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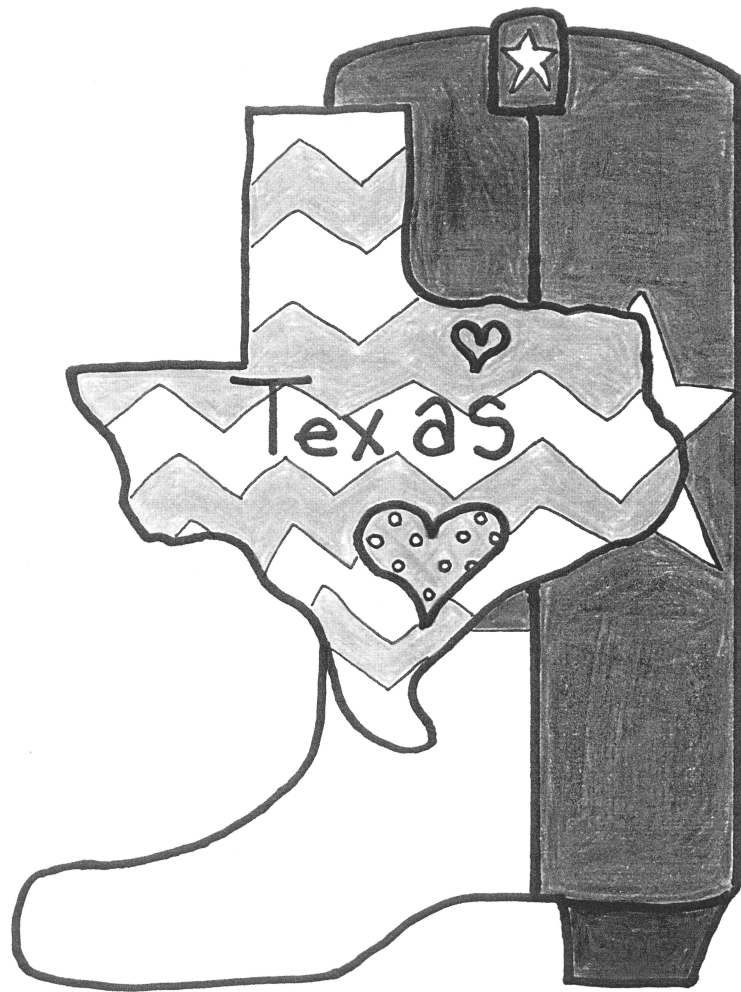
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THE GOVERNOR

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

Appointments

Appointments for February 22, 2024

Appointed as presiding officer of the North East Texas Regional Mobility Authority for a term to expire February 1, 2026, Gary N. Halbrooks of Bullard, Texas (Mr. Halbrooks is being reappointed).

Designating Gerald F. Ladner, Sr. of Austin as presiding officer of the Risk Management Board for a term to expire at the pleasure of the Governor. Mr. Ladner is replacing Lloyd M. Garland, M.D. of Lubbock as presiding officer.

Appointed to the Risk Management Board for a term to expire February 1, 2025, Jeffrey L. "Jeff" Houston of Dripping Springs, Texas (replacing Lloyd M. Garland, M.D. of Lubbock, who resigned).

Appointed as Governor's Designee/Ex-Officio Member to the Texas Economic Development Corporation Board of Directors for a term to expire at the pleasure of the Governor, Aaron S. Demerson of Austin, Texas (replacing Robert Allen of Austin).

Appointments for February 23, 2024

Pursuant to HB 2060, 88th Legislature, Regular Session, appointed to the Artificial Intelligence Advisory Council for a term to expire at the pleasure of the Governor, John F. Bash, III, of Austin, Texas.

Pursuant to HB 2060, 88th Legislature, Regular Session, appointed to the Artificial Intelligence Advisory Council for a term to expire at the pleasure of the Governor, Mark A. Stone, Ph.D. of Bryan, Texas.

Pursuant to HB 2060, 88th Legislature, Regular Session, appointed to the Artificial Intelligence Advisory Council for a term to expire at the pleasure of the Governor, Dean W. Teffer, Ph.D. of Austin, Texas.

Pursuant to HB 2060, 88th Legislature, Regular Session, appointed to the Artificial Intelligence Advisory Council for a term to expire at the pleasure of the Governor, Angela D. Wilkins, Ph.D. of Houston, Texas.

Appointed to the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2029, Kelly D. Mitchell of Texarkana, Texas (Mr. Mitchell is being reappointed).

Designating Kelly D. Mitchell of Texarkana as presiding officer of the Sulphur River Basin Authority Board of Directors for a term to expire at the pleasure of the Governor. Mr. Mitchell is replacing James C. "Chris" Spencer of Hughes Springs as presiding officer.

Greg Abbott, Governor

TRD-202400893



Proclamation 41-4098

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that elevated and critical fire weather conditions which began on February 23, 2024, and wildfires that began on February 26, 2024, pose an imminent threat of widespread or severe damage, injury, or loss of life or property in Archer, Armstrong, Bailey, Baylor, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fannin, Floyd, Foard, Garza, Gray, Gregg, Hale, Hall, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Hockley, Hutchinson, Kent, King, Knox, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Nacogdoches, Newton, Ochiltrie, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Stonewall, Swisher, Terry, Throckmorton, Upshur, Wheeler, Wichita, Wilbarger, Yoakum, and Young Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

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

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

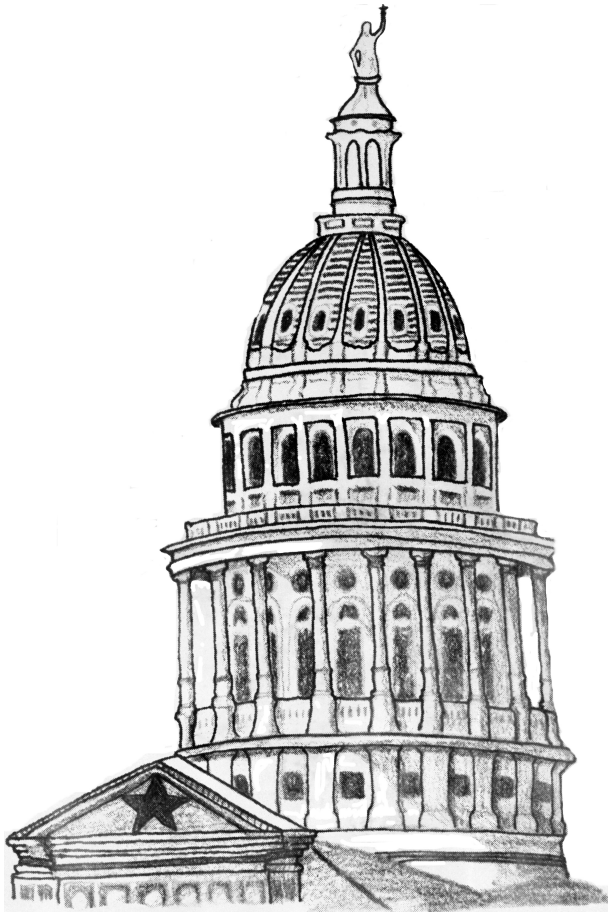
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of February, 2024.

Greg Abbott, Governor

TRD-202400879





PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 56. DISTRICT AND COUNTY ATTORNEY REPORTING REQUIREMENTS

1 TAC §§56.1 - 56.9

The Office of the Attorney General (OAG) proposes new Chapter 56 in Title 1 of the Texas Administrative Code (TAC), relating to reporting requirements for District Attorneys and County Attorneys presiding in a district or county with a population of 250,000 or more persons. Proposed new Chapter 56 consists of §§56.1 - 56.9. Proposed new Chapter 56 is necessary to implement Government Code §41.006.

EXPLANATION AND JUSTIFICATION OF RULES

Texas Government Code §41.006 states that district and county attorneys shall report to the OAG the information from their districts and counties that the OAG desires relating to criminal matters and interests of the state. Section 41.006 also states that the reports must be submitted to the OAG at the times and in the form the OAG directs. Proposed new Chapter 56 is necessary to implement §41.006 because it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

SECTION-BY-SECTION SUMMARY

Proposed new §56.1 specifies that District Attorneys and County Attorneys presiding in a district or county with a population of 250,000 or more are required to submit quarterly and annual reports relating to criminal matters and the interests of the state to the OAG in a manner prescribed by the OAG.

Proposed new §56.2(1) defines the term "case file" as all documents, notes, memoranda, and communications, whether handwritten or typed. The term includes, but is not limited to emails, instant messages, text messages, direct messages, social media messages, and handwritten notes. The term includes all drafts and final copies produced within or received by the reporting entity's office, including work product and otherwise privileged and confidential matters.

Proposed new §56.2(2) defines the term "correspondence" as any official or unofficial emails, letters, memoranda, instant message, text message, direct message, social media message, or notes received or issued by the reporting entity's office.

Proposed new §56.2(3) defines the term "fiscal year" as the twelve-month period between September 1 and August 31.

Proposed new §56.2(4) defines the term "reporting entity" as any office of a District Attorney or County Attorney serving a population of 250,000 or more.

Proposed new §56.2(5) defines the term "violent crime" to include, but is not limited to, capital murder, murder, or other felony homicide, aggravated assault, sexual assault of an adult or child, indecency with a child, family violence assault, robbery or aggravated robbery, burglary, theft, and automobile theft. The term also includes any attempt to commit such crimes.

Proposed new §56.3(a) specifies the content of the reports that must be provided to OAG on a quarterly each fiscal year.

Proposed new §56.3(b) specifies that the reporting requirement applies to all events occurring after the rule's final promulgation in the *Texas Register*. Proposed new § 56.3(b) also specifies that the reporting requirement applies to all events that occurred between January 1, 2023, and the effective date of the rule unless (1) the reporting entity obtains a waiver; (2) the reporting entity files a sworn affidavit that the information was the exclusive product of a previous District Attorney or County Attorney and is not reflective of the reporting entity's operations due to a formal change in policy, which must be described in detail; or (3) the reporting entity files a sworn affidavit that the information cannot be produced because it was destroyed or discarded pursuant to a legitimate document retention policy that existed prior to the effective date of this rule.

Proposed new §56.3(c) specifies that all information for which the relevant reporting event occurs after the effective date of the rule is due within 30 days of the beginning of each new fiscal quarter for all reportable events that occurred in the prior fiscal quarter. Proposed new §56.3(c) also specifies that all information for which the relevant reporting event occurs between January 1, 2021, and the date this final rule is promulgated in the *Texas Register* is due within 60 days of the effective date of this rule.

Proposed new §56.4 specifies the content of reports that must be provided to OAG on an annual basis. The information must be submitted to OAG on the last business day of January each year for the prior 12 months.

Proposed new §56.5 specifies that each District Attorney and each County Attorney that is subject to the reporting requirements must implement a reasonable document retention policy in order to preserve all document subject to the reporting requirements. The policies must, at a minimum, preserve documents for two years after the time when they are due to be reported.

Proposed new §56.6 specifies that if OAG believes a reporting entity has failed to comply with Chapter 56, the OAG may send a notice to the reporting entity notifying the reporting entity of its

failure to comply. A reporting entity has 15 days after receipt of the notice to remedy its noncompliance.

Proposed new §56.7 specifies that if a District Attorney or County Attorney intentionally violates proposed new Chapter 56, the Attorney General can (1) file a petition for removal of the District Attorney or County Attorney under Local Government Code 87.015; (2) file a petition for quo warranto under Civil Practice and Remedies Code 66.002; or (3) file a petition for an injunction in a civil proceeding ordering the District Attorney or County Attorney to comply.

Proposed new §56.8 specifies the makeup and responsibilities of the Oversight Advisory Committee as it relates to proposed new Chapter 56.

Proposed new §56.9 specifies that the application of every provision in the proposed rule is severable from the rest, if a court finds a provision to be invalid or unconstitutional.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Josh Reno, the Deputy Attorney General for Criminal Justice, has determined that for the first five-year period the proposed rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of state government. There may be minimal costs to local governments for gathering and submitting quarterly and yearly reports to OAG, however, the gathering and submitting of the required reports can likely be absorbed into reporting entities' ongoing operations with minimal, if any, fiscal impact.

District Attorneys and County Attorneys must report "information from their districts and counties that the attorney general desires relating to criminal matters and the interests of the state." Texas Government Code § 41.006. The proposed rules prescribe the information that the attorney general so desires relating to criminal matters. Accordingly, the proposed rules do not have an impact beyond that of the statute.

PUBLIC BENEFIT AND COST NOTE

Mr. Reno has determined that for the first five-year period the proposed rules are in effect, the public will benefit through clear procedures and standards for Texas District Attorneys and County Attorneys to submit quarterly and annual reports to the Attorney General's Oversight Advisory Committee. The public can confirm compliance with these standards.

Mr. Reno has also determined that for each year of the first five-year period the proposed rules are in effect, there are minimal, if any, anticipated economic costs to entities that are required to comply with the proposed rules.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

Mr. Reno has determined that the proposed rules do not have an impact on local employment or economies because the proposed rules only impact governmental bodies. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Mr. Reno has determined that for each year of the first five-year period the proposed rules are in effect, there will be no foreseeable adverse fiscal impact on small business, micro-businesses, or rural communities as a result of the proposed rules.

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

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the agency has prepared a government growth impact statement. During the first five years the proposed rules are in effect, the proposed rules:

- will not create a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not lead to an increase or decrease in fees paid to a state agency;
- will create a new regulation;
- will not repeal an existing regulation;
- will result in a decrease in the number of individuals subject to the rule; and
- will not positively or adversely affect the state's economy.

REQUEST FOR PUBLIC COMMENT

Written comments on the proposed rules may be submitted electronically to the OAG's Open Records Division by email to OAGRuleCommentsCh56@oag.texas.gov, or by mail to Josh Reno, Attn: Rule Comments, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Comments will be accepted for 30 days following publication in the *Texas Register*.

To request a public hearing on the proposal, submit a request before the end of the comment period by email to OAGRuleCommentsCh56@oag.texas.gov, or by mail to Josh Reno, Attn Rule Comments, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

STATUTORY AUTHORITY

New 1 TAC Chapter 56 is proposed pursuant to Texas Government Code §41.006.

CROSS-REFERENCE TO STATUTE. This regulation clarifies Texas Government Code §41.006. No other rule, regulation, or law is affected by this proposed rule.

§56.1. General Reporting Requirements.
District Attorneys and County Attorneys presiding in a district or county with a population of 250,000 or more persons shall submit quarterly and annual reports relating to criminal matters and the interest of the state to the Office of the Attorney (OAG) in a manner prescribed by the OAG and as set forth in this chapter. If needed the

OAG will post reporting instructions, guidance, and examples on the OAG's website for reference.

§56.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) "Case file" means all documents, notes, memoranda, and communications, whether handwritten, typed, electric, or otherwise, including but not limited to all emails, instant messages, text messages, direct messages, social media messages, handwritten notes, and typed or handwritten memoranda, whether a draft or final copy, produced within or received by the reporting entity's office, including work product and otherwise privileged and confidential matters.

(2) "Correspondence" means any email, letter, memorandum, instant message, text message, direct message, social media message, note, or otherwise, received or issued by an employee of the reporting entity.

(3) "Fiscal Year" means the period of September 1 through August 30, of each calendar year.

(4) "Reporting entity" means the office of a District Attorney or County Attorney serving a population of 250,000 or more persons.

(5) "Violent crime" includes but is not limited to capital murder, murder, other felony homicides, aggravated assault, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, any crime listed in Code of Criminal Procedure § 17.50(3), and any attempt to commit such crimes.

§56.3. Quarterly Reporting Requirements.

(a) Content of reports. Reporting entities shall provide the following information to the OAG quarterly each Fiscal Year.

(1) The case file regarding any decision to indict a peace officer;

(2) The case file regarding any decision to indict a poll watcher;

(3) The case file in any prosecution where a defendant has raised a justification under Chapter 9 of the Penal Code, Subchapters C and/or D;

(4) The case file for any case where a recommendation is made to a judicial body that a person subject to a final judgment of conviction be released from prison before the expiration of their sentence;

(5) The case file regarding any prosecution for which the Texas Governor has announced that The Office of the Texas Governor is considering a pardon;

(6) The case file regarding any prosecution for which the Attorney General, through the OAG's Oversight Advisory Committee, has concluded there are substantial doubts whether probable cause exists to support a prosecution;

(7) All correspondence regarding any decision not to indict a person who was arrested by the Texas Department of Public Safety for a violent crime;

(8) All correspondence regarding any decision not to indict a person who was arrested for committing a violent crime;

(9) All correspondence and other documentation describing and analyzing a reporting entity's policy not to indict a category or sub-category of criminal offenses;

(10) All correspondence with any employee of a federal agency regarding a decision whether to indict an individual;

(11) All correspondence with any non-profit organization regarding a decision whether to indict an individual; and

(12) Correspondence or other records memorializing assistant district attorney or assistant county attorney resignations or terminations and the reasons therefore where a complaint was made, formally or informally, by the assistant district attorney or assistant county attorney.

(b) Applicability and Reporting Requirements

(1) A reporting entity must submit all information in subsection (a) of this section for which the relevant reporting event occurs.

(2) A reporting entity must submit all information in subsection (a) of this section for a which a reporting event occurred between January 1, 2021, and the effective date of this rule, unless:

(A) The reporting entity obtains a written exception, in whole or in part, from the OAG;

(B) The reporting entity provides a sworn affidavit that states the information:

(i) Was the exclusive product of a previous District or County Attorney; and

(ii) Is not reflective of the reporting entity's current operations due to a formal change in the office's policies, and the formal change is described in detail and transmitted to the Oversight Advisory Committee; or

(C) The reporting entity provides a sworn affidavit that states the information cannot be produced because it was destroyed or otherwise discarded pursuant to a bona fide document retention policy that existed prior to the effective date of this rule and that is described in detail and transmitted to the Oversight Advisory Committee.

(c) Timing of reports

(1) Reports for information under subsection (b)(1) of this section are due within 30 days of the beginning of each new fiscal quarter for all reporting events that occurred in the prior fiscal quarter.

(2) Reporting of information under subsection (b)(2) of this section is due within 60 days of the effective date of this rule.

§56.4. Annual Reports.

Reporting entities must submit electronic copies of the following information for the prior 12 months in a form prescribed by the OAG no later than the last business day of January of each year:

(1) All policies, rules, and orders, including internal operating procedures and public policy documents, that were modified during the prior 12 months;

(2) A list of all local, county, state, and federal ordinances, statutes, laws, and rules for which the reporting entity files reports, whether that requirement is regular or arises upon the occurrence of an event;

(3) A report providing individual expenditures and purchases made based on funds or assets received through civil asset forfeiture;

(4) A report providing all information regarding funds accepted by the commissioners court of their county pursuant to Texas Government Code §41.108 that were passed on to the reporting entity. The reporting entity must detail how much of the funds were passed

on to the reporting entity and provide a detailed accounting of how the reporting entity disposed of any funds received; and

(5) A report providing all information regarding funds accepted by the commissioners court of their county pursuant to Tex. Gov. Code Sec. 41.108 that were not passed on to the reporting entity, but were used to benefit the reporting entity, its personnel, or its operations. The report must include any correspondence regarding accepted funds, as well as a detailed account of how the funds were used to benefit the reporting entity, its personnel, or its operations.

§56.5. Document Retention.

Reporting entities must implement document retention policies reasonably designed to preserve all documents which are, or may be, subject to these reporting requirements. Reasonable document retention policies must at a minimum preserve documents until two years after the time when they are due to be reported.

§56.6. Overdue Reports.

If an entity fails to comply with this chapter, in whole or in part, the OAG may send notice to the reporting entity identifying the reporting entity of its failure to comply. A reporting entity must remedy the identified reporting failure within 15 days after receipt of notice.

§56.7. Compliance.

If a reporting entity intentionally violates §56.5 or §56.6 of this chapter:

(1) The OAG may file a petition for removal of the District or County Attorney under Local Gov't Code 87.015 for official misconduct or incompetency;

(2) The OAG may file a petition for quo warranto under Civil Practice and Remedies Code 66.002 for the performance of an act that by law causes the forfeiture of the County or District Attorney's office; or

(3) The OAG may initiate a civil proceeding for an injunction to order the County or District Attorney to comply with this chapter.

§56.8. Oversight Advisory Committee.

(a) The Attorney General may establish an Oversight Advisory Committee composed of three members of the Office of the Attorney General designated by the Attorney General.

(b) The Oversight Advisory Committee may publish on the OAG's website any necessary forms or coordinating instructions for submitting reports.

(1) In the absence of a form or coordinating instruction, District and County Attorneys are to use their discretion with respect to reporting format.

(2) Reporting entities must submit required case files and correspondence to the OAG via email if electronic service is possible, otherwise by certified mail.

(c) The Oversight Advisory Committee may issue clarifying instructions to reporting entities about the scope of their obligations under these rules.

(d) The Oversight Advisory Committee may issue notifications of Overdue Reports under §56.6 of this Chapter.

§56.9. Severability.

(a) If any application of any provision of this rule is found by a court to be invalid or unconstitutional, the remaining applications of

that provision shall be severed and be unaffected. All constitutionally valid applications of this rule shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Attorney General's intent and priority that the valid applications be allowed to stand alone.

(b) If any court declares or finds a provision of this rule facially unconstitutional, when discrete applications of that provision can be enforced without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the Attorney General had enacted a provision limited to circumstances for which the provision's application will not violate the United States Constitution or Texas Constitution.

(c) The Attorney General further declares that he would have promulgated this rule, and each provision and all constitutional applications of this rule, irrespective of the fact that any provision or application of this rule were to be declared unconstitutional.

(d) If any provision of this rule is found by any court to be unconstitutionally vague, the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(e) No court should decline to enforce the severability requirements of this rule on the ground that severance would rewrite the rule or involve the court in rulemaking activity.

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 26, 2024.

TRD-202400832

Justin Gordon

General Counsel

Office of the Attorney General

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 565-8064



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 382. WOMEN'S HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §382.1, concerning Introduction; §382.5, concerning Definitions; §382.7, concerning Client Eligibility; §382.9, concerning Application and Renewal Procedures; §382.15, concerning Covered and Non-covered Services; §382.17, concerning Health-Care Providers; §382.101, concerning Introduction; §382.105, concerning Definitions; §382.107, concerning Client Eligibility; §382.109, concerning Financial Eligibility Requirements; §382.113, concerning Covered and Non-covered Services; §382.115, concerning Family Planning Program Providers; §382.119, concerning Reimbursement; §382.121, concerning Provider's Request for Review of Claim Denial; §382.123, concerning Record Retention; §382.125, concerning Confidentiality and Consent; and §382.127, concerning FPP Services for

Minors; and proposes the repeal of §382.3, concerning Non-entitlement and Availability; and §382.11, concerning Financial Eligibility Requirements.

BACKGROUND AND PURPOSE

The primary purpose of the proposal is to update eligibility and other Medicaid requirements in the Healthy Texas Women (HTW) program to describe the agency's compliance with the HTW Section 1115 Demonstration that was approved by the Centers for Medicare and Medicaid Services on January 22, 2020, and transitioned the majority of the program into Medicaid. For eligible minors, the HTW program remains fully funded by state general revenue.

Another purpose of the proposal is to comply with Texas Health and Safety Code §32.102, added by Senate Bill (S.B.) 750, 86th Legislature, Regular Session, 2019, which requires HHSC to provide enhanced postpartum care services, called HTW Plus, to eligible clients. HHSC made HTW Plus available to eligible clients enrolled in the HTW program beginning September 1, 2020.

Another purpose of the proposal is to comply with Texas Health and Safety Code §31.018, also added by S.B. 750, to include a requirement for women in HTW to receive referrals to the Primary Health Care Services Program.

Another purpose of the proposal is to make conforming amendments to the Family Planning Program (FPP) rules where necessary and update covered and non-covered services for HTW and FPP.

Other non-substantive clarifying changes were made throughout the rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §382.1, Introduction, replaces references to statutes that have expired with a reference to the original bill in §382.1(b) and deletes "non-federally funded services" from §382.1(c)(5) because it no longer applies to the majority of the HTW program under the authority of the HTW Section 1115 Demonstration. The HTW Section 1115 Demonstration is state and federally funded through Medicaid. The proposed amendment also makes clarifications related to the use of state funds and minor changes to use "HTW program" consistently.

