the individual receiving the EVV required service through the CDS option or on or before the effective date of the transfer to another FMSA; and

(v) maintain the completed HHSC Electronic Visit Verification Responsibilities and Additional Information form in the individual's record;

(40) have contact with an individual in-person, by video-conferencing, or telephone to provide service coordination during a month in which it is anticipated that the individual will not receive an HCS Program service unless:

(A) the individual's HCS Program services have been suspended; or

(B) the service coordinator had an in-person contact with the individual that month to comply with §331.11(d) of this title (relating to LIDDA's Responsibilities);

(41) within one business day after the meeting to revise an IPC described in §263.503(k) of this chapter (relating to Residential Agreements), submit the following documentation to HHSC if the individual or LAR wants to keep residential support, supervised living, or host home/companion care on the individual's IPC:

(A) a completed HHSC Notification of Service Coordinator Disagreement form;

(B) a copy of the written notice of proposed eviction described in §263.503(h)(3) of this chapter;

(C) a copy of the written notice to vacate described in §263.503(j)(3) of this chapter;

(D) progress notes from any meetings related to the eviction; and

(E) a copy of the individual's PDP; and

(42) within one business day after receiving the notice from a program provider described in §263.503(m) of this chapter, notify HHSC that the individual is no longer delinquent in room or board payments.

§263.902. *Permanency Planning.*

(a) The provisions contained in this section apply to an applicant under 22 years of age moving from a family setting and requesting supervised living or residential support.

(b) A LIDDA must, during the enrollment process:

(1) review the applicant's records, and, if possible, meet the applicant before the meeting described in paragraph (3) of this subsection;

(2) inform the applicant and LAR:

(A) of the benefits of living in a family setting;

(B) that the placement of the applicant is considered temporary; and

(C) that an ongoing permanency planning process is required; and

(3) convene a permanency planning meeting with the LAR and, as appropriate, the applicant.

(c) During the permanency planning meeting, the meeting participants must:

(1) discuss and choose one of the following goals:

(A) to live in the applicant's home or family home where the natural supports and strengths of the applicant's family are supplemented, as needed, by activities and supports provided or facilitated by the LIDDA or program provider; or

(B) to live in a family-based alternative with a family other than the applicant's family who:

(i) has received specialized training in the provision of support and in-home care for an individual under 22 years of age with an intellectual disability or a related condition;

(ii) will provide a consistent and nurturing environment in a family home that supports a continued relationship with the applicant's family to the extent possible; and

(iii) will provide an enduring, nurturing parental relationship with a specific adult; and

(2) to accomplish the goal chosen in accordance with paragraph (1) of this subsection, discuss and identify:

(A) the issues that led the applicant or LAR to request supervised living or residential support;

(B) the applicant's daily support needs;

(C) barriers to having the applicant reside in the family home;

(D) supports that would be necessary for the applicant to remain in the family home;

(E) actions that must be taken to overcome the barriers and provide the necessary supports;

(F) the importance for the applicant to live in a long-term nurturing relationship with a family;

(G) alternatives to the applicant living in an institutional setting;

(H) the applicant's and LAR's need for information and preferences regarding those alternatives;

(I) how, after the applicant's enrollment, to facilitate regular contact between the applicant and the applicant's family, and, if desired by the applicant and family, between the applicant and

advocates and friends in the community to continue supportive and nurturing relationships;

(J) natural supports and family strengths that will assist in accomplishing the identified permanency planning goal;

(K) activities and supports that can be provided by the family, LIDDA, or program provider to achieve the permanency planning goal;

(L) assistance needed by the applicant's family:

(i) in maintaining a nurturing relationship with the applicant; and

(ii) preparing the family for the applicant's eventual return to the family home or move to a family-based alternative; and

(M) action steps, both immediate and long term, for achieving the permanency plan goal.

(d) A LIDDA must make reasonable accommodations to promote the participation of the LAR in a permanency planning meeting, including:

(1) conducting a meeting in person, by videoconferencing, or by telephone, as mutually agreed upon by the LIDDA and LAR;

(2) conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the LIDDA and LAR;

(3) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(4) providing a language interpreter, if appropriate.

(e) A LIDDA must:

(1) develop a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form found on the HHSC website;

(2) complete the Permanency Planning Review Screen in HHSC data system during enrollment to obtain approval for an applicant to receive residential support or supervised living;

(3) keep a copy of the Permanency Planning Review Approval Status View Screen from HHSC data system in the applicant's record; and

(4) provide a copy of the permanency plan to the program provider, the applicant, and the LAR.

(f) A LIDDA must inform the applicant and LAR that they may request a volunteer advocate to assist in permanency planning.

(1) The applicant or LAR may:

(A) select a person who is not employed by or under contract with the LIDDA or a program provider; or

(B) request the LIDDA to designate a volunteer advocate.

(2) If an applicant or LAR requests that the LIDDA designate a volunteer advocate or the LIDDA cannot locate the applicant's LAR, the LIDDA must attempt to designate a volunteer advocate to assist in permanency planning who is, in order of preference:

(A) an adult relative who is actively involved with the applicant;

(B) a person who:

(i) is part of the applicant's natural supports; and

(ii) is not employed by or under contract with the LIDDA or a program provider; or

(C) a person or a child advocacy organization representative who:

(i) is knowledgeable about community services and supports;

(ii) is familiar with the permanency planning philosophy and processes; and

(iii) is not employed by or under contract with the LIDDA or a program provider.

(3) If a LIDDA is unable to locate a volunteer advocate locally, the LIDDA must request assistance from a statewide advocacy organization in identifying an available volunteer advocate who meets the requirements described in subsection (f)(2)(C) of this section. If the statewide advocacy organization is unable to assist the LIDDA in identifying a volunteer advocate, the LIDDA must document all efforts to designate a volunteer advocate in accordance with subsection (f)(2) of this section.

(g) Until an individual either becomes 22 years of age or is no longer receiving supervised living or residential support, a LIDDA must do the following six months after the date of the initial permanency planning meeting and every six months thereafter:

(1) provide written notice to the LAR of a meeting to conduct a review of the individual's permanency plan no later than 21 calendar days before the meeting date and include a request for a response from the LAR;

(2) convene a permanency planning meeting with the LAR and, if possible, the individual, to review the individual's current permanency plan in accordance with subsections (c) and (d) of this section, with an emphasis on changes or additional information gathered since the last permanency plan was developed;

(3) during the permanency planning meeting, develop a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form available on the HHSC website;

(4) perform the actions regarding a volunteer advocate as described in subsection (f) of this section;

(5) complete the Permanency Planning Review Screen in the HHSC data system within 10 calendar days after the date of the permanency planning meeting;

(6) ensure that approval for the individual to continue to receive residential support or supervised living is obtained every six months from the HHSC executive commissioner or designee;

(7) keep a copy of the Permanency Planning Review Approval Status View Screen from the HHSC data system in the individual's record;

(8) provide a copy of the permanency plan to the program provider, the individual, and the LAR; and

(9) if the LIDDA determines it is unable to locate the parent or LAR, notify the service coordinator of such determination.

(h) If a LIDDA receives information that an individual under 22 years of age who has been enrolled in the HCS Program moved from a family setting and started receiving supervised living or residential support, the LIDDA must, within the timeframes described in the performance contract between HHSC and the LIDDA:

(1) provide an explanation of services and supports and other information in accordance with §263.104(e)(1) of this chapter (relating to Process for Enrollment of Applicants); and

(2) take actions to conduct permanency planning as described in subsections (b) - (f) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

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Health and Human Services Commission

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



## SUBCHAPTER K. DECLARATION OF DISASTER

### 26 TAC §263.1000

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

*§263.1000. Exceptions to Certain Requirements During Declaration of Disaster.*

(a) HHSC may allow program providers and service coordinators to use one or more of the exceptions described in subsections (c) - (j) 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 and LIDDAs:

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

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

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

(c) Notwithstanding the definition of "implementation plan" in §263.3 of this chapter (relating to Definitions), the signature of an individual who resides in the disaster area is not required on the individual's implementation plan, if:

(1) the meeting required by §263.302(a)(5)(A) of this chapter (relating to Renewal and Revision of an IPC) is conducted by videoconferencing or telephone;

(2) the individual or LAR orally agrees with the implementation plan; and

(3) the program provider documents the individual's or LAR's oral agreement on the implementation plan.

(d) Notwithstanding §263.8(a) of this chapter (relating to Comprehensive Nursing Assessment), the comprehensive nursing assessment completed by an RN is not required to be completed in person for an individual who resides in the disaster area, if the RN conducts the assessment as a telehealth service or by telephone.

(e) Notwithstanding §263.104(j)(2)(A)(i)(I)(-a-) and (-b-), of this chapter (relating to Process for Enrollment of Applicants), a LIDDA is not required to conduct a standardized measure of intellectual functioning in person, or to conduct a standardized measure of adaptive abilities in person for an individual who resides in the disaster area, if the LIDDA conducts the standardized measures by videoconferencing.

(f) Notwithstanding §263.104(j)(2)(B)(i) of this chapter, a LIDDA is not required to conduct an ICAP assessment in person for an individual who resides in the disaster area if the LIDDA conducts the ICAP assessment by videoconferencing.

(g) Notwithstanding §263.302(e)(1)(B) of this chapter, a program provider is not required to ensure that an individual who resides in the disaster area or LAR signs and dates a renewal or revised IPC, if:

(1) the meeting required by §263.302(a)(4) and (b)(3)(D)(ii) of this chapter is conducted by videoconferencing or telephone;

(2) the program provider documents on the renewal or IPC the reason for and the topics discussed at the meeting;

(3) the individual or LAR orally agrees with the renewal or revised IPC; and

(4) the program provider documents the individual's or LAR's oral agreement on the renewal or the revised IPC.

(h) Notwithstanding §263.304(a)(1) of this chapter (relating to Service Limits), the service limit of adaptive aids for an individual who resides in the disaster area may be exceeded if:

(1) the requested adaptive aid that causes the service limit to be exceeded is:

(A) an adaptive aid that replaces an adaptive aid destroyed as a result of the disaster; or

(B) the repair of an adaptive aid that was damaged as a result of the disaster;

(2) the addition of the requested adaptive aid to the individual's IPC does not result in:

(A) the service limit of adaptive aids being exceeded by more than \$5,000; or

(B) the individual's IPC cost limit for HCS program services being exceeded as described in §263.101(a)(3)(A), (B), and (C) of this chapter (relating to Eligibility Criteria for HCS Program Service and CFC Services);

(3) the program provider:

(A) includes the cost of the requested adaptive aid on the revised IPC; and

(B) submits to HHSC, within 180 days after the effective date of the order or proclamation described in subsection (a) of this section, a written request to HHSC to approve the requested adaptive aid that includes:

(i) a description of the adaptive aid that is replacing the adaptive aid destroyed as a result of the disaster, which may include pictures or other descriptive information from a catalog, web-site or brochure;

(ii) a description of the repair to an adaptive aid that was damaged as a result of the disaster;

(iii) one bid for the requested adaptive aid from a vendor that includes:

(I) the total cost of the requested adaptive aid; and

(II) the name, address and telephone number of the vendor who must not be a relative of the individual; and

(iv) a statement from the program provider that the adaptive aid is not available through a third party resource; and

(4) the requested adaptive aid is approved by HHSC.

(i) Notwithstanding §263.304(a)(3)(A) and (B) of this chapter, the service limit of minor home modifications for an individual who resides in the disaster area may be exceeded if:

(1) the requested minor home modification 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) the repair of a minor home modification that was damaged as a result of the disaster;

(2) the addition of the requested minor home modification to the individual's IPC does not result in:

(A) the service limit of minor home modification being exceeded by more than \$3,750; or

(B) the individual's IPC cost limit for HCS program services being exceeded as described in §263.101(a)(3)(A), (B), or (C) of this chapter;

(3) the program provider:

(A) includes the cost of the requested minor home modification on the revised IPC;

(B) submits to HHSC, within 180 days after the effective date of the order or proclamation described in subsection (a) of this section, a written request to HHSC to approve the requested minor home modification that includes:

(i) a description of the minor home modification that is replacing the minor home modification destroyed as a result of the disaster, which may include pictures or other descriptive information from a catalog, web-site, or brochure;

(ii) a description of the repair to a minor home modification that was damaged as a result of the disaster;

(iii) one bid for the requested minor home modification from a vendor that includes:

(I) the total cost of the requested minor home modification; and

(II) the name, address and telephone number of the vendor who must not be a relative of the individual; and

(iv) a statement from the program provider that the minor home modification is not available through a third party resource; and

(4) the requested minor home modification is approved by HHSC.

(j) Notwithstanding §263.901(e)(9) of this chapter, a service coordinator is not required to ensure that an individual who resides in the disaster area or LAR sign the PDP, if:

(1) the meeting required by §263.302(a)(1)(B) and (b)(3)(D)(i) of this chapter is conducted by videoconferencing or telephone;

(2) the service coordinator documents on the PDP the reason for and the topics discussed at the meeting;

(3) the individual or LAR orally agrees with the PDP; and

(4) the service coordinator documents the individual's or LAR's oral agreement on the PDP.

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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Health and Human Services Commission

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



## CHAPTER 272. TRANSITION ASSISTANCE SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §272.1, concerning Purpose; §272.3, concerning Definitions; §272.5, concerning Service Description; §272.7, concerning Transition Assistance Services (TAS) in the HCS Program; §272.11, concerning Contracting Requirements; §272.33, concerning Service Delivery; and §272.41, concerning Record Keeping.

The amendments to §§272.3, 272.7, and 272.33 are adopted with changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5713). These rules will be republished.

The amendments to §§272.1, 272.5, 272.11, and 272.41 are adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5713), and therefore will not be republished.

### BACKGROUND AND JUSTIFICATION

The adopted amendments replace the reference to the Department of Aging and Disability Services (DADS) with the Texas Health and Human Services Commission (HHSC), revise references to program rules, and make minor editorial changes for clarity.

### COMMENTS

The 31-day comment period ended October 17, 2022.

During this period, HHSC did not receive any comments regarding the proposed rules.

HHSC revised proposed §272.3(20) to remove the term "working day" and instead added the term "business day" in §272.3(1) to be consistent with the use of "business day" in the waiver program rules. HHSC also renumbered the paragraphs in proposed §272.3. Further, HHSC revised proposed §272.33(d) to use "business day" instead of "working day."

HHSC revised proposed §272.3(1), renumbered as §273.(2), to add "(CLASS)" in the definition of "case manager" because the acronym for Community Living Assistance and Support Services must be established before the acronym is used again in §272.3.

HHSC revised proposed §272.3(2), renumbered as §272.3(3), to update the title and the reference to the Community Living Assistance and Support Services (CLASS) Program rules.

HHSC revised proposed §272.3(4), renumbered as §272.3(5), to update the reference to the Deaf Blind with Multiple Disabilities Program rules.

HHSC revised proposed §272.3(8), renumbered as §272.3(9), and revised §272.7(a) and (b) to update the references to the Home and Community-based Services (HCS) Program rules.

HHSC revised proposed §272.3(13), renumbered as §272.3(14), to make the definition of "LAR" consistent with the definition of "LAR" in the waiver program rules.

## SUBCHAPTER A. INTRODUCTION

### 26 TAC §§272.1, 272.3, 272.5, 272.7

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

#### §272.3. Definitions.

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

(1) 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).

(2) Case manager--The person who is responsible for case management activities in the Community Living Assistance and Support Services (CLASS), Medically Dependent Children Program (MDCP), and Deaf Blind with Multiple Disabilities (DBMD) Programs.

(3) CLASS Program--Community Living Assistance and Support Services Program. A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by the Texas Health and Human Services Commission (HHSC) under Chapter 259 of this title (relating to Community Living Assistance and Support Services (CLASS) Program and Community First Choice (CFC) Services).

(4) Day--A calendar day, unless otherwise specified in the text. A calendar day includes Saturday, Sunday, and a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(5) DBMD Program--Deaf Blind with Multiple Disabilities Program. A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by HHSC under Chapter 260 of

this title (relating to Deaf Blind with Multiple Disabilities (DBMD) Program and Community First Choice (CFC) Services).

(6) Facility--

(A) a nursing facility, for an individual enrolling in MDCP; or

(B) a nursing facility or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), for an individual enrolling in the DBMD Program or CLASS Program.

(7) GRO--General Residential Operation. This term has the meaning set forth in Texas Human Resources Code, §42.002.

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

(9) HCS Program--Home and Community-based Services Program. A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by HHSC under Chapter 263 of this title (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)).

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

(11) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by HHSC.

(12) Individual--A person for whom HHSC authorizes the delivery of transition assistance services (TAS).

(13) IPC--Individual plan of care.

(14) LAR--Legally authorized representative. A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(15) MDCP--Medically Dependent Children Program. A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by HHSC under 1 TAC §353.1155 (relating to Medically Dependent Children Program).

(16) Nursing facility--A facility licensed in accordance with Texas Health and Safety Code, Chapter 242.

(17) 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 Transition Assistance Services Orientation Handbook.

(18) 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.

(19) TAS--Transition assistance services.

(20) TAS provider--A person, as defined in 40 TAC §49.102, that has a contract with HHSC to provide TAS in accordance with 40 TAC Chapter 49 (relating to Contracting for Community Services).

§272.7. TAS in the HCS Program.

(a) An individual being discharged from a nursing facility, an ICF/IID, or a GRO and enrolling in the HCS Program may receive TAS from an HCS program provider in accordance with Chapter 263 of this title (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)).

(b) An HCS program provider may contract with a TAS provider to provide TAS in accordance with Chapter 263 of this title.

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-202300633

Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3501



## SUBCHAPTER B. TAS PROVIDER REQUIREMENTS

### 26 TAC §272.11

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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 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 D. SERVICE DELIVERY REQUIREMENTS

### 26 TAC §272.33

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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.

#### §272.33. Service Delivery.

(a) A TAS provider must:

(1) deliver TAS to an individual for whom the TAS provider receives, from the individual's case manager, a completed Transition Assistance Services (TAS) Assessment and Authorization form authorized by HHSC;

(2) deliver to the individual the specific TAS authorized on the form;

(3) purchase TAS for the individual within the monetary amount authorized on the form; and

(4) submit a service claim to HHSC only after all of the authorized TAS has been delivered to the individual.

(b) A TAS provider must complete the delivery of TAS to the individual at least two days before the individual's facility discharge date unless the delay in delivery is beyond the control of the TAS provider.

(c) If a TAS provider does not deliver the authorized TAS in accordance with subsection (b) of this section, the TAS provider must:

(1) document the following:

(A) a description of the pending TAS;

(B) the reason for the delay;

(C) the date the TAS provider anticipates it will deliver the pending TAS or specific reasons why the TAS provider cannot anticipate a delivery date; and

(D) a description of the TAS provider's ongoing efforts to deliver the TAS; and

(2) at least two days before the facility discharge date, provide the information described in paragraph (1) of this subsection to:

(A) the individual or LAR, or in MDCP, the individual's primary caregiver; and

(B) the case manager.

(d) A TAS provider must, within one business day after TAS has been delivered, notify the following persons that TAS has been delivered:

(1) the individual or LAR, or in MDCP, the individual's primary caregiver; and

(2) the case manager.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray  
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## SUBCHAPTER E. CLAIM PAYMENTS AND DOCUMENTATION

### 26 TAC §272.41

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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 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 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 210. USE OF RECLAIMED WATER

##### SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §210.5

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §210.5(a)

Amended §210.5(a) is adopted *without change* to the proposed text as published in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6515) and, therefore, the rule will not be republished.

#### Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking adoption will implement rule changes to 30 Texas Administrative Code (TAC) Chapter 210 (Use of Reclaimed Water) to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently

or any time after submittal of an application for a permit to treat and dispose of wastewater.

#### Section by Section Discussion

The commission adopts the amendment to §210.5 (Authorization for the Use of Reclaimed Water), which contains the requirements to obtain an authorization for the use of reclaimed water. This change will clarify under §210.5(a) that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.

The executive director (ED) is clarifying the timing of the application for efficient processing and as an incentive to promote reuse.

#### Final Regulatory Impact Determination

The TCEQ reviewed the rulemaking adoption in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC), §2001.0225 and determined that the rulemaking is not subject to TGC, §2001.0225(a) because it does not meet the definition of a "Major Environmental Rule" as defined in TGC, §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a "Major Environmental Rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major Environmental Rule" is 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 or the state.

The rulemaking adoption will amend the requirements in 30 TAC §210.5 for obtaining an authorization for the use of reclaimed water. This change will clarify under §210.5(a) that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.

Certain aspects of the TCEQ's rules for use of Reclaimed Water are intended to protect the environment or reduce risks to human health from environmental exposure. However, the rulemaking adoption will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor will the rulemaking adoption adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the commission finds that this rulemaking adoption does not fit the TGC, §2001.0225 definition of "Major Environmental Rule."

Even if this rulemaking was a "Major Environmental Rule," this rulemaking adoption meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather adds clarity to the rules that implement state law, as the ED is making clear the timing of and application for use of Reclaimed Water to promote efficient processing and as an incentive to promote reuse. Third, this rulemaking does not come under a delegation agreement or contract with a federal program, and finally, is not being adopted under the



TCEQ's general rulemaking authority. This rulemaking adoption is authorized under existing state law found in the Texas Water Code Chapter 26 (Water Quality Control) and §11.1271(e) that gives the commission authority to establish and regulate water quality, set standards to prevent the disposal of waste that is injurious to the public health, to control plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes, and specifically with §11.1271(e), requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier. Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact Analysis during the public comment period. No comments were received on the regulatory impact analysis determination.

#### Takings Impact Assessment

The TCEQ evaluated the rulemaking adoption and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007.

The specific purpose of the rulemaking adoption is to amend 30 TAC Chapter 210 (Use of Reclaimed Water) to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. Promulgation and enforcement of the adopted rule amendments will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TGC, Chapter 2007 does not apply to these adopted rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the rulemaking adoption does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These Chapter 210 rule amendments do not regulate property but instead regulate the use of Reclaimed Water. The primary purpose of the rulemaking is to amend 30 TAC §210.5(e), to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. The rulemaking adoption is reasonably taken to fulfill requirements of state law. Therefore, the rulemaking adoption will not cause a taking under TGC, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the rulemaking adoption is not subject to the Texas Coastal Management Program.

The commission invited public comments regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

#### Public Comment

The commission held a public hearing on November 7, 2022. The comment period closed on November 8, 2022. No public comments were received.

#### Statutory Authority

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts these amendments to TCEQ rules under Texas Water Code (TWC) Chapters 5, 11, and 26. TWC, §5.013 establishes the general jurisdiction of the commission, while TWC §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.011, provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.027, authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state. TWC, §26.0271 allows, at the request of an Applicant in any permit or amendment to a permit issued under Chapter 26, for the commission to authorize a wastewater treatment facility to contribute treated domestic wastewater, produced by the facility as reclaimed water, to a reuse water system if the commission has approved the use of reclaimed water from the wastewater treatment facility. TWC, §26.034, provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes. TWC, §26.041, gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state. Finally, TWC, §11.1271(e), requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.120, 26.011, 26.027, 26.0271, 26.034, 26.041, 26.121, and 11.1271(e).

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-202300655

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For further information, please call: (512) 239-2678



# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 10. TEXAS WATER DEVELOPMENT BOARD

### CHAPTER 358. STATE WATER PLANNING GUIDELINES

#### SUBCHAPTER B. DATA COLLECTION

##### 31 TAC §358.6

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code §358.6. The proposal is adopted without changes as published in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8028). The rule will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

Certain retail public utilities are required by Texas Water Code, Chapter 16 to submit water loss audits to the TWDB. The TWDB proposes a new validation requirement on water loss audits required by certain retail public utilities. Additionally, the TWDB is clarifying how it will apply water loss thresholds to retail public utilities based on a utility's service connection density and is adjusting the water loss threshold values to better ensure water loss mitigation is included as an effective strategy of utilities receiving financial assistance for drinking water projects.

#### SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

##### *Subchapter B. Data Collection.*

##### *Section 358.6. Water Loss Audits.*

Section 358.6(a) is revised to remove the definition of "Category or Categories" in §358.6(a)(5) to add a new definition of "Validation," relating to the process of review of water loss audits and related data submitted to the TWDB for administrative completeness.

Section 358.6(a) is revised to remove the definition of "Unavoidable annual real loss" in §358.6(a)(12) because it is no longer used in the rule.

Section 358.6(b) is revised to remove the stated effective date of §358.6(b)(4) as it has occurred, and the section is currently effective and operative.

Section 358.6(b) is revised to add new §358.6(b)(5) to provide a validation requirement for water loss audits and related data submitted to the TWDB and require the TWDB to create new validation guidelines.

Section 358.6(c) is revised to require that validation of a water loss audit is also required for the executive administrator to determine whether a water loss audit is administratively complete.

Section 358.6(e) is revised to clarify which water loss thresholds the TWDB will apply to certain retail public utilities.

Previous Section 358.6(e)(1) is removed to help clarify how the TWDB applies water loss thresholds of retail public utilities by service connection density.

Section 358.6(e)(2) is renumbered to §358.6(e)(1).

New §358.6(e)(1) clarifies how the TWDB will apply water loss thresholds to certain retail public utilities to conform with industry standard. It applies to those retail public utilities with more than or equal to 32 service connections per mile rather than population of 10,000 or fewer persons and a service connection density of more than or equal to 32 connections per mile.

New §358.6(e)(1)(B) revises the real loss threshold for these retail public utilities to be less than 30 gallons per connection per day from 50 gallons per connection per day based on currently available water loss data to the TWDB.

Previous Section 358.6(e)(3) is renumbered to §358.6(e)(2).

New §358.6(e)(2) clarifies how the TWDB will apply water loss thresholds to certain retail public utilities to conform with industry standard. It applies new water loss thresholds to certain retail public utilities with less than 32 service connections per mile rather than a population of 10,000 or fewer persons and a service connection density less than 32 connections per mile.

New §358.6(e)(2)(B) clarifies that real loss will be calculated based on a connection per day standard rather than a connection per mile standard to conform with industry standard. It revises the real loss threshold for these retail public utilities to be less than 57 gallons per connection per day from 1,600 gallons per mile per day.

Previous Section 358.6(e)(4) is renumbered to §358.6(e)(3).

New §358.6(e)(3) applies new water loss thresholds to utilities with a volume of wholesale water sales that flow through the retail distribution system.

New §358.6(e)(3)(A) removes the use of a modified calculation that includes wholesale volume to calculate apparent water loss and instead requires that apparent water loss expressed as gallons per connection per day must be less than the utility's allowed apparent water loss.

New §358.6(e)(3)(B) removes the use of a utility's unavoidable annual real loss as a method for calculating real loss. It instead requires that real loss, expressed as gallons per connection per day and including a wholesale factor that accounts for wholesale water volume must be less than the applicable real water loss thresholds as stated in proposed new §§358.6(e)(1) or (e)(2).

#### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to clarify how the TWDB will evaluate water loss audits submitted to it that are statutorily required for certain retail public utilities in compliance with Texas Water Code Chapter 16.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed

a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather complies instead with Section 16.0121, Texas Water Code. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify water loss audit thresholds for certain retail public utilities. The rule would substantially advance this stated purpose by requiring validation of water loss audit data submitted to the TWDB while also measuring water loss based on a retail public utility's service connection density rather than population and service connection density to match industry standards.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency charged with compiling this information for the appropriate development of water management strategies to be included in local, regional water plans.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with existing statewide water loss auditing requirements in Chapter 16, Texas Water Code without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The public comment period for this rulemaking ended on January 2, 2022. The following is a compilation of the public comments received including a response to each.

#### *Section 358.6(b)(5) Validation Requirements for Water Loss Audits*

Comment:

Several commenters submitted comments related to the proposed validation requirements for water loss audits. The National Wildlife Federation commends the TWDB for its efforts in implementing a new program. San Antonio Water System (SAWS) supports better audit data and performing water loss audits. SAWS requested to review the proposed TWDB guidelines for training certified validators. The City of Irving (City) also inquired about proposed TWDB validation guidelines, the timing related to it, for training related to water loss audit validation and for scheduling validations, and what impact the failure to schedule a validation audit will have on an entity requesting financial assistance. The City also asked if there were any proposed exemptions from the validation requirement related to water loss audits. El Paso Water requested the TWDB to provide training for water loss audit validations.

Response:

The TWDB acknowledges these comments. The first required water loss audit validation will be for the 2024 water loss audit that is due to the TWDB by May 1, 2025. The TWDB will be working with interested utilities prior to that date as the program is established. The TWDB water loss audit validation guidelines will be based on current validation guidelines developed by the Water Research Foundation, a leading research organization made up of the WaterReuse Association, the Water and the Environment Federation, and the American Water Works Association, that works towards advancing the science of all water to meet the evolving needs of the water sector. The water loss audit validation guidelines will also be based on the recognized methodology used by the American Water Works Association Water Loss Control Committee. The TWDB is still in the process of finalizing its water loss audit validation guidelines. These guidelines will be complete prior to the 2025 effective date of the requirement as proposed in the rule.

The TWDB does not plan to provide training to certify validators. Further, the TWDB intends to provide validation services directly to utilities when the validation requirements become effective. Should a utility prefer, there are firms that provide training certifying water loss audit validators and are recognized as providing certification through recognized training. The TWDB does not anticipate that financial assistance applications of affected utilities will be negatively affected by the requirement to perform a validation of a water loss audits and there are currently no exemptions provided in rule to the validation requirement related to water loss audits. The TWDB is in the process of determining which utilities may be asked to participate in validation prior to 2025.

The TWDB proposes no changes to the rule in response to these comments.

#### *Section 358.6(e), Water Loss Data and Related Thresholds*

Comment:

Several commenters asked about the new proposed water loss thresholds. SAWS asked how the 30 gallons per connection per day was derived, whether the standard was "achievable" and "appropriate," and how the TWDB will address variability and anomalies, e.g. drought, extreme temperatures and "workforce constraints," in terms of compliance with the thresholds? The National Wildlife Federation, El Paso Water, and Mr. Alan Wyatt also inquired how the proposed gallons per connection per day was derived. Mr. Wyatt asked additionally if other frameworks were considered and why thresholds for "apparent loss" were being dropped. The City questioned how the TWDB defined "con-

nection." El Paso Water also submitted comments about service connection density. It asked how "allowed apparent loss" was calculated and submitted additional comments inquiring about the effects on a utility when it exceeds the water loss thresholds for both apparent loss and real loss. El Paso Water also inquires about why "unavoidable real loss" has been deleted from the rule.

Response:

The real loss threshold of 30 gallons per connection per day, for utilities with 32 or more connections per mile, was derived from quality-controlled water loss audit data submitted to the TWDB from 2015 to 2020. TWDB staff analyzed the water loss audit data submitted from 2015 to 2020 and determined the median value as an appropriate threshold for each connection density used for setting the thresholds for real water loss. Connection means service connection, the number of connections extending from the water main to supply water to a customer or use, excluding fire hydrants or flushing. It includes pressurized piping connections, including fire connections, whether active or inactive. This may differ from the number of customer or accounts the utility serves. Connection density and the use of a single delineation at 32 connections was used for a simplified approach to determining the threshold (as is used by the American Water Works Association's Water Loss Control Committee) and has been used as a delineation between high density and low density water utilities since the thresholds were originally established. The water loss thresholds are used as an indicator of water loss that exceeds that of comparable utilities and are used by the TWDB to determine when mitigation of water loss is required by utilities requesting financial assistance for a water supply project from TWDB. The thresholds are not intended to be targets for water loss performance.

With respect to issues related to variability, neither the current water loss rules nor the proposed amendments address the commenters concerns. The TWDB works with all utilities in reviewing their water loss audits and considers all pertinent information when reviewing a request for financial assistance. Additionally, the thresholds were developed using data from six years of quality-controlled water loss audits; therefore, any variability in the data used to derive the threshold is likely minimal.

The thresholds for apparent loss remain. Allowed apparent loss as a threshold for apparent loss is a utility-specific value derived from a calculation that accounts for the components of apparent loss: customer meter accuracy loss, data handling errors, and unauthorized consumption.  $Apparent\ loss = ((0.053 V_m) + (0.0025 V_{ba}) + (0.0025 V_{ba})) / (365 N_c)$ . Where  $V_m$  is the billed metered volume of the water loss audit,  $V_{ba}$  is the billed authorized volume of water from the audit, and  $N_c$  is the number of service connections. A reference to apparent loss as part of the wholesale factor was removed because it was not necessary. The wholesale factor calculation does not consider a utility's apparent loss. Under the proposed rules, unavoidable real loss will no longer be used as a metric for real loss thresholds or elsewhere, therefore, the definition is no longer necessary. Unavoidable real loss remains as a calculated value on the water loss audit worksheet.

Thresholds are applied when a utility is applying for financial assistance for a water supply project. If the utility's water loss meets or exceeds the applicable threshold for that utility, the retail public utility must use a portion of any financial assistance

received from the board to mitigate the utility's water loss. The retail public utility in conjunction with the executive administrator determine the mitigation required for the project.

The TWDB proposes no changes to the rule in response to these comments.

#### *Comments Related to Combined Real Loss Indicator*

Comment:

Mr. Wyatt commented that the TWDB should use Combine Real Loss Indicator (CRLI) in its water loss audit calculations for future usefulness. Both Mr. Wyatt and the National Wildlife Federation commented that the TWDB should consider using a "Good Performance Level" as that term is used in a report published by the National Wildlife Federation.

Response:

The TWDB acknowledges these comments. TWDB's proposed water loss thresholds are based on six years of quality-controlled water loss audit data. These proposed thresholds, along with the current threshold framework, balances the need for many utilities to mitigate water loss with the efficient use of state resources and the variability in factors for the cause and the mitigation of losses. Our proposed thresholds do increase the number of potentially affected utilities from the current thresholds.

The TWDB proposes no changes to the rule in response to these comments.

#### **AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)**

The TWDB reviewed the rulemaking in light of the statutory requirement for the Agency to review existing rules in Texas Government Code §2001.039 and has determined that the rulemaking to 31 TAC §358.6 is necessary to comply with §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and also specifically under §16.0121, Texas Water Code, which imposes a requirement on the TWDB to develop methodologies for water loss audits. Therefore, the rulemaking is re-adopted with amendments.

#### **STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))**

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code Section 6.0121.

Cross-reference to statute: This rulemaking affects Texas Water Code, Chapter 16, Subchapter B.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-7686



## CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code (TAC) §363.45 and amends 31 TAC §363.2 relating to the use of Alternative Delivery Guidance. 31 TAC §363.2 is adopted with changes to the text as published in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8031) and will be republished. 31 TAC §363.45 is adopted without changes as published in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8031) and will not be republished.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE AMENDMENT.

The Texas Legislature amended Texas Government Code Chapter 2269 to allow the use of alternative project delivery methods for the construction of public works projects, including water and wastewater projects, financed by the TWDB. Regardless of the project delivery method employed, all applicants for TWDB program funding must meet program requirements.

To accommodate methods such as Construction Manager-at-Risk (CMAR) and Design-Build (D-B) in addition to the more common Design-Bid-Build, the TWDB has prepared guidance for the use of CMAR and DB delivery methods. In conjunction with these amendments, the guidance will provide further detail and explanation. The additions and amendments to TWDB rules incorporate this document to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

### SECTION BY SECTION DISCUSSION OF THE AMENDMENTS.

#### 31 TAC §363.2(2) Definitions of Terms

Section 363.2 is amended by adding new paragraph (2) "Alternative Delivery Guidance" to identify the Guidance for Use of Construction-Manager-at-Risk and Design-Build Project Delivery Methods that provides for the alternative methods of delivery. All subsequent paragraphs are renumbered.

#### 31 TAC §363.45 Use of Alternative Delivery Guidance

Section 363.45 is added to describe the process by which an applicant will use an alternative delivery method rather than Design-Bid-Build project delivery.

### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs

for state and local governments. Any savings will relate to local project costs. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. While these rules do not directly result in changes in costs for state or local governments, the use of alternative delivery methods in general may provide cost savings to local governments who utilize those methods. These rules clarify that local governments may use these statutorily-authorized alternative delivery methods for TWDB-financed projects.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code; and are necessary to protect the health, safety, and welfare of the residents of this state.

### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers. Ms. Trevino also has determined that for each year of the first five years the rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

### LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §2001.022)

The TWDB has determined that a local employment impact statement is not required because the rule does not adversely affect a local economy in a material way for the first five years that the rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking. Therefore, no regulatory flexibility analysis is necessary.

### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to clarify requirements for TWDB borrowers.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §§15.001, 15.6041, and 15.605. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB borrowers. The rule would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the financing programs.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that reviews contract documents, including those using alternative delivery methods.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding construction of public works projects financed by the TWDB without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the rule would be in effect, the rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3)

require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

No public comments were received during the public comment period.

### SUBCHAPTER A. GENERAL PROVISIONS DIVISION 1. INTRODUCTORY PROVISIONS

#### 31 TAC §363.2

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.439, 15.537, 17.183, and 17.186.

This rulemaking affects Water Code, Chapters 15 and 17.

#### §363.2. *Definitions of Terms.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Applicant--The entity applying for financial assistance, including the entity that receives the financial assistance, the entity that owns the project funded under this chapter, or an entity authorized to act on behalf of the applicant.

(2) Alternative Delivery Guidance--A document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

(3) Board--Texas Water Development Board.

(4) Building--Erecting, building, acquiring, altering, remodeling, improving, or extending a water supply project, treatment works, or flood control measures.

(5) Certification of trust--An instrument executed by a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the loan proceeds in accordance with §114.086, Texas Property Code.

(6) Closing--The time at which the requirements for loan closing have been completed under §363.42 of this title (relating to Loan Closing) and an exchange of debt for delivery of funds to either the applicant, an escrow agent bank, or a trust agent has occurred.

(7) Commission--Texas Commission on Environmental Quality.

(8) Commitment--An offer by the board to provide financial assistance to an applicant who timely fulfills the conditions required in a board resolution.

(9) Construction account--A separate account created and maintained for the deposit of loan funds and utilized by the applicant to pay eligible expenses of the project.

(10) Corporation--A nonprofit water supply corporation created and operating under Texas Water Code, Chapter 67.

(11) Debt--All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.

(12) Department--Texas Department of State Health Services.

(13) Escrow account--A separate account maintained by an escrow agent for the board's deposit of escrowed funds until such funds are eligible for release to the construction account.

(14) Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral as designated in accordance with Texas Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

(15) Executive administrator--The executive administrator of the board or a designated representative.

(16) Financial assistance--Loans, grants, or state acquisition of facilities by the board pursuant to the Texas Water Code, Chapters 15, Subchapters B, C, E, G, H, O, P, and Q; Chapter 16, Subchapters E, and F; Chapter 17, Subchapters D, F, G, I, K, and L; and Chapter 36, Subchapter L.

(17) Grants--Financial assistance provided by the board for which repayment is not required.

(18) Innovative technology--Nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation or other technologies which represent a significant advance in the state of the art.

(19) Legislative Designation--A designation made by the legislature in accordance with §16.051(f) and (g), Texas Water Code.

(20) Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals developed pursuant to a water conservation plan.

(21) Pre-design commitment--A commitment by the board prior to completion of planning or design pursuant to §363.16 of this title (relating to Pre-design Funding Option).

(22) Private placement memorandum--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(23) Release--The time at which funds are made available to the loan or grant recipient or to a state participation recipient pursuant to a master agreement.

(24) SWIFT--The state water implementation fund for Texas.

(25) SWIRFT--The state water implementation revenue fund for Texas.

(26) Water Plan--The current state water plan prepared and adopted in accordance with Texas Water Code, §16.051.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300622

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: March 1, 2023

Proposal publication date: December 2, 2022

For further information, please call: (512) 463-7686



## DIVISION 4. PREREQUISITES TO RELEASE OF STATE FUNDS

### 31 TAC §363.45

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The new rule is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.439, 15.537, 17.183, and 17.186.