The proposed repeal of §382.3, Non-entitlement and Availability, deletes the rule as no longer necessary because it is no longer applicable to the HTW Section 1115 Demonstration. Within Medicaid, HTW is an entitlement program.

The proposed amendment to §382.5, Definitions, deletes the definition for "elective abortion" and adds a definition for "abortion" that aligns with the Texas Health and Safety Code. The proposed amendment adds definitions for "CHIP" and "HTW Plus" because they are new terms used in the proposed rules. The proposed amendment revises the terms "client," "covered service," "HTW," "HTW Provider," "Medicaid," "third-party resource," and "unintended pregnancy." The proposed amendment to "covered service" clarifies that a service reimbursable under the HTW program includes HTW Plus services to comply with Texas Health and Safety Code §32.102. The proposed amendments to "HTW" and "Medicaid" clarify that the terms refer to programs. The proposed amendment to "HTW Provider" specifies that HTW providers must be enrolled in the Texas Medicaid program and may also have a cost reimbursement contract with HHSC. The proposed amendment to "third-party

resource" complies with federal Medicaid third-party resource requirements. The proposed amendment to "unintended pregnancy" makes the term plural to conform with the usage of the term in §382.1. The proposed amendment deletes the terms "child," "contraceptive method," "corporate entity," "health care provider," and "health clinic" because they are no longer used in Chapter 382, Subchapter A.

The proposed amendment to §382.7, Client Eligibility, updates eligibility requirements in the HTW program to reflect changes made to comply with the HTW Section 1115 Demonstration and federal Medicaid requirements, as well as Texas Health and Safety Code §32.102. The eligibility requirements updated include income, citizenship, HTW Plus eligibility criteria, period of eligibility, automatic eligibility determination, and third-party resources. The proposed amendment updates rule references and reformats the rule to improve readability of the rules.

The proposed amendment to §382.9, Application and Renewal Procedures, revises the title of the section to "Initial Application and Renewal Procedures." The proposed amendment also updates §382.9(a) to specify that women apply for HTW using the medical assistance application form and can apply for HTW online. The proposed amendment in §382.9(h)(2) adds that HTW clients can renew online. The proposed amendment complies with the HTW Section 1115 Demonstration and federal Medicaid requirements. The proposed amendment updates a rule reference and makes editorial changes to improve readability of the rules.

The proposed repeal of §382.11, Financial Eligibility Requirements, deletes the rule because updated financial and income eligibility requirements were added to proposed amended §382.7, Client Eligibility.

The proposed amendment to §382.15, Covered and Non-covered Services, adds language on HTW Plus services in §382.15(b) to comply with Texas Health and Safety Code §32.102 and updates language on covered and non-covered services for more specificity as to services available in the HTW program. The proposed amendment clarifies that women receiving HTW Plus services can also receive HTW services listed in §382.15(a).

The proposed amendment to §382.17, Health-Care Providers, revises the title of the section to "HTW Providers." The proposed amendment also adds language to §382.17(a)(5) on requirements for HTW providers to refer women in HTW to HHSC programs like the Primary Health Care Services Program to comply with Texas Health and Safety Code §31.018. The proposed amendment to §382.17(e) changes the HTW provider requirement to certify compliance with §382.17(b) from annually to periodically using an HHSC-approved form. The proposed amendment deletes §382.17(h) because the initial certification period for the HTW program has passed.

The proposed amendment to §382.101, Introduction, replaces references to statutes that have expired with a reference to the original bill in §382.1(b) and makes clarifications related to the use of state funds and minor changes to use "FPP" consistently.

The proposed amendment to §382.105, Definitions, deletes the definition for "elective abortion" and adds a definition for "abortion" that aligns with the Texas Health and Safety Code. The proposed amendment replaces the definition for "contractor" with a definition for "grantee" to align current terminology. The proposed amendment revises the terms "covered service," "Family Planning Program provider," "Medicaid," "third-party resource,"

and "unintended pregnancy." The proposed amendment to "covered service" clarifies the definition using plain language. The proposed amendment to "Family Planning Program provider" removes the term "health-care" as it is included in the definition. The proposed amendment to "Medicaid" clarifies that the term refers to a program. The proposed amendment to "third-party resource" is consistent with third-party resource requirements used in HTW. The proposed amendment to "unintended pregnancy" makes the term plural to conform with the usage of the term in §382.101. The proposed amendment deletes the terms "corporate entity," "contraceptive method," and "health clinic," because the terms are not used in Chapter 382, Subchapter B.

The proposed amendment to §382.107, Client Eligibility, improves readability of the rules. The proposed amendment removes Medicaid for Pregnant Women from adjunctive eligibility as that program provides full health benefits.

The proposed amendment to §382.109, Financial Eligibility Requirements, improves readability of the rules.

The proposed amendment to §382.113, Covered and Non-covered Services, updates language on covered and non-covered services for more specificity as to services available in FPP and adds language on new services.

The proposed amendment to §382.115, Family Planning Program Health-Care Providers, improves readability; makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider;" and revises the title of the section to, "Family Planning Program Providers." The proposed amendment to §382.115(e) changes the FPP provider requirement to certify compliance with §382.115(b) from annually to before initially providing covered services using an HHSC-approved form.

The proposed amendment to §382.119, Reimbursement, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.121, Provider's Request for Review of Claim Denial, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.123, Record Retention, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.125, Confidentiality and Consent, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.127, FPP Services for Minors, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. The additional cost is due to HHSC's reimbursement for additional services provided through the HTW Plus and FPP service arrays.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$2,047,918 in fiscal year (FY) 2024, \$8,823,739 in FY 2025, \$10,904,489 in FY 2026, \$11,218,855 in FY 2027, and \$11,550,379 in FY 2028.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will not require an increase in future legislative appropriations;
- (4) the proposed rules will not require an increase in fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand and repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities related to the rule as there is no requirement to alter current business practices. In addition, no rural communities contract with HHSC in any program or service affected by the proposed rule.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons; are necessary to receive a source of federal funds or comply with federal law; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, women in their postpartum period will be able to receive additional HTW Plus benefits for 12 months and improve continuity of care between Medicaid or CHIP and HTW. Additionally, the rules are expected to maintain or decrease the number of Medicaid and CHIP paid deliveries, which will reduce annual expenditures for prenatal, delivery, and newborn and infant care.

Michelle Alletto, Chief Program and Services Officer, has determined that for the first five years the rules are in effect, clients receiving services through FPP will have access to an improved array of benefits to promote health and well-being.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because HTW and FPP services are available at no cost to the public and providers are reimbursed by HHSC for HTW and FPP covered services, including additional HTW Plus services.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R082" in the subject line.

SUBCHAPTER A. HEALTHY TEXAS WOMEN

1 TAC §§382.1, 382.5, 382.7, 382.9, 382.15, 382.17

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendments also affect Texas Health and Safety Code §§31.018 and 32.102.

§382.1. Introduction.

(a) Governing rules. This subchapter sets out rules governing the administration of the Healthy Texas Women (HTW) program [(HTW)].

(b) Authority. This subchapter is authorized generally by Senate Bill 200, 84th Legislature, Regular Session, 2015 [Texas Government Code §531.0201(a)(2)(C)], which transferred [transfers] client services functions performed by the Texas Department of State Health Services to HHSC and required [; and Texas Government Code §531.0204, which requires] the HHSC Executive Commissioner to develop a transition plan which includes an outline of HHSC's reorganized structure and a definition of client services functions.

(c) Objectives. The HTW program is established to achieve the following overarching objectives:

(1) to increase access to women's health and family planning services to:

(A) avert unintended pregnancies;

(B) positively affect the outcome of future pregnancies; and

(C) positively impact the health and wellbeing of women and their families;

(2) to implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;

(3) to ensure the efficient and effective use of state funds in support of these objectives and [to avoid the direct or indirect use of] that state funds are not directly or indirectly used to promote or support elective abortion;

(4) to reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans access to safe, effective services that are consistent with these objectives; and

(5) to enforce Texas Human Resources Code §32.024(c-1) and any other state law that regulates the delivery of HTW [~~non-federally funded family planning~~] services, to the extent permitted by the Constitution of the United States.

§382.5. Definitions.

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

(1) Abortion--As defined in Texas Health and Safety Code §245.002.

(2) [(+) Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this definition may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, articles of incorporation or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group agreement, staffing agreement, management agreement, or collaborative practice agreement.

(3) [(2)] Applicant--A female applying to receive services in the [under] HTW program, including a current client who is applying to renew.

(4) [(3)] Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

[(4)] Child--An adoptive, step, or natural child who is under 19 years of age.]

(5) CHIP--The Texas State Children's Health Insurance Program.

(6) [(5)] Client--A female who is enrolled in the [receives services through] HTW program.

[(6)] Contraceptive method--Any birth control options approved by the United States Food and Drug Administration, with the exception of emergency contraception.]

[(7)] Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, or a sole proprietorship.]

~~(7) [(8)] Covered service--A service that is reimbursable under the HTW program, including HTW Plus services [medical procedure for which HTW will reimburse an enrolled health-care provider].~~

~~(9) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:]~~

~~[(A) to terminate a pregnancy that resulted from an act of rape or incest;]~~

~~[(B) in a case in which a female suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the female in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or]~~

~~[(C) in a case in which a fetus has a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.]~~

~~(8) [(40)] Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.~~

~~(9) [(44)] Federal poverty level--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.~~

~~[(12) Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.]~~

~~[(13) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.]~~

~~(10) [(44)] HHSC--The Texas Health and Human Services Commission or its designee.~~

~~(11) HTW Plus--Healthy Texas Women Plus. An enhanced postpartum services package for women enrolled in the HTW program who are eligible for the services.~~

~~(12) [(45)] HTW program--The Healthy Texas Women program. A program administered by HHSC as outlined in this subchapter.~~

~~(13) [(46)] HTW provider--A [health-care] provider that is enrolled in the Texas Medicaid program and is qualified to perform covered services in the HTW program. An HTW provider with a cost reimbursement contract with HHSC may be reimbursed for providing [contracted with HHSC to provide] additional services as described in §382.21(a)(2) of this subchapter (relating to Reimbursement).~~

~~(14) [(47)] Medicaid program--The Texas Medical Assistance Program, a joint federal and state program provided for in Texas Human Resources Code Chapter 32, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.~~

~~(15) [(48)] Minor--In accordance with the Texas Family Code, a person under 18 years of age who has never been married and never been declared an adult by a court (emancipated).~~

~~(16) [(49)] Third-party resource--A person or organization, other than HHSC or a person living with a female [the] applicant or a client, who may be liable as a source of payment of the female applicant's or client's medical expenses, for example, a private health insurance company or liability insurance company [(for example, a health insurance company)].~~

~~(17) [(20)] Unintended pregnancies--Pregnancies that [pregnancy--Pregnancy] a female reports as either mistimed or undesired at the time of conception.~~

~~(18) [(21)] U.S.C.--United States Code.~~

~~§382.7. Client Eligibility.~~

~~(a) HTW Program Criteria. A female applicant is eligible for the [to receive services through] HTW program if she:~~

~~(1) meets the following age requirements:~~

~~(A) is 18 through 44 years of age[, inclusive]; or~~

~~(B) is 15 through 17 years of age[, inclusive], and has a parent or legal guardian apply, renew, and report changes to her case on her behalf;~~

~~(2) is not pregnant;~~

~~(3) meets the income eligibility requirements for the HTW program as determined by HHSC in accordance with Chapter 366 Subchapter K of this title (relating to Modified Adjusted Gross Income Methodology) and her household income is equal to or less than 204.2 percent [has countable income (as calculated under §382.11 of this subchapter (relating to Financial Eligibility Requirements) that does not exceed 200 percent] of the federal poverty level;~~

~~(4) is a:~~

~~(A) United States citizen;[;]~~

~~(B) a United States national;[;]~~ or

~~(C) an alien who qualifies under §366.513 of this title (relating to Citizenship) [§382.9(g) of this subchapter (relating to Application and Renewal Procedures)];~~

~~(5) resides in Texas;~~

~~(6) does not currently receive benefits through another [a] Medicaid program, CHIP [Children's Health Insurance Program], or Medicare Part A or B; and~~

~~(7) does not have creditable health coverage that covers the services provided in the HTW program [provides], except as specified in subsection (f) [(e)] of this section.~~

~~(b) HTW Plus Criteria.~~

~~(1) A client in the HTW program may also qualify to receive HTW Plus covered services if the client:~~

~~(A) meets the criteria in subsection (a) of this section; and~~

~~(B) has been pregnant within the past 12 months.~~

~~(2) HTW Plus services are available to a client for a period of not more than 12 months after the date of enrollment in the HTW program.~~

~~(c) [(b)] Age.~~

(1) For purposes of subsection (a)(1)(A) of this section, a female ~~[an]~~ applicant is considered 18 years of age on the day of her 18th birthday and 44 years of age through the last day of the month of her 45th birthday.

(2) For purposes of subsection (a)(1)(B) of this section, a female ~~[an]~~ applicant is considered 15 years of age the first day of the month of her 15th birthday and 17 years of age through the day before her 18th birthday.

(3) A female applicant is ineligible for the HTW program if her application is received the month before her 15th birthday or the month after she turns 45 years of age.

~~[(e) Third-party resources. An applicant with creditable health coverage that would pay for all or part of the costs of covered services may be eligible to receive covered services if she affirms, in a manner satisfactory to HHSC, her belief that a party may retaliate against her or cause physical or emotional harm if she assists HHSC (by providing information or by any other means) in pursuing claims against that third party. An applicant with such creditable health coverage who does not comply with this requirement is ineligible to receive HTW benefits.]~~

(d) Period of eligibility. A client is deemed eligible to receive covered services for 12 continuous months from the earliest day of the application month on which the female applicant meets all eligibility criteria ~~[after her application is approved]~~, unless:

- (1) the client dies;
- (2) the client voluntarily withdraws;
- (3) the client no longer satisfies criteria set out in subsection (a) of this section;
- (4) state law no longer allows the client ~~[female]~~ to be covered; or
- (5) HHSC determines the client provided information affecting her eligibility that was false at the time of application.

~~[(e) Transfer of eligibility. A female who received services through the Texas Women's Health Program is automatically enrolled as an HTW client and is eligible to receive covered services for as long as she would have been eligible for the Texas Women's Health Program.]~~

~~(c) [(f) Automatic Eligibility Determination [Auto-Enrollment].~~

~~(1) A client [female] who is receiving Medicaid or CHIP [for pregnant women] is automatically tested for eligibility for the [enrolled into] HTW program at the end of her Medicaid or CHIP [for pregnant women] certification period if she is not eligible for another Medicaid program or CHIP.~~

~~(2) Program coverage begins on the first day following the termination of her Medicaid or CHIP coverage.~~

~~(3) A client [female] enrolled in the [into] HTW program may [has the option to] opt out of the [receiving] HTW program. [To be auto-enrolled, a female must:]~~

~~[(1) be 18 to 44 years of age, inclusive, as defined in subsection (b) of this section;]~~

~~[(2) not be receiving active third-party resources at the time of auto-enrollment; and]~~

~~[(3) be ineligible for any other Medicaid or CHIP program.]~~

~~(f) Third party resources. All female applicants eligible for the HTW program must comply with §354.2313 of this title (relating to Duty of Applicant or Recipient to Inform and Cooperate). A female applicant with creditable health coverage or other third party resources that would pay for all or part of the costs of covered services may affirm, in a manner satisfactory to HHSC, her belief that someone may retaliate against her or cause physical or emotional harm if she assists HHSC by providing information or by any other means in pursuing claims against that third-party resource. A female applicant with such creditable health coverage who does not comply with §354.2313 of this title is ineligible to receive HTW benefits.~~

§382.9. *Initial Application and Renewal Procedures.*

(a) Application. A female, or a parent or legal guardian acting on her behalf if she is 15 through 17 years of age~~], inclusive,~~ may apply for the HTW program ~~[services]~~ by completing an application for medical assistance ~~[form]~~ and providing documentation as required by HHSC.

(1) A female ~~[An]~~ applicant may obtain an application ~~[in the following ways]:~~

(A) from a local benefits office of HHSC, ~~[an HTW provider's office,]~~ or any other location that makes the application ~~[HTW applications]~~ available;

(B) from the HTW program or HHSC website;

(C) by calling 2-1-1; or

(D) by any other means approved by HHSC.

(2) HHSC accepts ~~[and processes]~~ every application received through the following means:

(A) in person at a local HHSC benefits office ~~[of HHSC];~~

(B) by fax;

(C) by ~~[through the]~~ mail; ~~[or]~~

(D) online; or

(E) ~~[(D)]~~ by any other means approved by HHSC.

(b) Processing timeline. HHSC processes an ~~[HTW]~~ application for medical assistance by the 45th day after the date HHSC receives the application.

(c) Start of coverage. Program coverage~~],~~ for a client ~~[females]~~ who is determined eligible ~~[are not auto-enrolled]~~ in accordance with §382.7 ~~[(f)]~~ of this subchapter (relating to Client Eligibility)~~],~~ begins on the earliest ~~[first]~~ day of the application month ~~on [in]~~ which the client meets all eligibility criteria ~~[HHSC receives a valid application].~~

(1) For female applicants 18 through 44 years of age~~], inclusive,~~ a valid application has, at a minimum, the applicant's name, address, and signature.

(2) For female applicants 15 through 17 years of age~~], inclusive,~~ a valid application has, at a minimum, the female applicant's name, address, and the signature of a parent or legal guardian.

(d) Social security number (SSN) required. In accordance with 42 U.S.C. §405(c)(2)(C)(i), HHSC requires a female ~~[an]~~ applicant to provide or apply for a social security number. If a female ~~[an]~~ applicant is not eligible to receive an SSN, the female applicant must provide HHSC with any documents requested by HHSC to verify the female applicant's identity. ~~[HHSC requests, but does not require, budget group members who are not applying for HTW to provide or apply for an SSN.]~~

(e) Interviews. HHSC does not require an interview for purposes of an eligibility determination. A female [An] applicant may, however, request an interview for an initial or renewal application.

(f) Identity. A female [An] applicant must verify her identity the first time she applies to receive covered services.

(g) Citizenship.

(1) If a female [an] applicant is a United States citizen, she must provide proof of citizenship.

(2) If a female [the] applicant[;] who is otherwise eligible for the [to receive] HTW program [services;] is not a [an] United States citizen, HHSC determines her eligibility as described in [accordance with] §366.513 of this title (relating to Citizenship).

(3) Citizenship is only verified once, unless HHSC receives conflicting information related to citizenship. If a female [an] applicant's citizenship has already been verified by HHSC for eligibility for the Medicaid program [or HTW], the female applicant is not required to re-verify her citizenship.

(h) Renewal. A client, [female;] or a parent or legal guardian acting on [her] behalf of the client if she is 15 through 17 years of age, [inclusive;] may renew her enrollment in the HTW program [services] by completing a renewal form as described in this subsection and providing documentation as required by HHSC.

(1) HHSC sends a [An HTW] client [will be sent] a renewal packet during the 9th [10th] month of her 12-month certification period for the HTW program.

(2) HHSC accepts and processes every renewal form received through the following means:

(A) in person at a local HHSC benefits office [of HHSC];

(B) by fax;

(C) by [through the] mail; [or]

(D) online; or

(E) [(D)] by any other means approved by HHSC.

§382.15. Covered and Non-covered Services.

(a) Covered services[; Services] provided through the HTW program include:

(1) contraceptive services;

(2) pregnancy testing and counseling;

(3) preconception health screenings for:

(A) obesity;

(B) hypertension;

(C) diabetes;

(D) cholesterol;

(E) smoking; and

(F) mental health;

(4) sexually transmitted infection (STI) services;

(5) limited pharmacological treatment for the following chronic conditions:

(A) hypertension;

(B) diabetes; and

(C) high cholesterol;

(6) breast and cervical cancer screening and diagnostic services:

(A) radiological procedures including mammograms;

(B) screening and diagnosis of breast cancer; and

(C) diagnosis and treatment of cervical dysplasia;

(7) immunizations;

(8) limited pharmacological treatment for postpartum depression;

(9) health history and physical exam; and

(10) covered HTW Plus services for clients who qualify for HTW Plus as described in §382.7(b) of this subchapter.

[(1) health history and physical;]

[(2) counseling and education;]

[(3) laboratory testing;]

[(4) provision of a contraceptive method;]

[(5) pregnancy tests;]

[(6) sexually transmitted infection screenings and treatment;]

[(7) referrals for additional services, as needed;]

[(8) immunizations;]

[(9) breast and cervical cancer screening and diagnostic services; and]

[(10) other services subject to available funding.]

(b) In addition to the HTW services above, covered HTW Plus services include:

(1) mental health counseling/treatment, including:

(A) individual, family, and group psychotherapy services; and

(B) peer specialist services;

(2) substance use disorder treatment, including:

(A) screening, brief intervention, and referral for treatment;

(B) outpatient substance use counseling;

(C) smoking cessation services;

(D) medication-assisted treatment; and

(E) peer specialist services;

(3) cardiovascular and coronary condition management, including:

(A) cardiovascular evaluation imaging and laboratory studies;

(B) blood pressure monitoring equipment; and

(C) anticoagulant, antiplatelet, and antihypertensive medications;

(4) diabetes management, including:

(A) laboratory studies;

(B) additional injectable insulin options;

(C) blood glucose testing supplies;

(D) glucose monitoring supplies; and

(E) voice-integrated glucometers for women with diabetes who are visually impaired; and

(5) asthma management, including:

(A) medications; and

(B) supplies.

(c) ~~[(b)]~~ Non-covered services in the [HTW program] include:

(1) counseling on and provision of abortion services; and

~~[(2) counseling on and provision of emergency contraceptives; and]~~

(2) ~~[(3)]~~ other services that cannot be appropriately billed with a permissible procedure code.

§382.17. HTW Providers [Health-Care Providers].

(a) Procedures. An HTW provider must:

(1) be enrolled as a Medicaid program provider in accordance with Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);

(2) comply with subsection (b) of this section;

(3) ~~[(2)]~~ complete the [HTW] certification [~~process as~~] described in subsection (e) of this section; and

(4) ~~[(3)]~~ comply with the requirements [~~set out~~] in Chapter 354, Subchapter A, Division 1 of this title (relating to Medicaid Procedures for Providers).

(5) ensure women in HTW receive information and referrals to HHSC programs like the Primary Health Care Services Program.

(b) Requirements. An HTW provider must ensure that:

(1) the HTW provider does not perform or promote elective abortions outside the scope of the HTW program and is not an affiliate of an entity that performs or promotes elective abortions; and

(2) in offering or performing a covered [an HTW] service, the HTW provider:

(A) does not promote elective abortion within the scope of HTW;

(B) maintains physical and financial separation between its HTW activities and any elective abortion-performing or abortion-promoting activity, as evidenced by the following:

(i) physical separation of HTW services from any elective abortion activities, no matter what entity is responsible for the activities;

(ii) a governing board or other body that controls the HTW provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;

(iii) accounting records that confirm that none of the funds used to pay for HTW services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and

(iv) display of signs and other media that identify HTW and the absence of signs or materials promoting elective abortion in the HTW provider's location or in the HTW provider's public electronic communications; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:

(1) taking affirmative action to secure elective abortion services for an HTW client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion [health-care] provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a [health-care] provider;

(2) furnishing or displaying to an HTW client information that publicizes or advertises an elective abortion service or [health-care] provider; or

(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, an HTW provider must provide HHSC with all information HHSC requires to determine the HTW provider's compliance with this section.

(e) Certification. Before initially providing covered services and periodically thereafter [Upon initial application for enrollment in HTW], an HTW [a health-care] provider must certify its compliance with subsection (b) of this section using an HHSC-approved form and any other requirement specified by HHSC. [Each health-care provider enrolled in HTW must annually certify that the HTW provider complies with subsection (b) of this section.]

(f) HTW provider disqualification. If HHSC determines that an HTW provider fails to comply with subsection (b) of this section, HHSC disqualifies the [HTW] provider from the HTW program.

(g) Client assistance and recoupment. If an HTW provider is disqualified, HHSC takes appropriate action to:

(1) assist a [an HTW] client to find an alternate HTW provider; and

(2) recoup any funds paid to a disqualified HTW provider for covered [HTW] services performed during the period of disqualification.