This rulemaking affects Water Code, Chapters 15 and 17.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300623

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: March 1, 2023

Proposal publication date: December 2, 2022

For further information, please call: (512) 463-7686



## CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) adopts the amendment to 31 Texas Administrative Code (TAC) §371.1 relating to Definitions of Terms and adopts new 31 Texas Administrative Code (TAC) §371.64. Section 371.1 is adopted with changes to correct the alphabetization of the definitions as published in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8034). This section will be republished. Section 371.64 is adopted without changes as published in the

December 2, 2022, issue of the *Texas Register* (47 TexReg 8034). This section will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE AMENDMENT.

The Texas Legislature amended Texas Government Code Chapter 2269 to allow the use of alternative project delivery methods for the construction of public works projects, including water and wastewater projects, financed by the TWDB. Regardless of the project delivery method employed, all applicants for TWDB program funding must meet program requirements.

To accommodate methods such as Construction Manager-at-Risk (CMAR) and Design-Build (D-B) in addition to the more common Design-Bid-Build, the TWDB has prepared guidance for the use of CMAR and DB delivery methods. In conjunction with these amendments, the guidance will provide further detail and explanation. The additions and amendments to TWDB rules incorporate this document to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

#### SECTION BY SECTION DISCUSSION OF AMENDMENTS.

##### 31 TAC §371.1(3) Definitions of Terms

Section 371.1 is amended by adding paragraph (3) "Alternative Delivery Guidance" to identify the Guidance for Use of Construction-Manager-at-Risk and Design-Build Project Delivery Methods that provides for the alternative methods of delivery.

##### 31 TAC §371.64 Use of Alternative Delivery Guidance

Section 371.64 is added to describe the process by which an applicant will use an alternative delivery method rather than Design-Bid-Build project delivery.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments. Any savings will relate to local project costs. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. While these rules do not directly result in changes in costs for state or local governments, the use of alternative delivery methods in general may provide cost savings to local governments who utilize those methods. These rules clarify that local governments may use these statutorily-authorized alternative delivery methods for TWDB-financed projects.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code;

and are necessary to protect the health, safety, and welfare of the residents of this state.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers. Ms. Trevino also has determined that for each year of the first five years the rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

#### LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §2001.022)

The TWDB has determined that a local employment impact statement is not required because the rule does not adversely affect a local economy in a material way for the first five years that the rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking. Therefore, no regulatory flexibility analysis is necessary.

#### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to clarify requirements for TWDB borrowers.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §§15.001, 15.6041, and 15.605. Therefore, this rule does



not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB borrowers. The rule would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the financing programs.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that reviews contract documents, including those using alternative delivery methods.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding construction of public works projects financed by the TWDB without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the rule would be in effect, the rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

No public comments were received during the public comment period.

### SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

#### 31 TAC §371.1

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to

adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.6041, and 15.605.

This rulemaking affects Water Code, Chapter 15.

#### §371.1. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Acquisition--The Applicant obtaining interests in land for the purposes of locating eligible project components.

(2) Act--The Federal Safe Drinking Water Act, 42 U.S.C. §300f et seq.

(3) Alternative Delivery Guidance--A document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

(4) Applicant--The entity applying for financial assistance from the DWSRF including:

(A) the entity that receives the financial assistance; and

(B) the entity legally responsible to repay the debt.

(5) Application--The information and supporting documentation submitted by or on behalf of the Applicant that may be used for commitment for financial assistance from the DWSRF or that the executive administrator determines must be completed for consideration for financial assistance from the DWSRF.

(6) Authorized representative--The signatory agent authorized and directed by the Applicant's governing body to file the application and to sign documents relating to the project, on behalf of the Applicant.

(7) Board--The Texas Water Development Board.

(8) Bonds--All bonds, notes, certificates of obligation, and book-entry obligations authorized to be issued by any political subdivision.

(9) Bypass--To pass over a higher ranked project in favor of a lower ranked project to ensure that funds available are utilized in a timely manner, to select an interrelated project, or to meet statutory and capitalization grant requirements as delineated in the applicable IUP.

(10) Capitalization grant--The federal grant funds awarded annually by the EPA to the State for capitalization of the DWSRF.

(11) Certification of Trust--An instrument executed by a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the financial assistance proceeds in accordance with §114.086, Texas Property Code.

(12) Closing--The exchange of the Applicant's approved debt instruments for DWSRF financial assistance.

(13) Commission--The Texas Commission on Environmental Quality.

(14) Commitment--An offer by the Board to provide financial assistance to an Applicant as evidenced by a Board resolution.

(15) Community water system--A public water system that:

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(16) Consolidation--Any one of the following activities:

(A) a public water system acquiring another public water system;

(B) a public water system providing retail service to another public water system; or

(C) a public water system providing wholesale service, which may include operation of the system, to another public water system.

(17) Construction account--A separate account created and maintained for the deposit of financial assistance and utilized by the Applicant to pay eligible expenses for the project.

(18) Construction phase--The erection, acquisition, alteration, remodeling, rehabilitation, improvement, extension, or other man-made change necessary for an eligible project or activity.

(19) Contaminant--Any physical, chemical, biological, or radiological substance present in water.

(20) Contract documents--The engineering documentation relating to the project including engineering drawings, maps, technical specifications, design reports, instructions, and other contract conditions and forms that are in sufficient detail to allow contractors to bid on the work.

(21) Davis-Bacon Act--The federal statute at 40 U.S.C. §3141 et seq. and in conformance with the U.S. Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and 29 CFR Part 3 (Contractors and Subcontractors on Public Building or Work Financed in Whole or in Part by Loans or Grants from the United States).

(22) Debt--All bonds or other documents issued or to be issued by any political subdivision or eligible Applicant pledging repayment of the Board's financial assistance.

(23) Design--The project phase during which the project design documents are prepared by the Applicant. Documents may include design surveys, plans, working drawings, specifications, and any procedures and protocols to be used during the construction of the project.

(24) Disadvantaged community--A community that meets the affordability criteria based on income, unemployment rates, and population trends. Specifically, the service area of an eligible applicant, the service area of a community that is located outside the entity's service area, or a portion within the entity's service area if the proposed project is providing new service to existing residents in unserved areas; and meets the following affordability criteria: (a) has an annual median household income that is no more than 75 percent of the state median household income using an acceptable source of socioeconomic data, and (b) the household cost factor that considers income, unemployment rates, and population trends must be greater than or equal to one percent if only water or sewer service is provided or greater than or equal to two percent if both water and sewer service are provided. The required data and calculations of the household cost factor are specified in the IUP under which the project would receive funding.

(25) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake,

wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency as defined in Texas Government Code §418.004.

(26) Drinking Water State Revolving Fund (DWSRF)--The financial assistance program authorized by Texas Water Code, Chapter 15, Subchapter J in accordance with the Act.

(27) Eligible Applicant--Any of the following entities:

(A) a nonprofit noncommunity water system;

(B) a nonprofit community water system;

(C) a political subdivision that is a municipality, intermunicipal, interstate or state agency, or a nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code;

(D) privately-owned community water system; or

(E) any other entity eligible under federal law to receive funds from the DWSRF.

(28) Engineering feasibility report--Those necessary plans and studies that directly relate to the project and that are needed in order to assure compliance with the enforceable requirements of the Act and state statutes.

(29) EPA--The United States Environmental Protection Agency or a designated representative.

(30) Equivalency projects--Those funded projects that must follow all federal cross-cutter requirements.

(31) Escrow account--A separate account maintained by an escrow agent until such funds are eligible for release to the construction account.

(32) Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code Chapter 404, Subchapter C;

(B) a custodian of collateral as designated in accordance with Texas Government Code Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Texas Local Government Code Chapter 104.

(33) Executive administrator--The executive administrator of the Board or a designated representative.

(34) Expiration date--The date on which the Board's offer of financial assistance is no longer open or valid and by which a Closing must occur.

(35) Financial assistance--Funding made available to eligible Applicants as authorized in 40 CFR §35.3525, including principal forgiveness.

(36) Force majeure--Acts of god, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other incapacities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

(37) Green project--A project or components of a project that, when implemented, will result in energy efficiency, water efficiency, green infrastructure, or environmental innovation that is characterized as a green project either categorically or by utilizing a business case as approved by the executive administrator.

(38) Green project reserve--A federal directive requiring a specified portion of the capitalization grant to be used for green projects.

(39) Initial Invited Projects List--That portion of the Project Priority List listing the eligible projects ranked according to their rating that will initially be invited to submit applications in accordance with procedures and deadlines as detailed in the applicable IUP.

(40) Intended Use Plan (IUP)--A document prepared annually by the Board, after public review and comment, which identifies the intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

(41) Lending rate--The rate of interest applicable to financial assistance that must be repaid.

(42) Market interest rates--Interest rates comparable to those attained for securities in an open market offering.

(43) Municipality--A city, town, or other public body created by or pursuant to state law.

(44) Non-equivalency projects--All projects other than Equivalency projects.

(45) Nonprofit organization--Any legal entity that is recognized as a tax-exempt organization by the Texas Comptroller of Public Accounts pursuant to 34 Texas Administrative Code, Part 1, Chapter 3, Subchapter O (relating to State and Local Sales and Use Taxes).

(46) Nonprofit noncommunity (NPNC) water system--A public water system that is not operated for profit, is owned by a political subdivision or nonprofit entity, and is not a community water system.

(47) Outlay report--The Board's form used to report costs incurred on the project.

(48) Permit--Any permit, license, registration, or other legal document required from any local, regional, state, or federal government for construction of the project.

(49) Person--An individual, corporation, partnership, association, State, municipality, commission, or political subdivision of the State, or any interstate body, as defined by 33 U.S.C. §1362, including a political subdivision as defined by Chapter 15, Subchapter J, of the Texas Water Code, if the person is eligible for financial assistance under the Act.

(50) Planning--The project phase during which the Applicant identifies and evaluates potential alternatives to meet the needs of the proposed project. It includes the environmental review described in Subchapter E of this Chapter and preparation of the engineering feasibility report as described in Subchapter F of this Chapter.

(51) Political subdivision--A municipality, intermunicipal, interstate, or state agency, any other public entity eligible for assistance, or a nonprofit water supply corporation created and operating under Texas Water Code Chapter 67.

(52) Population--The number of people who reside within the territorial boundaries of or receive wholesale or retail water service from the Applicant based upon data that is acceptable to the executive administrator and which includes the following:

(A) acceptable demographic projections or other information in the engineering feasibility report or the latest official data available from the U.S. Census Bureau for an incorporated city; or

(B) information on the population for which the project is designed, where the Applicant is not an incorporated city or town.

(53) Primary drinking water regulation--Regulations promulgated by EPA which:

(A) apply to public and private water systems;

(B) specify contaminants which, in the judgment of the EPA, may have any adverse effect on the health of persons;

(C) specify for each such contaminant either:

(i) a maximum contaminant level if, in the judgment of the EPA, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

(ii) if, in the judgment of the EPA, it is not economically or technologically feasible to ascertain the level of such contaminant, each treatment technique known to the EPA which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of the Act; and

(D) contain criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels including quality control and testing procedures to ensure compliance with such levels and to ensure the proper operation and maintenance of the system, and requirements as to:

(i) the minimum quality of water which may be taken into the system; and

(ii) the siting of new facilities for public water systems.

(54) Principal forgiveness--A type of additional subsidization authorized by 42 U.S.C. §300j-12(d) or federal appropriations acts, as detailed in the Intended Use Plan and principal forgiveness agreement or bond transcript applicable to the project.

(55) Private Placement Memorandum (PPM)--A document functionally similar to an "official statement" used in connection with an offering of municipal securities in a private placement.

(56) Project--The planning, acquisition, environmental review, design, construction, and other activities designed to accomplish the objectives, goals, and policies of the Act.

(57) Project engineer--The engineer retained by the Applicant to provide professional engineering services during any phase of a project.

(58) Project Information Form (PIF)--The form that the executive administrator determines must be submitted by Applicants for rating and ranking on an IUP.

(59) Project Priority List--A listing found in the IUP of projects eligible for funding, ranked according to their rating criteria score and that may be further prioritized as described in the applicable IUP.

(60) Public water system--

(A) In General. A system that provides water to the public for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

(i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) Connections. A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:

(i) the water is used exclusively for purposes other than residential use (consisting of drinking, bathing, cooking, or other similar uses);

(ii) the EPA or the Commission determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(iii) the EPA or the Commission determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(C) Irrigation districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar uses shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subparagraph (B)(ii) and (iii) of this paragraph.

(D) Transition period. A water supplier that would be a public water system only as a result of modifications made shall not be considered a public water system until two years after August 6, 1996. If a water supplier does not serve 15 service connections or 25 people at any time after the conclusion of the two-year period, the water supplier shall not be considered a public water system.

(61) Ready to proceed--A project for which available information indicates that there are no significant permitting, land acquisition, social, contractual, environmental, engineering, or financial issues that would keep the project from proceeding in a timely manner to the construction phase of the project.

(62) Release of funds--The sequence and timing for Applicant's release of financial assistance funds from the escrow account to the construction account.

(63) Secondary drinking water regulation--Regulations promulgated by EPA which apply to public water systems and which specify the maximum contaminant levels which, in the judgment of the EPA, are necessary to protect the public welfare. Such regulations may vary according to geographic and other circumstances and may apply to any contaminant in drinking water:

(A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use; or

(B) which may otherwise adversely affect the public welfare.

(64) Small water system--A system that serves ten thousand persons or fewer.

(65) State--The State of Texas.

(66) Subsidy--A reduction in the interest rate from the market interest rate.

(67) Utility Commission--The Public Utility Commission of Texas.

(68) Water conservation plan--A plan that complies with the requirements of Texas Water Code §16.4021.

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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Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7686



## SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

### 31 TAC §371.64

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.6041, and 15.605.

This rulemaking affects Water Code, Chapter 15.

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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## CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) adopts the amendment to 31 Texas Administrative Code (TAC) §375.1 relating to the use of Alternative Delivery Guidance and adopts new 31 Texas Administrative Code (TAC) §375.84. Section

375.1 is adopted with changes to correct the alphabetization of the definitions as published in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8035). This section will be republished. Section 375.84 is adopted without changes as published in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8035). This section will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE AMENDMENT.

The Texas Legislature amended Texas Government Code Chapter 2269 to allow the use of alternative project delivery methods for the construction of public works projects, including water and wastewater projects, financed by the TWDB. Regardless of the project delivery method employed, all applicants for TWDB program funding must meet program requirements.

To accommodate methods such as Construction Manager-at-Risk (CMAR) and Design-Build (D-B) in addition to the more common Design-Bid-Build, the TWDB has prepared guidance for the use of CMAR and DB delivery methods. In conjunction with these amendments, the guidance will provide further detail and explanation. The additions and amendments to TWDB rules incorporate this document to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

#### SECTION BY SECTION DISCUSSION OF THE AMENDMENTS.

##### 31 TAC §375.1(71) Definitions of Terms

Section 375.1 is amended by adding subsection (3) "Alternative Delivery Guidance" to identify the Guidance for Use of Construction-Manager-at-Risk and Design-Build Project Delivery Methods that provides for the alternative methods of delivery.

##### 31 TAC §375.84 Use of Alternative Delivery Guidance

Section 375.84 is added to describe the process by which an applicant will use an alternative delivery method rather than Design-Bid-Build project delivery.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments. Any savings will relate to local project costs. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. While these rules do not directly result in changes in costs for state or local governments, the use of alternative delivery methods in general may provide cost savings to local governments who utilize those methods. These rules clarify that local governments may use these statutorily-authorized alternative delivery methods for TWDB-financed projects.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code,

§2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code; and are necessary to protect the health, safety, and welfare of the residents of this state.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers. Ms. Trevino also has determined that for each year of the first five years the rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

#### LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §2001.022)

The TWDB has determined that a local employment impact statement is not required because the rule does not adversely affect a local economy in a material way for the first five years that the rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking. Therefore, no regulatory flexibility analysis is necessary.

#### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to clarify requirements for TWDB borrowers.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an

agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §§15.001, 15.6041, and 15.605. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB borrowers. The rule would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the financing programs.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that reviews contract documents, including those using alternative delivery methods.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding construction of public works projects financed by the TWDB without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the rule would be in effect, the rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

No public comments were received during the public comment period.

### SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

#### 31 TAC §375.1

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.601, 15.603, and 15.605.

This rulemaking affects Water Code, Chapter 15.

#### §375.1. Definitions.

The following words and terms have the following meanings when used in this chapter, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code and not defined here shall have the meanings provided by Chapter 15.

(1) Acquisition--The Applicant obtaining interests in land that are necessary for construction or land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land.

(2) Act--The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.

(3) Alternative Delivery Guidance--A document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

(4) Applicant--The entity applying for financial assistance from the CWSRF including:

- (A) the entity that receives the financial assistance, and
- (B) the entity legally responsible to repay the debt.

(5) Application--The information and supporting documentation submitted by or on behalf of the Applicant that may be used in consideration for financial assistance from the CWSRF or that the executive administrator determines must be completed for consideration for financial assistance from the CWSRF.

(6) Authorized representative--The signatory agent authorized and directed by the Applicant's governing body to file the application and to sign documents relating to the project, on behalf of the Applicant.

(7) Board--The Texas Water Development Board.

(8) Bonds--All bonds, notes, certificates of obligation, and book-entry obligations authorized to be issued by any political subdivision.

(9) Bypass--To pass over a higher ranked project in favor of a lower ranked project to ensure that funds available are utilized in a timely manner, to select an interrelated project, or to meet statutory and capitalization grant requirements as delineated in the applicable IUP.

(10) Capitalization grant--The federal grant funds awarded annually by the EPA to the State for capitalization of the CWSRF.

(11) Certification of Trust--An instrument executed by a home rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the financial assistance proceeds in accordance with §114.086, Texas Property Code.

(12) Clean Water State Revolving Fund (CWSRF)--The financial assistance program authorized by Texas Water Code, Chapter 15, Subchapter J in accordance with the Act.

(13) Closing--The exchange of the Applicant's approved debt instruments for CWSRF financial assistance.

(14) Commission--The Texas Commission on Environmental Quality.

(15) Commitment--An offer by the Board to provide financial assistance to an Applicant as evidenced by a Board resolution.

(16) Construction--Any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques meeting guidelines promulgated under 33 U.S.C. §1314(d)(3), or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works or the inspection or supervision of any of the foregoing items.

(17) Construction account--A separate account created and maintained for the deposit of financial assistance and utilized by the Applicant to pay eligible expenses of the project.

(18) Construction phase--The erection, acquisition, alteration, remodel, rehabilitation, improvement, extension, or other man-made change necessary for an eligible project or activity.

(19) Contract documents--The engineering documentation relating to the project including engineering drawings, maps, technical specifications, design reports, instructions, and other contract conditions and forms that are in sufficient detail to allow contractors to bid on the work.

(20) Cost and Effectiveness Analysis--The study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity; and the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation; taking into account (i) the cost of constructing the project or activity, (ii) the cost of operating and maintaining the project or activity over the life of the project or activity, and (iii) the cost of replacing the project or activity.

(21) Davis Bacon Act--The federal statute at 40 U.S.C. §§3141 et seq. and in conformance with the U.S. Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and 29 CFR Part 3 (Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States).

(22) Debt--All bonds or other documents issued or to be issued by any political subdivision or eligible Applicant pledging repayment of the Board's financial assistance.

(23) Design--The project phase during which the project design documents are prepared by the Applicant. Documents may include design surveys, plans, working drawings, specifications and any procedures and protocols to be used during the construction phase of the project.

(24) Disadvantaged community--A community that meets the affordability criteria based on income, unemployment rates, and population trends. Specifically, the service area of an eligible applicant, the service area of a community that is located outside the entity's

service area, or a portion within the entity's service area if the proposed project is providing new service to existing residents in unserved areas; and meets the following affordability criteria: (a) has an annual median household income that is no more than 75 percent of the state median household income using an acceptable source of socioeconomic data, and (b) the household cost factor that considers income, unemployment rates, and population trends must be greater than or equal to one percent if only water or sewer service is provided or greater than or equal to two percent if both water and sewer service are provided. The required data and calculations of the household cost factor are specified in the Intended Use Plan under which the project would receive funding.

(25) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency as defined in Texas Government Code, §418.004.