~~[(h) Exemption from initial certification. The initial application requirement of subsection (g) of this section does not apply to a health-care provider that certified and was determined to be in compliance with the requirements of the Texas Women's Health Program administered by HHSC pursuant to Texas Human Resources Code §32.024(e-1).]~~

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 23, 2024.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 7, 2024
For further information, please call: (512) 815-1887



1 TAC §382.3, §382.11

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The repeals also affect Texas Health and Safety Code §§31.018 and 32.102.

§382.3. *Non-entitlement and Availability.*

§382.11. *Financial Eligibility 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 23, 2024.

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Karen Ray
Chief Counsel

Texas Health and Human Services Commission
Earliest possible date of adoption: April 7, 2024
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SUBCHAPTER B. FAMILY PLANNING PROGRAM

1 TAC §§382.101, 382.105, 382.107, 382.109, 382.113, 382.115, 382.119, 382.121, 382.123, 382.125, 382.127

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendments also affect Texas Health and Safety Code §§31.018 and 32.102.

§382.101. *Introduction.*

(a) Governing rules. This subchapter sets out rules governing the administration of the HHSC Family Planning Program (FPP). This program is separate from family planning services provided through Medicaid.

(b) Authority. This subchapter is authorized generally by Senate Bill 200, 84th Legislature, Regular Session, 2015 [Texas Government Code §531.0201(a)(2)(C)], which transferred [transfers] client services functions performed by the Texas Department of State Health Services to HHSC and required [; and Texas Government Code §531.0204, which requires] the HHSC Executive Commissioner to develop a transition plan which includes an outline of HHSC's reorganized structure and a definition of client services functions.

(c) Objectives. FPP [The HHSC Family Planning Program] is established to achieve the following overarching objectives:

(1) to increase access to health and family planning services to:

(A) avert unintended pregnancies;

(B) positively affect the outcome of future pregnancies;

and

(C) positively impact the health and well-being of women and their families;

(2) to implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;

(3) to ensure the efficient and effective use of state funds in support of these objectives and that [~~to avoid the direct or indirect use of~~] state funds are not directly or indirectly used to promote or support elective abortion;

(4) to reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans access to safe, effective services that are consistent with these objectives; and

(5) to enforce any state law that regulates the delivery of non-federally funded family planning services, to the extent permitted by the Constitution of the United States.

§382.105. *Definitions.*

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

(1) Abortion--As defined in Texas Health and Safety Code §245.002.

(2) [(+)] Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this definition may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, articles of incorporation or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group

agreement, staffing agreement, management agreement, or collaborative practice agreement.

(3) [(2)] Applicant--An individual applying to receive services under FPP, including a current client who is applying to renew.

(4) [(3)] Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

(5) [(4)] Client--Any individual seeking assistance from an FPP health-care provider to meet their family planning goals.

[(5) Contraceptive method--Any birth control option approved by the United States Food and Drug Administration, with the exception of emergency contraception].

[(6) Contractor--An entity that HHSC has contracted with to provide services. The contractor is the responsible entity, even if a subcontractor provides the service.]

[(7) Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, or a sole proprietorship.]

(6) [(8)] Covered service--A service that is reimbursable under FPP [medical procedure for which FPP will reimburse a contracted health-care provider].

[(9) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:]

[(A) to terminate a pregnancy that resulted from an act of rape or incest;]

[(B) in a case in which a female suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the female in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or]

[(C) in a case in which a fetus has a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.]

(7) [(40)] Family Planning Program (FPP)--The non-Medicaid program administered by HHSC as outlined in this subchapter.

(8) [(41)] Family Planning Program [health-care] provider--A health-care provider that is contracted with HHSC and qualified to perform covered services.

(9) [(42)] Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.

(10) [(43)] Federal poverty level--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(11) Grantee--An entity that HHSC has contracted with to provide services. The grantee is the responsible entity, even if a subcontractor provides the service.

(12) [(44)] Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency,

health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.

[(15) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.]

(13) [(46)] HHSC--The Texas Health and Human Services Commission or its designee.

(14) [(47)] Medicaid program--The Texas Medical Assistance Program, a joint federal and state program provided for in Texas Human Resources Code Chapter 32, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(15) [(48)] Minor--In accordance with the Texas Family Code, a person under 18 years of age who has never been married and never been declared an adult by a court (emancipated).

(16) [(49)] Point of Service--The location where an individual can receive FPP services.

(17) [(20)] Third-party resource--A person or organization, other than HHSC or a person living with an [the] applicant or a client, who may be liable as a source of payment of the applicant's or client's medical expenses, for example, a private health insurance company or liability insurance company [(for example, a health insurance company)].

(18) [(21)] Unintended pregnancies--Pregnancies that [pregnancy--Pregnancy] a female reports as either mistimed or undesired at the time of conception.

(19) [(22)] U.S.C.--United States Code.

§382.107. Client Eligibility.

(a) FPP Criteria. A male or female is eligible for [to receive services through] FPP if he or she:

(1) [he or she] is 64 years of age or younger;

(2) [he or she] resides in Texas; and

(3) has countable income (as calculated under §382.109 of this subchapter (relating to Financial Eligibility Requirements) that does not exceed 250 percent of the federal poverty level (FPL).

(b) Contractors determine eligibility at the point of service in accordance with program policy and procedures.

(c) Adjunctive eligibility--An applicant is considered adjunctively (automatically) eligible for FPP services at an initial or renewal eligibility screening if the applicant can provide proof of active enrollment in one of the following programs:

(1) Children's Health Insurance Program (CHIP) Perinatal;

[(2) Medicaid for Pregnant Women;]

(2) [(3)] Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); or

(3) [(4)] Supplement Nutrition Assistance Program (SNAP).

§382.109. Financial Eligibility Requirements.

Calculating countable income. FPP determines an applicant's financial eligibility by calculating the applicant's countable income. To determine countable income, FPP adds the incomes listed in paragraph (1) of this section, less any deductions listed in paragraph (2) of this section, and exempting any amounts listed in paragraph (3) of this section.

(1) To determine income eligibility, FPP counts the income of the following individuals if living together:

(A) the individual age 18 through 64[; ~~inclusive,~~] applying for FPP;

(i) the individual's spouse; and

(ii) the individual's children age 18 and younger; or

(B) the individual age 17 or younger[; ~~inclusive,~~] applying for FPP;

(i) the individual's parent(s);

(ii) the individual's siblings age 18 and younger; and

(iii) the individual's children;

(2) In determining countable income, FPP deducts the following items:

(A) a dependent care deduction of up to \$200 per month for each child under two years of age, and up to \$175 per month for each dependent two years of age or older;

(B) a deduction of up to \$175 per month for each dependent adult with a disability; and

(C) child support payments.

(3) FPP exempts from the determination of countable income the following types of income:

(A) the earnings of a child;

(B) up to \$300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(C) Temporary Assistance to Needy Families (TANF);

(D) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program) (7 U.S.C. §§2011-2036), the Child Nutrition Act of 1966 (42 U.S.C. §§1771-1793), the National School Lunch Act (42 U.S.C. §§1751-1769), and the Older Americans Act of 1965 (42 U.S.C. §§3056, et seq.);

(E) foster care payments;

(F) payments made under a government housing assistance program based on need;

(G) energy assistance payments;

(H) job training payments;

(I) lump sum payments;

(J) Supplemental Security Income;

(K) adoption payments;

(L) dividends, interest and royalties;

(M) Veteran's Administration;

(N) earned income tax credit payments;

(O) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(P) educational assistance payments; and

(Q) crime victim's compensation payments.

§382.113. *Covered and Non-covered Services.*

(a) Covered services[; ~~Services~~] provided through FPP include:

(1) contraceptive services;

(2) pregnancy testing and counseling;

(3) preconception health screenings for:

(A) obesity;

(B) hypertension;

(C) diabetes;

(D) cholesterol;

(E) smoking; and

(F) mental health;

(4) sexually transmitted infection (STI) services;

(5) limited pharmacological treatment for the following chronic conditions:

(A) hypertension;

(B) diabetes; and

(C) high cholesterol;

(6) breast and cervical cancer screening and diagnostic services:

(A) radiological procedures including mammograms;

(B) screening and diagnosis of breast cancer; and

(C) diagnosis and treatment of cervical dysplasia;

(7) immunizations;

(8) limited pharmacological treatment for postpartum depression;

(9) health history and physical exam;

(10) mental health counseling/treatment, including:

(A) individual, family, and group psychotherapy services; and

(B) psychological testing administration and evaluation;

(11) health behavior intervention, including:

(A) screening, brief intervention, and referral for treatment;

(B) smoking cessation services; and

(C) medication-assisted treatment;

(12) cardiovascular and coronary condition management, including:

(A) cardiovascular evaluation imaging and laboratory studies;

(B) blood pressure monitoring equipment; and

(C) antihypertensive medications; and

(13) diabetes management, including:

- (A) laboratory studies;
- (B) additional injectable insulin options; and
- (C) blood glucose testing supplies.

- {(1) health history and physical;}
- {(2) counseling and education;}
- {(3) laboratory testing;}
- {(4) provision of a contraceptive method;}
- {(5) pregnancy tests;}
- {(6) sexually transmitted infection screenings and treatment;}
- {(7) referrals for additional services, as needed;}
- {(8) immunizations;}
- {(9) breast and cervical cancer screening and diagnostic services;}
- {(10) prenatal services; and}
- {(11) other services subject to available funding.}

(b) Non-covered services in ~~Services not provided through~~ FPP include:

- (1) counseling on and provision of abortion services; and
- {(2) counseling on and provision of emergency contraceptives; and}
- (2) [(3)] other services that cannot be appropriately billed with a permissible procedure code.

§382.115. *Family Planning Program [Health-Care] Providers.*

(a) Procedures. An FPP [health-care] provider must:

- (1) be enrolled as a Medicaid program provider in accordance with Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);
- (2) comply with subsection (b) of this section;
- (3) [(2)] must complete the FPP certification process as described in subsection (c)[(g)] of this section; and
- (4) [(3)] must comply with the requirements set out in Chapter 354, Subchapter A, Division 1 of this title (relating to Medicaid Procedures for Providers).

(b) Requirements. An FPP health-care provider must ensure that:

- (1) the FPP [health-care] provider does not perform or promote elective abortions outside the scope of FPP and is not an affiliate of an entity that performs or promotes elective abortions; and
- (2) in offering or performing a covered [an FPP] service, the FPP [health-care] provider:
 - (A) does not promote elective abortion within the scope of FPP;
 - (B) maintains physical and financial separation between its FPP activities and any elective abortion-performing or abortion-promoting activity, as evidenced by the following:
 - (i) physical separation of FPP services from any elective abortion activities, no matter what entity is responsible for the activities;

(ii) a governing board or other body that controls the FPP [health-care] provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;

(iii) accounting records that confirm that none of the funds used to pay for FPP services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and

(iv) display of signs and other media that identify FPP services and the absence of signs or materials promoting elective abortion in the FPP [health-care] provider's location or in the FPP [health-care] provider's public electronic communications; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:

(1) taking affirmative action to secure elective abortion services for an FPP client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a [health-care] provider;

(2) furnishing or displaying to an FPP client information that publicizes or advertises an elective abortion service or [health-care] provider; or

(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, an FPP [health-care] provider must provide HHSC with all information HHSC requires to determine the provider's compliance with this section.

(e) Certification. Before initially providing covered services, [Upon initial application for enrollment in FPP,] an FPP grantee [contractor] must certify its compliance with subsection (b) of this section using an HHSC-approved form and any other requirement specified by HHSC. [Each FPP contractor must annually certify that the contractor complies with subsection (b) of this section.]

(f) FPP provider [Provider] disqualification. If HHSC determines that an FPP [health-care] provider fails to comply with subsection (b) of this section, HHSC disqualifies the [FPP health-care] provider from providing FPP services under this subchapter.

(g) Client assistance and recoupment. If an FPP [health-care] provider is disqualified from providing FPP services under this subchapter, HHSC takes appropriate action to:

(1) assist a [an FPP] client to find an alternate FPP [health-care] provider; and

(2) recoup any funds paid to a disqualified provider for covered [FPP] services performed during the period of disqualification.

§382.119. *Reimbursement.*

(a) Reimbursement.

(1) Covered services provided through FPP are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

(2) Entities that contract with HHSC to provide additional services related to family planning that are separate from services referenced in paragraph (1) of this subsection are reimbursed by HHSC in compliance with program standards, policy and procedures, and contract requirements unless payment is prohibited by law.

(b) Claims procedures. An FPP [health-care] provider must comply with Chapter 354, Subchapter A, Divisions 1 and 5 of this title (relating to Medicaid Procedures for Providers and relating to Physician and Physician Assistant Services).

(c) Improper use of reimbursement. An FPP [health-care] provider may not use any FPP funds received to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.

(d) An FPP [health-care] provider may not deny covered services to a client based on the client's inability to pay.

§382.121. *Provider's Request for Review of Claim Denial.*

(a) Review of denied claim. An FPP [health-care] provider may request a review of a denied claim. The request must be submitted as an administrative appeal under Chapter 354, Subchapter I, Division 3 of this title (relating to Appeals).

(b) Appeal procedures. An administrative appeal is subject to the timelines and procedures set out in Chapter 354, Subchapter I, Division 3 of this title and all other procedures and timelines applicable to an FPP [health-care] provider's appeal of a Medicaid program claim denial.

§382.123. *Record Retention.*

(a) FPP grantees [~~contractors~~] must maintain, for the time period specified by the HHSC, all records pertaining to client services, contracts, and payments.

(b) FPP grantees [~~contractors~~] must comply with the Medicaid program record retention requirements found in §354.1004 of this title (relating to Retention of Records).

(c) All records relating to services must be accessible for examination at any reasonable time to representatives of HHSC and as required by law.

§382.125. *Confidentiality and Consent.*

(a) Confidentiality required. An FPP [health-care] provider must maintain all health care information as confidential to the extent required by law.

(b) Written release authorization. Before an FPP [health-care] provider may release any information that might identify a particular client, that client must authorize the release in writing. If the client is a minor, the client's parent, managing conservator, or guardian, as authorized by Chapter 32 of the Texas Family Code or by federal law or regulations, must authorize the release.

(c) Confidentiality training. An FPP [health-care] provider's staff (paid and unpaid) must be informed during orientation of the importance of keeping client information confidential.

(d) Records monitoring. An FPP [health-care] provider must monitor client records to ensure that only appropriate staff and HHSC may access the records.

(e) Assurance of confidentiality. An FPP [health-care] provider must verbally assure each client that her records are confidential and must explain the meaning of confidentiality.

(f) Consent for minors. FPP services must be provided with consent from the minor's parent, managing conservator, or guardian

only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations.

(g) An [A] FPP [health-care] provider may not require consent for family planning services from the spouse of a married client.

§382.127. *FPP Services for Minors.*

(a) Minors must be provided individualized family planning counseling and family planning medical services that meet their specific needs as soon as possible.

(b) The FPP [health-care] provider must ensure that:

(1) counseling for minors seeking family planning services is provided with parental consent;

(2) counseling for minors includes information on use and effectiveness of all medically approved birth control methods, including abstinence; and

(3) appointment schedules are flexible enough to accommodate access for minors requesting services.

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

Filed with the Office of the Secretary of State on February 23, 2024.

TRD-202400823

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 815-1887



TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission (commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 40 titled "Chronic Wasting Disease." Specifically, amendments are proposed to §40.6 CWD Movement Restriction Zones.

BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

The purpose of this chapter is to prevent and control the incidence of chronic wasting disease (CWD) in Texas by seeking to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species. The commission proposes amendments to §40.6 to modify existing movement restriction zones to provided targeted surveillance and reduce the risk of CWD being spread from areas where it may exist.

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD poses a serious threat to livestock and exotic livestock that the commission is charged with protecting. CWD can spread through natural movements of infected animals and transportation of live infected animals or car-

cass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

To mitigate the risks and spread of CWD, the commission works in coordination and collaboration with the Texas Parks and Wildlife Department (TPWD) to address CWD. The commission has jurisdiction over exotic CWD susceptible species. TPWD has jurisdiction over mule deer, white-tailed deer, and other native species. Those native species are classified as property of the State of Texas and managed as state resources. TPWD, under specific statutory authorization, allows herd owners to breed, trade, sell, and move white-tailed or mule deer that meet certain TPWD requirements.

The purpose of the movement restriction zones is to both increase surveillance and reduce the risk of CWD being spread from areas where it may exist. As required by §40.6(g), the commission reviewed the movement restriction zones and recommends the modifications as stated herein. The proposed amendments modify the boundaries of some existing zones and creates new zones to improve and implement surveillance efforts as part of the agency's effort to manage CWD.

SECTION-BY-SECTION DISCUSSION

§40.6 CWD Movement Restriction Zones

The proposed amendment to §40.6(b)(1)(I) would add a new containment zone in Coleman County in response to the detection of CWD in a free-range white-tailed deer in that county.

The proposed amendment to §40.6(b)(2)(V) would add a new surveillance zone in Brooks County in response to the detection of CWD in a deer breeding facility in that county.

The proposed amendment to §40.6(b)(2)(W) would add a new surveillance zone in Kimble County in response to the detection of CWD in a deer breeding facility in that county.

The proposed amendment to §40.6(b)(2)(X) would add a new surveillance zone in Medina County in response to the detection of CWD in a deer breeding facility in that county.

The proposed amendment to §40.6(b)(2)(Y) would add a new surveillance zone in Cherokee County in response to the detection of CWD in a deer breeding facility in that county.

The proposed amendment to §40.6(b)(2)(Z) would add a new surveillance zone in Coleman and Brown Counties in response to the detection of CWD in a white-tailed deer in Coleman County.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel of the Texas Animal Health Commission, determined for each year of the first five years the rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed rules. Commission employees will administer and enforce these rules as part of their regular job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as

a result of enforcing or administering the proposed rules and the proposed rules do not have foreseeable implications relating to costs or revenues of state governments.

PUBLIC BENEFIT

Ms. Coggeshall determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits will be the protection of CWD susceptible species by increasing the probability of detecting CWD in areas of the state where it is confirmed or likely to be detected and by reducing the inadvertent movement of the disease from those areas.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

MAJOR ENVIRONMENTAL RULE

The commission determined that Texas Government Code §2001.0225 does not apply to the proposed rules because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

TAKINGS ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

ECONOMIC IMPACT STATEMENT

The commission determined that the proposed amendments to §40.6 may impact animal agricultural industries, which meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006, and may affect rural communities. Specifically, the commission determined that the proposed rules may affect herd owners of exotic CWD susceptible species located in the proposed containment and surveillance zones.

The commission determined that the proposed surveillance and containment zones in response to recent positive CWD cases would not adversely affect herd owners of exotic CWD susceptible species because the proposal applies to exotic CWD susceptible species located in geographic areas where CWD has been detected or there is a high probability of detection. As such, the movement and testing requirements resulting from the proposed zones are intended to reduce exposure to other susceptible species in the same rural community, where the disease risk is greatest, and other communities and small businesses across the state. As a result, the application of the rule will help prevent adverse economic impacts associated with CWD.

REGULATORY FLEXIBILITY ANALYSIS

The commission considered several alternative methods for achieving the proposed rule's purpose while minimizing adverse economic impacts on small businesses, microbusinesses, and rural communities, as applicable, pursuant to Texas Government Code, Chapter 2006. The following sections analyze the substantive proposed changes that may have direct, adverse economic impacts on regulated parties in the order they are presented in Chapter 40.

Containment and Surveillance Zones. The commission considered alternatives for all proposed zones, especially where there are known exotic CWD susceptible species, including voluntary surveillance and alternative zone boundaries that followed more recognizable features. However, the commission determined that voluntary testing would not protect the health of other CWD susceptible species in the affected area and across the state. The commission also determined that the regulated community would benefit from consistent zone boundaries for both native and exotic CWD susceptible species. As such, the commission proposes zone boundaries to align with boundaries developed in consultation with Texas Parks and Wildlife Department. The commission determined these proposals are necessary to follow the legislative requirement that the commission protect exotic livestock from certain diseases that pose a serious threat to exotic livestock, specifically CWD.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, for each year of the first five years the proposed rules would be in effect, the commission determined the following:

- (1) The proposed rules will not create or eliminate a government program;
- (2) Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the commission;
- (4) The proposed rules will not require an increase or decrease in fees paid to the commission;
- (5) The proposed rules will not create a new regulation;
- (6) The proposed rules will expand existing rules, but will not otherwise limit or repeal an existing regulation;
- (7) The proposed rules may increase the number of individuals subject to the regulation; and
- (8) The proposed rules will not adversely affect this state's economy.

COST TO REGULATED PERSONS

The proposed amendments to §40.6 may impose an indirect cost on a regulated person if they are owners of exotic CWD susceptible species located within a proposed surveillance or containment zone. The commission determined these proposals are necessary to follow the legislative requirement that the commission protect exotic livestock from chronic wasting disease, a disease that poses a serious threat to the exotic livestock industry in Texas. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state. Pursuant to Section 161.041 of the Texas Agriculture Code, Section 2001.0045 of the Texas Government Code does not apply to rules adopted under Section 161.041; therefore, it is unnecessary to amend or repeal any other existing rule.

REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512)

719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40-CWD Rules" in the subject line.

STATUTORY AUTHORITY

The amendments to §40.6 within Chapter 40 of the Texas Administrative Code are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product," the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined

herd, premises, or area. The executive director of the commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the commission may pay indemnity to the owner of livestock or fowl if necessary to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the commission may charge a fee for an inspection made by the commission as provided by commission rule.

Pursuant to §161.061, titled "Establishment," if the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals po-

tentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the commission.

Pursuant to §161.081, titled "Importation of Animals," the commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

The proposed rules in this chapter for adoption do not affect other statutes, sections, or codes.

§40.6 CWD Movement Restriction Zones.

(a) (No change.)

(b) Declaration of area restricted for CWD. CWD has been detected in susceptible species in different locations in Texas. This creates a high risk for CWD exposure or infection in CWD susceptible species in those geographic areas. ~~[In order to protect other areas of the state from the risk of exposure and spread of CWD, restricted]~~ Restricted areas, such as containment zones and surveillance zones, are created to protect against the spread of and exposure to CWD to other areas of the state and to have necessary surveillance to epidemiologically assess the risk. The high-risk areas are delineated as follows:

(1) Containment Zone Boundaries:

(A) - (H) (No change.)