(26) Eligible Applicant--Any of the following entities:

(A) a waste treatment management agency including any interstate agencies, or any city, commission, county, district, river authority, or other public body created by or pursuant to state law that has authority to dispose of sewage, industrial wastes, or other waste, or a special purpose district that finances, on behalf of its members, waste disposal projects;

(B) an authorized Indian tribal organization;

(C) any person applying for financial assistance to build a nonpoint source pollution control project pursuant to 33 U.S.C. §1329;

(D) any person applying for financial assistance for an estuary management project pursuant to 33 U.S.C. §1330;

(E) any entity or person applying for financial assistance as authorized under 33 U.S.C. §1383(c); or

(F) any other entity eligible under federal law to receive funds from the CWSRF.

(27) Engineering feasibility report--Those necessary plans and studies that directly relate to the project and that are needed in order to assure compliance with the enforceable requirements of the Act and state statutes.

(28) EPA--The United States Environmental Protection Agency or a designated representative.

(29) Equivalency projects--Those projects funded that must follow all federal cross cutter requirements.

(30) Escrow account--A separate account maintained by an escrow agent until such funds are eligible for release to the construction account.

(31) Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral in accordance with the Texas Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

(32) Estuary management plan--A plan for the conservation and management of an estuary of national significance as described in 33 U.S.C. §1330.

(33) Estuary management project--A project to develop or implement an estuary management plan.

(34) Executive administrator--The executive administrator of the Board or a designated representative.

(35) Expiration date--The date on which the Board's offer of financial assistance is no longer open or valid and by which a Closing must occur.

(36) Financial assistance--Funding made available to eligible Applicants, as authorized in 33 U.S.C. §1383(d), including principal forgiveness.

(37) Fiscal sustainability plan--At a minimum, it includes:

(A) an inventory of critical assets that are part of the treatment works;

(B) an evaluation of the condition and performance of inventoried assets or asset groupings;

(C) a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

(D) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

(38) Force majeure--Acts of god, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other incapacities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

(39) Green project--A project or components of a project that, when implemented, will result in energy efficiency, water efficiency, green infrastructure, or environmental innovation and that are characterized as green projects either categorically or by utilizing a business case as approved by the executive administrator.

(40) Green project reserve--A federal directive requiring a specified portion of the capitalization grant to finance green projects.

(41) Initial Invited Project List--That portion of the Project Priority List listing the eligible projects, ranked according to their rating, that will initially be invited to submit applications in accordance with procedures and deadlines as detailed in the applicable Intended Use Plan.

(42) Intended Use Plan (IUP)--A document prepared annually by the Board, after public review and comment, which identifies the intended uses of all CWSRF program funds and describes how those uses support the overall goals of the CWSRF.

(43) Lending rate--The rate of interest applicable to financial assistance that must be repaid.

(44) Market interest rate--Interest rates comparable to those attained for securities in an open market offering.

(45) Municipality--A city, town, borough, county, parish, district, association, or other public body created by or pursuant to state law, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. §1288.

(46) Non-equivalency projects--All projects other than Equivalency projects.

(47) Nonpoint source pollution plan--A plan for managing nonpoint source pollution as described in 33 U.S.C. §1329. Nonpoint source pollution is any source of water pollution that does not enter water from a point source and includes pollution generally resulting from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification.

(48) Nonpoint source pollution project--A project implemented pursuant to a nonpoint source pollution plan.

(49) Outlay report--The Board's form used to report costs incurred on the project.

(50) Permit--Any permit, license, registration, or other legal document required from any local, regional, state, or federal government for construction of the project.

(51) Person--An individual, corporation, partnership, association, State, municipality, commission, or political subdivision of the State, or any interstate body.

(52) Planning--The project phase during which the Applicant identifies and evaluates potential alternatives to meet the needs of the proposed project. It includes the cost and effectiveness analysis and environmental review described in Subchapter E of this chapter and preparation of the engineering feasibility report described in Subchapter F of this chapter.

(53) Point source--Any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(54) Political subdivision--A municipality, intermunicipal, interstate, or state agency, or any other public entity eligible for assistance under Texas Water Code Chapter 16, Subchapter J, or a non-profit water supply corporation created and operating under Texas Water Code Chapter 67, if such entity is eligible for financial assistance under federal law.

(55) Population--The number of people who reside within the territorial boundaries of or receive wholesale or retail wastewater service from the Applicant based upon data that is acceptable to the executive administrator and which includes the following:

(A) acceptable demographic projections or other information in the engineering feasibility report or the latest official data from the U.S. Census Bureau for an incorporated city; or

(B) information on the population for which the project is designed, where the Applicant is not an incorporated city or town.

(56) Principal forgiveness--A type of additional subsidization authorized by 33 U.S.C. §1383(i) or federal appropriations acts, as detailed in the Intended Use Plan and principal forgiveness agreement or bond transcript applicable to the project.

(57) Private Placement Memorandum (PPM)--A document functionally similar to an "official statement" used in connection with an offering of municipal securities in a private placement.



(58) Project--The planning, acquisition, environmental review, design, construction, and other activities designed to accomplish the objectives, goals, and policies of the Act by providing assistance for projects and activities identified in 33 U.S.C. §1383(c), which may include those projects eligible for funding under §375.2 of this title.

(59) Project engineer--The engineer retained by the Applicant to provide professional engineering services during any phase of a project.

(60) Project information form (PIF)--The form that the executive administrator determines must be submitted by Applicants for rating and ranking in an IUP.

(61) Project Priority List--A listing, found in the IUP, of projects eligible for funding, ranked according to their rating criteria score and that may be further prioritized as described in the applicable IUP.

(62) Ready to proceed--A project for which available information indicates that there are no significant permitting, land acquisition, social, contractual, environmental, engineering, or financial issues that would keep the project from proceeding in a timely manner to the construction phase of a project.

(63) Release of funds--The sequence and timing for Applicant's release of financial assistance funds from the escrow account to the construction account.

(64) Small and Medium-Sized Publicly Owned Treatment Works--A Publicly Owned Treatment Work with a design flow equal to or less than 5 million gallons per day.

(65) Small systems--Those systems that serve a population of not more than ten thousand individuals.

(66) State--The State of Texas.

(67) Subsidy--A reduction in the interest rate from the market interest rate.

(68) Treatment works--Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement 33 U.S.C. §1281, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units, clear well facilities and distribution facilities for recycled or reused water; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction. The term also means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

(69) Utility Commission--The Public Utility Commission of Texas.

(70) Water conservation plan--A plan that complies with the requirements of Texas Water Code Section 16.4021.

(71) Water quality management plan--A plan prepared and updated annually by the State and approved by the Environmental Protection Agency that determines the nature, extent, and causes of water quality problems in various areas of the State and identifies cost-effective

and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

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) 463-7686



## SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

### 31 TAC §375.84

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The rule is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.601, 15.603, and 15.605.

This rulemaking affects Water Code, Chapter 15.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300630

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: March 1, 2023

Proposal publication date: December 2, 2022

For further information, please call: (512) 463-7686



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

#### SUBCHAPTER D. OCCUPATION TAX ON SULPHUR PRODUCERS

### 34 TAC §3.41

The Comptroller of Public Accounts adopts the repeal of §3.41, concerning definition and due dates, without changes to the pro-

posed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8957). The rule will not be republished. The comptroller repeals this section to implement Senate Bill 757, 84th Legislature, 2015, effective September 1, 2015, which repealed Tax Code, Chapter 203, Sulphur Production Tax.

After filing the report and paying the sulphur production tax for the 2015 July and August production, due November 2, 2015, sulphur producers are no longer required to file a report and pay this tax. This period is now outside the four-year statute of limitations for assessments and refund claims. See Tax Code, §111.107(a) (When Refund or Credit Is Permitted) and §111.201 (Assessment Limitation).

The comptroller did not receive any comments regarding adoption of the repeal.

This repeal is 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.

This repeal implements Tax Code, §203 (Sulphur Production Tax).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2023.

TRD-202300563

Jenny Burleson

Director, Tax Policy Division

Comptroller of Public Accounts

Effective date: February 26, 2023

Proposal publication date: December, 30 2022

For further information, please call: (512) 475-2220



## SUBCHAPTER G. CIGARETTE TAX

### 34 TAC §3.102

The Comptroller of Public Accounts adopts amendments to §3.102, concerning applications, definitions, permits, and reports, with changes to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5076). The rule will be republished.

The comptroller adopts amendments to implement Senate Bill 248, 87th Legislature, 2021. Senate Bill 248 requires a person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer to store the cigarettes exclusively in an interstate warehouse. The comptroller amends this section to add a definition of cigar, to remove language regarding sales made by a permitted bonded agent from a vehicle, and to address that a permitted importer is required to be a permitted distributor.

The comptroller adds three new definitions to subsection (a) and renumbers all relevant paragraphs after each new definition. The comptroller adds new subsection (a)(3) to define "cigar." The comptroller takes this definition from Tax Code, §155.001 (Definitions). The comptroller amends the definition of "first sale" in renumbered paragraph (10) to identify that interstate

warehouse transactions and sales to an interstate warehouse do not constitute a first sale. The comptroller adds new paragraphs (12) and (13), defining the terms interstate warehouse and interstate warehouse transaction. The comptroller takes these definitions from Tax Code, §154.001 (Definitions).

The comptroller also amends renumbered paragraph (17) to include "interstate warehouse" as a permit holder and amends renumbered paragraph (21) to specifically state that an interstate warehouse is not a wholesaler.

The comptroller amends subsection (b)(1) to include that an interstate warehouse must have a valid permit to engage in business in Texas and that failure to obtain the permit subjects the person to a penalty of not more than \$2,000 for each violation. The comptroller amends paragraph (2) to include that each interstate warehouse shall obtain a permit for each place of business owned or operated by an interstate warehouse.

The comptroller removes "bonded agent" from paragraph (4) concerning selling cigarettes from a vehicle. A bonded agent delivers or distributes cigarettes on behalf of the manufacturer and cannot sell cigarettes from a vehicle. A bonded agent may still deliver invoiced product from a vehicle, which does not require obtaining a permit.

The comptroller amends paragraphs (5) and (7) for readability. Additionally, the comptroller adds paragraph (9) to state that the comptroller may not issue a distributor's permit for the same location to a person who is an interstate warehouse.

The comptroller adds new paragraph (10) to specify that a permitted importer is required to be a permitted distributor.

The comptroller amends subsection (c)(1) to include that a manufacturer outside this state who is not a permitted distributor may sell cigarettes to an interstate warehouse in addition to another permitted distributor. The comptroller amends paragraph (2) to state when a permitted distributor may sell cigarettes to an interstate warehouse. The comptroller amends paragraph (3) to add an interstate warehouse to the list of entities to whom a permitted importer may sell cigarettes.

The comptroller adds new paragraph (8) to clarify that an interstate warehouse may sell cigarettes only in an interstate warehouse transaction. Intrastate sales are only allowed with written authorization by the comptroller.

The comptroller amends subsection (d)(1) to include that an interstate warehouse permit expires on the last day of February of each year.

The comptroller amends subsection (e) to include that an application for an interstate warehouse permit must be accompanied by the appropriate fee and to add the methods by which payment can be made. The comptroller amends paragraph (2) to add the \$300 permit fee for an interstate warehouse and renumbers the following paragraphs. The comptroller amends renumbered paragraph (8) to remove language that conflicts with the definition of "engage in business" and clarifies that a manufacturer who is located out of state with no representation in Texas is not required to register with the comptroller. The comptroller takes this definition from Tax Code, §155.001 (Definitions).

The comptroller amends subsection (f)(1) to include that the comptroller shall issue a permit to an interstate warehouse if the comptroller receives an application, the applicable fee, and believes the issuance will not jeopardize enforcement of Tax Code, Chapter 154 (Cigarette Tax).

Cliff Block with McLane Company, Inc. commented that the proposed language in subsection (b)(9) conflicted with the statutory language in Tax Code, §154.101(k). The proposed language in subsection (b)(9) did not allow the comptroller to issue *any* other permit to the same location where the comptroller issued an interstate warehouse permit. However, Tax Code, §154.101(k) only prohibits the comptroller from issuing a distributor's permit to the same location as an interstate warehouse permit. The comptroller agrees that the proposed language conflicts with Tax Code, §154.101(k) and revises paragraph (9) accordingly.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §154.001 (Definitions) and §154.101 (Permits).

§3.102. *Applications, Definitions, Permits, and Reports.*

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

(1) Agency--The Comptroller of Public Accounts of the State of Texas or the comptroller's duly authorized agents and employees.

(2) Bonded agent--A person in this state who is a third-party agent of a manufacturer outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer.

(3) Cigar--A roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

(4) Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(5) Commercial business location--The entire premises occupied by a permit applicant or a person required to hold a permit under Tax Code, Chapter 154 (Cigarette Tax). A commercial business location cannot include a residence or a unit in a public storage facility.

(6) Consumer--A person who possesses cigarettes for personal consumption.

(7) Distributor--A person who:

(A) is authorized to purchase, for the purpose of making a first sale in this state, cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages;

(B) ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C) manufactures or produces cigarettes; or

(D) is an importer.

(8) Engage in business--A person engaging either directly or through a representative, in any of the following activities:

(A) selling cigarettes in or into this state;

(B) using a warehouse or another location to store cigarettes; or

(C) otherwise conducting through a physical presence cigarette-related business in this state.

(9) Export warehouse--A person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(10) First sale--Except as otherwise provided in this section;

(A) the first transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in or into this state, which includes:

(i) the sale of cigarettes by:

(ii) a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and

(iii) a manufacturer in this state who transfers the tobacco products in this state; and

(iv) does not include:

(I) the sale of cigarettes by a manufacturer outside this state to a distributor in this state;

(II) the transfer of cigarettes from a manufacturer outside this state to a bonded agent in this state;

(III) the sale of cigarettes by a manufacturer, bonded agent, distributor, or importer to an interstate warehouse in this state; or

(IV) the transfer of cigarettes by an interstate warehouse in an interstate warehouse transaction;

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss. First sale also includes giving away cigarettes as promotional items.

(11) Importer--A person who ships, transports, or imports into this state cigarettes manufactured or produced outside the United States for the purpose of making a first sale in this state.

(12) Interstate warehouse--A person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer and stores the cigarettes exclusively for an interstate warehouse transaction.

(13) Interstate warehouse transaction--The sale or delivery of cigarettes from an interstate warehouse to a person located in another state who is licensed or permitted by the other state to affix that state's cigarette stamps or otherwise pay the state's excise tax on cigarettes as required.

(14) Manufacturer--A person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes, for sale or distribution.

(15) Manufacturer's representative--A person employed by a manufacturer to sell or distribute the manufacturer's stamped cigarette packages.

(16) Permit--Any agency license, certificate, approval, registration, or similar form of permission required by law to buy, sell, stamp, store, transport, or distribute cigarettes. A permit includes a vending machine decal.

(17) Permit holder--A person who has been issued a bonded agent, interstate warehouse, distributor, importer, export warehouse, manufacturer, wholesaler, or retailer permit under Tax Code, §154.101 (Permits).

(18) Place of business--

(A) a commercial business location where cigarettes are sold;

(B) a commercial business location where cigarettes are kept for sale or consumption or otherwise stored;

(C) a vehicle from which cigarettes are sold; or

(D) a vending machine from which cigarettes are sold.

(19) Retailer--A person who engages in the business of selling cigarettes to consumers. The owner of a cigarette vending machine is a retailer.

(20) Stamp--Includes only a stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by Tax Code, §154.021 (Imposition and Rate of Tax);

(C) is consecutively numbered and uniquely identifiable as a Texas cigarette tax stamp; and

(D) is not damaged beyond recognition as a valid Texas tax stamp.

(21) Wholesaler--A person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale. A wholesaler is not a distributor.

(b) Permits required.

(1) To engage in business as a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse, or retailer, a person must apply for and receive the applicable permit from the comptroller. The permits are not transferable. A new application is required if a change in ownership occurs (sole ownership to partnership, sole ownership to corporation, partnership to limited liability company, etc.). Each legal entity must apply for its own permit(s). All permits issued to a legal entity will have the same taxpayer number. Tax Code, §154.501(a)(2) (Penalties), provides that a person who engages in the business of a bonded agent, interstate warehouse, distributor, importer, manufacturer, export warehouse, wholesaler, or retailer without a valid permit is subject to a penalty of not more than \$2,000 for each violation. Tax Code, §154.501(c), provides that a separate offense is committed each day on which a violation occurs.

(2) Each distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse, or retailer shall obtain a permit for each place of business owned or operated by the distributor, importer, manufacturer, wholesaler, bonded agent, interstate warehouse, or retailer. A new permit shall be required for each physical change in the location of the place of business. Correction or change of street listing by a city, state, or U.S. Post Office shall not require a new permit so long as the physical location remains unchanged.

(3) Permits are valid for one place of business at the location shown on the permit. If the location houses more than one place of business under common ownership, an additional permit is required

for each separate place of business. For example, each retailer who operates a cigarette vending machine shall place a retailer's permit on the machine.

(4) A vehicle from which cigarettes are sold is considered to be a place of business and requires a permit. A motor vehicle permit is issued to a distributor or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Vehicle permits may not be moved from one vehicle to another. No cigarette permit is required for a vehicle used only to deliver invoiced cigarettes.

(5) The comptroller may issue a combination permit for cigarettes and tobacco products to a person who is a distributor, importer, manufacturer, wholesaler, bonded agent, interstate warehouse, or retailer as defined by Tax Code, Chapter 154 and Chapter 155 (Cigars and Tobacco Products Tax). A person who receives a combination permit pays only the higher of the two permit fees.

(6) The comptroller will not issue a permit for a residence or a unit in a public storage facility because cigarettes may not be stored at such places.

(7) A permit is not required for a research facility that possesses and only uses cigarettes for experimental purposes.

(8) A person who engages in the business of selling cigarettes for commercial purposes who provides a roll-your-own machine that is available for use by consumers must obtain a manufacturer's, distributor's and a retailer's permit.

(9) The comptroller may not issue a distributor's permit and an interstate warehouse permit to the same location.

(10) A person who engages in the business of importing cigarettes from a foreign country into Texas is required to be permitted as a cigarette distributor.

(c) Sales and purchase requirements for permit holders. Except for retail sales to consumers, cigarettes may only be sold or distributed by and between permit holders as provided by this section. A permit holder may engage in the following business activities:

(1) A manufacturer outside this state who is not a permitted distributor may sell cigarettes only to a permitted distributor or interstate warehouse.

(2) A permitted distributor may sell cigarettes only to a permitted distributor, wholesaler, or retailer. A permitted distributor who manufactures or produces cigarettes in this state may sell those cigarettes to a permitted interstate warehouse.

(3) A permitted importer may sell cigarettes only to a permitted interstate warehouse, distributor, wholesaler, or retailer.

(4) A permitted wholesaler may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(5) A permitted retailer may sell cigarettes only to the consumer and may purchase cigarettes only from a permitted distributor or wholesaler.

(6) A permitted export warehouse may sell cigarettes only to persons authorized to sell or consume unstamped cigarettes outside the United States.

(7) A manufacturer's representative may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(8) A permitted interstate warehouse may sell cigarettes only in an interstate warehouse transaction. An interstate warehouse

may not make an intrastate sale of cigarettes without written authorization by the comptroller.

(d) Permit period.

(1) Bonded agent, interstate warehouse, distributor, importer, manufacturer, wholesaler, and motor vehicle permits expire on the last day of February of each year.

(2) Retailer permits expire on the last day of May of each even-numbered year.

(e) Permit fees. An application for a bonded agent, interstate warehouse, distributor, manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the appropriate fee. The permit fee payment must be made in cash, by money order, check, or credit card.

(1) The permit fee for a bonded agent is \$300.

(2) The permit fee for an interstate warehouse is \$300.

(3) The permit fee for a distributor is \$300.

(4) The permit fee for a manufacturer with representation in Texas is \$300.

(5) The permit fee for a wholesaler is \$200.

(6) The permit fee for a motor vehicle is \$15.

(7) The permit fee for a retailer permit is \$180.

(8) No permit fee is required to obtain an importer or an export warehouse permit.

(9) A \$50 fee is assessed for failure to obtain a permit in a timely manner.

(10) The comptroller prorates the permit fee for new permits according to the number of months remaining in the permit period. If a permit will expire within three months of the date of issuance, the comptroller may collect the prorated permit fee for the current permit period and the total permit fee for the next permit period.