(I) Containment Zone 9. That portion of Coleman County lying within the area described by the following latitude-longitude coordinate pairs:

-99.29788709,	32.00897313;	-99.29703740,	32.00896493;	-99.29618783,	32.00894951;
-99.29533850,	32.00892688;	-99.29448947,	32.00889704;	-99.29364083,	32.00886000;
-99.29279266,	32.00881574;	-99.29194506,	32.00876429;	-99.29109810,	32.00870565;
-99.29025187,	32.00863981;	-99.28940645,	32.00856680;	-99.28856193,	32.00848661;
-99.28771839,	32.00839925;	-99.28687591,	32.00830473;	-99.28603458,	32.00820307;
-99.28519449,	32.00809426;	-99.28435570,	32.00797833;	-99.28351832,	32.00785528;
-99.28268242,	32.00772513;	-99.28184808,	32.00758789;	-99.28101539,	32.00744357;
-99.28018443,	32.00729219;	-99.27935529,	32.00713375;	-99.27852804,	32.00696829;
-99.27770277,					

32.00679581;	-99.27687955;	32.00661633;	-99.27605848;	31.93993168;	-99.21322456;	31.93920835;	-99.21319467;
32.00642987;	-99.27523963;	32.00623645;	-99.27442309;	31.93848472;	-99.21317323;	31.93776088;	-99.21316025;
32.00603609;	-99.27360893;	32.00582880;	-99.27279723;	31.93703689;	-99.21315572;	31.93631283;	-99.21315964;
32.00561461;	-99.27198809;	32.00539353;	-99.27118157;	31.93558876;	-99.21317202;	31.93486477;	-99.21319285;
32.00516560;	-99.27037776;	32.00493083;	-99.26957673;	31.93414091;	-99.21322214;	31.93341727;	-99.21325987;
32.00468925;	-99.26877858;	32.00444088;	-99.26798337;	31.93269391;	-99.21330604;	31.93197090;	-99.21336065;
32.00418574;	-99.26719118;	32.00392387;	-99.26640210;	31.93124833;	-99.21342370;	31.93052625;	-99.21349517;
32.00365528;	-99.26561620;	32.00338000;	-99.26483356;	31.92980475;	-99.21357507;	31.92908388;	-99.21366337;
32.00309806;	-99.26405426;	32.00280950;	-99.26327837;	31.92836373;	-99.21376008;	31.92764437;	-99.21386518;
32.00251433;	-99.26250598;	32.00221258;	-99.26173716;	31.92692586;	-99.21397866;	31.92620828;	-99.21410051;
32.00190430;	-99.26097198;	32.00158950;	-99.26021052;	31.92549170;	-99.21423072;	31.92477619;	-99.21436927;
32.00126822;	-99.25945286;	32.00094049;	-99.25869907;	31.92406182;	-99.21451616;	31.92334867;	-99.21467136;
32.00060634;	-99.25794923;	32.00026581;	-99.257270342;	31.92263679;	-99.21483487;	31.92192627;	-99.21500665;
31.99991893;	-99.25646169;	31.99956573;	-99.25572414;	31.92121717;	-99.21518671;	31.92050956;	-99.21537502;
31.99920625;	-99.25499083;	31.99884053;	-99.25426183;	31.91980352;	-99.21557155;	31.91909911;	-99.21577630;
31.99846860;	-99.25353723;	31.99809050;	-99.25281708;	31.91839641;	-99.21598923;	31.91769548;	-99.21621034;
31.99770626;	-99.25210146;	31.99731593;	-99.25139045;	31.91699639;	-99.21643959;	31.91629921;	-99.21667697;
31.99691954;	-99.25068411;	31.99651714;	-99.24998251;	31.91560402;	-99.21692245;	31.91491087;	-99.21717600;
31.99610875;	-99.24928573;	31.99569443;	-99.24859382;	31.91421985;	-99.21743761;	31.91353101;	-99.21770723;
31.99527422;	-99.24790687;	31.99484815;	-99.24722493;	31.91284442;	-99.21798486;	31.91216016;	-99.21827046;
31.99441626;	-99.24654808;	31.99397861;	-99.24587639;	31.91147829;	-99.21856399;	31.91079888;	-99.21886544;
31.99353524;	-99.24520991;	31.99308618;	-99.24454873;	31.91012199;	-99.21917478;	31.90944770;	-99.21949196;
31.99263148;	-99.24389289;	31.99217120;	-99.24324247;	31.90877607;	-99.21981696;	31.90810716;	-99.22014975;
31.99170536;	-99.24259753;	31.99123403;	-99.24195814;	31.90744105;	-99.22049030;	31.90677779;	-99.22083856;
31.99075725;	-99.24132435;	31.99027506;	-99.24069624;	31.90611746;	-99.22119451;	31.90546012;	-99.22155812;
31.98978751;	-99.24007386;	31.98929465;	-99.23945728;	31.90480583;	-99.22192933;	31.90415467;	-99.22230812;
31.98879653;	-99.23884655;	31.98829320;	-99.23824174;	31.90350668;	-99.22269446;	31.90286195;	-99.22308829;
31.98778471;	-99.23764291;	31.98727111;	-99.23705011;	31.90222053;	-99.22348958;	31.90158248;	-99.22389830;
31.98675246;	-99.23646341;	31.98622879;	-99.23588287;	31.90094788;	-99.22431440;	31.90031677;	-99.22473784;
31.98570017;	-99.23530853;	31.98516664;	-99.23474047;	31.89968923;	-99.22516858;	31.89906532;	-99.22560657;
31.98462826;	-99.23417873;	31.98408509;	-99.23362336;	31.89844509;	-99.22605177;	31.89782861;	-99.22650414;
31.98353718;	-99.23307444;	31.98298457;	-99.23253200;	31.89721595;	-99.22696364;	31.89660715;	-99.22743021;
31.98242733;	-99.23199610;	31.98186552;	-99.23146681;	31.89600229;	-99.22790381;	31.89540142;	-99.22838439;
31.98129918;	-99.23094416;	31.98072837;	-99.23042821;	31.89480460;	-99.22887191;	31.89421189;	-99.22936632;
31.98015316;	-99.22991901;	31.97957359;	-99.22941662;	31.89362335;	-99.22986757;	31.89303904;	-99.23037560;
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32.00609162;	-99.32139299,	32.00629009;	-99.32057353,	27.16530377;	-98.24827454,	27.16473335;	-98.24837767,
32.00648161;	-99.31975186,	32.00666616;	-99.31892808,	27.16283530;	-98.24861935,	27.16094735;	-98.24899855,
32.00684372;	-99.31810225,	32.00701428;	-99.31727448,	27.15907758;	-98.24951363,	27.15723401;	-98.25016238,
32.00717782;	-99.31644483,	32.00733433;	-99.31561339,	27.15152451;	-98.25094202,	27.15365684;	-98.25184921,
32.00748378;	-99.31478024,	32.00762616;	-99.31394546,	27.15193857;	-98.25288004,	27.15027705;	-98.25403012,
32.00776147;	-99.31310915,	32.00788967;	-99.31227137,	27.14867938;	-98.25529449,	27.14715242;	-98.25666776,
32.00801077;	-99.31143222,	32.00812476;	-99.31059178,	27.14570269;	-98.25814404,	27.14433640;	-98.25971700,
32.00823161;	-99.30975013,	32.00833131;	-99.30890735,	27.14305939;	-98.26137991,	27.14187713;	-98.26312566,
32.00842387;	-99.30806353,	32.00850927;	-99.30721876,	27.14079468;	-98.26494677,	27.13981666;	-98.26627186,
32.00858750;	-99.30637311,	32.00865855;	-99.30552667,	27.13919216;	-98.26715049,	27.13880096;	-98.26771406,
32.00872242;	-99.30467953,	32.00877909;	-99.30383176,	27.13855607;	-98.26783677,	27.13850433;	-98.26809786,
32.00882857;	-99.30298346,	32.00887085;	-99.30213471,	27.13839484;	-98.26859139,	27.13819236;	-98.26885450,
32.00890593;	-99.30128558,	32.00893380;	-99.30043618,	27.13808680;	-98.26935182,	27.13789170;	-98.26961686,
32.00895445;	-99.29958657,	32.00896789;	-99.29873685,	27.13779009;	-98.27045143,	27.13748232;	-98.27057696,
32.00897412; and	-99.29788709,	32.00897313.		27.13743812;	-98.27086650,	27.13733678;	-98.27132970,

Figure: 4 TAC §40.6(b)(1)(I)

(2) Surveillance Zone Boundaries:

(A) - (U) (No change.)

(V) Surveillance Zone 22. That portion of Brooks County lying within the area described by the following latitude-longitude pairs: -98.29086210, 27.13309526; -98.29298351, 27.13318675; -98.29509370, 27.13340214; -98.29718363, 27.13374052; -98.29924438, 27.13420043; -98.30126711, 27.13477991; -98.30324318, 27.13547648; -98.30516413, 27.13628715; -98.30702174, 27.13720847; -98.30880805, 27.13823649; -98.31051543, 27.13936681; -98.31213656, 27.14059459; -98.31366451, 27.14191458; -98.31509272, 27.14332113; -98.31641508, 27.14480823; -98.31762594, 27.14636950; -98.31872010, 27.14799827; -98.31969287, 27.14968756; -98.32054008, 27.15143015; -98.32125809,

27.15321858;	-98.32184384,	27.15504518;	-98.32229480,	27.15690215;	-98.32260903,	27.15878152;	-98.32278519,
27.16067526;	-98.32282607,	27.16222641;	-98.32281627,	27.16501134;	-98.32281627,	27.16501136;	-98.32281357,
27.16578038;	-98.32281357,	27.16578040;	-98.32280037,	27.16953161;	-98.32280037,	27.16953161;	-98.32279424,
27.17127223;	-98.32279424,	27.17127224;	-98.32278834,	27.17294980;	-98.32278477,	27.17329865;	-98.32268306,
27.17519678;	-98.32244276,	27.17708490;	-98.32206488,	27.17895493;	-98.32155103,	27.18079885;	-98.32090342,
27.18260877;	-98.32012480,	27.18437693;	-98.31921851,	27.18609576;	-98.31818841,	27.18775790;	-98.31703892,
27.18935622;	-98.31577496,	27.19088389;	-98.31440193,	27.19233434;	-98.31292571,	27.19370138;	-98.31135263,
27.19497913;	-98.30968942,	27.19616213;	-98.30794321,	27.19724530;	-98.30612147,	27.19822401;	-98.30423202,
27.19909405;	-98.30228293,	27.19985170;	-98.30028258,	27.20049372;	-98.29823953,	27.20101734;	-98.29616253,
27.20142033;	-98.29406049,	27.20170096;	-98.29194242,	27.20185803;	-98.29045520,	27.20189407;	-98.28905559,
27.20192944;	-98.28026777,	27.20192618;	-98.27814490,	27.20183447;	-98.27603329,	27.20161877;	-98.27394199,
27.20128001;	-98.27187997,	27.20081965;	-98.26985606,	27.20023964;	-98.26787893,	27.19954249;	-98.26595706,
27.19873118;	-98.26409868,	27.19780919;	-98.26231175,	27.19678046;	-98.26060393,	27.19564941;	-98.25898254,
27.19442088;	-98.25745451,	27.19310014;	-98.25602640,	27.19169285;	-98.25470432,	27.19020504;	-98.25349392,
27.18864308;	-98.25240039,	27.18701366;	-98.25142840,	27.18532377;	-98.25058212,	27.18358064;	-98.24986516,
27.18179175;	-98.24928058,	27.17996476;	-98.24883089,	27.17810748;	-98.24851799,	27.17622788;	-98.24834323,
27.17433401;	-98.24830351,	27.17300440;	-98.24827071,	27.16530377;	-98.24827454,	27.16473335;	-98.24837767,
27.16283530;	-98.24861935,	27.16094735;	-98.24899855,	27.15907758;	-98.24951363,	27.15723401;	-98.25016238,
27.15152451;	-98.25094202,	27.15365684;	-98.25184921,	27.15193857;	-98.25288004,	27.15027705;	-98.25403012,
27.14867938;	-98.25529449,	27.14715242;	-98.25666776,	27.14570269;	-98.25814404,	27.14433640;	-98.25971700,
27.14305939;	-98.26137991,	27.14187713;	-98.26312566,	27.14079468;	-98.26494677,	27.13981666;	-98.26627186,
27.13919216;	-98.26715049,	27.13880096;	-98.26771406,	27.13855607;	-98.26783677,	27.13850433;	-98.26809786,
27.13839484;	-98.26859139,	27.13819236;	-98.26885450,	27.13808680;	-98.26935182,	27.13789170;	-98.26961686,
27.13779009;	-98.27045143,	27.13748232;	-98.27057696,	27.13743812;	-98.27086650,	27.13733678;	-98.27132970,
27.13717829;	-98.27162094,	27.13708092;	-98.27208657,	27.13692885;	-98.27237944,	27.13683546;	-98.27309571,
27.13661545;	-98.27412316,	27.13631179;	-98.27427026,	27.13626866;	-98.27529930,	27.13596939;	-98.27534656,
27.13595568;	-98.28028733,	27.13452608;	-98.28040390,	27.13449150;	-98.28244567,	27.13396821;	-98.28452131,
27.13356548;	-98.28662193,	27.13328503;	-98.28873854,	27.13312807;	-98.29086210	and 27.13309526.	

Figure: 4 TAC §40.6(b)(2)(V)

(W) Surveillance Zone 23. That portion of Kimble County lying within the area described by the following latitude-longitude pairs: -99.95180989, 30.29840729; -99.95400264, 30.29847039; -99.95618594, 30.29865777; -99.95835045, 30.29896861; -99.96048692, 30.29940160; -99.96258621, 30.29995488; -99.96463932, 30.3002607; -99.96663749, 30.30141232; -99.96857214, 30.30231025; -99.96983623,

30.30299275; -99.97667133, 30.30295620; -99.97688605,
30.30295564; -99.97907892, 30.30301831; -99.98126237,
30.30320526; -99.98342707, 30.30351568; -99.98556376,
30.30394824; -99.98766328, 30.30450110; -99.98971667,
30.30517190; -99.99171514, 30.30595775; -99.99365012,
30.30685531; -99.99551334, 30.30786072; -99.99729683,
30.30896969; -99.99899295, 30.31017747; -100.00059444,
30.31147889; -100.00209444, 30.31286839; -100.00348653,
30.31434001; -100.00476475, 30.31588747; -100.00592361,
30.31750413; -100.00695816, 30.31918308; -100.00769098,
30.32056160; -100.00769527, 30.32057026; -100.00770515,
30.32057419; -100.00856976, 30.32093081; -100.01050520,
30.32182811; -100.01236890, 30.32283327; -100.01415286,
30.32394201; -100.01584945, 30.32514957; -100.01745142,
30.32645078; -100.01895190, 30.32784008; -100.02034447,
30.32931152; -100.02162315, 30.33085881; -100.02278248,
30.33247532; -100.02381749, 30.33415413; -100.02472373,
30.33588807; -100.02549732, 30.33766969; -100.02613495,
30.33949139; -100.02663387, 30.34134536; -100.02699194,
30.34322366; -100.02720763, 30.34511825; -100.02727999,
30.34702101; -100.02727926, 30.34721962; -100.02698483,
30.38601250; -100.02691424, 30.38771670; -100.02669952,
30.38961139; -100.02634231, 30.39148985; -100.02584414,
30.39334403; -100.02520711, 30.39516599; -100.02443397,
30.39694793; -100.02352801, 30.39868221; -100.02249310,
30.40036141; -100.02133367, 30.40197834; -100.02005469,
30.40352605; -100.01866162, 30.40499793; -100.01716044,
30.40638767; -100.01555756, 30.40768931; -100.01385986,
30.40889727; -100.01207460, 30.41000638; -100.01020943,
30.41101189; -100.00827235, 30.41190948; -100.00627164,
30.41269531; -100.00421590, 30.41336602; -100.00211391,
30.41391872; -99.99997470, 30.41435104; -99.99780743,
30.41466115; -99.99562139, 30.41484770; -99.99361689,
30.41490944; -99.97742474, 30.41498743; -99.97723380,
30.41498786; -99.97503838, 30.41492516; -99.97285239,
30.41473811; -99.97068521, 30.41442751; -99.96854613,
30.41399469; -99.96644432, 30.41344150; -99.96438877,
30.41277033; -99.96308679, 30.41225858; -99.96228171,
30.41300309; -99.96067798, 30.41430404; -99.95897947,
30.41551127; -99.95719345, 30.41661962; -99.95532758,
30.41762432; -99.95338985, 30.41852108; -99.95138856,
30.41930605; -99.94933228, 30.41997587; -99.94722984,
30.42052767; -99.94509023, 30.42095908; -99.94292264,
30.42126825; -99.94090675, 30.42144388; -99.94082250,
30.42144900; -99.94073928, 30.42146147; -99.93938623,
30.42163958; -99.93719992, 30.42182513; -99.93500428,
30.42188633; -99.93280872, 30.42182290; -99.93062266,
30.42163512; -99.92919163, 30.42144375; -99.92652986,
30.42103663; -99.92579370, 30.42091666; -99.92365468,
30.42048309; -99.92155298, 30.41992917; -99.91949761,
30.41925727; -99.91749738, 30.41847027; -99.91577099,
30.41767601; -99.91519239, 30.41739079; -99.91376655,
30.41692839; -99.91052579, 30.41578007; -99.91035853,
30.41572034; -99.90835845, 30.41493320; -99.90642208,
30.41403434; -99.90455773, 30.41302762; -99.90439344,
30.41293169; -99.90438605, 30.41292734; -99.90437742,
30.41292934; -99.90435324, 30.41293495; -99.90221361,
30.41336564; -99.90004605, 30.41367408; -99.89785984,
30.41385896; -99.89566436, 30.41391947; -99.89346901,
30.41385537; -99.89128321, 30.41366692; -99.88911632,
30.41335493; -99.88697764, 30.41292075; -99.88529868,
30.41248821; -99.88024744, 30.41106139; -99.88024744,
30.41106139; -99.87742282, 30.41026342; -99.87700047,
30.41014141; -99.87494563, 30.40946879; -99.87294596,

30.40868110; -99.87101006, 30.40778170; -99.86914620,
30.40677446; -99.86736238, 30.40566369; -99.86566623,
30.40445415; -99.86406502, 30.40315102; -99.86256560,
30.40175989; -99.86117441, 30.40028671; -99.85989739,
30.39873781; -99.85874000, 30.39711981; -99.85770721,
30.39543965; -99.85746146, 30.39499685; -99.85659378,
30.39339897; -99.85593577, 30.39210664; -99.85516488,
30.39032398; -99.85453017, 30.38850142; -99.85429040,
30.38764797; -99.85405994, 30.38727300; -99.85337346,
30.38598353; -99.85281357, 30.38486057; -99.85259642,
30.38441489; -99.85182566, 30.38263221; -99.85119106,
30.38080964; -99.85069533, 30.37895498; -99.85034057,
30.37707618; -99.85012831, 30.37518129; -99.85005944,
30.37327842; -99.85013426, 30.37137571; -99.85035242,
30.36948133; -99.85071299, 30.36760337; -99.85121442,
30.36574988; -99.85176446, 30.36416114; -99.85459723,
30.35675198; -99.85468731, 30.35651963; -99.85546328,
30.35473872; -99.85637186, 30.35300564; -99.85740917,
30.35132780; -99.85857074, 30.34971237; -99.85985161,
30.34816629; -99.86047057, 30.34748954; -99.86049982,
30.34745852; -99.86052178, 30.34742326; -99.86100495,
30.34667428; -99.86216640, 30.34505883; -99.86344715,
30.34351270; -99.86373981, 30.34318754; -99.86408949,
30.34280464; -99.86519138, 30.34165962; -99.86535734,
30.34149711; -99.86574783, 30.34111759; -99.86708424,
30.33989216; -99.86837905, 30.33882977; -99.86854522,
30.33870050; -99.86857268, 30.33867483; -99.86856615,
30.33840357; -99.86854991, 30.33733178; -99.86854704,
30.33691486; -99.86862146, 30.33501215; -99.86883917,
30.33311174; -99.86889510, 30.33276880; -99.86917243,
30.33111199; -99.86947657, 30.32958293; -99.86997744,
30.32772937; -99.87061696, 30.32590820; -99.87139238,
30.32412720; -99.87230039, 30.32239401; -99.87333709,
30.32071604; -99.87449802, 30.31910048; -99.87553862,
30.31784364; -99.87612434, 30.31649807; -99.87703219,
30.31476485; -99.87806872, 30.31308684; -99.87922949,
30.31147124; -99.88050951, 30.30992495; -99.88190332,
30.30845459; -99.88340493, 30.30706646; -99.88500791,
30.30576649; -99.88670541, 30.30456026; -99.88849016,
30.30345291; -99.89035451, 30.30244920; -99.89229049,
30.30155340; -99.89428981, 30.30076937; -99.89634391,
30.30010044; -99.89844401, 30.29954949; -99.90058112,
30.29911887; -99.90274609, 30.29881042; -99.90492967,
30.29862546; -99.90696497, 30.29856499; -99.95165235,
30.29840756; and -99.95180989, 30.29840729.

Figure: 4 TAC §40.6(b)(2)(W)

(X) Surveillance Zone 24. That portion of Medina County lying within the area described by the following latitude-longitude pairs: -99.03678558, 29.25833376; -99.03895416, 29.25841257; -99.04111221, 29.25861555; -99.04325052, 29.25894183; -99.04535994, 29.25939001; -99.04743143, 29.25995817; -99.04945614, 29.26064389; -99.05142540, 29.26144423; -99.05333079, 29.26235576; -99.05516414, 29.26337459; -99.05691762, 29.26449635; -99.05858371, 29.26571625; -99.06015529, 29.26702907; -99.06162562, 29.26842918; -99.06298841, 29.26991060; -99.06423782, 29.27146699; -99.06536850, 29.27309169; -99.06637560, 29.27477773; -99.06725480, 29.27651791; -99.06800233, 29.27830478; -99.06861499, 29.28013068; -99.06909015, 29.28198780; -99.06942576, 29.28386819; -99.06962038, 29.28576380; -99.06967316, 29.28766652; -99.06967243, 29.28773353; -99.06967074, 29.28787205; -99.06988063, 29.28904794; -99.07007527, 29.29094355; -99.07012806, 29.29284627; -99.07012645, 29.29297847; -99.07008760,

29.29560823; -99.06999993, 29.29737770; -99.06976894,
 29.29927018; -99.06939723, 29.30114537; -99.06888638,
 29.30299524; -99.06823857, 29.30481186; -99.06745656,
 29.30658744; -99.06654371, 29.30831440; -99.06550390,
 29.30998532; -99.06434160, 29.31159305; -99.06306178,
 29.31313069; -99.06166990, 29.31459168; -99.06017194,
 29.31596973; -99.05857430, 29.31725895; -99.05688383,
 29.31845382; -99.05510777, 29.31954921; -99.05336743,
 29.32048377; -99.05333543, 29.32049978; -99.05330860,
 29.32052191; -99.05223193, 29.32137180; -99.05054131,
 29.32256658; -99.04876510, 29.32366188; -99.04691091,
 29.32465300; -99.04498668, 29.32553571; -99.04300066,
 29.32630620; -99.04096136, 29.32696119; -99.03887752,
 29.32749787; -99.03675807, 29.32791393; -99.03461208,
 29.32820759; -99.03244877, 29.32837759; -99.03106128,
 29.32842111; -99.02932843, 29.32844366; -99.02877504,
 29.32844682; -99.02681052, 29.32844364; -99.02658003,
 29.32844257; -99.02308778, 29.32841559; -99.02091766,
 29.32833650; -99.01857809, 29.32813317; -99.01661834,
 29.32780647; -99.01450757, 29.32735780; -99.01243483,
 29.32678908; -99.01040900, 29.32610275; -99.00843876,
 29.32530175; -99.00653256, 29.32438951; -99.00469856,
 29.32336995; -99.00294462, 29.32224744; -99.00175050,
 29.32137271; -99.00127811, 29.32118062; -98.99937206,
 29.32026827; -98.99753821, 29.31924861; -98.99578443,
 29.31812600; -98.99411823, 29.31690524; -98.99254673,
 29.31559157; -98.99107669, 29.31419063; -98.98971437,
 29.31270840; -98.98846563, 29.31115125; -98.98733580,
 29.30952584; -98.98632971, 29.30783914; -98.98545168,
 29.30609837; -98.98470545, 29.30431100; -98.98409422,
 29.30248467; -98.98362059, 29.30062721; -98.98328659,
 29.29874658; -98.98309363, 29.29685083; -98.98304254,
 29.29494807; -98.98306949, 29.29237800; -98.98316047,
 29.29047639; -98.98339313, 29.28858408; -98.98376645,
 29.28670915; -98.98427884, 29.28485964; -98.98492809,
 29.28304347; -98.98571142, 29.28126841; -98.98662546,
 29.27954206; -98.98766629, 29.27787182; -98.98882946,
 29.27626482; -98.99010998, 29.27472794; -98.99150236,
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 29.26501707; -99.00794776, 29.26448095; -99.01006596,
 29.26406539; -99.01162613, 29.26383960; -99.01179748,
 29.26381847; -99.01196770, 29.26379122; -99.01362891,
 29.26356323; -99.01364637, 29.26356123; -99.01366080,
 29.26355239; -99.01446528, 29.26307518; -99.01631862,
 29.26208456; -99.01824185, 29.26120232; -99.02022673,
 29.26043223; -99.02226477, 29.25977760; -99.02434725,
 29.25924121; -99.02646526, 29.25882537; -99.02860974,
 29.25853186; -99.03077150, 29.25836193; -99.03282370,
 29.25831559; -99.03666797, 29.25833304; and -99.03678558,
 29.25833376.