(11) A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

(f) Permit issuance, denial, suspension, or revocation.

(1) The comptroller shall issue a permit to a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse or retailer if the comptroller receives an application and any applicable fee, believes that the applicant has complied with Tax Code, §154.101, and determines that issuing the permit will not jeopardize the administration and enforcement of Tax Code, Chapter 154.

(2) If the comptroller determines that an existing permit should be suspended or revoked or a permit should be denied because of the applicant's prior conviction of a crime and the relationship of the crime to the license, the comptroller will notify the applicant or permittee in writing by personal service or by mail of the reasons for the denial, suspension, revocation, or disqualification, the review procedure provided by Occupations Code, §53.052 (Judicial Review), and the earliest date that the permit holder or applicant may appeal the denial, suspension, revocation, or disqualification.

(g) Reports.

(1) Manufacturer reports must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(2) All cigarette distributor and wholesaler reports and payments must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(3) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §154.212 (Reports by Wholesalers and Distributors of Cigarettes), shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300637

Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Effective date: March 1, 2023

Proposal publication date: August 26, 2022

For further information, please call: (512) 475-2220



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 9. TEXAS COMMISSION ON JAIL STANDARDS

#### CHAPTER 273. HEALTH SERVICES

##### 37 TAC §273.2

The Texas Commission on Jail Standards adopts amendments to 37 TAC §273.2, concerning the duties of county jailers following inmate miscarriage or of inmate physical or sexual assault as proposed in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5750) without changes. This rule will not be republished.

The adoption implements provisions of HB 1307 of the 87th Legislative Session. That bill amended Local Government Code Sec. 351.048 to require that, as soon as practicable after receiving a report of a miscarriage or physical or sexual assault of a pregnant inmate while in the custody of a county jail, the sheriff shall ensure that an obstetrician or gynecologist and a mental health professional promptly review the health care services provided to the prisoner; and order additional health care services, including obstetrical and gynecological services and mental health services, as appropriate. HB 1307 did not explicitly require the Commission to adopt a rule to implement this law; however, the Commission decided that having the statute reflected in the administrative code rule will assist jails to comply with the statute.

The agency anticipates that having this requirement included in jail operational plans will aid compliance.

No public comments on the proposed rules were received.

The amendment is adopted under statutory authority of Government Code, Chapter 511, which authorizes the Texas Com-

mission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails. This adoption does not affect other rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300640

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Effective date: March 1, 2023

Proposal publication date: September 16, 2022

For further information, please call: (512) 463-5505

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

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

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

**40 TAC §§9.151, 9.152, 9.154 - 9.170, 9.186, 9.189 - 9.192**

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Texas Administrative Code (TAC), Title 40, Part 1, and will be repealed or administratively transferred to 26 TAC, Health and Human Services, as appropriate. Until such action is taken, the rules in 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 adopts the repeal of §§9.151, 9.152, 9.154 - 9.170, 9.186, and 9.189 - 9.192 in 40 TAC Chapter 9, Subchapter D related to the Home and Community-based Services (HCS) Program and Community First Choice (CFC).

The repeal of §§9.151, 9.152, 9.154 - 9.170, 9.186, and 9.189 - 9.192 is adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5769). These rules will not be republished.

**BACKGROUND AND JUSTIFICATION**

The adoption repeals, in 40 TAC Chapter 9, Subchapter D, §§9.151, 9.152, 9.154 - 9.170, 9.186, and 9.189 - 9.192 for the HCS Program. HHSC is adopting new rules regarding the HCS Program in 26 TAC Chapter 263 elsewhere in this issue of the *Texas Register*.

**COMMENTS**

The 31-day comment period ended October 17, 2022.

During this period and the public hearing held on September 26, 2022, HHSC did not receive any comments regarding the proposed repeals.

**STATUTORY AUTHORITY**

The repeals are authorized under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300599

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: March 1, 2023

Proposal publication date: September 16, 2022

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

◆ ◆ ◆  
**SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)**

**40 TAC §§9.551, 9.552, 9.554, 9.556, 9.558, 9.560 - 9.563, 9.566 - 9.568, 9.570, 9.571, 9.573 - 9.575, 9.582, 9.583**

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Texas Administrative Code (TAC) Title 40, Part 1, and will be repealed or administratively transferred to 26 TAC, Health and Human Services, as appropriate. Until such action is taken, the rules in 40 TAC, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in 40 TAC, Part 1.

Therefore, the Executive Commissioner of HHSC adopts the repeal of §§9.551, 9.552, 9.554, 9.556, 9.558, 9.560 - 9.563, 9.566

- 9.568, 9.570, 9.571, 9.573 - 9.575, 9.582 and 9.583 in 40 TAC Chapter 9, Subchapter N, concerning Texas Home Living (TxHmL) Program and Community First Choice (CFC).

The repeal of §§9.551, 9.552, 9.554, 9.556, 9.558, 9.560 - 9.563, 9.566 - 9.568, 9.570, 9.571, 9.573 - 9.575, 9.582 and 9.583 are adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5770). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The adoption repeals, in 40 TAC Chapter 9, Subchapter N, §§9.551, 9.552, 9.554, 9.556, 9.558, 9.560 - 9.563, 9.566 - 9.568, 9.570, 9.571, 9.573 - 9.575, 9.582 and 9.583 for the TxHmL Program. HHSC is adopting new rules regarding the TxHmL Program in 26 TAC Chapter 262 elsewhere in this issue of the *Texas Register*.

#### COMMENTS

The 31-day comment period ended October 17, 2022.

During this period and the public hearing held on September 26, 2022, HHSC did not receive any comments regarding the proposed repeals.

#### STATUTORY AUTHORITY

The repeals are authorized under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2023.

TRD-202300614

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: March 1, 2023

Proposal publication date: September 16, 2022

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







# 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 Housing and Community Affairs

### Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC §1.10, Public Comment Procedures. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to have procedures for hearing public comment at Governing Board meetings. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 24, 2023 through March 27, 2023. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, at [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 27, 2023.

TRD-202300638  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: February 9, 2023



Texas State Library and Archives Commission

### Title 13, Part 1

The Texas State Library and Archives Commission (commission) files this notice of its intent to review Texas Administrative Code, Title 13, Part 1, Chapter 3, concerning the State Publications Depository Program, in accordance with Texas Government Code §2001.039.

The review will include, at a minimum, whether the reasons for adopting or readopting the rules continue to exist.

The commission will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register*. Comments regarding this review may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, 1201 Brazos Street, P.O. Box 12927, Austin, Texas 78711-2927 or to [rules@tsl.texas.gov](mailto:rules@tsl.texas.gov) with the subject line "Rule Review."

TRD-202300685  
Sarah Swanson  
General Counsel  
Texas State Library and Archives Commission  
Filed: February 14, 2023



Texas Commission on Environmental Quality

### Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 3, Definitions.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 3 continue to exist.

Comments regarding suggested changes to the rules in Chapter 3 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 3. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-030-003-LS. Comments must be received by March 27, 2023. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

TRD-202300689  
Guy Henry  
Acting Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: February 14, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 20, Rulemaking.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 20 continue to exist.

Comments regarding suggested changes to the rules in Chapter 20 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 20. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-026-020-LS. Comments must be received by March 27, 2023. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

TRD-202300690

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 14, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 122, Federal Operating Permits Program.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 122 continue to exist.

Comments regarding suggested changes to the rules in Chapter 122 may be submitted during this review but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 122. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-027-122-AI. Comments must be received by March 27, 2023. For further information, please contact David Munzenmaier, Air Permits Division, at (512) 239-6092.

TRD-202300691

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 14, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 218, Brine Evaporation Pits.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 218 continue to exist.

Comments regarding suggested changes to the rules in Chapter 218 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 218. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-028-218-OW. Comments must be received by March 27, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202300687

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 14, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 305, Consolidated Permits.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 305 continue to exist.

Comments regarding suggested changes to the rules in Chapter 305 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 305. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-029-305-WS. Comments must be received by March 27, 2023. For further information, please contact Jarita Sepulvado, Waste Permits Division, at (512) 239-4413.

TRD-202300688  
Guy Henry  
Acting Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: February 14, 2023

◆ ◆ ◆  
**Adopted Rule Reviews**

Department of State Health Services

**Title 25, Part 1**

The Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code:

Chapter 157, Emergency Medical Care

Subchapter A, Emergency Medical Services - Part A

Subchapter B, Emergency Medical Services Provider Licenses

Subchapter C, Emergency Medical Services Training and Course Approval

Subchapter D, Emergency Medical Services Personnel Certification

Subchapter G, Emergency Medical Services Trauma Systems

Notice of the review of this chapter was published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7307). HHSC received no comments during the comment period concerning this chapter.

HHSC has reviewed Chapter 157 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 157. Any appropriate amendments to Chapter 157 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 25 TAC Chapter 157 as required by the Texas Government Code, §2001.039.

TRD-202300725  
Jessica Miller  
Director, Rules Coordination Office  
Department of State Health Services  
Filed: February 15, 2023

◆ ◆ ◆  
Health and Human Services Commission

**Title 26, Part 1**

The Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code:

Chapter 559, Day Activity and Health Services Requirements

Subchapter A, Introduction

Subchapter B, Application Procedures

Subchapter C, Facility Construction Procedures

Subchapter D, Licensure and Program Requirements

Subchapter E, Inspections, Surveys, and Visits

Subchapter F, Abuse, Neglect, And Exploitation: Complaint and Incident Reports and Investigations

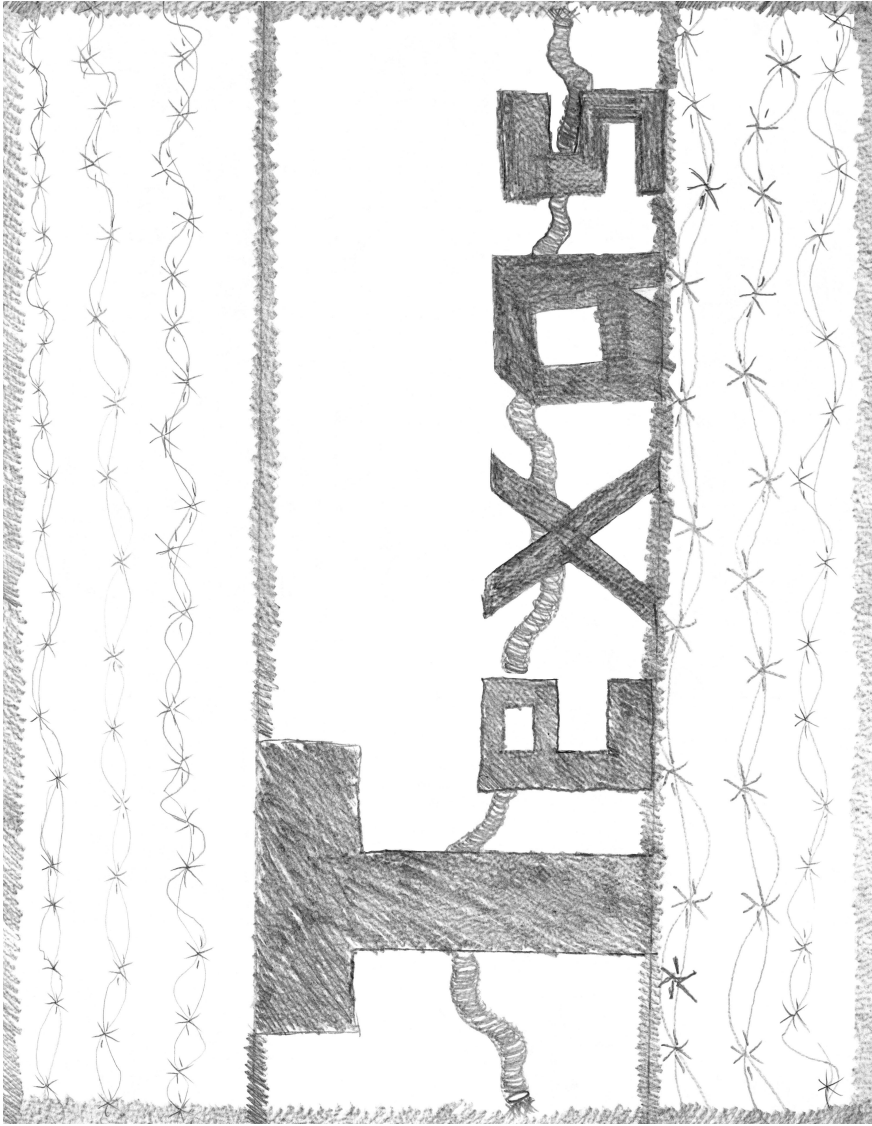
Subchapter G, Enforcement

Notice of the review of this chapter was published in the August 19, 2022, issue of the *Texas Register* (47 TexReg 5007). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 559 in accordance with §2001.039 of the Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting the rules in the chapter continue to exist and readopts Chapter 559. Any appropriate amendments to Chapter 559 identified by HHSC during the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 559 as required by the Government Code, §2001.039.

TRD-202300712  
Jessica Miller  
Director, Rules Coordination Office  
Health and Human Services Commission  
Filed: February 15, 2023



# 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.

## Coastal Bend Workforce Development Board

Request for Statement of Qualifications for Financial Audit Services (RFQ No. 23-03)

Workforce Solutions of the Coastal Bend (WFSCB) is requesting qualifications from experienced and professional certified public accounting firms or individuals to provide financial and compliance auditing services. The initial contract will be awarded for a period not to exceed twelve (12) months ending on September 30, 2023. The contract may be renewed for three (3) additional one-year periods beyond the original acceptance award for a total not to exceed four (4) years. An annual audit is required at the end of each fiscal year and for the 2021-2022 fiscal year (October 1, 2021 through September 30, 2022) the audit work will need to be completed by May 31, 2023.

The RFQ will be available on Tuesday, February 21, 2023, at 2:00 p.m. Central Time and can be accessed on our website at: [www.workforcesolutionscb.org](http://www.workforcesolutionscb.org) or by contacting Esther Velazquez at (361) 885-3013 or [esther.velazquez@workforcesolutionscb.org](mailto:esther.velazquez@workforcesolutionscb.org).

Interested parties are encouraged to attend a pre-proposal meeting at WFSCB's Administrative Offices located at 400 Mann Street, Suite 800, Corpus Christi, Texas 78401, Main Conference Room on **Monday, February 27, 2023, at 10:00 a.m. Central Time**. The purpose of the meeting is to review the RFQ requirements and answer any questions related to the RFQ. While this meeting is not mandatory, attendance is strongly recommended. Parties unable to attend in person may participate virtually from a computer, tablet, or smart phone via Zoom:

### Join Zoom Meeting

<https://us02web.zoom.us/j/89306251099?pwd=OFRRd2hhcDF1Uz-M1U0oxeEhXK1pNUT09>

U.S. Toll-Free Call In: (888) 475 4499

Meeting ID 893 0625 1099

Passcode: 236766

**Proposals are due on Wednesday, March 15, 2023, at 4:00 p.m. Central Time.** Responses should be submitted via email to [esther.velazquez@workforcesolutionscb.org](mailto:esther.velazquez@workforcesolutionscb.org) or may be hand delivered or mailed to: Workforce Solutions of the Coastal Bend, 400 Mann Street, Suite 800, Corpus Christi, Texas 78401.

Workforce Solutions of the Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: (800) 735-2989 (TDD) and (800) 735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

TRD-202300663

Esther Velazquez

Contract & Procurement Specialist

Coastal Bend Workforce Development Board

Filed: February 13, 2023

## Office of Consumer Credit Commissioner

### Adjustment of Maximum Fee Amounts

Section 394.210 of the Texas Finance Code lists maximum fee amounts for debt management and debt settlement providers. Under Section 394.2101, the OCCC publishes adjustments to these amounts based on the Consumer Price Index for All Urban Consumers (1982-84).

### Effective Maximum Fee Amounts: July 1, 2023 to June 30, 2024

The effective maximum fee amounts for July 1, 2023 to June 30, 2024 will be adjusted as follows:

Description	Citation	Adjusted Amount
Debt management setup fee	394.210(f)(1)	\$132.00
Debt management monthly service fee	394.210(f)(2)	Lesser of \$13.00 per account or \$66.00
Debt settlement setup fee	394.210(g)(1)	\$526.00
Debt settlement monthly service fee	394.210(g)(2)	Lesser of \$16.00 per account or \$66.00
Counseling or education if no debt management or settlement service provided	394.210(1)	\$132.00
Fee for dishonored payment	394.210(n)	\$30.00 <sup>1</sup>

<sup>1</sup> The adjustment would exceed the \$30 authorized by Texas Business and Commerce Code §3.506

Note: These calculations are based on comparing the reference base index for December 2011 (225.672) to the index for December 2022

(296.797). The percentage change is a 31.5170% increase, rounded to the nearest dollar. The fee descriptions above are just a summary.

Providers should carefully review Section 394.210 and other applicable law to ensure that their fees are authorized.

The adjustment would exceed the \$30 authorized by Texas Business and Commerce Code §3.506

TRD-202300700

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 14, 2023



### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/20/23 - 02/26/23 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/20/23 - 02/26/23 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202300695

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 14, 2023



### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/20/23 - 02/26/23 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/20/23 - 02/26/23 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202300699

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 14, 2023



## Credit Union Department

### Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and are under consideration.

An application was received from First Central Credit Union, Waco, Texas, to expand its field of membership. The proposal would permit

persons who reside, work, worship, or attend school in Milam, Limestone, Robertson, and Bell Counties, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-character-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202300707

Michael S. Riepen

Commissioner

Credit Union Department

Filed: February 15, 2023



### 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

Mobiloil Credit Union #1 (Beaumont) - See *Texas Register* dated on November 25, 2022.

Mobiloil Credit Union #2 (Beaumont) - See *Texas Register* dated on November 25, 2022.

Mobiloil Credit Union #3 (Beaumont) - See *Texas Register* dated on November 25, 2022.

Mobiloil Credit Union #4 (Beaumont) - See *Texas Register* dated on November 25, 2022.

Mobiloil Credit Union #5 (Beaumont) - See *Texas Register* dated on November 25, 2022.

Mobiloil Credit Union #6 (Beaumont) - See *Texas Register* dated on November 25, 2022.

Mobiloil Credit Union #7 (Beaumont) - See *Texas Register* dated on November 25, 2022.

Mobiloil Credit Union #8 (Beaumont) - See *Texas Register* dated on November 25, 2022.

Space City Credit Union (Houston) - See *Texas Register* dated on November 25, 2022.

Members Choice Credit Union (Houston) - See *Texas Register* dated on November 25, 2022.

First Service Credit Union (Houston) - See *Texas Register* dated on September 30, 2022.

Merger or Consolidation - Approved

Associated Credit Union of Texas (League City) and T & FS Employees Credit Union (Port Arthur) - See *Texas Register* dated on October 28, 2022.