Figure: 4 TAC §40.6(b)(2)(X)

(Y) Surveillance Zone 25. That portion of Cherokee County lying within the area described by the following latitude-longitude pairs: -95.16551813, 31.88499767; -95.16585785, 31.88501179; -95.16883776, 31.88514836; -95.17072236, 31.88527950; -95.17293080, 31.88554853; -95.17511390, 31.88594019; -95.17726232, 31.88645280; -95.17936688, 31.88708417; -95.18141857, 31.88783159; -95.18340860, 31.88869188; -95.18532847, 31.88966134; -95.18716995, 31.89073583; -95.18892517, 31.89191075; -95.19058660, 31.89318107; -95.19214714, 31.89454137; -95.19360011,

31.89598580; -95.19493927, 31.89750821; -95.19615889, 31.89910206; -95.19725376, 31.90076054; -95.19821916, 31.90247655; -95.19905097, 31.90424274; -95.19974562, 31.90605155; -95.20030011, 31.90789524; -95.20071208, 31.90976592; -95.20097975, 31.91165557; -95.20110197, 31.91355611; -95.20107820, 31.91545940; -95.20090853, 31.91735728; -95.20059369, 31.91924163; -95.20013501, 31.92110439; -95.19953445, 31.92293756; -95.19915728, 31.92389976; -95.19815357, 31.92631908; -95.19779084, 31.92715263; -95.19691477, 31.92890324; -95.19590628, 31.93060123; -95.19476969, 31.93223933; -95.19350987, 31.93381051; -95.19213220, 31.93530804; -95.19064258, 31.93672552; -95.18904740, 31.93805686; -95.18735347, 31.93929635; -95.18556806, 31.94043870; -95.18369881, 31.94147900; -95.18175374, 31.94241280; -95.17974117, 31.94323609; -95.17766973, 31.94394535; -95.17554830, 31.94453754; -95.17338596, 31.94501011; -95.17119198, 31.94536104; -95.16897578, 31.94558883; -95.16674684, 31.94569251; -95.16451472, 31.94567162; -95.16228898, 31.94552626; -95.16007918, 31.94525705; -95.15789477, 31.94486515; -95.15574512, 31.94435223; -95.15363944, 31.94372049; -95.15292604, 31.94347588; -95.15225794, 31.94323930; -95.15201777, 31.94315426; -95.15112625, 31.94283856; -95.14978698, 31.94233530; -95.14779612, 31.94147452; -95.14587558, 31.94050452; -95.14403360, 31.93942947; -95.14227806, 31.93825396; -95.14061648, 31.93698304; -95.13905598, 31.93562215; -95.13760324, 31.93417712; -95.13626449, 31.93265414; -95.13504544, 31.93105975; -95.13395132, 31.92940076; -95.13298681, 31.92768430; -95.13215603, 31.92591770; -95.13146253, 31.92410854; -95.13090928, 31.92226456; -95.13049864, 31.92039367; -95.13023236, 31.91850388; -95.13020804, 31.91825324; -95.13003171, 31.91633466; -95.12993523, 31.91468469; -95.12996044, 31.91278142; -95.13013153, 31.91088362; -95.13044775, 31.90899944; -95.13090775, 31.90713692; -95.13150954, 31.90530405; -95.13225054, 31.90350868; -95.13312758, 31.90175849; -95.13413689, 31.90006097; -95.13527414, 31.89842338; -95.13653446, 31.89685275; -95.13791245, 31.89535578; -95.13940221, 31.89393889; -95.14099735, 31.89260814; -95.14269104, 31.89136922; -95.14447605, 31.89022744; -95.14634471, 31.88918769; -95.14828904, 31.88825440; -95.15030071, 31.88743158; -95.15237111, 31.88672274; -95.15449139, 31.88613093; -95.15665248, 31.88565866; -95.15884512, 31.88530796; -95.16105993, 31.88508034; -95.16328745, 31.88497676; and -95.16551813, 31.88499767.

Figure: 4 TAC §40.6(b)(2)(Y)

(Z) Surveillance Zone 26. That portion of the state within the boundaries of a line beginning at the intersection of U.S. Highway 283 and County Road 176 in Coleman County; thence east along County Road 176 to State Highway (S.H.) 206; thence east along S.H. 206 to County Road 170; thence south along County Road 170 to County Road 171; thence south along C.R. 171 to County Road 113 in Brown County; thence south along C.R. 113 to Farm to Market (F.M.) 585; thence south along F.M. 585 to County Road 108 in Brown County; thence southwest along C.R. 108 to County Road 127 in Coleman County; thence southwest along C.R. 127 to F.M. 568; thence west along F.M. 568 to U.S. Highway 84, thence north along U.S. 84 to S.H. 206, thence north along S.H. 206 to U.S. 283; thence north along U.S. 283 to County Road 176.

Figure: 4 TAC §40.6(b)(2)(Z)

(c) - (g) (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 26, 2024.

TRD-202400827

Jeanine Coggeshall
General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 839-0511



CHAPTER 49. EQUINE

4 TAC §49.5, §49.7

The Texas Animal Health Commission (commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 49 titled "Equine." Specifically, amendments are proposed to §49.5 regarding Piroplasmosis: Testing, Identification of Infected Equine, and §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests.

BACKGROUND AND PURPOSE

The commission proposes amendments to §49.5 which establishes testing and identification requirements of equine piroplasmosis. Equine piroplasmosis is a tick-borne protozoal infection of horses. At least one species of tick, *Amblyomma cajennense*, has proven capable of transmitting the blood parasite. This species of tick is endemic to South Texas and several other southern states. Also, the disease may be spread between horses by unsafe animal husbandry practices such as sharing needles or equipment that is contaminated with blood. This has brought about the disclosure that there is a distinct group of positive animals which are for the purpose of racing, either through sanctioned events or otherwise.

In 2011, the commission took action to safeguard Texas equine population by requiring all equine participating in racing events at a sanctioned racetrack facility to have a negative piroplasmosis test. The requirement was put in place to ensure that the positive animals are disclosed as well as to protect other animals participating in such events. Since 2010, there has not been a disclosed piroplasmosis positive thoroughbred horse participating in sanctioned racing. As such, the commission approved a temporary waiver of the requirement that thoroughbred horses be tested for piroplasmosis prior to entering a racetrack facility licensed by the Texas Racing Commission on July 26, 2022.

The proposed amendments to §49.5 incorporate the thoroughbred testing requirement waiver. The proposed amendments also streamline the existing testing and identification requirements for ease of use and readability.

Additionally, the commission proposes amendments to §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests. The section currently refers readers to an outdated section in the Code of Federal Regulations. The proposed amendment updates the citation.

SECTION-BY-SECTION DISCUSSION

Section 49.5 details the testing and identification requirements for equine piroplasmosis. The proposed amendments stream-

line the rule for readability. The proposed amendments also formally codify the waiver of testing requirements for thoroughbreds as approved by the commission in the 413th Meeting on July 26, 2022. The proposed amendments to not change any other testing or identification requirements.

Section 49.7 sets requirements for individuals or laboratories performing EIA tests. The proposed amendments update the citation to the relevant section in the Code of Federal Regulations. The proposed amendments to not change the existing requirement.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments. Commission employees will administer and enforce these rules as part of their current job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are to provide clarity and guidance on the testing requirements of infectious equine diseases.

TAKINGS IMPACT ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. For each year of the first five years the proposed rules would be in effect, the commission determined the following:

- (1) The amendments will not create or eliminate a government program;
- (2) Implementation of the amendments will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the amendments will not increase future legislative appropriations to the commission;
- (4) The amendments will not increase or decrease the fees paid to the commission;
- (5) The amendments will not create a new rule;
- (6) The amendments do not expand, limit, or repeal existing rules;
- (7) The amendments do not change the number of individuals subject to the rules; and
- (8) The amendments will not affect the state's economy.

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

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

COSTS TO REGULATED PERSONS

The proposed amendments to Chapter 49 do not impose additional costs on regulated persons and are designed to provide clarity and accurate guidance on infectious equine diseases. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

PUBLIC COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 49, Equine" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.046 which authorizes the commission to promulgate rules in accordance with the Texas Agriculture Code.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products," the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.0602, entitled "Persons or Laboratories Performing Equine Infectious Anemia Tests," the commission shall adopt rules that require a person or laboratory to be approved by the commission if the person or laboratory performs an official equine infectious anemia test.

Pursuant to §161.113, entitled "Testing or Treatment of Live-stock," if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission.

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

§49.5. *Piroplasmosis: Testing, Identification of Infected Equine.*

(a) Official [Equine Piroplasmosis] Test. [:] A complement fixation test (CFT) or competitive enzyme linked immunosorbent assay (cELISA) are the official tests for equine piroplasmosis. [A test for Equine Piroplasmosis applied and reported by a laboratory approved by the Commission. The sample must be collected by or under the direct supervision of an authorized veterinarian. A completed Equine Piroplasmosis Laboratory Test chart (Form 10-07) must be submitted with the sample, listing the description of the equine to include the following: age, breed, color, sex, animal's name, and all distinctive markings (i.e., color patterns, brands, tattoos, scars, or blemishes), and any RFID numbers applied to the equine. In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos or scars), the equine must be identified by indicating the location of all hair whorls, vortices or cowlicks with an "X" on the illustration provided on the chart. In lieu of the manual illustration, digital photographs clearly showing the equine from the left side, right side, and full face may be incorporated in the chart. All charts must list owner's name, address, the equine's home premises and county, the name and address of the authorized individual collecting the test sample, and laboratory and individual conducting the test. The Piroplasmosis test document shall list one equine only.]

(b) Authorization to conduct test. Only a test applied and reported by a laboratory approved by the commission will be considered an official test. Only samples collected by or under the direct supervision of an authorized veterinarian accompanied by a completed Equine Piroplasmosis Laboratory Test chart (form 10-07) will be accepted for official testing.

(c) [(b)] Reactor. A reactor is any equine which discloses a positive reaction to the official test [for Piroplasmosis on a Complement Fixation (CF) or competitive Enzyme Linked Immunosorbent Assay (eELISA) applied at a laboratory approved by the Commission]. The individual collecting the test sample must notify the equine's owner of the quarantine within 48 hours after receiving the results. Movement of all piroplasmosis [Piroplasmosis] positive equine and all equine epidemiologically determined to have been exposed to a piroplasmosis [Piroplasmosis] positive equine will be restricted. Retests of a reactor may only be performed by a representative of the commission [Commission].

(d) [(e)] Official identification of reactors [Identification of Reactors].

(1) A reactor must be identified with an implanted radio frequency microchip identification device that provides unique identification for each individual equine and complies with ISO 11784/11785 and one of the following methods as determined by the commission [Commission]:

(A) The reactor [equine] may be identified with a [permanent mark as described herein or as approved by the Commission. If] branded [the] letter "P" [will be] applied as a hot-iron

brand, freeze-marking brand, [or a] hoof brand, or as approved by the commission. For a freeze [Freeze] or hot-iron [Hot-Iron] brand, the "P" brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. For a hoof brand, the "P" brand must be applied to the front left hoof and reapplied as necessary to maintain visibility;

(B) Using an identification device or a unique tattoo, approved by the commission [Commission], that provides unique identification for each individual equine; or

(C) Using digital photographs sufficient to identify the individual equine.

(2) Reactors must be identified by an authorized veterinarian or representative of the commission [Commission] within 10 [ten] days of the date the laboratory completes the test unless the equine is destroyed [equine being classified as a reactor by the Commission]. Any equine destroyed prior to identification must be described in a written statement by the authorized veterinarian or other authorized personnel certifying to the destruction. [The description must be sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes or biometric measurements).] This certification must be submitted to the commission [Commission] within 10 [ten] days of the date the equine is destroyed.

(d) Any equine [Equine] entering a racetrack facility, with the exception of thoroughbreds, must have a negative piroplasmosis [Piroplasmosis] test [(Theileria equi)] within the past 12 months. A racetrack facility is grounds used to conduct live horse racing events and is not limited to facilities licensed by the Texas Racing Commission.

§49.7. *Persons or Laboratories Performing Equine Infectious Anemia Tests.*

A person or laboratory who performs an official equine infectious anemia test in the State of Texas must meet and comply [be in compliance] with the requirements found in Title 9 Code of Federal Regulations §71.22 [§75.4(e)], which is entitled "Approval of laboratories to conduct official testing." [Laboratories, and Diagnostic or Research Facilities".]

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 26, 2024.

TRD-202400826

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 839-0511



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 110. ATHLETIC TRAINERS

16 TAC §§110.12, 110.21, 110.70

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 110, §§110.12, 110.21, and 110.70, regarding the Athletic Trainers program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 110, implement Texas Occupations Code, Chapter 451, Athletic Trainers.

The proposed rules implement House Bill (HB) 2495 and HB 2512, enacted during the regular session of the 88th Legislature, (2023). The proposed rules promulgate modernized definitions that reflect the current state of the occupation and remove outdated language related to licensure qualifications and requirements to obtain or renew a license. The proposed rules ensure consistency with processes already in place at the department. The proposed rules also allow greater access to an athletic trainer's services under supervision and increase employment opportunities. The acts upon which these proposed rules are based took effect September 1, 2023.

HB 2495

Section 3 of the enrolled bill removes the baccalaureate degree in corrective therapy as a satisfactory qualification for licensure, as this degree has become obsolete. Section 3 also removes the apprenticeship requirement of a minimum of 20 hours of work per week during the fall semester as specific sport seasons now span both fall and spring semesters. All other sections of the bill concern the internal processes of the department.

HB 2512

Section 1 of the enrolled bill updates the definitions of "athletic injury" and "athletic training".

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Advisory Board of Athletic Trainers at its meeting on February 12, 2024. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §110.12(a) to modernize the description of what services a licensed athletic trainer performs by referring to the applicable statute section.

The proposed rules amend §110.21(c) to remove a degree plan that is now obsolete.

The proposed rules amend §110.21(c)(2) to remove the minimum number of hours an apprentice must work weekly. The proposed rules also remove a time period for apprenticeship hours that is no longer applicable to the modern collegiate athletic calendar.

The proposed rules amend §110.70(a) to modernize the description of what services a licensed athletic trainer performs by referring to the applicable statute section.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reduc-

tions in costs to state or local government as a result of enforcing or administering the proposed rules. The activities required to implement the proposed rule changes, if any, are one-time program administration tasks that are routine in nature, such as modifying or revising publications and/or website information. The proposed rules will not necessitate an increase in personnel or resources and therefore will not result in an increase in costs to the State.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules. The proposed rules do not create a revenue loss, as they do not eliminate, amend, or impact any fees assessed by the licensing program.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments. Local governments are not responsible for administering the regulation of athletic trainers under Occupations Code, Chapter 451.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022. Changes made by the proposed rules are not anticipated to increase or decrease the number of licensed athletic trainers or temporary athletic trainers, nor is it anticipated to affect potential employers seeking to hire athletic trainers.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the effective and efficient regulation of athletic trainers, which promotes the health, safety, and welfare of athletes across Texas. Specifically, the proposed rules clarify the scope of practice for licensed athletic trainers and clarify the requirements for licensure.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The rules do not impose additional fees or costs upon licensees, businesses, or any other persons.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Licensed athletic trainers provide services under the direction of a physician, and they are typically employed by school districts, colleges and universities, professional sports organizations, and certain health care facilities. These entities do not qualify as small businesses or micro-businesses. The proposed rules have no anticipated adverse economic effect on rural communities, because the proposed rules will not decrease

the availability of athletic trainers to rural communities, nor will the rule increase the cost of athletic training services in rural communities. Additionally, the proposed rules do not impose additional requirements on licensees located in rural communities. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do 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 expand, limit, or repeal an existing regulation. The enacted legislation found in H. B. 2512, Section 1, regarding the definitions of "Athletic injury" and "Athletic training" expand the breadth of the existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box

12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 451, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 451, and Texas Education Code, Chapter 38. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted are House Bill 2495 and House Bill 2512, 88th Legislature, Regular Session (2023).

§110.12. *Scope of Practice.*

(a) A licensed athletic trainer practices a form of health care defined as "athletic training" within the scope of the person's license and pursuant to §451.001(3) of the Act, [~~prevents, recognizes, assesses, manages, treats, disposes of, and reconditions athletic injuries and illnesses~~] under the direction of a physician licensed in this state or another qualified, licensed health professional who is authorized to refer for health care services within the scope of the person's license. "Athletic training" consists of:

- (1) managing the risk of an athletic injury or illness;
- (2) preventing an athletic injury or illness;
- (3) assessing an athletic injury or illness;
- (4) providing immediate emergency care;
- (5) providing therapeutic intervention for an athletic injury; and
- (6) reconditioning an athletic injury or illness.

(b) - (d) (No change.)

§110.21. *License Requirements.*

(a) - (b) (No change.)

(c) Applicants qualifying under the Act, §451.153(a)(2) [~~or (a)(3)~~], shall have a baccalaureate or post-baccalaureate degree or a state-issued certificate in physical therapy [~~or a baccalaureate or post-baccalaureate degree in corrective therapy with at least a minor in physical education or health~~]. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state-licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) [~~Actual working hours shall include a minimum of 20 hours per week during each fall semester.~~] A [~~fall~~] semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 hours of the 720 hours may be earned at an affiliated setting which the college or university's athletic trainer has approved. An affiliated setting may be any setting where athletic training takes place. No more than 120 hours may be earned at one affiliated setting.

(d) - (h) (No change.)

§110.70. *Standards of Conduct.*

(a) An athletic trainer, when carrying out the practice of athletic training in accordance with §451.001(3) of the Act, shall work under the direction of a licensed physician or another qualified, licensed health professional, who is authorized to refer for health care services within the scope of the person's license [~~when carrying out the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning athletic injuries~~].

(b) - (y) (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 23, 2024.

TRD-202400811

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 475-4879



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 559. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§559.1, 559.11, 559.81, and 559.91; the repeal of §§559.2, 559.12 - 559.23, 559.61 - 559.64, 559.82 - 559.84, 559.92 - 559.95, and 559.102 - 559.105; and new §§559.3, 559.13, 559.15, 559.17, 559.19, 559.21, 559.23, 559.25, 559.27, 559.29, 559.31, 559.33, 559.35, 559.37, 559.39, 559.50 - 559.53, 559.55, 559.57, 559.59, 559.61, 559.63, 559.65, 559.67, 559.69, 559.71, 559.73, 559.75, 559.77, 559.79, 559.83, 559.85, 559.87, 559.93, 559.95, 559.97, 559.99, 559.101, 559.103, 559.105, and 559.107, in Texas Administrative Code (TAC), Title 26, Part 1, Chapter 559, Day Activity and Health Services Requirements.

BACKGROUND AND PURPOSE

The purpose of this proposal is to comply with House Bill (H.B.) 1009 and H.B. 4696 from the 88th Legislature, Regular Session, 2023. The proposal also reorganizes rule sections so that key topics are easier to find, adds clarity and specificity to rules, and updates references throughout the chapter.

SECTION-BY-SECTION SUMMARY

Proposed amendments throughout the chapter update citations and references and restructure sentences to use active voice. Other proposed amendments throughout the chapter replace "individual" with "client" for consistency.

The proposed amendment to §559.1, Purpose, removes requirements for a Day Activity and Health Services (DAHS) facility contracting with DADS to provide DAHS under Title XIX or Title XX of the Social Security Act. These requirements are in 40 TAC Chapter 98, Day Activity and Health Services Requirements, Subchapter H, Day Activity and Health Services (DAHS) Contractual Requirements.

The proposed repeal of §559.2, Definitions, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.3, Definitions.

Proposed new §559.3, Definitions, relocates the rule from proposed repealed §559.2, Definitions. The proposed new rule deletes definitions for the terms "authorization," "case manager," "caseworker," and "Medicaid eligible" as these terms are only used in 40 TAC Chapter 98, Subchapter H, DAHS Contractual Requirements. The proposed new rule adds definitions for the terms "controlling person," "online portal," and "willfully interfere."

The proposed amendment to §559.11, Criteria for Licensing, requires submission of license applications through the online portal, adds controlling parties to the list of individuals whose background and qualification HHSC considers for licensure, and clarifies that the term of a license is three years.

The proposed repeal of §559.12, Building Approval, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.17, Building Approval.

The proposed repeal of §559.13, Applicant Disclosure Requirements, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.19, Applicant Disclosure Requirements.

Proposed new §559.13, General Application Requirements, creates a new section requiring applicants to use the online portal to submit a license application and fulfill all licensure requirements.

The proposed repeal of §559.14, Increase in Capacity, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.35, Change in Capacity.

The proposed repeal of §559.15, Renewal Procedures and Qualifications, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.23, Renewal Procedures and Qualifications.

Proposed new §559.15, Time Periods for Processing Licensing Applications, relocates the rule from proposed repealed §559.18, Time Periods for Processing Licensing Applications, and updates citations and references.

The proposed repeal of §559.16, Change of Ownership and Notice of Changes, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.25, Change of Ownership and Notice of Changes.

The proposed repeal of §559.17, Change of Staff, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.29, Change of Staff.

Proposed new §559.17, Building Approval, relocates the rule from proposed repealed §559.12, Building Approval, and updates citations and references.

The proposed repeal of §559.18, Time Periods for Processing Licensing Applications, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.15, Time Periods for Processing Licensing Applications.

The proposed repeal of §559.19, Criteria for Denying a License or Renewal of a License, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.31, Criteria for Denying a License or Renewal of a License.

Proposed new §559.19, Applicant Disclosure Requirements, relocates the rule from proposed repealed §559.13, Applicant Disclosure Requirements, and updates citations and references.

The proposed repeal of §559.20, Opportunity to Show Compliance, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.33, Opportunity to Show Compliance.

The proposed repeal of §559.21, License Fees, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.37, Fees.

Proposed new §559.21, Initial License Application Procedures and Requirements, creates a new section requiring full payment of fees with the application submission for an initial license. Additionally, the proposed new rule requires an applicant to notify HHSC via the online portal when the facility is ready for a Life Safety Code inspection and when the facility is ready for a health inspection.

The proposed repeal of §559.22, Plan Review Fees, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.37, Fees.

The proposed repeal of §559.23, Relocation, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.27, Relocation.

Proposed new §559.23, Renewal Procedures and Qualifications, relocates the rule from proposed repealed §559.15, Renewal Procedures and Qualifications, and updates citations and references. The proposed new rule clarifies that license renewals expire three years after the date of issuance.

Proposed new §559.25, Change of Ownership and Notice of Changes, relocates the rule from proposed repealed §559.16, Change of Ownership and Notice of Changes.

Proposed new §559.27, Relocation, relocates the rule from proposed repealed §559.23, Relocation, and updates citations and references.

Proposed new §559.29, Change of Staff, relocates the rule from proposed repealed §559.17, Change of Staff, and updates citations and references. The proposed new rule requires facilities to submit an application for a change of director through the online portal within 30 days before or after the change.

Proposed new §559.31, Criteria for Denying a License or Renewal of a License, relocates the rule from proposed repealed §559.19, Criteria for Denying a License or Renewal of a License, and updates citations and references.

Proposed new §559.33, Opportunity to Show Compliance, relocates the rule from proposed repealed §559.20, Opportunity to Show Compliance, and updates citations and references.

Proposed new §559.35, Change in Capacity, relocates the rule from proposed repealed §559.14, Increase in Capacity, and updates citations and references. The proposed new rule requires

license holders that wish to decrease the licensed capacity of the facility to provide notification via the online portal.

Proposed new §559.37, Fees, relocates the rules from proposed repealed §559.21, License Fees and §559.22, Plan Review Fees, and updates citations and references. The proposed new rule requires payment of fees in accordance with the options available in the online portal and removes the option of payment for a two-year license.

Proposed new §559.39, Voluntary Closure, creates a new section requiring providers to notify HHSC in writing at least five days before permanent closure of the operation.

Proposed new §559.50, Purpose, creates a new section defining the term "communicable diseases" used in the subchapter.

Proposed new §559.51, Compliance, relocates the rule from proposed repealed §559.61(b), and updates citations and references. The proposed new rule defines "reportable conduct" used in this section and implements H.B. 1009 requiring a facility to suspend an employee who has been reported to the Employee Misconduct Registry (EMR) during any appeals process.

Proposed new §559.52, Client Rights, creates a new section requiring facilities to extend the enumerated rights to all adult clients, not just those over age 60.

Proposed new §559.53, Maintenance of Policies and Procedures, relocates the rule from proposed repealed §559.61(c) and updates citations and references.

Proposed new §559.55, Reporting Incidents of Abuse or Neglect, relocates the rule from proposed repealed §559.61(d) and updates citations and references. The proposed new rule requires facilities report to HHSC via the online portal or by speaking with an HHSC agent at 1-800-458-9858 upon learning of alleged abuse or neglect of a client.

Proposed new §559.57, Postings, relocates the rule from proposed repealed §559.61(e) and updates citations and references.

Proposed new §559.59, Staff Qualifications, relocates the rule from proposed repealed §559.62(a) and updates citations and references. The proposed new rule adds basic infection prevention and control measures and emergency preparedness and response to the list of options for director annual continuing education. The proposed new rule deletes requirements for a facility that contracts with HHSC.

The proposed repeal of §559.61, General Requirements, deletes the rule as no longer necessary because the content of the rule has been added to proposed new rules as follows: §559.61(b) content added to §559.51, Compliance; §559.61(c) content added to §559.53, Maintenance of Policies and Procedures; §559.61(d) content added to §559.55, Reporting Incidents of Abuse or Neglect; and §559.61(e) content added to §559.57, Postings.

Proposed new §559.61, Staffing Ratio and Hours, relocates the rule from proposed repealed §559.62(b) and updates citations and references.

The proposed repeal of §559.62, Program Requirements, deletes the rule as no longer necessary because the content of the rule has been added to proposed new rules as follows: §559.62(a) content added to §559.59, Staff Qualifications; §559.62(b) content added to §559.61, Staffing Ratio and Hours;

§559.62(c) content added to §559.63, Infection Prevention and Control; §559.62(d) content added to §559.65, Staff Responsibilities; §559.62(e) content added to §559.67, Training; §559.62(f) content added to §559.69, Medications; §559.62(g) content added to §559.71, Accident, Injury, or Acute Illness; and §559.62(h) content added to §559.73, Menus.

The proposed repeal of §559.63, Peer Review, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.77, Peer Review.

Proposed new §559.63, Infection Prevention and Control, relocates the rule from proposed repealed §559.62(c) and updates citations and references. The proposed new rule requires facilities to develop, implement, enforce, and maintain an infection prevention and control program that provides a safe, sanitary, and comfortable environment and helps prevent the development and transmission of disease and infection.

The proposed repeal of §559.64, Emergency Preparedness and Response deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.79, Emergency Preparedness and Response.

Proposed new §559.65, Staff Responsibilities, relocates the rule from proposed repealed §559.62(d) and updates citations and references. The proposed new rule requires facilities ensure clients have a choice in whether to participate in facility activities.

Proposed new §559.67, Training, relocates the rule from proposed repealed §559.62(e) and updates citations and references. The proposed new rule adds a list of possible topics that may be covered in the required quarterly training to direct service staff.

Proposed new §559.69, Medications, relocates the rule from proposed repealed §559.62(f) and updates citations and references. The proposed new rule clarifies that a person who administers medications to clients must hold a current license under applicable state law authorizing the licensee to administer medications. The proposed new rule requires facilities to dispose of medication in accordance with federal and state laws and allows for disposal of medications via local pharmacy on-site medication drop-off boxes or local law enforcement or community drug take-back programs.

Proposed new §559.71, Accident, Injury, or Acute Illness, relocates the rule from proposed repealed §559.62(g) and updates citations and references.

Proposed new §559.73, Menus, relocates the rule from proposed repealed §559.62(h) and updates citations and references.

Proposed new §559.75, Client Records, creates a new section with facility requirements for retention of records, destruction of records, and client access to records.

Proposed new §559.77, Peer Review, relocates the rule from proposed repealed §559.63, Peer Review.

Proposed new §559.79, Emergency Preparedness and Response, relocates the rule from proposed repealed §559.64, Emergency Preparedness and Response. The proposed new rule adds definitions to the terms "designated emergency contact," "disaster or emergency," "emergency management coordinator," "emergency preparedness coordinator," "plan," and "risk assessment." The proposed new rule removes references to "receiving facility" to avoid confusion.

The proposed amendment to §559.81, Procedural Requirements, implements H.B. 4696, requiring HHSC to perform an inspection as soon as feasible but not later than the 14th day after the date HHSC receives a complaint alleging abuse, neglect, or exploitation (ANE) rather than not later than the 30th day. H.B. 4696 also provides that if a complaint does not allege ANE, HHSC must investigate the complaint not later than the 45th day after the complaint is received. The amendment requires facilities that maintain electronic records to have a mechanism for printing documentation if a surveyor or investigator requests copies.

The proposed repeal of §559.82, Determinations and Actions Pursuant to Inspections, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.83, Determinations and Actions Pursuant to Inspections.

The proposed repeal of §559.83, Referrals to the Attorney General, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.85, Referrals to the Attorney General.

Proposed new §559.83, Determinations and Actions Pursuant to Inspections, relocates the rule from proposed repealed §559.82, Determinations and Actions Pursuant to Inspections, and updates citations and references.

The proposed repeal of §559.84, Procedures for Inspection of Public Records, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.87, Procedures for Inspection of Public Records.

Proposed new §559.85, Referrals to the Attorney General, relocates the rule from proposed repealed §559.83, Referrals to the Attorney General, and updates citations and references.

Proposed new §559.87, Procedures for Inspection of Public Records, relocates the rule from proposed repealed §559.84, Procedures for Inspection of Public Records, and updates citations and references.

The proposed amendment to §559.91, Definitions of Abuse, Neglect, and Exploitation, updates an outdated reference to §98.1.

The proposed repeal of §559.92, Abuse, Neglect, or Exploitation Reportable to DADS by Facilities, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.93, Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities.

The proposed repeal of §559.93, Complaint Investigation, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.95, Complaint Investigation.

Proposed new §559.93, Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities, relocates the rule from proposed repealed §559.92, Abuse, Neglect, or Exploitation Reportable to DADS by Facilities, and updates citations and references. The proposed new rule requires facilities to investigate alleged abuse, neglect, or exploitation and submit a written report of the investigation via the online portal.

The proposed repeal of §559.94, Investigations of Complaints, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.97, Investigations of Complaints.

The proposed repeal of §559.95, Confidentiality, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.99, Confidentiality.

Proposed new §559.95, Complaint Investigation, relocates the rule from proposed repealed §559.93, Complaint Investigation, and updates citations and references.

Proposed new §559.97, Investigations of Complaints, relocates the rule from proposed repealed §559.94, Investigations of Complaints, and updates citations and references.

Proposed new §559.99, Confidentiality, relocates the rule from proposed repealed §559.95, Confidentiality, and updates citations and references.

Proposed new §559.101, Nonemergency Suspension, relocates the rule from proposed repealed §559.102, Nonemergency Suspension, and updates citations and references. The proposed new rule requires a facility whose license has been suspended to return the license to HHSC within 72 hours of the passing of the appeal deadline or, if an appeal is filed, the final disposition of the appeal.

The proposed repeal of §559.102, Nonemergency Suspension, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.101, Nonemergency Suspension.

The proposed repeal of §559.103, Revocation, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.103, Revocation.

Proposed new §559.103, Revocation, relocates the rule from proposed repealed §559.103, Revocation, and updates citations and references. The proposed new rule requires a facility whose license has been revoked to return the license to HHSC within 72 hours of the passing of the appeal deadline or, if an appeal is filed, the final disposition of the appeal.

The proposed repeal of §559.104, Emergency Suspension and Closing Order, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.105, Emergency Suspension and Closing Order.

The proposed repeal of §559.105, Administrative Penalties, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.107, Administrative Penalties.

Proposed new §559.105, Emergency Suspension and Closing Order, relocates the rule from proposed repealed §559.104, Emergency Suspension and Closing Order, and updates citations and references.

Proposed new §559.107, Administrative Penalties, relocates the rule from proposed repealed §559.105, Administrative Penalties, and updates citations and references.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new regulation;
- (6) the proposed rules will expand and repeal existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses or micro-businesses, or rural communities.

A DAHS may incur a cost due to the implementation of H.B. 1009 if an agency staff person is suspended while he or she goes through due process or an appeals process for being added to the EMR. This might not impact all DAHS but could affect those that may need to hire additional staff on a temporary basis while the staff person is on suspension.

HHSC lacks sufficient information to determine the number of small businesses, micro-businesses, or rural communities subject to the rule.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of DAHS clients.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from increased clarity in the rules and guidance in the requirements for DAHS facilities.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Luis Aleman, Program Specialist, Texas Health and Human Services

Commission, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751, or by email to HHSCLTCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R117" in the subject line.

SUBCHAPTER A. INTRODUCTION

26 TAC §559.1, §559.3

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The amendment and new section implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.1. Purpose.

The purpose of this chapter is to[:]

[(+)] implement Texas Human Resources Code, Chapter 103, by establishing licensing procedures and standards for a DAHS facility.[: and]

[(2) establish requirements for a DAHS facility contracting with DADS to provide DAHS under Title XIX or Title XX of the Social Security Act.]

§559.3. Definitions.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person, or sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Actual harm--A negative outcome that compromises the physical, mental, or emotional well-being of an elderly person or a person with a disability receiving services at a facility.

(3) Adult--A person 18 years of age or older or an emancipated minor.

(4) Affiliate--With respect to a:

- (A) partnership, each partner of the partnership;
- (B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;
- (C) natural person, includes each:
- (i) person's spouse;
- (ii) partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and
- (iii) corporation in which the person is an officer, director, principal stockholder, or person with a disclosable interest.
- (5) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC) or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.
- (6) Ambulatory--Mobility not relying on walker, crutch, cane, or other physical object or use of wheelchair.
- (7) Applicant--A person applying for a license under Texas Human Resources Code, Chapter 103.
- (8) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.
- (9) Client--An individual receiving day activity and health services.
- (10) Construction, existing--See definition of existing building.
- (11) Construction, new--Construction begun after April 1, 2007.
- (12) Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.
- (13) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of management, expenditure of money, or policies of a facility or other person. A controlling person includes:
- (A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;
- (B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of a facility;
- (C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and
- (D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.
- (14) DADS--The term referred to the Texas Department of Aging and Disability Services; it now refers to HHSC.

- (15) DAHS--Day activity and health services. Health, social, and related support services as defined in this section.
- (16) DAHS facility--A facility that provides services through a day activity and health services program on a daily or regular basis, but not overnight, to four or more elderly persons or persons with disabilities who are not related to the owner of the facility by blood, marriage, or adoption.
- (17) DAHS program--A structured, comprehensive program offered by a DAHS facility that is designed to meet the needs of adults with functional impairments by providing DAHS in accordance with individual plans of care in a protective setting.
- (18) Days--Calendar days, unless otherwise specified.
- (19) Department--HHSC.
- (20) Dietitian consultant--A person licensed as a dietitian by the Texas Department of Licensing and Regulation or a person with a bachelor's degree with major studies in food and nutrition, dietetics, or food service management.
- (21) Direct service staff--An employee or contractor of a facility who directly provides services to individuals, including the director, a licensed nurse, the activities director, and an attendant. An attendant includes a driver, food service worker, aide, janitor, housekeeper, and laundry worker. A dietitian consultant is not a member of the direct service staff.
- (22) Director--The person responsible for the overall operation of a facility.
- (23) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.
- (24) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.
- (25) Elderly person--A person 65 years of age or older
- (26) Executive Commissioner--The executive commissioner of HHSC.
- (27) Existing building--A building or portion thereof that, at the time of initial inspection by HHSC, is used as an adult day care occupancy, as defined by Life Safety Code, NFPA 101, 2000 edition, Chapter 17, for existing adult day care occupancies; or has been converted from another occupancy or use to an adult day care occupancy, as defined by Chapter 16 for new adult day care occupancies.
- (28) Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.
- (29) Facility--A licensed DAHS facility.
- (30) Fence--A barrier to prevent elopement of an individual or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.
- (31) FM--FM Global (formerly known as Factory Mutual). A corporation whose approval of a product indicates a level of testing and certification that is acceptable to HHSC.
- (32) Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(33) Functional impairment--A condition that requires assistance with one or more personal care services.

(34) Health assessment--An assessment of an individual by a facility used to develop the individual's plan of care.

(35) Health services--Services that include personal care, nursing, and therapy services.

(A) Personal care services include:

- (i) bathing;
- (ii) dressing;
- (iii) preparing meals;
- (iv) feeding;
- (v) grooming;
- (vi) taking self-administered medication;
- (vii) toileting;
- (viii) ambulation; and
- (ix) assistance with other personal needs or maintenance.

(B) Nursing services may include:

- (i) administering medications;
- (ii) physician-ordered treatments, such as dressing changes; and
- (iii) monitoring the health condition of the individual.

(C) Therapy services may include:

- (i) physical therapy;
- (ii) occupational therapy; and
- (iii) speech therapy.

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

(37) Human services--Include:

(A) personal social services, including:

- (i) DAHS;
- (ii) counseling;
- (iii) in-home care; and
- (iv) protective services;

(B) health services, including:

- (i) home health;
- (ii) family planning;
- (iii) preventive health programs;
- (iv) nursing facility; and
- (v) hospice;

(C) education services, meaning:

- (i) all levels of school;
- (ii) Head Start; and
- (iii) vocational programs;

(D) housing and urban environment services, including public housing;

(E) income transfer services, including:

- (i) Temporary Assistance for Needy Families; and
- (ii) Supplemental Nutrition Assistance Program;

and

(F) justice and public safety services, including:

- (i) parole and probation; and
- (ii) rehabilitation.

(38) Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of a human service program are:

(A) dependent on public resources and are planned and provided by the community;

(B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences; and

(C) used to aid, rehabilitate, or treat people in difficulty or need.

(39) Immediate threat to the health or safety of an elderly person or a person with a disability--A situation that causes, or is likely to cause, serious injury, harm, or impairment to, or the death of, an elderly person or a person with a disability receiving services at a facility.

(40) Indirect ownership interest--Any ownership or membership interest in a person who has a direct ownership interest in an applicant or license holder.

(41) Individual--A person who applies for or is receiving services at a facility.

(42) Isolated--When a very limited number of elderly persons, or persons with disabilities, receiving services at a facility are affected and a very limited number of staff are involved, or the situation has occurred only occasionally.

(43) License holder--A person who holds a license to operate a facility.

(44) Life Safety Code, NFPA 101--The Code for Safety to Life from Fire in Buildings and Structures, NFPA 101, a publication of the National Fire Protection Association, Inc. that:

(A) addresses the construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic; and

(B) establishes minimum criteria for the design of egress features to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.

(45) Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) an assisted living facility licensed under Texas Health and Safety Code, Chapter 247; and

(C) an intermediate care facility serving individuals with an intellectual disability or related conditions licensed under Texas Health and Safety Code, Chapter 252.

(46) LVN--Licensed vocational nurse. A person licensed by the Texas Board of Nursing who works under the supervision of an RN or a physician.

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

(48) Manager--A person who has a contractual relationship to provide management services to a facility.

(49) Medically related program--A program providing the services listed in paragraph (37)(B) of this section.

(50) Neglect--Failure to provide for oneself goods or services, including medical services, that are necessary to avoid physical harm, mental anguish, or mental illness; or failure of a caregiver to provide these goods or services.

(51) NFPA--The National Fire Protection Association. The NFPA is an organization that develops codes, standards, recommended practices, and guides through a consensus standards development process approved by the American National Standards Institute.

(52) NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by the NFPA for selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

(53) NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by the NFPA for the minimum requirements for design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

(54) NFPA 70--National Electrical Code. A code developed by the NFPA for installation of electric conductors and equipment.

(55) NFPA 72--National Fire Alarm Code. A code developed by the NFPA for application, installation, performance, and maintenance of fire alarm systems and their components.

(56) NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by the NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(57) NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by the NFPA for systems for movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(58) NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by the NFPA that provides the minimum fire safety requirements related to design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(59) Nurse--An RN or LVN licensed in the state of Texas.

(60) Nursing services--Services provided by a nurse, including:

- (A) observation;
- (B) promoting and maintaining health;
- (C) preventing illness and disability;

(D) managing health care during acute and chronic phases of illness;

(E) guiding and counseling individuals and families; and

(F) referral to physicians, other health care providers, and community resources when appropriate.

(61) Online portal--A secure portal provided on the HHSC website for licensure activities, including for a DAHS facility applicant to submit licensure applications and information.

(62) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with Texas Human Resources Code, Chapter 103, or a rule, standard, or order adopted under Texas Human Resources Code, Chapter 103 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same elderly persons or persons with disabilities receiving services at the facility or the same facility employees.

(63) Person--An individual, corporation, or association.

(64) Person with a disability--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(65) Plan of care--A written plan, based on a health assessment and developed jointly by a facility and an individual or the individual's responsible party, that documents the functional impairment of the individual and the DAHS needed by the individual.

(66) Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact to an individual.

(67) Protective setting--A setting in which an individual's safety is ensured by the physical environment by staff.

(68) Related support services--Services to an individual, family member, or caregiver that may improve the person's ability to assist with an individual's independence and functioning. Services include:

(A) information and referral;

(B) transportation;

(C) teaching caregiver skills;

(D) respite;

(E) counseling;

(F) instruction and training; and

(G) support groups.

(69) Responsible party--A person designated by an individual as the individual's representative.

(70) RN--Registered nurse. A person licensed by the Texas Board of Nursing to practice professional nursing.

(71) Safety--Protection from injury or loss of life due to conditions such as fire, electrical hazard, unsafe building or site conditions, and presence of hazardous materials.

(72) Sanitation--Protection from illness, transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or

practices in preparation of food and beverage, or care of personal belongings.

(73) Semi-ambulatory--Mobility relying on a walker, crutch, cane, or other physical object, or independent use of wheelchair.

(74) Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(75) Social activities--Therapeutic, educational, cultural enrichment, recreational, and other activities in a facility or in the community provided as part of a planned program to meet the social needs and interests of an individual.

(76) TAC--Texas Administrative Code.

(77) UL--Underwriters Laboratories, Inc. A corporation whose approval of a product indicates a level of testing and certification that is acceptable to HHSC.

(78) Widespread in scope--A violation of Texas Human Resources Code, Chapter 103, or a rule, standard, or order adopted under Texas Human Resources Code, Chapter 103, that:

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

(B) represents a systematic failure by the facility that affects or has the potential to affect a large portion or all the elderly persons or persons with disabilities receiving services at the facility.

(79) Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede.

(80) Working with people--Acts involving delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, experience in an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity.

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

Filed with the Office of the Secretary of State on February 26, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



26 TAC §559.2

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeal implements Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.2. Definitions.

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

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For further information, please call: (512) 438-3161



SUBCHAPTER B. LICENSING [APPLICATION PROCEDURES]

26 TAC §§559.11, 559.13, 559.15, 559.17, 559.19, 559.21, 559.23, 559.25, 559.27, 559.29, 559.31, 559.33, 559.35, 559.37, 559.39

STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The amendment and new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.11. Criteria for Licensing.

(a) A person must not establish or operate a DAHS facility in Texas without a license issued by HHSC in accordance with Texas Human Resources Code, Chapter 103, and this chapter.

(b) An applicant for a license must submit a complete application form and license fee to HHSC through the online portal in accordance with instructions provided with the application.

(c) An applicant for a license must affirmatively demonstrate that the applicant [DAHS facility] meets:

(1) the standards of the Life Safety Code, NFPA 101, 2000 edition;

(2) the construction standards in Subchapter C of this chapter (relating to Facility Construction Procedures); and

(3) the requirements for operation based on an on-site survey.

(d) HHSC may deny an application that remains incomplete after 120 days.

(e) Before issuing a license, HHSC considers the background and qualifications of:

- (1) the applicant or license holder;
- (2) a person with a disclosable interest;
- (3) an affiliate of the applicant or license holder;
- (4) controlling parties, such as a director or manager; and
- (5) anyone disclosed in the application in accordance with the instructions provided with the application [a manager].

(f) HHSC issues a license if it finds that the applicant [DAHS facility], and all persons [any person] described in subsection (e) of this section, meet [meets] all requirements of this chapter. The license is valid for three years[, except as provided by §98.15(b)(1) and (c)(1) of this subchapter (relating to Renewal Procedures and Qualifications)].

(g) A facility must not provide services to more clients [individuals] than the number [of individuals] specified on its license.

(h) A facility must prominently and conspicuously post its license for display in a public area of the facility that is readily accessible to individuals, employees, and visitors.

§559.13. General Application Requirements.

(a) An applicant must use the online portal and the forms prescribed by HHSC to submit a license application and fulfill all licensure requirements and activities that can be met or conducted using the online portal.

(b) An applicant must complete the application and furnish all documents and information that HHSC requests in accordance with the instructions provided with the application. An application must be complete, accurate, and submitted with full payment of applicable license fees described in §559.37 of this subchapter (relating to Fees). If an applicant provides incorrect or false information, or withholds information, HHSC may deny the application as described in §559.31 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

(c) An application must include documentation from the local fire authority that the facility and its operations meet local fire ordinances.

(d) If an applicant decides not to continue the application process for a license after submitting an application and license fee, the applicant must submit to HHSC a request to withdraw the application. HHSC does not refund the license fee for an application that is withdrawn, except as provided in §559.15(e) - (g) of this subchapter (relating to Time Periods for Processing Licensing Applications).

§559.15. Time Periods for Processing Licensing Applications.

(a) HHSC only processes applications received at least 60 days before the requested date of the license issuance.

(b) An application is complete when all requirements for licensing have been met, including compliance with standards. If an inspection for compliance is required, the application is not complete until the inspection has occurred, reports have been reviewed, and the applicant complies with the standards.

(c) The HHSC Regulatory Services Licensing and Credentialing Section notifies facilities through the online portal within 30 days after receipt of the application if any of the following applications are incomplete:

- (1) initial;
- (2) change of ownership;
- (3) renewal; and
- (4) increase in capacity.

(d) Except as provided in subsection (e) of this section, HHSC issues or denies a license within 30 days after the receipt of a complete application or within 30 days before the expiration date of the license. HHSC may delay an action on an application for renewal of a license for up to six months if the facility is subject to a proposed or pending licensure termination action on or within 30 days before the expiration date of the license. Issuing the license constitutes HHSC's official written notice to the facility of application acceptance and filing.

(e) In the event an application is not processed in the time periods established in this section, the applicant has a right to request from the program director full reimbursement of all filing fees paid as part of that application process. If the program director does not agree that the established periods have been exceeded or finds that good cause existed for exceeding the established periods, the request is denied.

(f) Good cause for exceeding an established period is considered to exist if:

(1) the number of applications to be processed by HHSC exceeds by 15 percent or more the number processed in the same calendar quarter of the preceding year;

(2) another public or private entity involved in the application process caused the delay; or

(3) other conditions existed giving good cause for exceeding the established periods.

(g) If the request for full reimbursement is denied, the applicant may appeal directly to HHSC's executive commissioner for resolution of the dispute. The applicant must send a written statement to the executive commissioner describing the request for reimbursement and the reasons for it. The program director may also send a written statement to the executive commissioner describing the program's reasons for denying reimbursement. The executive commissioner makes a timely decision concerning the appeal and notifies the applicant and the program in writing of the decision.

§559.17. Building Approval.

(a) Local fire authority. All initial, change of ownership, and renewal applications for licensure must include the written approval of the local fire authority that the facility and its operation meet local fire ordinances. The written approval must be uploaded into the application in the online portal.

(b) Local health authority. The following procedures allow the local health authority to provide recommendations to HHSC concerning facility licensure.

(1) New facility. The sponsor of a new facility under construction or a previously unlicensed facility must provide to HHSC a copy of a dated written notice to the local health authority that construction or modification has been or will be completed by a specific date. This notice must be uploaded into the application submitted through the online portal. The sponsor must also provide a copy of a dated written notice of the approval for occupancy by the local fire marshal or local building code authority, if applicable, by uploading the notice into the application submitted through the online portal. The local health authority may provide recommendations to the HHSC Regulatory Services Licensing and Credentialing Section regarding the status of compliance with local codes, ordinances, or regulations.

(2) Increase in capacity. The license holder must submit an application through the online portal for approval of an increase in capacity from the HHSC Regulatory Services Licensing and Credentialing Section. The license holder must notify the local fire marshal and health authority of the request. The license holder must arrange for the inspection of the facility by the local fire marshal. The facility

must upload a copy of the written notice sent to the local health authority notifying them of the increase in capacity into the capacity increase application submitted through the online portal. HHSC approves the application only if the facility is found to be in compliance with the standards. Upon approval, the HHSC Regulatory Licensing and Credentialing Section issues a license with the increased capacity.

(3) Change of ownership. The applicant for a change of ownership license must provide to HHSC a copy of a letter notifying the local health authority of the request for a change of ownership by uploading the letter into the change of ownership application submitted through the online portal. The local health authority may provide recommendations to HHSC regarding the status of compliance with local codes, ordinances, or regulations.