TRD-202300704

◆ ◆ ◆  
**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 **March 27, 2023**. 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 **March 27, 2023**. 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: Carrington Associates, Incorporated; DOCKET NUMBER: 2022-1499-UTL-E; IDENTIFIER: RN101242691; LOCATION: Clemons, Matagorda County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$530; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Baird; DOCKET NUMBER: 2022-0979-PWS-E; IDENTIFIER: RN101387462; LOCATION: Baird, Callahan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notice to customers of the facility within 24 hours of low distribution pressure using the prescribed notification format as specified in 30 TAC §290.47(c); PENALTY: \$629; ENFORCEMENT COORDINA-

TOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: City of Gilmer; DOCKET NUMBER: 2021-1189-MWD-E; IDENTIFIER: RN101918761; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010457001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$31,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$25,300; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 755-6327; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Commodore Cove Improvement District; DOCKET NUMBER: 2022-0109-PWS-E; IDENTIFIER: RN101440022; LOCATION: Freeport, Brazoria 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: \$1,437; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: FOOTHILLS MOBILE HOME RANCH, INCORPORATED; DOCKET NUMBER: 2022-1384-UTL-E; IDENTIFIER: RN101221232; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$500; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Halyard Energy Wharton, LLC; DOCKET NUMBER: 2021-0735-AIR-E; IDENTIFIER: RN107948754; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: electricity generation plant; RULES VIOLATED: 30 TAC §122.143(4), §122.146(1)(B) and (2), Federal Operating Permit Number O3872, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §328.085(b), by failing to certify compliance after the voidance of an issued permit covering the period from the date of the last certification to the date the permit is voided, and failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$5,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: RIVER OAKS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1237-UTL-E; IDENTIFIER: RN101187318; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$600; ENFORCEMENT COORDINATOR: Ecco Beggs, (915) 834-4968; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Roy Dawkins dba Shady Meadows Mobile Home Park; DOCKET NUMBER: 2022-1390-UTL-E; IDENTIFIER:

RN110777687; LOCATION: Cibolo, Guadalupe County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$500; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Sekisui Specialty Chemicals America, LLC; DOCKET NUMBER: 2021-1496-AIR-E; IDENTIFIER: RN103012183; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1) and (2), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(2) and §63.11(b)(5), New Source Review (NSR) Permit Number 19618, Special Conditions (SC) Number 29.C, Federal Operating Permit (FOP) Number O1675, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 7 and 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to operate each flare with a flame present at all times; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19618, SC Number 1, FOP Number O1675, GTC and STC Number 9, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$27,200; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,880; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2021-0429-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 39142 and PSDTX822M2, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1253, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 23, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate; 30 TAC §§101.20(3), 116.115(c), 116.615(2), and 122.143(4), NSR Permit Numbers 39142 and PSDTX822M2, SC Number 1, Standard Permit Registration Number 91499, General Requirements Number (4)(D)(v), FOP Number O1253, GTC and STC Number 23, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1253, GTC and STC Number 27, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$81,938; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202300656

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 10, 2023



Combined Notice of Public Meeting and Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) and Notice of Application and Preliminary Decision for TPDES Permit for Industrial Wastewater New Permit No. WQ0005397000

**APPLICATION AND PRELIMINARY DECISION.** Gapped Bass LLC, 130 Walker Watson Road, Bastrop, Texas 78602, which proposes to operate the FM 1209 Wastewater Treatment Facility, which serves a tunnel boring equipment manufacturing and testing facility with on-site residences, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005397000, to authorize the discharge of treated process wastewater and domestic wastewater at a daily average flow not to exceed 142,500 gallons per day via Outfall 001 and the disposal of process wastewater and domestic wastewater at a daily average flow not exceed 142,500 gallons via surface irrigation of 63 acres of non-public access land. The TCEQ received this application on July 15, 2022.

**This combined notice is being issued to update the contact information provided at the end of the original NORI. The person to contact for further information is Mr. Hunter Brauer, Lead Civil Engineer, TBC - The Boring Company, at (725) 279-8632.**

The facility and land application site will be located at 130 Walker Watson Road, near the City of Bastrop, Bastrop County, Texas 78602. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.405%2C30.1525&level=12>

The effluent will be discharged directly to the Colorado River Below Lady Bird Lake/Town Lake in Segment No. 1428 of the Colorado River Basin. The designated uses for Segment No. 1428 are primary contact recreation, public water supply, and exceptional aquatic life use.

In accordance with Title 30 Texas Administrative Code Section 307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Colorado River Below Lady Bird Lake/Town Lake, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Bastrop Public Library, 1100 Church Street, Bastrop, Texas.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.



The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, March 21, 2023 at 7:00 p.m.**

**Hampton Inn and Suites Bastrop**

**240 South Hasler Boulevard**

**Bastrop, Texas 78602**

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. **The response to comments, along with the Executive Director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.**

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be added to: (1) the permanent list for a specific applicant name and permit number; and (2) the mailing list for a specific county. If you wish to be placed on the permanent and the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www.tceq.texas.gov/goto/comment> within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.**

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database at <https://www.tceq.texas.gov/goto/CID/>. Search the database using the permit number for this application, which is provided at the top of this notice.

**AGENCY CONTACTS AND INFORMATION.** Public comments and requests must be submitted either electronically at <https://www.tceq.texas.gov/goto/comment>, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address, and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040 or visit their website at <https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Gapped Bass LLC at the address stated above or by calling **Mr. Hunter Brauer, Lead Civil Engineer, TBC - The Boring Company, at (725) 279-8632.**

Issued: February 09, 2023

TRD-202300715

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023

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Correction of Error

The Texas Commission on Environmental Quality (commission) published a Notice of Request for Public Comment and Notice of Public Meeting on Draft Implementation Plan for Four Total Maximum Daily Loads for Indicator Bacteria in Tributaries of the Neches River Below Lake Palestine in the February 10, 2023, issue of the *Texas Register* (48 TexReg 753). Due to an error as submitted by the commission, it was stated that the close of comment period was March 13, 2023. The correct close of comment date is March 14, 2023, and the notice should read "All written comments must be received at TCEQ by midnight on March 14, 2023".

TRD-202300705

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 15, 2023

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Correction of Error

The Texas Commission on Environmental Quality (commission) published a Notice of Request for Public Comment and Notice of Public Meeting on Draft Implementation Plan for Five Total Maximum Daily Loads for Indicator Bacteria in Hillebrandt Bayou and Neches River Tidal in the February 10, 2023, issue of the *Texas Register* (48 TexReg 753). Due to an error as submitted by the commission, it was stated that the close of comment period was midnight on March 13, 2023. The correct close of comment date is March 14, 2023 and the notice should read "All written comments must be received at TCEQ by midnight on March 14, 2023".

TRD-202300706

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 15, 2023

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Enforcement Orders

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2021-1345-PWS-E on February 14, 2023 assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AIRTRONICS, INC., Docket No. 2022-0150-PWS-E on February 14, 2023 assessing \$2,750 in administrative penalties with \$550 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Little Elm Valley Water Supply Corporation, Docket No. 2022-1189-UTL-E on February 14, 2023 assessing \$500 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LAKESHORE UTILITY COMPANY, Docket No. 2022-1191-UTL-E on February 14, 2023

assessing \$750 in administrative penalties with \$150 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Samuel O. Klaerner dba Chaparral Water System, Docket No. 2022-1199-UTL-E on February 14, 2023 assessing \$600 in administrative penalties with \$120 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Rotan, Docket No. 2022-1223-UTL-E on February 14, 2023 assessing \$920 in administrative penalties with \$184 deferred. Information concerning any aspect of this order may be obtained by contacting Daniel Brill, 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 LAKESHORE UTILITY COMPANY, Docket No. 2022-1267-UTL-E on February 14, 2023 assessing \$725 in administrative penalties with \$145 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, 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 Rotan, Docket No. 2022-1268-UTL-E on February 14, 2023 assessing \$650 in administrative penalties with \$130 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SIMPLY AQUATICS, INC., Docket No. 2022-1307-UTL-E on February 14, 2023 assessing \$700 in administrative penalties with \$140 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, 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 SIMPLY AQUATICS, INC., Docket No. 2022-1308-UTL-E on February 14, 2023 assessing \$765 in administrative penalties with \$153 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, 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 LAKESHORE UTILITY COMPANY, Docket No. 2022-1331-UTL-E on February 14, 2023 assessing \$645 in administrative penalties with \$129 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, 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 Petra Firma Development Group, Inc., Docket No. 2022-1342-UTL-E on February 14, 2023 assessing \$610 in administrative penalties with \$122 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nocona Hills Water Supply Corporation, Docket No. 2022-1344-UTL-E on February 14, 2023 assessing \$500 in administrative penalties with \$100 deferred. Informa-

tion concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Earth, Docket No. 2022-1417-UTL-E on February 14, 2023 assessing \$530 in administrative penalties with \$106 deferred. Information concerning any aspect of this order may be obtained by contacting Corinna Willis, 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 CYPRESS VALLEY WATER SUPPLY CORPORATION, Docket No. 2022-1429-UTL-E on February 14, 2023 assessing \$625 in administrative penalties with \$125 deferred. Information concerning any aspect of this order may be obtained by contacting Devin Mendoza, 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 CYPRESS VALLEY WATER SUPPLY CORPORATION, Docket No. 2022-1439-UTL-E on February 14, 2023 assessing \$600 in administrative penalties with \$120 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, 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 La Grulla, Docket No. 2022-1457-UTL-E on February 14, 2023 assessing \$1,120 in administrative penalties with \$224 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, 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 MIDFIELD WATER SUPPLY CORPORATION, Docket No. 2022-1463-UTL-E on February 14, 2023 assessing \$460 in administrative penalties with \$92 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202300722

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023



### Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration No. 171256

**APPLICATION.** Bartoo Ready Mix, LLC, 500 West University Drive, Suite 101, McKinney, Texas 75069-4822 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 171256 to authorize the operation of a concrete batch plant. The facility is proposed to be located at the following driving directions: from the intersection of Farm to Market Road 2931 and Mustang Road, go east on Mustang Road for approximately 0.4 miles to private road. Go south on private road for approximately 0.4 miles to site entrance on right, Pilot Point, Denton County, Texas 76258. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of

the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.314779&lng=-96.927161&zoom=13&type=r>. This application was submitted to the TCEQ on December 14, 2022. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on January 11, 2023.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Thursday, March 16, 2023, at 6 p.m.**

**Courtyard by Marriott Denton**

**2800 Colorado Boulevard**

**Denton, Texas 76210**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION.** If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Bartoo Ready Mix, LLC, 500 West University Drive, Suite 101, McKinney, Texas 75069-4822, or by calling Mr. Josh Butler, Principal Consultant, Elm Creek Environmental, LLC at (469) 946-8195.

Notice Issuance Date: February 8, 2023

TRD-202300718

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, Agency, or commission) staff is providing an opportunity for written public comment on the listed 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 **March 27, 2023**. 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 March 27, 2023**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Hubbard; DOCKET NUMBER: 2019-0043-MWD-E; TCEQ ID NUMBER: RN101918480; LOCATION: approximately 0.94 mile south of the intersection of State Highway 31 and State Highway 171, Hill County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010534001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$7,812; STAFF ATTORNEY: Megan L. Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: City of La Joya; DOCKET NUMBER: 2019-0545-MWD-E; TCEQ ID NUMBER: RN101920361; LOCATION: approximately 1.5 miles south-southwest of the intersection of United States Highway 83 and Farm-to-Market Road 2521, Hidalgo County; TYPE OF FACILITY: wastewater treatment facility; RULES

VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012675001, Interim and Interim I Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and TCEQ Agreed Order Docket Number 2011-0244-MWD-E, Ordering Provision Number 3.c, by failing to comply with the permitted effluent limitations; TWC, §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0012675001, Interim and Interim I Effluent Limitations and Monitoring Requirements Number 1, and TCEQ Agreed Order Docket Number 2011-0244-MWD-E, Ordering Provision Number 3.c, by failing to comply with the permitted effluent limitations; TWC, §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0012675001, Interim and Interim I Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and TCEQ Agreed Order Docket Number 2011-0244-MWD-E, Ordering Provision Number 3.c, by failing to comply with the permitted effluent limitations; 30 TAC §305.125(1) and (11)(B), and §319.7(c), and TPDES Permit Number WQ0012675001, Monitoring and Reporting Requirements Number 3.b, by failing to maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative; 30 TAC §305.125(1) and (9)(A), and TPDES Permit Number WQ0012675001, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted limitation by more than 40% within five working days of becoming aware of the noncompliance for the monitoring periods; 30 TAC §305.125(1) and (17), and §319.7(d), and TPDES Permit Number WQ0012675001 Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0012675001 Sludge Provisions, by failing to timely submit annual sludge reports (ASRs) at the intervals specified in the permit; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0012675001 Sludge Provisions, by failing to submit ASRs at the intervals specified in the permit; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012675001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and TPDES Permit Number WQ0012675001, Other Requirements Number 10, by failing to comply with all permit conditions; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012675001, Operational Requirements Number 1, by failing to ensure that the facility and all of its system of collection, treatment, and disposal are properly operated and maintained; and TWC, §26.121(a)(1), 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0012675001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of untreated wastewater from the wastewater collection system into or adjacent to any water in the state; PENALTY: \$218,812; STAFF ATTORNEY: Tracy Chandler, Litigation, MC 175, (512) 239-0629; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: EAGLE TYLER GROCERY, INC. dba Eagle Exxon Tyler; DOCKET NUMBER: 2021-0797-PST-E; TCEQ ID NUMBER: RN109238493; LOCATION: 215 West Martin Luther King Jr. Boulevard, Tyler, Smith 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)(B), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed on or after January 1, 2009; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY:

\$4,000; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100

(4) COMPANY: FIRST COMPASS MARKETS, INC.; DOCKET NUMBER: 2021-1510-PST-E; TCEQ ID NUMBER: RN102448131; LOCATION: 14746 Old Humble Road, Humble, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual as a Class A and B operator for the facility; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and §334.54(c)(1), by failing to monitor a temporarily out-of-service (TOOS) UST system for releases; 30 TAC §37.867(a), by failing to empty the UST system within 90 days after financial assurance coverage terminates; TWC, §26.3475(d) and 30 TAC §334.49(a)(2) and §334.54(b)(3), by failing to adequately protect a TOOS UST system from corrosion; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; and TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to have the corrosion protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$5,105; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: US C-Store Operations, LLC dba Midtown Pentry; DOCKET NUMBER: 2021-0976-PST-E; TCEQ ID NUMBER: RN102255536; LOCATION: 720 South Fleishel Avenue, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which would detect a release at a 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; and 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel; PENALTY: \$15,000; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202300680

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 14, 2023



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and

Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 27, 2023**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 27, 2023**. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: HWY 300 LLC; DOCKET NUMBER: 2019-1578-MWD-E; TCEQ ID NUMBER: RN103065041; LOCATION: approximately 1,700 feet due east of a point on State Highway 300 that is approximately 2,900 feet north of the intersection of Gregg Tex Road and State Highway 300 and 3,500 feet south of the intersection of State Highway 300 and Farm-to-Market Road 1844, Gregg County; TYPE OF FACILITY: wastewater treatment facility and disposal site; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; TWC, §26.121(a)(1) and 30 TAC §305.65, by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; and TWC, §5.702 and 30 TAC §21.4, by failing to pay Consolidated Water Quality fees and associated late fees for TCEQ Financial Administration Account Number 23005554 for Fiscal Years 2010 - 2016; PENALTY: \$136,500; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: James Mangrum; DOCKET NUMBER: 2021-1103-MSW-E; TCEQ ID NUMBER: RN111145306; LOCATION: 151 County Road 368, Broadus, San Augustine County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$7,875; STAFF ATTORNEY: Megan L. Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.



### Notice of Opportunity to Comment on Shutdown/Default Orders of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an 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. In accordance with 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 **March 27, 2023**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/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 S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/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 S/DO shall be sent to the attorney designated for the S/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 March 27, 2023**. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone number; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Hassan LLC dba Culebra Food Stop; DOCKET NUMBER: 2021-0084-PST-E; TCEQ ID NUMBER: RN101436483; LOCATION: 1302 Laven Drive, San Antonio, Bexar County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; and TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(B) and (2)(A)(iii), by failing to monitor the UST and the associated pressurized piping in a manner which will detect a release at a frequency of at least once

every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009; PENALTY: \$7,500; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Jorge Arturo Vasquez De La Garza; DOCKET NUMBER: 2022-0312-PST-E; TCEQ ID NUMBER: RN101689040; LOCATION: 158 Guerra Garza Road, Rio Grande City, Starr County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a), by failing to identify and designate for the facility at least one named individual for each class of operator-Class A, B, and C; 30 TAC §334.7(d)(1)(A) and (B) and (3), by failing to provide an amended registration for any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST; PENALTY: \$7,200; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: SORT Valley LLC dba MiniMax 3; DOCKET NUMBER: 2022-0458-PST-E; TCEQ ID NUMBER: RN102283652; LOCATION: 3401 Tom Gill Road, Penitas, Hidalgo County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a 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; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; PENALTY: \$8,233; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.



### Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill

Notice issued on February 08, 2023

Proposed Permit No. 62049

Application. PSA Future Property, LLC, 2509 Kennedy Circle 4th Floor, San Antonio, Texas 78235, has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62049). The proposed development concerns a tract of land of

approximately two acres located at 10811 Gabriel's Place, San Antonio, Texas 78217. The proposed development consists of an enclosed animal research vivarium with an approximately 14,000-square foot one-story building and paved parking areas. The development permit application is available for viewing and copying at Thousand Oaks Library, 4618 Thousand Oaks Drive, San Antonio, Bexar County, Texas 78233, and may be viewed online at [http://keller-martin.com/New\\_Animal\\_Research\\_Vivarium\\_TCEQ\\_Permit\\_Application.html](http://keller-martin.com/New_Animal_Research_Vivarium_TCEQ_Permit_Application.html). The following link to an electronic map of the site or facility general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1mybjD>. For exact location, refer to application.

**Alternative Language Notice.** Alternative language notice in Spanish is available at [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps). En [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps) encontrará un aviso en otro idioma.

**Public Comment/Public Meeting.** You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

**Executive Director Action.** The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

**Information Available Online.** For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice. Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at <http://www14.tceq.texas.gov/epic/eComment/> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Further information may also be obtained from PSA Future Properties Inc. at the address stated above or by calling Mr. Paul Attar at (210) 842-5890.

TRD-202300717

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: February 15, 2023



## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 330

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 330, Municipal Solid Waste, §330.647, under the requirements of Texas Health and Safety Code (THSC), §363.062(f) and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would adopt the 24 approved regional solid waste management plans developed by the Texas councils of government, as required in THSC, §363.062(f).

### Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on March 23, 2023, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

### Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, March 21, 2023. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, March 22, 2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MmVl-ZTk4YTMtNDhjNC00YjhkLWJhYTktMWMwYjE3MjA3NmZk-%40thread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22isBroadcastMeeting%22%3atrue%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MmVl-ZTk4YTMtNDhjNC00YjhkLWJhYTktMWMwYjE3MjA3NmZk-%40thread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22isBroadcastMeeting%22%3atrue%7d)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-LAY-TX (TDD). Requests should be made as far in advance as possible.

### Written Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2022-035-330-WS. The comment period closes March 27,

2023. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). Copies of the proposed regional solid waste management plans are available for public review on the commission's website at [www.tceq.texas.gov/goto/wastegrant](http://www.tceq.texas.gov/goto/wastegrant). For further information, please contact Jessica Uramkin, Business & Program Services, (512) 239-6685.

TRD-202300654

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 10, 2023



#### Notice of Public Meeting for TPDES Permit for Municipal Wastewater Major Amendment Permit No. WQ0011041002

**APPLICATION.** City of Kyle, 100 West Center Street, Kyle, Texas 78640, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011041002 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow limit not to exceed 4,500,000 gallons per day to an annual average flow limit not to exceed 12,000,000 gallons per day and the addition of an Interim II phase at an annual average flow not to exceed 9,000,000 gallons per day. TCEQ received this application on March 11, 2022.

The facility is located at 941 New Bridge Drive, in Hays County, Texas 78640. The treated effluent is discharged directly to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Plum Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.835277%2C29.967777&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**PUBLIC COMMENT / PUBLIC MEETING.** A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discus-

ion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

#### The Public Meeting is to be held:

Thursday, March 30, 2023 at 7:00 p.m.

City of Kyle Public Library

550 Scott Street

Kyle, Texas 78640

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Kyle Public Library, 550 Scott Street, Kyle, Texas. Further information may also be obtained from City of Kyle at the address stated above or by calling Mr. Timothy Samford, Division Manager of Treatment Operations, at (512) 262-3024.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: February 14, 2023

TRD-202300714

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023



#### Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016036001

**APPLICATION.** Camden Parc Municipal Utility District of Rockwall County, 12801 North Central Expressway, Suite 1650, Dallas, Texas 75243, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016036001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 550,000 gallons per day. TCEQ received this application on August 24, 2021.



The facility will be located approximately 0.85 miles northeast of the intersection of Farm-to-Market Road 548 and North Munson Road, in Rockwall County, Texas 75891. The treated effluent will be discharged to Parker Creek, thence to South Fork of the Sabine River, thence to Lake Tawakoni in Segment No. 0507 of the Sabine River Basin. The unclassified receiving water uses are limited aquatic life use for both Parker Creek and South Fork Sabine River. The designated uses for Segment No. 0507 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.32728%2C32.920089&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**PUBLIC COMMENT / PUBLIC MEETING.** A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Thursday, March 23, 2023 at 7:00 p.m.**

**Hampton Inn**

**1549 Laguna Drive**

**Rockwall, Texas 75087**

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Royse City Hall, 305 North Arche Street, Royse City, Texas.