(4) Renewal. The applicant for renewal must provide to HHSC a copy of a letter notifying the local health authority of the request for a renewal by uploading the letter into the renewal application submitted through the online portal. The local health authority may provide recommendations to HHSC regarding the status of compliance with local codes, ordinances, or regulations. The local authority may also recommend that a state license be issued or denied; however, the final decision on licensure status remains with HHSC.

§559.19. Applicant Disclosure Requirements.

(a) Scope of section. No person may apply for a license, change of ownership, increase in capacity, or license renewal to operate or maintain a facility without disclosing information as required in this section.

(b) Disclosures. Disclosures are made on each application as defined in this section and as required by the instructions for the application submitted.

(c) General information required.

(1) For initial, change of ownership, renewal, and change applications related to capacity and real estate, evidence of the right to possession of the facility at the time of the application must be submitted. This requirement may be satisfied by uploading applicable portions of a lease agreement, deed or trust, or other appropriate legal document into the application submitted through the online portal. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds appurtenant to the buildings, must be disclosed to HHSC in the application submitted through the online portal.

(2) At the request of HHSC, an applicant or license holder must provide to HHSC any additional background information within 30 days after HHSC's request.

§559.21. Initial License Application Procedures and Requirements.

(a) An applicant for an initial license must submit an application in accordance with §559.13 of this subchapter (relating to General Application Requirements) and include full payment of the fees required in §559.37 of this subchapter (relating to Fees).

(b) HHSC reviews an application for an initial license within 30 days after the date the HHSC Licensing and Credentialing Section, Long-term Care Regulation, receives the application and the associated fees and notifies the applicant if additional information is needed to complete the application.

(c) The applicant must notify HHSC via the online portal indicating that the facility is ready for a Life Safety Code (LSC) inspection. The notice must be submitted with the application or within 120 days after the HHSC Licensing and Credentialing Section, Long-term Care Regulation, receives the application. After the applicant has satisfied

the application submission requirements in §559.11 of this subchapter (relating to Criteria for Licensing) and §559.13 of this subchapter, HHSC staff conduct an on-site LSC inspection of the facility to determine if the facility meets the applicable physical plant requirements in Subchapter C of this chapter (relating to Facility Construction Procedures).

(d) If the applicant fails to meet the licensure requirements within 120 days after the initial LSC inspection, HHSC denies the application for a license.

(e) After an applicant has met the licensure requirements in Subchapter C of this chapter and admitted at least one but no more than three clients, the applicant must notify HHSC via the online portal that the facility is ready for a health inspection.

(1) HHSC staff conduct an on-site health inspection to determine if the facility meets the licensure requirements for standards of operation and client care in Subchapter D of this chapter (relating to Standards for Licensure).

(2) If the facility fails to meet the licensure requirements for standards of operation and client care within 120 days after the initial health inspection, HHSC denies the application for a license.

(f) HHSC issues a license within 30 days after HHSC determines that the applicant and the facility have met the licensure requirements of this section. Issuing a license constitutes HHSC's official written notice to the facility of the approval of the application.

(g) HHSC may deny an application for an initial license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §559.11 of this subchapter.

(h) If HHSC denies an application for an initial license, HHSC sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with HHSC rules in 1 TAC, Part 15, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

§559.23. Renewal Procedures and Qualifications.

(a) A license issued under this chapter:

- (1) expires three years after the date issued;
- (2) must be renewed before the license expiration date; and
- (3) is not automatically renewed.

(b) The submission of a license fee alone does not constitute an application for renewal.

(c) The completion of a renewal survey alone does not renew the license. A renewal application submitted through the online portal is required.

(d) If a renewal application is not generated in the online portal within 120 days of expiration, it is the responsibility of the facility to request from HHSC that one be generated.

(e) To renew a license, a license holder must submit an application for renewal through the online portal no later than the 45th day before the expiration date of the current license. HHSC considers that an application for renewal has met the submission deadline if the license holder:

(1) submits a complete application to HHSC, and HHSC receives that complete application through the online portal no later than the 45th day before the expiration date of the current license;

(2) submits an incomplete application to HHSC through the online portal and uploads a letter explaining the circumstances that prevented the inclusion of the missing information, and HHSC receives the incomplete application and letter no later than the 45th day before the expiration date of the current license; or

(3) submits a complete application or an incomplete application through the online portal with a letter uploaded into the application explaining the circumstances that prevented the inclusion of the missing information to HHSC, HHSC receives the application during the 45-day period ending on the date the current license expires, and the license holder pays a late fee in accordance with §559.37(a)(2) of this subchapter (relating to Fees) in addition to the license renewal fee.

(f) If the application is submitted through the online portal along with the appropriate licensing fee by the submission deadline, HHSC considers the application to be timely filed. It is the license holder's responsibility to ensure that the application is timely received by HHSC by submission through the online portal.

(g) For purposes of Texas Government Code §2001.054, HHSC considers that an individual has submitted a timely and sufficient application for renewal of a license if the license holder's application has met the submission deadlines in subsections (e) and (f) of this section. Failure to submit a timely and sufficient application results in the expiration of the license on the expiration date listed on the license.

(h) HHSC does not accept an application for renewal submitted after the expiration date of the license. An application for an initial license must be submitted and must comply with the requirements for an initial license in §559.11 of this subchapter (relating to Criteria for Licensing) and §559.19 of this subchapter (relating to Applicant Disclosure Requirements).

(i) The application for renewal must contain the same information required for an initial application and the license fee as described in §559.37 of this subchapter.

(j) The renewal of a license may be denied for the same reasons an original application for a license may be denied under the criteria in §559.31 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

(k) The facility must have an annual inspection by the local fire marshal and must submit a copy of the most current inspection as part of the renewal procedures by uploading the report into the renewal application through the online portal.

§559.25. *Change of Ownership and Notice of Changes.*

(a) For purposes of this section, a temporary change of ownership license is a temporary license issued to an applicant who proposes to become the new operator of a facility that exists on the date the application is submitted.

(b) A license holder may not transfer its license. The applicant (new license holder) must obtain a temporary change of ownership license followed by an initial three-year license in accordance with this section. When HHSC approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the effective date of the change of ownership indicated in the change of ownership application. Between the effective date of the change of ownership and issuance of the temporary change of ownership license, the existing license holder remains responsible under its license; however, the applicant may operate a facility on behalf of the current license holder during such time period.

(c) The applicant must submit to HHSC through the online portal:

(1) a complete application for a license in accordance with HHSC instructions and §559.11 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §559.37 of this subchapter (relating to Fees); and

(3) a signed and notarized Change of Ownership Transfer Affidavit, HHSC Form 1092, from the applicant and the facility's current license holder of intent to transfer operation of the facility from the current license holder to the applicant, beginning on the change of ownership effective date specified on the change of ownership application.

(d) To avoid a facility operating without a license, an applicant must submit all items required by subsection (c) of this section at least 30 days before the anticipated date of a change of ownership, unless the 30-day notice requirement is waived in accordance with subsection (e) of this section.

(e) HHSC may waive the 30-day notice required in subsection (d) of this section if HHSC determines that the applicant presents evidence showing that circumstances prevented the submission of the items in subsection (c) of this section at least 30 days before the anticipated change of ownership and that not waiving the 30-day requirement would create a threat to client health and safety.

(f) Upon HHSC approval of the items specified in subsection (c) of this section, HHSC issues a temporary change of ownership license to the applicant if HHSC finds that the applicant, all controlling persons, and all persons disclosed in the application satisfy all applicable requirements in §559.11 of this subchapter, §559.19 of this subchapter (relating to Applicant Disclosure Requirements), and §559.31 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

(1) Issuing a temporary change of ownership license constitutes HHSC's official written notice to the facility of the approval of the application for a change of ownership.

(2) The effective date of the temporary change of ownership license is the date requested in the application and cannot precede the date the application is received by HHSC through the online portal.

(g) A temporary change of ownership license expires on the earlier of:

(1) 90 days after its effective date or the last day of any extension HHSC provides in accordance with subsection (h) of this section; or

(2) the date HHSC issues a three-year license in accordance with subsection (k) of this section.

(h) HHSC, in its sole discretion, may extend a temporary change of ownership license for a term of 90 days at a time based upon extenuating circumstances.

(i) HHSC conducts an on-site health inspection to verify compliance with the licensure requirements after issuing a temporary change of ownership license. HHSC may conduct a desk review instead of an on-site health inspection after issuing a temporary change of ownership license if:

(1) less than 50 percent of the direct or indirect ownership interest of the former license holder changed, when compared to the new license holder; or

(2) every person with a disclosable interest in the new license holder had a disclosable interest in the former license holder.

(j) HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection after issuing a temporary change of ownership license.

(k) If the applicant, all controlling persons, and all persons disclosed in the application satisfy all applicable requirements for a license in §§559.11, 559.19, and 559.31 of this subchapter, and the facility passes the change of ownership health inspection as described in subsection (i) of this section, HHSC issues a three-year license. The effective date of the three-year license is the same date as the effective date of the change of ownership and cannot precede the date the application was received by HHSC through the online portal.

(l) If a license holder adds an owner with a disclosable interest, but the license holder does not undergo a change of ownership, the license holder must notify HHSC of the addition no later than 30 days after the addition of the owner.

(m) If a license holder changes its name but does not undergo a change of ownership, the license holder must notify HHSC and submit documentation evidencing a legal name change by submitting an application through the online portal. On receipt of the notice and documentation, HHSC reissues the current license in the license holder's new name.

§559.27. Relocation.

(a) A license holder must not relocate a facility without approval from HHSC. The license holder must submit a complete application and the fee required under §559.37 of this subchapter (relating to Fees) to HHSC through the online portal before the relocation.

(b) Clients must not be relocated until the new building has been inspected and approved as meeting the standards of Life Safety Code, NFPA 101, 2000 edition, as applicable to day activity health services facilities.

(c) Following Life Safety Code, NFPA 101, 2000 edition, approval by HHSC, the license holder must notify HHSC of the date clients will be relocated. If the new facility meets the standards for operation based on an on-site survey, HHSC issues a license for the new location.

(d) The effective date of this license is the date all clients are relocated.

(e) The license holder must continue to maintain the license at the current location and meet all requirements for facility operation until the date of the relocation.

§559.29. Change of Staff.

(a) A facility must submit an application for a change of director through the online portal within 30 days before or after the change. The new director must submit qualifying documentation for approval to the HHSC Regulatory Services Regional Office within 30 days before or after the change, as specified in §559.59 of this chapter (relating to Staff Qualifications).

(b) A new facility activities director must submit qualifying documentation for approval within 30 days before or after the change, as specified in §559.59 of this chapter.

(c) If the facility does not have a director or activities director within 30 days after a vacancy, the facility must submit a letter to the HHSC Regulatory Services Regional Office requesting an extension. The HHSC Regulatory Services Regional Office notifies the facility in writing of the length of any extension.

§559.31. Criteria for Denying a License or Renewal of a License.

(a) HHSC may deny an initial license or refuse to renew a license if any person described in §559.11(e) of this subchapter (relating to Criteria for Licensing):

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

(2) substantially fails to comply with the requirements described in §559.42 of this chapter (relating to Safety), §559.43 of this chapter (relating to Sanitation), and Subchapter D of this chapter (relating to Standards for Licensure), including:

(A) noncompliance that poses a serious threat to health and safety; or

(B) failure to maintain compliance on a continuous basis;

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

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

(5) knowingly provides false or fraudulent information by:

(A) submitting false or intentionally misleading statements to HHSC;

(B) using subterfuge or other evasive means of filing;

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

(D) knowingly concealing a material fact; or

(E) being responsible for fraud;

(6) fails to pay when due:

(A) licensing fees as described in §559.37 of this subchapter (relating to Fees); and

(B) franchise taxes, if applicable; or

(7) has a history of any of the following actions during the five-year period preceding the date of the application:

(A) received a sanction for operating a facility that has been decertified or had its contract canceled under the Medicare or Medicaid program in any state;

(B) being assessed federal or state Medicare or Medicaid sanctions or penalties;

(C) received unsatisfied final judgments;

(D) was evicted from any property or space used as a facility in any state; or

(E) received a suspension of a license to operate a health facility, long-term care facility, assisted living facility, or a similar facility in any state.

(b) Concerning subsection (a)(7) of this section, HHSC may consider exculpatory information provided by any person described in §559.11(e) of this subchapter and grant a license if HHSC finds that person able to comply with the rules in this chapter.

(c) HHSC does not issue a license to an applicant to operate a new facility if the applicant has a history of any of the following actions during the five-year period preceding the date of the application:

(1) revocation of a license to operate a health care facility, nursing facility, assisted living facility, or similar facility in any state;

(2) debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(3) a court injunction prohibiting any person described in §559.11(e) of this subchapter from operating a facility.

(d) Only final actions are considered for purposes of subsection (a)(7) of this section and subsection (c) of this section. An action is final when routine administrative and judicial remedies are exhausted. All actions, whether pending or final, must be disclosed.

(e) If an applicant owns multiple facilities, the overall record of compliance in all the facilities is examined. An overall record poor enough to deny issuing a new license does not preclude renewing licenses of individual facilities with satisfactory records.

(f) If HHSC denies a license or refuses to issue a license renewal, the applicant or license holder may request a hearing by following HHSC rules in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). An administrative hearing is conducted in accordance with Texas Government Code, Chapter 2001, and 1 TAC Chapter 357, Subchapter I.

§559.33. Opportunity to Show Compliance.

(a) Before starting proceedings to revoke or suspend a license or deny an application for the renewal of a license, HHSC gives the applicant or license holder:

(1) notice by personal service or registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all requirements of law for the retention of the license by sending the director of the HHSC Regulatory Enforcement Section a written request for an opportunity to show compliance. The request must:

(A) be postmarked within 10 days after the date of HHSC's notice and received in the state office of the director of the HHSC Regulatory Enforcement Section within 10 days after the date of the postmark; and

(B) contain specific documentation refuting HHSC's allegations.

(b) HHSC's review is limited to a review of documentation submitted by the license holder and information used by HHSC as the basis for its proposed action and is not conducted as an adversary hearing. HHSC gives the license holder a written affirmation or reversal of the proposed action.

§559.35. Change in Capacity.

(a) Increase in Capacity.

(1) During the license term, a license holder may not increase capacity without approval from HHSC. The license holder must submit to HHSC a complete application for increase in capacity through the online portal.

(2) Upon approval of an increase in capacity following a Life Safety Code Survey, HHSC issues a new license.

(b) Decrease in Capacity.

(1) A license holder that wishes to decrease the licensed capacity of the facility must provide notification via the online portal to HHSC Licensing and Credentialing Section, Long-term Care Regulation. The notification must include the desired capacity for the new license.

(2) Upon receipt of the notification, HHSC issues a new license with the desired capacity indicated in the notification.

§559.37. Fees.

(a) License Fees.

(1) The license fee is \$75 for a three-year license. The fee must be paid with each initial application, change of ownership application, and application for license renewal. A facility or applicant must pay fees in accordance with the options available in the online portal.

(2) An applicant for license renewal who submits an application during the 45-day period ending on the date the current license expires must pay a late fee of \$25 in addition to the license fee described in paragraph (1) of this subsection.

(b) Plan Review Fees.

(1) HHSC charges a fee to review plans for new buildings and conversion of buildings not licensed by HHSC and for additions and remodeling existing licensed facilities.

(2) HHSC fee schedule by building type:

(A) new buildings or conversion of buildings not licensed by HHSC--\$12 per client (minimum \$500 and maximum \$1,000); or

(B) additions or remodeling existing licensed facilities--2 percent of construction cost (minimum \$250 and maximum \$750).

§559.39. Voluntary Closure.

(a) A provider must notify HHSC in writing at least five days before permanent closure of the operation.

(b) The provider must include in the written notice:

(1) the date of permanent closure;

(2) the reason for closing;

(3) the location of individual records, both active and inactive; and

(4) the name and address of the individual records custodian.

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

Filed with the Office of the Secretary of State on February 26, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 438-3161

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SUBCHAPTER B. APPLICATION PROCEDURES

26 TAC §§559.12 - 559.23

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.12. *Building Approval.*

§559.13. *Applicant Disclosure Requirements.*

§559.14. *Increase in Capacity.*

§559.15. *Renewal Procedures and Qualifications.*

§559.16. *Change of Ownership and Notice of Changes.*

§559.17. *Change of Staff.*

§559.18. *Time Periods for Processing Licensing Applications.*

§559.19. *Criteria for Denying a License or Renewal of a License.*

§559.20. *Opportunity to Show Compliance.*

§559.21. *License Fees.*

§559.22. *Plan Review Fees.*

§559.23. *Relocation.*

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



SUBCHAPTER D. STANDARDS FOR LICENSURE [AND PROGRAM REQUIREMENTS]

26 TAC §§559.50 - 559.53, 559.55, 559.57, 559.59, 559.61, 559.63, 559.65, 559.67, 559.69, 559.71, 559.73, 559.75, 559.77, 559.79

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.50. *Purpose.*

For purposes of this subchapter, the term, "communicable diseases" has the meaning assigned to it in 25 TAC Chapter 97 (relating to Communicable Diseases).

§559.51. *Compliance.*

(a) For purposes of this section, "reportable conduct" includes:

(1) abuse or neglect that causes or may cause death or harm to a client;

(2) sexual abuse of a client;

(3) financial exploitation of a client in the amount of \$25 or more; or

(4) emotional, verbal, or psychological abuse that causes harm to a client.

(b) A facility must:

(1) comply with the requirements for advance directives as outlined under §559.53 of this subchapter (relating to Maintenance of Policies and Procedures);

(2) comply with the provisions of Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illness);

(3) before offering employment to any individual, search on the HHSC internet website, employee misconduct registry (EMR) established under Texas Health and Safety Code §253.007, and HHSC nurse aide registry (NAR) to determine if an individual is designated in either registry as unemployable;

(A) not employ a person who is listed as unemployable in either registry;

(B) provide information about the EMR to an employee in accordance with §561.3 of this title (relating to Employment and Registry Information);

(C) conduct a search of the EMR and NAR at least once every 12 months to determine if the employee is designated in either registry as unemployable;

(D) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file; and

(E) suspend the employment of an employee who HHSC finds has engaged in reportable conduct, as defined in subsection (a) of this section, while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review, pending a final decision by an administrative law judge, and not reinstate the employee's employment or contract during any applicable appeals process;

(4) develop policies to comply with standards for universal precautions for HIV/AIDS and related conditions in the workplace;

(5) develop written policies for control of communicable diseases in employees and clients, which include tuberculosis screening and provision of a safe and sanitary environment for clients and their families;

(6) comply with all relevant federal and state standards;

and

(7) comply with all applicable provisions of Texas Human Resource Code, Chapter 102.

§559.52. Client Rights.

A facility must ensure that all adult clients receiving services provided by the facility are guaranteed the following rights.

(1) The facility must ensure that the facility's policies and procedures:

(A) enable a client to exercise his or her rights;

(B) promote the highest practicable quality of life for all clients and not deliberately or inadvertently prohibit a client from exercising the rights stated in this section or the rights of citizenship; and

(C) ensure that a client, in exercising his or her rights, does not impede the rights of others in the facility.

(2) The facility must ensure a listing of client rights is:

(A) provided in writing to each client or client's responsible party; and

(B) posted in English and Spanish in a prominent place in the facility accessible by clients and visitors.

(3) A client has all the rights, benefits, responsibilities, and privileges stated in the Constitution and laws of this state and the United States, except where lawfully restricted.

(4) A client has the right to be free of interference, coercion, discrimination, and reprisal in exercising his or her civil rights. Examples of interference, coercion, discrimination, and reprisal include:

(A) prohibiting a client from selecting the client's responsible party of the client's choice;

(B) intimidating a client to provide information about a private conversation with another person;

(C) not allowing a client to use the client's private property, such as durable medical equipment, recreational items, and assistive devices;

(D) not allowing a client to visit with an individual of the client's choice, unless the individual poses a threat to the health and safety of the client, other clients, or staff;

(E) discharging a client for filing a complaint or grievance; and

(F) using derogatory language to describe or address a client.

(5) A client has the right to be free from physical and mental abuse, including corporal punishment, physical restraints and seclusion, and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the client's medical symptoms.

(6) A client has the right to participate in activities of social, religious, and community groups unless the participation interferes with the rights of others.

(7) A client has the right to practice the religion of the client's choice or to abstain from religious activities.

(8) A client with an intellectual disability and who is represented by a court-appointed guardian may participate in a behavior modification program that involves the use of restraints or adverse stimuli only with the informed consent of the guardian.

(9) A client has the right to be treated with respect, courtesy, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the client:

(A) has the right to make individualized choices regarding personal affairs, care, benefits, schedules and activities, and services;

(B) has the right to be free from abuse, neglect, and exploitation;

(C) has the right, if protective measures are required and the client has not been adjudicated cognitively impaired, to designate a guardian or representative to ensure the right to quality stewardship of the client's affairs; and

(D) has the right to protection of the client's personal image. A facility employee must not share or post to the internet or social media any photographs or video of a client without the client's written consent.

(10) A client has the right to a safe and clean environment that:

(A) is free of pests;

(B) is free of electrical and structural hazards; and

(C) has clean bathrooms and client areas.

(11) A client has the right to communicate with staff and others in the client's native language for the purpose of acquiring or providing any type of treatment, care, or services.

(12) A client has the right to make a complaint about the client's care or treatment.

(A) A client's complaint may be made anonymously or communicated by a person designated by the client.

(B) The facility must promptly respond to resolve each client complaint.

(C) The facility must not discriminate or take other punitive action against a client who makes a complaint.

(D) The facility must not impede a client's right to make a formal complaint to HHSC or require that complaints be made to the facility prior to lodging a formal complaint with HHSC.

(13) The facility must ensure a client is given personal privacy while attending to personal needs.

(14) A client has the right to review and obtain copies of the client's records in accordance with §559.75 of this subchapter (relating to Client Records).

(15) A client has the right to be fully informed in advance about treatment, care, and services provided by the facility.

(16) A client has the right to participate in developing his or her individual plan of care that describes the client's DAHS needs and how the needs will be met.

(17) A client has the right to refuse medical treatment or services. The facility must ensure the client is advised by the person providing treatment or services of the possible consequences of refusing treatment or services.

(18) A client has the right to refuse to perform services for the facility, except as contracted for by the client and director.

(19) A client has the right to be informed by the provider, no later than the 30th day after admission:

(A) whether the client is entitled to benefits under Medicare or Medicaid related to DAHS services; and

(B) which items and services are covered by these benefits, including items or services for which the client may not be charged.

(20) A client has the right to execute an advance directive, under Texas Health and Safety Code, Chapter 166, or designate a guardian in advance of need to make decisions regarding the client's health care should the client become incapacitated.

§559.53. Maintenance of Policies and Procedures.

A facility must maintain policies and procedures regarding the following with respect to all clients receiving services provided by the facility.

(1) The facility must provide a client with written information about:

(A) the client's rights under Texas law (whether statutory or as recognized by the courts of the state) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives;

(B) the facility's policies respecting the implementation of these rights; and

(C) a written list of the client's rights as applicable, as outlined under Texas Human Resource Code §102.004 (relating to List of Rights), and as required in §559.52 of this subchapter (relating to Client Rights).

(2) The facility must document in the client's record whether the client has executed an advance directive.

(3) The facility must not condition the provision of care or otherwise discriminate against a client based on whether the client has executed an advance directive.

(4) The facility must ensure compliance with the requirements of Texas law, whether statutory or as recognized by the courts of Texas, respecting advance directives.

(5) The facility must educate the client, family members, and staff, in a language each understands, on issues concerning advance directives.

(6) The facility must provide the attending physician with any information relating to a known existing Directive to Physicians, Living Will, or Durable Power of Attorney for Health Care and assist with coordinating prescribing practitioners' orders with any directive.

(7) When a client is in an incapacitated state, and therefore is unable to receive information or articulate whether he or she has executed an advance directive, the family, surrogate, or other concerned person must receive the information concerning advance directives. The facility must provide this information to the client in a language he or she understands if he or she is no longer incapacitated.

(8) When the client or a relative, surrogate, or other concerned or related individual presents the facility with a copy of the client's advance directive, the facility must comply with the advance directive including recognition of a durable power of attorney for health care to the extent allowed under state law. If no one comes forward with a previously executed advance directive and the client is incapacitated or otherwise unable to receive information or articulate whether he has executed an advance directive, the facility must note that the client was not able to receive information and was unable to communicate whether an advance directive existed.