Further information may also be obtained from Camden Parc Municipal Utility District of Rockwall County at the address stated above or by calling Mr. MT Akavizadeh, Manager, Venture Anna 48, LLC, at (214) 972-3870.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: February 09, 2023

TRD-202300713

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023



**Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016148001**

**APPLICATION.** Greenwood Ventures Group LLC, 101 Parklane Boulevard, Suite 102, Sugar Land, Texas 77478, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016148001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 975,000 gallons per day. TCEQ received this application on April 20, 2022.

The facility will be located approximately 1.87 miles southwest of the intersection of County Road 214 and U.S. Highway 183, in Caldwell County, Texas 78644. The treated effluent will be discharged to an unnamed tributary, thence to a second unnamed tributary, thence to West Fork Plum Creek, thence to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The unclassified receiving water uses are minimal aquatic life use for unnamed tributary and limited aquatic life use for West Fork Plum Creek (intermittent with pools), and high aquatic life use for West Fork Plum Creek (perennial). The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedure to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected West Fork Plum Creek (perennial portion) and Plum Creek, which have been identified as high aquatic life use. Existing uses will be maintained and protected. The preliminary determination

can be reexamined and may be modified if new information is received. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.700833%2C29.796111&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

**PUBLIC COMMENT / PUBLIC MEETING.** A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, March 28, 2023 at 7:00 p.m.**

**Lockhart Evening Lions Club**

**220 Bufkin Lane**

**Lockhart, Texas 78644**

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Lockhart City Hall, 308 West San Antonio Street, Lockhart, Texas. Further information may also be obtained from Greenwood Ventures Group LLC at the address stated above or by calling Mr. Daniel Ryan, P.E., LJA Engineering, Inc, at (512) 439-4700.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: February 14, 2023

TRD-202300720

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023



**Notice of Receipt of Application and Intent to Obtain a Type V Municipal Solid Waste Permit**

Notice issued on February 15, 2023

Proposed Permit No. 2417

Application. South Texas DeWatering LLC, P.O. Box 721005, McAllen, Texas 78504, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type V Municipal Solid Waste Permit to authorize this facility to process and dewater non-hazardous liquid wastes using flocculation and filtration to separate liquids and solids. Recovered liquids will be disposed to the city sewer and solids will be disposed at an authorized landfill, compost facility or processing facility. The facility is proposed to be located at 502 Commerce Road, Alice, Texas 78332 in Jim Wells County, Texas. The TCEQ received this application on December 15, 2022. The permit application is available for viewing and copying at the Alicia Salinas City of Alice Public Library, 401 East Third Street, Alice, Texas 78332, and may be viewed online at [www.intera.com/permits](http://www.intera.com/permits). The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1DfrPX>. For exact location, refer to application.

Alternative Language Notice. Alternative language notice in Spanish is available at [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps). Aviso en otro idioma. El aviso en lengua alternativa en español está disponible en [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps)

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons

who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from South Texas DeWatering LLC at the address stated above or by calling Mr. Howard Adams at (956) 627-0139.

TRD-202300724

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023



### Notice of Water Quality Application

The following notice was issued on February 09, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

#### INFORMATION SECTION

Willow Point Municipal Utility District has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0015072001, to authorize an additional Interim phase of a daily average flow not to exceed 300,000 gallons per day (gpd). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gpd. The facility is located at 1226 Posey Ridge Lane, Katy, in Fort Bend County, Texas 77494.

TRD-202300719

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023



### Notice of Water Rights Application

Notices Issued February 8, 2023

APPLICATION NO. 13844

Barnwell Properties, 318 Hwy 271 N, Gilmer, Texas 75644, Applicant, seeks a water use permit to authorize the maintenance of a dam and 24.5 acre-foot capacity reservoir located on an unnamed tributary of Bishop Creek, Cypress Creek Basin for recreational purposes in Upshur County. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on June 8, 2022. Additional information and fees were received on August 17 and September 1, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 23, 2022.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft Water Use Permit, if granted, would contain a special condition requiring the Applicant to pass all inflows of state water should they be required to satisfy downstream senior and superior water rights. 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](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, 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 amendment 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 amendment 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 WRPERM 13844 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 web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

#### APPLICATION NO. 12-3653C

Conargo, LLC, P.O. Box 35, Dublin, Texas 76446, Applicant, seeks to amend Certificate of Adjudication No. 12-3653 to add a place of use in Comanche County and change the two diversion reaches to seven diversion reaches on Indian Creek, an unnamed tributary of the South Leon River, the South Leon River, the Leon River, and an unnamed tributary of Walnut Creek, Brazos River Basin in Comanche County. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on June 15, 2020. Additional information and fees were received on November 12, 2020 and August 25, 2022. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 9, 2020.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, stream-flow restrictions. 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](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 February 27, 2023. 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 February 27, 2023. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed February 27, 2023.

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 3653 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 web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

#### APPLICATION NO. 14-1432A

Samuel W. Beaumont Jr. and Beate C. Beaumont (Owners/Applicants), P.O. Box 1011, Fredericksburg, Texas 78624, seek to amend their portion of Certificate of Adjudication No. 14-1432 to add a diversion reach on Barons Creek, Colorado River Basin, in Gillespie County. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on August 12, 2021. Additional information and fees were received on September 9, 2021. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 24, 2021.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions, including but not limited to installation of screens on any new diversion structure(s). 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-permit](https://www.tceq.texas.gov/permitting/water_rights/wr-permit)

ting/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 February 27, 2023. 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 February 27, 2023. The Executive Director may approve the application unless a written request for a contested case hearing is filed by February 27, 2023.

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 1432 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 web site at [www.tceq.texas.gov](http://www.tceq.texas.gov) Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202300716

Laurie Gharis  
Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023



Revised Combined Notice of Public Meeting and Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) and Notice of Application and Preliminary Decision for TPDES Permit for Industrial Wastewater New Permit No. WQ0005397000

**APPLICATION AND PRELIMINARY DECISION.** Gapped Bass LLC, 130 Walker Watson Road, Bastrop, Texas 78602, which proposes to operate the FM 1209 Wastewater Treatment Facility, which serves a tunnel boring equipment manufacturing and testing facility with on-site

residences, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005397000, to authorize the discharge of treated process wastewater and domestic wastewater at a daily average flow not to exceed 142,500 gallons per day via Outfall 001 and the disposal of process wastewater and domestic wastewater at a daily average flow not exceed 142,500 gallons via surface irrigation of 63 acres of non-public access land. The TCEQ received this application on July 15, 2022.

**This revised combined notice is being issued to update the contact information provided at the end of the original NORI. The person to contact for further information is Mr. Hunter Brauer, Lead Civil Engineer, TBC - The Boring Company, at (737) 279-8632.**

The facility and land application site will be located at 130 Walker Watson Road, near the City of Bastrop, Bastrop County, Texas 78602. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.405%2C30.1525&level=12>

The effluent will be discharged directly to the Colorado River Below Lady Bird Lake/Town Lake in Segment No. 1428 of the Colorado River Basin. The designated uses for Segment No. 1428 are primary contact recreation, public water supply, and exceptional aquatic life use.

In accordance with Title 30 Texas Administrative Code Section 307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Colorado River Below Lady Bird Lake/Town Lake, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Bastrop Public Library, 1100 Church Street, Bastrop, Texas.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a con-

tested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, March 21, 2023 at 7:00 p.m.**

**Hampton Inn and Suites Bastrop**

**240 South Hasler Boulevard**

**Bastrop, Texas 78602**

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least five business days prior to the meeting.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. **The response to comments, along with the Executive Director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.**

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be added to: (1) the permanent list for a specific applicant name and permit number; and (2) the mailing list for a specific county. If you wish to be placed on the permanent and the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www.tceq.texas.gov/goto/comment> within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.**

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioner Integrated Database at <https://www.tceq.texas.gov/goto/CID/>. Search the database using the permit number for this application, which is provided at the top of this notice.

**AGENCY CONTACTS AND INFORMATION.** Public comments and requests must be submitted either electronically at <https://www.tceq.texas.gov/goto/comment>, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address, and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040 or visit their website at <https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Gapped Bass LLC at the address stated above or by calling **Mr. Hunter Brauer, Lead Civil Engineer, TBC - The Boring Company, at (737) 279-8632.**

Issued: February 14, 2023

TRD-202300721

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2023

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**Texas Facilities Commission**

Request for Proposals (RFP) #303-3-20747

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD) announces the issuance of Request for Proposals (RFP) 303-4-20752. TFC seeks a five (5) or ten (10) year lease of approximately 9,440 square feet of usable space which consists of 5,440 SF of office space, 1,500 SF of vehicle storage/workshop, and 2,500 SF of outside storage located in Amarillo, Texas.

The deadline for questions is March 13, 2023, and the deadline for proposals is March 28, 2023, at 3:00 p.m. The award date is June 15, 2023. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Heather Goll at [heather.goll@tfc.texas.gov](mailto:heather.goll@tfc.texas.gov). A copy of the RFP may be downloaded from the Electronic State Business Daily at <https://www.txsmartbuy.com/esbdetails/view/303-4-20752>.

TRD-202300723

Gayla Davis

Director of Leasing Services

Texas Facilities Commission

Filed: February 15, 2023

## 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 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 23, 2023 to February 10, 2023. 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 §§30.25, 30.32, and 30.41, 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, February 17, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, March 19, 2023.

#### FEDERAL AGENCY ACTIVITIES:

**Applicant:** Texas Department of Transportation

**Location:** The project site is located in wetlands, in an unnamed tributary to Tabbs Bay, and Tabbs Bay, at a point south of State Highway (SH) 99/146 East, near Baytown, in Harris County, Texas.

**Latitude & Longitude (NAD 83):** 29.713123, -94.973746

**Project Description:** The applicant proposes to temporarily discharge fill material into 0.15 acre of estuarine emergent wetlands and 0.8 acre of an unnamed perennial tributary to Tabbs Bay, and permanently discharge fill material into 3.85 acres of palustrine emergent wetlands, 0.14 acre of palustrine scrub/shrub wetlands, 0.01 acre of estuarine emergent wetlands, 0.27 acre of open water and 0.57 acre of perennial stream. Total volume of material proposed to be placed is approximately 9,142 cubic yards into a total of 5.07 acres of wetlands and waters of the United States. This fill is proposed for the construction of a drainage channel with a minimum width of 20 feet and a maximum

width of 40-foot-wide. The drainage channel will begin at a point along SH 99/146 East and continue to a point south of Evergreen Road near Tabbs Bay.

The applicant proposed to mitigate for the proposed impacts by constructing a permittee responsible mitigation (PRM) project. The PRM project includes enhancement and restoration of approximately 14 acres of wetlands and 5,407 linear feet of stream. The goals of the compensatory mitigation proposal are to maintain the aquatic ecosystem functions and hydrologic conditions within Galveston Bay watershed. Compensatory mitigation would replace the chemical, physical, and biological functions of wetlands and other aquatic resources that are lost or degraded as a result of the proposed project.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-2022-00334. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**CMP Project No:** 23-1136-F2

**Applicant:** U.S. Army Corps of Engineers

**Location:** The sites selected for evaluation start in the east with the Lower Neches Wildlife Management Area and move southwest along the Gulf Intracoastal Waterway (GIWW) to Goose Island State Park. The project site is located in Aransas County.

**Project Description:** The goals and objectives for this study are to 1) re-establish ecological integrity, including plant and animals that resemble native communities to foster natural diversity; 2) design the restoration to be a resilient and self-sustaining system that can adapt to changing dynamics; and 3) improve sediment and nutrient inputs into the restoration area.

The Proposed Action is Alternative 3D which would restore and nourish 39 acres of technically significant marsh habitat at Goose Island State Park. Within the four marsh restoration units (cells 1 - 4), material dredged from the GIWW would be hydraulically pumped into open water and low-lying areas assuming a post-construction settlement elevation of +0.6 to +0.8-ft NAVD88 (+1.5 to +1.7-foot MLLW). Within cells 3 and 4, along the southern area, dredge material would be hydraulically pumped to construct a 3.7-acre and 2.5-acre, respectively, higher elevation marsh targeting +1.5 to +2.0-ft NAVD88 (+2.4 to +2.9-foot MLLW). The higher elevation marsh in cells 3 and 4 would be gradually sloped to meet the lower elevation marsh at approximately 1.0 ft NAVD88. A new containment berm would be constructed. It is estimated that 196,500 cubic yards (cy) of dredged material would be required to restore the 39 acres of marsh. This alternative needs to raise the existing dike of 7,220 ft to raise an extra foot, with a volume need of 13,700 cy. Final project design criteria will be developed during the pre-engineering, design, and construction phase.

**Type of Application:** U.S. Army Corps of Engineers Draft Detailed Project Report and Environmental Assessment (DDPR-EA). The U.S. Army Corps of Engineers, Galveston District, in partnership with the Texas General Land Office, have undertaken the Aquatic Ecosystem Restoration for the Gulf Intracoastal Waterway - Beneficial Use of Dredged Material study, proposing to beneficially use material dredged during routine maintenance dredging operations from the Matagorda Bay to Corpus Christi Bay reach in the GIWW to restore coastal saline marsh habitat in Goose Island State Park, Aransas County, Texas (referred to as the Proposed Action). The study is authorized under Section 204 of the Water Resources Development Act of 1992, as amended, and would be administered under the USACE Continuing Authorities Program (CAP).

**CMP Project No:** 23-1125-F2

**Applicant:** Texas Department of Transportation - Houston District

**Location:** The project site is located in adjacent wetlands along State Highway 146, near La Porte, in Harris County, Texas 77571.

**Latitude & Longitude (NAD 83):**

Starting: 29.652819, -95.030006

Ending: 29.582282, -95.028887

**Project Description:** The applicant proposes to permanently discharge fill material into a total of 2.59 acres of wetlands during construction activities associated with improvements to the existing State Highway (SH) 146. The associated fill activities include grading on banks along the main lane and frontage road locations, as well as the construction of a concrete batch plant that is required to complete additional work in addition to the previously authorized project under Nationwide Permit (NWP) SWG-2006-00484.

The applicant has stated that compensatory mitigation is required for unavoidable impacts to 3.3413 acres of wetlands totaling 8.1 functional credit units (FCUs) (of which 0.7423 acre/1.8 FCU is previously permitted and purchased) at Gulf Coastal Plains Mitigation Bank (GCPMB). Compensatory mitigation for this Standard Permit (SP) would include an additional 6.6 FCUs for 2.60 acres of impacts.

The Gulf Coastal Plains Mitigation Bank has a service area that overlaps the proposed project area. The project area occurs within the secondary service area for this bank, so a 1.5 multiplier is required. The bank also only releases credits in a credit suite, meaning an equal amount in each Functional Capacity Unit (FCU) category determined by the highest value must be purchased. The Atlantic and Gulf Coastal Plains utilizes Hydrogeomorphic Interim (HGMI) assessments to mandate credits of wetlands or other water of the U.S. that are adversely impacted. This bank recognizes the HGMI assessment method and for credit purchases combines Palustrine Emergent (PEM) wetlands and Palustrine Scrub-Shrub (PSS) wetlands into one credit. A Wetland Functional Assessment Report was completed detailing the calculations for determining the functional loss of Temporary Storage & Detention of Storage Water (TSDSW), Maintain Plant and Animal Communities (MPAC), and Removal & Sequestration of Elements & Compounds (RSEC) anticipated from unavoidable impacts to wetlands as a result of the proposed project. HGMI functional assessments that were completed for the four crossings which would require mitigation.

TxDOT previously purchased 0.6 FCU for TSDSW, MPAC, and RSEC totaling 1.8 FCUs under NWP SWG-2006-00484. TxDOT proposes to purchase an additional 6.6 FCUs for 2.60 acres of impacts to fulfill the additional mitigation requirements for impacts associated with this SP application. Since Gulf Coastal Plains Mitigation Bank sells credits in a credit suite for PSS/PEM impacts, 2.2 FCUs of each TSDSW, MPAC, and RSEC (6.6 FCUs total) are required to mitigate for impacts to PSS/PEM.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2006-00484. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

**CMP Project No:** 23-1144-F2

FEDERAL AGENCY ACTIONS:

**Applicant:** Cameron County, Texas

**Location:** The project site is located in the City of South Padre Island (SPI) starting at Beach Access Road 4, five miles north of the entrance onto SPI from the Queen Isabella Causeway, and extending approximately 12 miles north along the beach into the Laguna Atascosa National Wildlife Refuge (LANWR).

**Latitude & Longitude (NAD 83):**

- Beach Template

South End: 26.156678, -97.171763

North End: 26.331997, -97.205130

Center (approx.): 26.258194, -97.189054

- Borrow Area A: 26.065931, -97.155413

- Borrow Area B: 26.066175; -97.116923

- Borrow Area C: 26.064607; -97.166457

**Project Description:** The applicant proposes to place suitable sand for beach nourishment in volumes ranging from 250,000 to 500,000 cubic yards per event along approximately 12 miles of beach totaling approximately 970 acres as beach nourishment activities. Placement of material would be based on available sediment quantity within areas with the most need for nourishment due to ongoing erosion. The construction width includes a 200-foot berm crest at an elevation of +4.0 feet NAVD88, a variable slope to the toe of fill, and a variable fill density. The resulting placement density (volume per linear foot of nourished beach) along the project length would vary due to the varying quantities of material needed to construct the beach and provide nourishment.

The placement of sand material on the beach would primarily occur by dredge pipeline. Sand placement from authorized upland sites would occur via truck hauling. Truck hauling would include the use of sand brought to Access Roads 5 and 6, where it would be stockpiled and transported to the project area by large off-road dump trucks. Front-end loaders would then grade sand placed within the construction corridor to create the authorized beach template.

The dredge pipeline would deliver sand from authorized borrow areas to the project area by hopper dredge with a pump-out station(s) located offshore. The pipeline would bring suitable sand to an Active Construction Area located on the beach using a combination of the following:

1. Contractor routes the pipeline to shore at one location and then adds dredge pipeline on the beach as progress is made towards the Active Construction Area, or
2. Contractor would have multiple landing locations for the pipeline and the pipeline would be routed along the seafloor to a location near the Active Construction Area.

An Active Construction Area is the area on the beach where dredged material is discharged and mechanically moved to construct the beach and dune profile. Heavy equipment operators would create temporary earthen training berms, which would partially contain and direct the slurry exiting the dredge pipe. As this slurry runs along the beach, sediment would settle out within the project template and water would return to the Gulf of Mexico. As sediment builds up in front of the pipe, heavy equipment would grade the sediment to meet the project template. Operation of heavy equipment would primarily be limited to the Active Construction Area. However, equipment and personnel would travel portions of the beach for crew changes and transfer of equipment/supplies to the working area. Beach construction equipment would be stored near Active Construction Areas above the high tide line.

The temporary dredge pipe located on land would be placed below or above the existing grade to allow vehicular access. Upon removal of the dredge pipe, all disturbed areas would be filled, graded, and compacted to allow vehicle access at project completion.

Sand Borrow Areas



Suitable sand material for beach nourishment would be supplied from beneficial use borrow sources located near the entrance of the Brazos Santiago Pass (Borrow Areas A - C). The Corps conducts regular maintenance dredging of the entrance portion of the Brazos Santiago Pass on an average 2-year cycle and currently coordinates with the City of SPI, Cameron County, and the General Land Office (GLO) to place sand as beach nourishment on Isla Blanca Park (County) and City of SPI shorelines. The applicant is coordinating with the Corps to allow the beneficial use of suitable maintenance material for this project. In addition, the applicant is in coordination with the Port of Brownsville to beneficially use suitable sand material from proposed dredge areas within the Brazos Santiago Pass, which will be part of the proposed Brazos Island Harbor Channel Improvement channel deepening project (BIH Project) authorized under a separate Department of the Army Permit SWG-2016-00038 and to be performed by a private party, for placement on SPI shoreline. Project activities for Borrow Areas A - C include the following:

- Use channel maintenance material from the existing channel configuration maintained by the Corps (Borrow Area A channel maintenance area - approximately 92 acres). Quantities of maintenance dredge material is between 250,000 to 500,000 cubic yards per event.

- Use channel maintenance material from the revised channel configuration (depths) after performance (by others) of the proposed BIH Project. The quantity of beneficial use material dredged from the channel during navigation maintenance projects is expected to be similar in quantities to current maintenance dredge amounts, i.e., 250,000 to 500,000 cubic yards per event (expand Borrow Area A from approximately 92 acres to 119 acres).

- Use suitable material from new work areas as part of the BIH Project (Borrow Areas B and C - approximately 28 acres and 15 acres, respectively).

- Suitable material beneficially used from maintenance and new work within the Brazos Santiago Channel will allow up to 1,500,000 cubic yards of sand to be used as beach fill on SPI beaches (Plan Drawings, Sheets 51-55). The new work areas would only be used during future proposed work.

- Cameron County would not conduct dredging of the Brazos Santiago Pass on their own. The County would receive material from federal dredging of the channel (Corps) and from the already authorized BIH Project (private party).

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2022-00454. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 23-1141-F1

**Applicant:** Lone Star NGL Mont Belvieu, L.P.

**Location:** The project site is located in forested wetlands adjacent to Cedar Bayou, approximately 2.35 miles southwest of the intersection of State Highway 146 and Farm-to-Market Road 1942, in Mont Belvieu, Chambers County, Texas.

**Latitude & Longitude (NAD 83):** 29.841754, -94.929849

**Project Description:** The applicant proposes to discharge approximately 25,000 cubic yards of fill material into 30.47 acres of forested wetlands for the purpose of constructing two natural gas fractionators, chemical treatment and processing units, and associated infrastructure.

The applicant has proposed to mitigate for 30.47 acres of impacts to jurisdictional wetlands by implementing an off-site Permittee Responsible Mitigation plan that would fulfill the appropriate number of functional credit units (FCUs) calculated using the Galveston District's interim Hydrogeomorphic Model for Riverine Forested Wetlands. At this time, Delta Land Services has developed an off-site PRM plan for the appropriate number of FCUs needed to offset the impact of the 30.47 acres of forested wetlands. The approximate number of FCUs needed to offset the 30.47 acres of mosaic forested wetland impacts includes the following: 17.16 Physical FCUs, 18.78 Biological FCUs, and 17.66 Chemical FCUs.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2019-00692. 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:** 23-1142-F1

**Applicant:** Johnson Beach Development, LLC

**Location:** The project site is located in wetlands adjacent to the Gulf of Mexico at Rettilon Road, in Port Bolivar, Galveston County, Texas.

**Latitude & Longitude (NAD 83):** 29.384844, -94.723584

**Project Description:** The applicant proposes to discharge dredged or fill material into 0.72-acre of non-tidal wetlands for the purpose of constructing a residential subdivision. The subdivision is proposed to include 30 residential lots, 1,610 linear feet of roadway with an approximate 60-foot-wide right of way, and an additional 280 linear feet of roadway with an 80-foot-wide right of way at the intersection of Rettilon Road. The project also includes a 175 linear foot by 10-foot-wide wooden mat Beach Access over the dunes within a 30-foot-wide beach access easement and a 95-square-foot crossing of Wetland 1 for equipment ingress and egress for maintenance activities. The applicant proposed to mitigate for the proposed impacts by purchasing wetland functional credit units from the Gulf Coastal Plains Mitigation Bank.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2007-00321. 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:** 23-1143-F1

**Applicant:** Port of Corpus Christi Authority

**Location:** The project site is located in herbaceous wetlands adjacent to McCampbell Slough, between Texas State Highway 35 and Ingleside, San Patricio County, Texas.

**Latitude & Longitude (NAD 83):** 27.912112, -97.206839

**Project Description:** The applicant proposes to discharge approximately 111,100 cubic yards of fill material into 13.9 acres of herbaceous wetlands adjacent to McCampbell Slough, a tidal water of the United States. The discharges are associated with construction of an approximate 600 megawatt photovoltaic solar panel development on Port of Corpus Christi property. Work includes construction of 10-foot-wide aggregate access routes, rotating solar panels mounted on helical piles, power inverters, and two electric substations in an approximate 1,866-ac area.

The applicant proposed to mitigate for the proposed impacts by restoring approximately 29.6 acres of previously degraded wetlands onsite. These areas include unimproved vehicle paths which will be restored

to the adjacent wetland elevations to facilitate improved wetland hydrology and vegetation.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2021-00163. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 23-1158-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](mailto: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](mailto:federal.consistency@glo.texas.gov).

TRD-202300693

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: February 14, 2023



### Notice of Availability - Texas Coastal Management Program

The General Land Office (GLO) and the Coastal Coordination Advisory Committee (CCAC) file this Notice of Funds Availability to announce upcoming federal grant funds provided by the National Oceanic and Atmospheric Administration and state grant funds provided by the Gulf of Mexico Energy Security Act to the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and ensure the long-term ecological and economic productivity of the coast.

A federal award from NOAA to the CMP, approximating \$2 million, is expected in October 2024 and state GOMESA funds are expected in April 2024. The GLO, which oversees the implementation of the CMP with the advice of the CCAC, will pass through the funding to eligible entities to support projects that implement and/or advance the CMP goals and policies. Projects must be located within the coastal zone boundary established by the Texas Legislature in 1995.

The following entities are eligible to receive grants under the CMP.

Incorporated cities within the coastal zone boundary

County governments within the coastal zone boundary

Texas state agencies

Texas public colleges/universities

Subdivisions of the state with jurisdiction within the coastal zone boundary (e.g., navigation districts, port authorities, river authorities, and soil and water conservation districts)

Councils of governments and other regional governmental entities within the coastal zone boundary

The Galveston Bay Estuary Program

The Coastal Bend Bays and Estuaries Program

Nonprofit Organizations that are registered as a 501(c)(3) or 501(c)(4) and have an office located in Texas. Nonprofit organizations must be nominated by one of the eligible entities listed above. (A nomination must take the form of a resolution or letter from an official representative of the entity. The nominating entity is not expected to contribute

financially or administratively to the management and implementation of the proposed project.)

The GLO and the CCAC will accept applications for NOAA funding through a competitive pre-proposal process followed by an invitation-only final application submission. Projects applying for GOMESA funds must submit a final application and will be selected based on the merits of the project proposed therein. Projects must address at least one of the CMP funding priorities listed in the CMP Cycle 29 Guidance document.

The GLO will hold four in-person grant workshops to provide information on the funding priorities, outline application requirements, and give potential applicants the opportunity to discuss specific project ideas with GLO staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged. Identical information will be presented at all four workshops.

#### **Workshop 1 - Port Lavaca**

Tuesday, February 28, 2023

8:00 a.m. - 12:00 p.m.

Bauer Community Center

2300 TX-35

Port Lavaca, Texas 77979

#### **Workshop 2 - League City Workshop**

Thursday, March 2, 2023

8:00 a.m. - 12:00 p.m.

Johnnie Arolfo Civic Center

400 W Walker St

League City, Texas 77573

#### **Workshop 3 - Port Isabel**

Tuesday, March 7, 2023

8:00 a.m. - 12:00 p.m.

Port Isabel Cultural and Event Center

309 Railroad St

Port Isabel, Texas 78578

#### **Workshop 4- Port Aransas**

Thursday, March 9, 2023

8:00 a.m. - 12:00 p.m.

Patton Center, Mission-Aransas National Estuarine Research Reserve

855 E Cotter Ave

Port Aransas, Texas 78373

Breakfast will be provided before each workshop at 8:00 a.m., and presentations will begin at 8:30 a.m. **Registration is required to attend the workshops.** Register for all workshops at: <https://www.surveymonkey.com/r/GLOworkshops2023>

The requirements to receive federal or state grant funds are outlined in the CMP Cycle 29 Guidance document. This document along with the online application portal, financial guidance, and other useful information can be found here: <http://www.glo.texas.gov/coast/grant-projects/funding/>.

Submission of a pre-proposal is required for all projects requesting NOAA-based funds. **Pre-proposals are due by 5:00 p.m. on June**

7, 2023. Written comments will be provided to enhance the quality of the project for the final application or better align the project with CCAC member agency needs for future cycles. Applicants for NOAA funding must be invited to submit a final application. **Upon invitation, NOAA funding final applications with supporting documentation are due by 5:00 p.m. on October 4, 2023.**

**If applying for a GOMESA funded Project of Special Merit, final applications are due by 5:00 p.m. on June 7, 2023.** Pre-proposals are not required for a Project of Special Merit. To be considered for funding, pre-proposals and final applications must be submitted electronically in the online application portal.

TRD-202300664

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: February 13, 2023

◆ ◆ ◆  
**Texas Health and Human Services Commission**

Notice of Public Hearing on Proposed Payment Rates for the STAR Kids/STAR Health Medically Dependent Children's Program (MDCP) Out-of-Home Respite Retroactive to December 1, 2022

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on March 14, 2023, at 9:00 a.m. to receive public comments on proposed payment rates for STAR Kids/STAR Health MDCP Out-of-Home Respite, retroactive to December 1, 2022.

The public hearing will be held in the HHSC North Austin Complex Building, Public Hearing Room 1.401, First Floor, at 4601 W. Guadalupe St., Austin, Texas 78751. Free parking is available in the adjacent parking garage. HHSC will also broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and accessible on demand on the same website. The hearing will be held in compliance with Texas Human Resources Code, Section 32.0282, which requires public notice of hearings on proposed Medicaid reimbursements.

Proposal. Payment rates for the STAR Kids/STAR Health MDCP Out-of-Home Respite, retroactive to December 1, 2022.

Methodology and Justification. The proposed payment rates were determined in accordance with Title 1 of the Texas Administrative Code Section 355.507, related to the Reimbursement Methodology for the Medically Dependent Children Program. HHSC is proposing per diem payment rates consistent with revised bill codes for MDCP Out-of-Home Respite, effective December 1, 2022. The new rates will be based on 77 percent of weighted average per diem methodological rates for NF using four daily rates based on only ventilator and tracheostomy needs. HHSC evaluated the current rate methodology for these services as part of the regular biennial fee review process.

Briefing Package. A briefing package describing the proposed payment rates will be available at <https://pfd.hhs.texas.gov/rate-packets> no later than February 27, 2023. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Provider Finance Department by telephone at (737) 867-7817; by fax at (512) 730-7475; or by email at [PFD-LTSS@hhs.texas.gov](mailto:PFD-LTSS@hhs.texas.gov). The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on the day of the hearing. Written comments may be

sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to [PFD-LTSS@hhs.texas.gov](mailto:PFD-LTSS@hhs.texas.gov). In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact HHSC Provider Finance by calling (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202300650

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 9, 2023

◆ ◆ ◆  
**Public Notice - Texas State Plan for Medical Assistance Amendment**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments will be effective March 1, 2023.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Physicians and Other Practitioners;

Clinical Diagnostic Labs;

Medication-Assisted Treatment;

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); and

Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT).

The proposed amendment is estimated to result in an annual aggregate expenditure of \$110,003 for federal fiscal year (FFY) 2023, consisting of \$70,369 in federal funds and \$39,634 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is \$158,174 consisting of \$95,743 in federal funds and \$62,431 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is \$156,482 consisting of \$94,124 in federal funds and \$62,358 in state general revenue.

Further details on specific reimbursement rates and percentage changes were made available on the HHSC Provider Finance website under the proposed effective date at: <https://pfd.hhs.texas.gov/rate-packets>.

Rate Hearings.

Rate hearings were conducted in person and online on November 7, 2022. Information about the proposed rate changes and hearings was published in the October 7, 2022, issue of the *Texas Register* (46 TexReg 6662). Additional information and the notice of hearings can be found at <https://www.sos.state.tx.us/texreg/index.shtml>. Archived recordings of the hearings can be found at <https://www.hhs.texas.gov/about/meetings-events>.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Shaneqwea James, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at [Medicaid\\_Chip\\_SPA\\_Inquiries@hhsc.state.tx.us](mailto:Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us). Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

#### Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

#### U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

#### Fax

Attention: Provider Finance at (512) 730-7475

#### Email

[PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov)

#### Preferred Communication.

For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202300649

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 9, 2023



## Texas Department of Housing and Community Affairs

### Notice of Public Comment Period and Public Hearing on Draft 2023 Department of Energy Weatherization Assistance Program State Plan

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of a public comment period for the Draft 2023 United States Department of Energy (DOE) Weatherization Assistance Program (WAP) State Plan. The public comment period begins Friday,

February 24, 2023, and ends Tuesday, March 14, 2023, at 5:00 p.m. Austin local time.

Please visit the TDHCA Public Comment Center at: <http://www.tdhca.state.tx.us/public-comment.htm> to access the Plan.

Written comments concerning the Draft Plan should be submitted to TDHCA, Attn: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us).

A public hearing for the Draft 2023 DOE WAP State Plan will be accessible to the public via the web link information below. In order to engage in two-way communication during the hearing, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the hearing without registering online will not be able to provide comment, but the hearing will still be audible.

Thursday, March 7, 2023

10:00 a.m. Austin local time

#### GoToWebinar

To register: <https://attendee.gotowebinar.com/register/6251507984373764440>

Dial-in number: +1 (213) 929-4212, Webinar ID: 522-401-003, Audio Access Code 231-216-426 (persons who use the dial-in number and access code without registering online will only be able to hear the public hearing and will not be able to provide comment).

After registering, you will receive a confirmation email containing information about joining the Public Hearing Webinar.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the 2023 DOE WAP State Plan.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Rita Gonzales-Garza at (512) 475-3905, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Rita Gonzales-Garza, (512) 475-3905, at least five days before the meeting so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Rita Gonzales-Garza, al siguiente número (512) 475-3905 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

If you have any questions, please contact Gavin Reid via email at [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us).

TRD-202300677

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 13, 2023



## Texas Department of Insurance

### Correction of Error

The Texas Department of Insurance submitted proposed amendments to 28 TAC §21.113(l)(5) in the February 10, 2023, issue of the *Texas Register* (48 TexReg 628). Due to an error as submitted by the agency, the new figure in 28 TAC §21.113(l)(5) was not published correctly. The correct figure is as follows:

Figure: 28 TAC §21.113(l)(5)

Item (6)

ACKNOWLEDGEMENT OF NONDUPLICATION  
PLEASE READ CAREFULLY BEFORE SIGNING

<p>I _____, certify that I (Agent's Name)</p> <p>have done the following:</p> <p>1. Informed the undersigned applicant of the right to have all existing health insurance policies presently in force reviewed by me to determine whether duplicate coverage will occur with the issuance of this policy.</p> <p>2. Reviewed the policies listed below and have found that duplication WILL or WILL NOT (circle one) occur with the issuance of the applied for policy.</p> <p>_____ (Form Number)</p> <p>COMPANY POLICY TYPE OF NUMBER (#) POLICY</p> <p>_____ _____ _____ _____</p> <p>Check one:</p> <p>a. ___ Duplication will not occur because the above listed policy(ies) # _____ will be replaced by the applied-for policy _____ (form number). Justification for the replacement is (explain benefit to consumer)</p> <p>_____ _____</p> <p>b. ___ No health policies in force at this time.</p> <p>c. ___ Applicant has elected not to have the policy(ies) reviewed.</p> <p>_____ DATE      AGENT/COMPANY REPRESENTATIVE</p>	<p style="text-align: center;">NOTICE TO CONSUMERS</p> <p style="text-align: center;">Age 65 and Older</p> <p>This Notice is required by the Texas Department of Insurance because of its concern that some consumers may buy unnecessary coverage or may replace their coverage needlessly. Buying too much coverage or replacing a policy may be a waste of your money.</p> <p>1. PURCHASING MORE THAN ONE POLICY OF EACH OF THE FOLLOWING TYPES MAY BE UNNECESSARY AND COSTLY:</p> <p><input type="checkbox"/> SPECIFIED DISEASE (CANCER, STROKE, ETC.)</p> <p><input type="checkbox"/> HOSPITAL INDEMNITY</p> <p><input type="checkbox"/> BASIC HOSPITAL EXPENSE OR BASIC MEDICAL/SURGICAL</p> <p><input type="checkbox"/> EXPENSE (THESE POLICIES ARE TYPIFIED BY A SCHEDULED BENEFIT PER ILLNESS)</p> <p><input type="checkbox"/> LONG-TERM CARE</p> <p>THE TEXAS DEPARTMENT OF INSURANCE CANNOT SAY WHETHER YOU SHOULD OR SHOULD NOT PURCHASE ANY OR ALL OF THESE POLICY TYPES. THE DECISION IS YOURS ALONE AND SHOULD BE DETERMINED BY YOUR NEEDS AND CIRCUMSTANCES.</p> <p>2. IF YOU HAVE MORE THAN ONE POLICY IN ANY OF THE ABOVE CATEGORIES, THE TEXAS DEPARTMENT OF INSURANCE STRONGLY URGES YOU TO GET A SECOND OPINION FROM SOMEONE YOU TRUST AS TO WHETHER YOU NEED MORE THAN ONE OF THESE POLICIES.</p> <p>3. IF YOU REPLACE EXISTING HEALTH INSURANCE POLICIES YOU MAY LOSE COVERAGE DURING A PERIOD OF TIME THAT NEW EXCLUSIONS, REDUCTIONS, LIMITATIONS, OR WAITING PERIODS MUST BE SERVED.</p> <p>4. THE TEXAS DEPARTMENT OF INSURANCE STRONGLY URGES YOU TO ALLOW YOUR INSURANCE AGENT OR COMPANY TO REVIEW ALL YOUR CURRENT HEALTH POLICIES PRIOR TO REPLACING EXISTING HEALTH COVERAGE OR PURCHASING ADDITIONAL HEALTH COVERAGE.</p>
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I certify that my right to have all of my existing health policies examined has been explained to me by the agent named above.

\_\_\_ I have been informed that the policy for which I am applying WILL OR WILL NOT (circle one) result in duplicate coverage.

\_\_\_ I have chosen to waive my right to have my policies reviewed to determine if they unnecessarily duplicate each other.

I have read the attached notice. Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
APPLICANT

Item (7)

**NOTICE TO CONSUMERS  
AGE 65 AND OLDER**

The Texas Department of Insurance requires that this Notice be given to you at the time you receive a policy.

State law gives you the right to review this policy and return it for a full premium refund if you are not satisfied. By law you have a minimum 10 days if you buy any individual accident and health insurance policy. The Texas Department of Insurance urges you to use this time to verify that this coverage is needed.

The Department is concerned that some consumers may buy unnecessary coverage or may replace their coverage needlessly. Buying too much coverage or replacing a policy may be a waste of your money.

1. PURCHASING MORE THAN ONE POLICY OF EACH OF THE FOLLOWING TYPES MAY BE UNNECESSARY AND COSTLY:

- SPECIFIED DISEASE (CANCER, STROKE, ETC.)
- HOSPITAL INDEMNITY
- BASIC HOSPITAL EXPENSE OR BASIC MEDICAL/SURGICAL
- EXPENSE (THESE POLICIES ARE TYPIFIED BY A SCHEDULED BENEFIT PER ILLNESS)
- LONG-TERM CARE

THE TEXAS DEPARTMENT OF INSURANCE CANNOT SAY WHETHER YOU SHOULD OR SHOULD NOT PURCHASE ANY OR ALL OF THESE POLICY TYPES. THE DECISION IS YOURS ALONE AND SHOULD BE DETERMINED BY YOUR NEEDS AND CIRCUMSTANCES.

2. IF YOU HAVE MORE THAN ONE POLICY IN ANY OF THE ABOVE CATEGORIES, THE TEXAS DEPARTMENT OF INSURANCE STRONGLY URGES YOU TO GET A SECOND OPINION FROM SOMEONE YOU TRUST AS TO WHETHER YOU NEED MORE THAN ONE OF THESE POLICIES.

3. IF YOU REPLACE EXISTING HEALTH INSURANCE POLICIES YOU MAY LOSE COVERAGE DURING A PERIOD OF TIME THAT NEW EXCLUSIONS, REDUCTIONS, LIMITATIONS, OR WAITING PERIODS MUST BE SERVED.

TRD-202300678



## 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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