§559.55. Reporting Incidents of Abuse or Neglect.

A facility must:

(1) report to HHSC via the online portal, or by speaking with an HHSC agent at 1-800-458-9858, upon learning of alleged abuse or neglect of a client and submit an investigation report to HHSC no later than the fifth working day after the initial report;

(2) maintain incident reports as required by §559.75 of this subchapter (relating to Client Records);

(3) ensure the confidentiality of individual client records and other information related to clients; and

(4) inform the client, or client's responsible party, orally and in writing of the client's rights, responsibilities, and grievance procedures in a language the client, or client's responsible party, understands.

§559.57. Postings.

A facility must prominently and conspicuously post for display in a public area of the facility that is readily available to clients, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by HHSC that can be found on the HHSC website that describes complaint procedures and specifies how complaints may be filed with HHSC;

(3) a notice in the form prescribed by HHSC stating that inspection and related reports are available at the facility for public inspection and providing the HHSC toll-free telephone number that may be used to obtain information concerning the facility;

(4) a copy of the most recent inspection report relating to the facility;

(5) a brochure or letter that outlines the facility's hours of operation, holidays, and a description of activities offered; and

(6) emergency telephone numbers, including the abuse hotline telephone number, near all telephones.

§559.59. Staff Qualifications.

(a) Director. A facility must employ a director.

(1) The director must:

(A) have graduated from an accredited four-year college or university and have no less than one year of experience in working with people in a human service or medically related program, or have an associate degree or 60 semester hours from an accredited college or university with three years of experience working with people in a human service or medically related program;

(B) be an RN with one year of experience in a human service or medically related program;

(C) meet the training and experience requirements for a license as a nursing facility administrator under Chapter 555 of this title (relating to Nursing Facility Administrators); or

(D) have met the qualifications for a director required on July 16, 1989, and served continuously in the capacity of director since that date.

(2) The director must show evidence of 12 hours of annual continuing education in at least two of the following areas:

(A) client and provider rights and responsibilities, abuse, neglect, exploitation, and confidentiality;

(B) basic principles of supervision;

(C) skills for working with individuals, families, and other professional service providers;

- (D) individual characteristics and needs;
- (E) community resources;
- (F) basic infection prevention and control measures;
- (G) emergency preparedness and response;
- (H) basic emergency first aid, such as cardiopulmonary resuscitation or choking; or

(I) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, Rehabilitation Act of 1993, and Family and Medical Leave Act of 1993.

(3) The activities director may fulfill the function of director if the activities director meets the qualifications for facility director.

(4) One person may not serve as facility nurse, activities director, and director.

(5) The facility must have a policy regarding the delegation of responsibility in the director's absence from the facility.

(6) The facility must notify HHSC Regulatory Services Regional Office for the region in which the facility is located if the director is absent from the facility for more than 10 working days.

(b) Nurse. A facility must employ a nurse.

(1) An RN must have a license from the Texas Board of Nursing and practice in compliance with the Nurse Practice Act and rules and regulations of the Texas Board of Nursing.

(2) An LVN must have a license from the Texas Board of Nursing and practice in compliance with the Nurse Practice Act and rules and regulations of the Texas Board of Nursing.

(3) If a nurse serving as director leaves the facility to perform other duties related to the DAHS program, an LVN or another RN must fulfill the duties of the facility nurse.

(4) A facility that does not have a DAHS contract, but that has a Special Services to Persons with Disabilities contract, is not required to have an RN on duty if the clients receiving services have no medical needs and are able to self-administer medication.

(c) Activities director. A facility must employ an activities director.

(1) Except as provided in paragraph (2) of this subsection, an activities director must have graduated from high school or have a certificate recognized by a state of the United States as the equivalent of a high-school diploma and have:

(A) a bachelor's degree from an accredited college or university and one year of full-time experience working with elderly people or people with disabilities in a human service or medically related program;

(B) 60 semester hours from an accredited college or university and two years of full-time experience working with elderly people or people with disabilities in a human service or medically related program; or

(C) completed an activities director's course and two years of full-time experience working with elderly people or people with disabilities in a human service or medically related program.

(2) An activities director hired before May 1, 1999, with four years of full-time experience working with elderly people or people with disabilities in a human service or medically related program is not subject to the requirements of paragraph (1) of this subsection.

(d) Attendants. An attendant must be at least 18 years of age and may be employed as a driver, aide, food service worker, janitor, housekeeper, or laundry services worker.

(1) If a facility employs a driver, the driver must have a current operator's license, issued by the Texas Department of Public Safety, that is appropriate for the class of vehicle used to transport clients.

(2) If an attendant handles food in the facility, the attendant must meet the requirements of the Texas Department of State Health Services (DSHS) rules on food service sanitation as described in 25 TAC Chapter 228 (relating to Retail Food Establishments).

(e) Food service personnel. If a facility prepares meals on site, the facility must have sufficient food service personnel to prepare meals and snacks. Food service personnel must meet the requirements of the DSHS rules on food service sanitation as described in 25 TAC Chapter 228.

§559.61. Staffing Ratio and Hours.

A facility must ensure that:

(1) the ratio of direct service staff to clients is at least one to eight, which must be maintained during provision of all services except during facility-provided transportation;

(2) at least one RN or LVN is working at the facility for at least eight hours per day and sufficient nurses are at the facility to meet the nursing needs of the clients at all times;

(3) the facility director routinely works at least 40 hours per week performing duties relating to provision of the DAHS program;

(4) the activities director routinely works at least 40 hours a week;

(5) clients whose needs cannot be met by the facility are not admitted or retained; and

(6) sufficient attendants are on duty at all times clients are present to meet the needs of the clients who are served by the facility.

§559.63. Infection Prevention and Control.

(a) A facility must develop, implement, enforce, and maintain an infection prevention and control program that provides a safe, sanitary, and comfortable environment and helps prevent development and transmission of disease and infection.

(1) The infection prevention and control program must include policies and procedures that reduce the risk of spreading communicable diseases in the facility, including:

(A) wearing personal protective equipment, such as gloves, a gown, or a mask when called on for anticipated exposure;

(B) properly cleaning hands after using the lavatory, before and after touching another client, and in between glove changes;

(C) cleaning and disinfecting environmental surfaces, including doorknobs, handrails, light switches, control panels, and remote controls;

(D) using universal precautions for blood and bodily fluids; and

(E) disposing of soiled items (such as used tissues, wound dressings, incontinence briefs, and soiled linens) from the environment.

(2) Staff must handle, store, process, and transport linens to prevent the spread of infection.

(3) If the facility knows or suspects an employee has contracted a communicable disease that is transmissible to clients through food handling or direct client care, the facility must exclude the employee from providing these services for the applicable period of communicability.

(4) The facility must maintain evidence of compliance with local and state health codes and ordinances regarding employee and client health status.

(5) The facility must immediately report the name of any client with a reportable disease as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases), to the city health officer, county health officer, or health unit director having jurisdiction, and implement appropriate infection control procedures as directed by the local health authority.

(b) The facility must comply with rules regarding special waste in 25 TAC Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(c) The facility's infection prevention and control program must include a policy to minimize the risk for transmission of tuberculosis (TB). The facility must screen a new employee for TB within two weeks of employment, according to Centers for Disease Control and Prevention screening guidelines and any additional guidance from HHSC.

(1) The facility must provide annual TB education to employees that must include the following topics:

- (A) TB risk factors;
- (B) the signs and symptoms of TB disease; and
- (C) TB infection control policies and procedures.

(2) The facility may request evidence of compliance with this requirement from a person who provides services under an outside resource contract.

§559.65. Staff Responsibilities.

(a) The facility director:

- (1) manages the DAHS program and the facility;
- (2) trains and supervises facility staff, contractors, and volunteers;
- (3) monitors the facility building and grounds to ensure compliance;
- (4) maintains all financial and client records;
- (5) develops relationships with community groups and agencies for identification and referral of clients;
- (6) maintains communication with clients' family members or responsible parties;
- (7) ensures development and maintenance of the clients' plans of care; and
- (8) ensures that, if the facility director also serves as the RN consultant, the facility director fulfills the responsibility as director.

(b) The facility nurse:

- (1) assesses clients' nursing and medical needs;
- (2) develops clients' plans of care;
- (3) obtains prescribing practitioner's orders for medication and treatments to be administered;

(4) determines whether self-administered medications have been appropriately taken, applied, or used;

(5) enters, dates, and signs monthly progress notes on medical care provided;

(6) administers medication and treatments;

(7) provides health education;

(8) maintains medical records; and

(9) oversees implementation of the facility's infection prevention and control policies.

(c) The activities director:

(1) plans and directs the daily program of activities, including physical fitness exercises or other recreational activities;

(2) records client's social histories;

(3) assists clients' related support needs;

(4) ensures that the identified related support services are included in clients' plans of care;

(5) signs and dates monthly progress notes about social and related support services activities provided; and

(6) ensures clients have a choice in whether to participate in activities.

(d) An attendant:

(1) provides personal care services to assist with activities of daily living;

(2) assists the activities director with recreational activities; and

(3) provides protective supervision through observation and monitoring.

(e) Food service personnel:

(1) prepare meals and snacks; and

(2) maintain the kitchen area and utensils in a safe and sanitary condition.

(f) A facility must obtain consultation at least four hours per month from a dietitian consultant.

(1) The dietitian consultant plans and reviews menus and must:

(A) approve and sign snack and lunch menus;

(B) review menus monthly to ensure that substitutions were appropriate; and

(C) develop a special diet for clients if ordered by a prescribing practitioner.

(2) A facility must obtain consultation from a dietitian consultant even if the facility has meals delivered from another facility with a dietitian consultant or the facility contracts for the preparation and delivery of meals with a contractor that employs a registered dietician. A consultant who provides consultation to several facilities must provide at least four hours of consultation per month to each facility.

(g) If a facility employs an LVN as the facility nurse, the facility must ensure that an RN consultant provides consultation at the facility at least four hours per week. The RN consultant must document the consultation provided. The RN consultant must provide the

consultation when clients are present in the facility. The RN consultant may provide the following types of assistance:

- (1) review plans of care and suggest changes, if appropriate;
- (2) assess clients' health conditions;
- (3) consult with the LVN in solving problems involving care and service planning;
- (4) counsel clients on health needs;
- (5) train, consult, and assist the LVN to maintain proper medical records; and
- (6) provide in-service training for direct service staff.

§559.67. Training.

(a) Initial training.

(1) A facility must provide direct service staff with training in its fire, disaster, and evacuation procedures within three workdays after the start of employment and document the training in the facility records.

(2) A facility must provide direct service staff a minimum of 18 hours of training during the first three months after the start of employment and document the training in the facility records.

(3) The training provided in accordance with paragraph (2) of this subsection must include:

(A) a nationally or locally recognized adult cardiopulmonary resuscitation (CPR) course or certification;

(B) first aid;

(C) orientation to health care delivery, including:

(i) safe body function and mechanics;

(ii) personal care techniques and procedures; and

(iii) overview of the population served at the facility;

(D) identification and reporting of abuse, neglect, or exploitation; and

(E) basic infection prevention and control measures.

(b) Continuing training.

(1) A facility must provide at least three hours of continuing training to direct service staff quarterly and document the training in the facility records. Training may include:

(A) assisting clients with personal care services;

(B) health conditions and diagnoses of clients in the facility and how they may affect provision of care;

(C) safety measures to prevent accidents and injuries;

(D) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a client falls, suffers a laceration, or is experiencing a sudden change in physical or cognitive status;

(E) managing dysfunctional, disruptive, or maladaptive behavior and de-escalation techniques;

(F) client rights;

(G) communication techniques for working with clients with hearing, visual, or cognitive impairment;

(H) basic infection prevention and control measures; and

(I) fall prevention.

(2) A facility must practice evacuation procedures with staff and individuals at least once a month and document evacuation results in the facility records.

(3) The facility must ensure that direct service staff maintain current certification in CPR.

(c) Policy for clients with Alzheimer's disease or a related disorder. A facility must adopt, implement, and enforce a written policy that:

(1) requires direct service staff who provide care at the facility to a client with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to clients with Alzheimer's disease or related disorders;

(2) ensures the care and services provided by direct service staff to a client with Alzheimer's disease or a related disorder meet the specific identified needs of the client relating to the diagnosis of Alzheimer's disease or a related disorder; and

(3) ensures the training required for direct service staff under paragraph (1) of this subsection includes information about:

(A) symptoms and treatment of dementia;

(B) stages of Alzheimer's disease;

(C) person-centered behavioral interventions; and

(D) communication with a client with Alzheimer's disease or a related disorder.

§559.69. Medications.

(a) Administration.

(1) A facility must ensure that a person who administers medications to clients who choose not to or who cannot self-administer his or her medications holds a current license under applicable state law that authorizes the licensee to administer medications.

(2) A facility must ensure that all medication prescribed to a client that is administered at the facility is dispensed through a pharmacy or by the client's prescribing practitioner.

(3) A facility may administer sample medications at the facility if the medication has been prescribed to the client and includes specific dosage instructions for the client.

(4) A facility must record a client's medications on the client's medication profile record. The recorded information must be obtained from the prescription label and must include the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and date each medication was issued by the pharmacy.

(b) Assistance with self-administration. A nurse may assist with self-administration of a client's medication if the client is unable to administer the medication without assistance. Assistance with self-administration of medication is limited to:

(1) reminding the client to take medications at the prescribed time;

(2) opening and closing containers or packages;

(3) pouring prescribed dosage according to the client's medication profile record;

(4) returning medications to the proper locked areas;

(5) obtaining medications from a pharmacy; and

(6) listing on the client's medication profile record the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(c) Self-administration.

(1) A nurse must counsel a client who self-administers medication or treatment at least once per month to ascertain if the client continues to be able to self-administer the medication or treatment. The facility must keep a written record of the counseling.

(2) A facility may permit a client who chooses to keep the client's medication locked in the facility's central medication storage area to enter or have access to the area for the purpose of self-administering medication or treatment. A facility staff member must remain in or at the storage area the entire time the client is present in the area.

(d) General.

(1) A facility director, an activities director, or a facility nurse must immediately report to a client's prescribing practitioner and responsible party any unusual reactions to a medication or treatment.

(2) When a facility supervises or administers medications, the facility must document in writing if a client does not receive or take the medication and treatment as prescribed. The documentation must include the date and time the dose should have been taken and the name and strength of medication missed.

(e) Storage.

(1) A facility must provide a locked area for all medications, which may include:

(A) a central storage area; or

(B) a medication cart.

(2) A facility must store a client's medication separately from other clients' medications within the storage area.

(3) A facility must store medication requiring refrigeration in a locked refrigerator that is used only for medication storage or in a separate, permanently attached, locked medication storage box in a refrigerator.

(4) A facility must store poisonous substances and medications labeled for "external use only" separately from other substances within the locked area.

(5) A facility must store drugs covered by Schedule II of the Controlled Substances Act of 1970 in a locked, permanently attached cabinet, box, or drawer that is separate from the locked storage area for other medications.

(f) Disposal.

(1) In accordance with applicable federal and state laws, a facility must dispose of medication that:

(A) has been discontinued by order of the client's prescribing practitioner;

(B) remains after the client no longer attends the DAHS; or

(C) has passed the medication expiration date.

(2) A facility must ensure the medication identified in paragraph (1) of this subsection is disposed by:

(A) a registered pharmacist licensed in the State of Texas;

(B) a local pharmacy on-site medication drop-off box;
or

(C) a local law enforcement or community drug take-back program.

(3) A facility must inventory and store medications awaiting disposal separate from current client medications.

(4) A facility must dispose of needles and hypodermic syringes with needles attached as required by 25 TAC Chapter 1, Subchapter K (relating to the Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(5) A facility must obtain a signed receipt from the client or the client's responsible party if the facility releases medication to the client or responsible party.

§559.71. Accident, Injury, or Acute Illness.

(a) A facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(b) In the event of accident or injury to a client requiring emergency medical, dental, or nursing care, or in the event of death of a client, a facility must:

(1) arrange for emergency care or transfer of the client to an appropriate place for treatment, including:

(A) a physician's or practitioner's office;

(B) a clinic; or

(C) a hospital;

(2) immediately notify the client's physician and responsible party or agency who admitted the client to the facility; and

(3) describe and document the accident, injury, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file as required by §559.75 of this subchapter (relating to Client Records).

§559.73. Menus.

A facility that prepares meals on-site must:

(1) serve meals according to the menu;

(2) plan, date, post a menu at least two weeks in advance, maintain a copy of the menu; and

(3) ensure that a special diet meal ordered by a client's prescribing practitioner and developed by the dietician consultant is labeled with the client's name and type of diet.

§559.75. Client Records.

(a) Retention of Records. The retention of client records must comply with the following.

(1) Client records must be retained for five years after the client's services end.

(2) A facility must safeguard a client's records against loss, destruction, or unauthorized use.

(3) A facility must keep confidential all information contained in a client's records, except when release is:

(A) required by law or this chapter;

(B) to the client or client representative, where permitted by applicable law;

(C) for treatment, payment, or health care operations, as permitted by and in compliance with applicable law; or

(D) for public health activities, reporting of abuse, neglect, or domestic violence, health oversight activities, judicial and administrative proceedings, law enforcement purposes, organ donation purposes, research purposes, or to coroners, medical examiners, funeral directors, or to avert a serious threat to health or safety as permitted by and in compliance with applicable law.

(b) Destruction of Records. When client records are destroyed after the retention period, the facility must shred or incinerate the records in a manner that protects confidentiality. At the time of destruction, the facility must document for each record destroyed:

(1) client name;

(2) client record number, if used;

(3) the client's social security number and date of birth, if available; and

(4) date and signature of the person carrying out disposal.

(c) Client Access to Records. The client or the client's representative has the right to:

(1) upon an oral or written request to the facility, view all records pertaining to the client, within 24 hours (excluding weekends and holidays); and

(2) obtain hard copies of all or any portion of the records upon request within 48 hours (excluding weekends and holidays).

(d) Right of Refusal. A client does not have the right to refuse release of the client's records:

(1) when the client is transferred to another health care institution;

(2) when the record release is required by law or permitted by this chapter; or

(3) during surveys.

§559.77. Peer Review.

A facility must adopt and enforce a written policy to ensure that all professional disciplines comply with their professional practice acts or title acts relating to reporting and peer review.

§559.79. Emergency Preparedness and Response.

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

(1) Designated emergency contact--A person whom a client, or a client's representative, identifies in writing for the facility to contact in the event of a disaster or emergency.

(2) Disaster or emergency--An impending, emerging, or actual situation that:

(A) interferes with normal activities of a facility or its clients;

(B) may:

(i) cause injury or death to a client or staff member of the facility; or

(ii) cause damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage, or interference; and

(D) does not include a situation that arises from the medical condition of a client such as cardiac arrest, obstructed airway, cerebrovascular accident.

(3) Emergency management coordinator (EMC)--The person appointed by the local mayor or county judge to plan, coordinate, and implement public health emergency preparedness planning and response within the local jurisdiction.

(4) Emergency preparedness coordinator (EPC)--The facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency.

(5) Plan--A facility's emergency preparedness and response plan.

(6) Risk assessment--The process of evaluating, documenting, and examining potential disasters or emergencies that pose the highest risk to the facility and assessing their foreseeable impacts based on the facility's geographical location, structural conditions, client needs and characteristics, and other influencing factors, to develop an effective emergency preparedness and response plan.

(b) Administration. A facility must:

(1) develop and implement a written plan as described in subsection (c) of this section;

(2) maintain a current printed copy of the plan that is accessible to all staff, clients, and client representatives at all times;

(3) evaluate and revise the plan as necessary:

(A) within 30 days after an emergency situation;

(B) as soon as possible after the remodeling or construction of an addition to the facility; and

(C) at least annually; and

(4) revise the plan within 30 days after information included in the plan changes.

(c) Emergency preparedness and response plan. A facility's plan must:

(1) include a risk assessment of all potential internal and external emergency situations relevant to the facility operations and geographical area, such as a fire, failure of heating and cooling systems, a power outage, an explosion, a hurricane, a tornado, a flood, extreme snow and ice for the area, a wildfire, terrorism, or a hazardous materials accident;

(2) include a description of the facility's client population;

(3) include a description of the services and assistance needed by the clients in an emergency situation;

(4) include a section for each core function of emergency management, as described in subsection (d) of this section, that is based on a facility's decision to either shelter-in-place or evacuate during an emergency; and

(5) include a fire safety plan that complies with subsection (f) of this section.

(d) Plan requirements regarding eight core functions of emergency management.

(1) Direction and control. A facility's plan must contain a section for direction and control that:

(A) designates by name or title the emergency preparedness coordinator (EPC) who is the facility staff person with the

authority to manage the facility's response to an emergency situation in accordance with the plan;

(B) designates by name or title the alternate EPC who is the facility staff person with the authority to act as the EPC if the EPC is unable to serve in that capacity;

(C) documents the name and contact information for the local EMC for the area where the facility is located, as identified by the office of the local mayor or county judge; and

(D) documents coordination with the local EMC as required by the local EMC's guidelines relating to emergency situations.

(2) Warning. A facility's plan must contain a section for warning that:

(A) describes how the EPC will be notified of an emergency situation;

(B) identifies who the EPC will notify of an emergency situation and when the notification will occur; and

(C) ensures monitoring of local news and weather reports.

(3) Communication. A facility's plan must contain a section for communication that:

(A) identifies the facility's primary mode of communication and alternate mode of communication to be used in the event of power failure or the loss of the facility's primary mode of communication in an emergency situation;

(B) includes procedures for maintaining a current list of telephone numbers for clients and responsible parties;

(C) includes procedures for maintaining a current list of telephone numbers for the facility's staff that also identifies the facility's EPC;

(D) identifies the location of the lists described in subparagraphs (B) and (C) of this paragraph where facility staff can obtain the lists quickly;

(E) includes procedures to notify:

(i) facility staff about an emergency situation;

(ii) the alternate location about an impending or actual evacuation of clients; and

(iii) clients, legally authorized representatives and other persons about an emergency situation;

(F) describes how the facility will provide, during an emergency situation, general information to the public, such as the change in the facility's location and hours, or that the facility is closed due to the emergency situation;

(G) includes procedures for the facility to maintain communication with:

(i) facility staff during an emergency situation;

(ii) an alternate location if applicable; and

(iii) facility staff who will transport clients to a secure location during an evacuation in a facility vehicle;

(H) includes procedures for reporting to HHSC an emergency situation that caused the death or serious injury of a client:

(i) by telephone, at 1-800-458-9858, within 24 hours after the death or serious injury; and

(ii) electronically via the online portal on the HHSC form titled HHSC Provider Investigation Report, within five working days after the facility makes the telephone report required by clause (i) of this subparagraph.

(4) Sheltering-in-place. A facility's plan must contain a section that includes procedures to shelter clients in place during an emergency situation.

(5) Evacuation. A facility's plan must contain a section for evacuation that:

(A) requires posting building evacuation routes prominently throughout the facility, except in small, one-story buildings where all exits are obvious;

(B) includes procedures for evacuating clients to a pre-arranged location in an emergency situation, if applicable;

(C) includes an agreement with an alternate location which must specify the arrangements for receiving clients in the event of an evacuation;

(D) identifies primary and alternate evacuation destinations and routes, and includes a map that shows the destination and routes;

(E) includes procedures for:

(i) ensuring facility staff accompany evacuating clients;

(ii) ensuring that all persons present in the building have been evacuated;

(iii) accounting for clients and staff after they have been evacuated;

(iv) accounting for clients who are absent from the facility at the time of the evacuation;

(v) contacting the local EMC, if required by the local EMC guidelines, to find out if it is safe to return to the geographical area; and

(vi) determining if it is safe to re-enter and occupy the building after an evacuation;

(F) includes procedures for notifying the local EMC regarding an evacuation of the facility, if required by the local EMC guidelines;

(G) includes procedures for notifying HHSC by telephone, at 1-800-458-9858, within 24 hours after an evacuation that clients have been evacuated;

(H) includes procedures for notifying the HHSC Regulatory Services Regional Office for the area in which the facility is located, by telephone, as soon as safely possible after a decision to evacuate is made; and

(I) includes procedures for notifying the HHSC Regulatory Services Regional Office for the area in which the facility is located, by telephone, that clients have returned to the facility after an evacuation, within 48 hours after their return.

(6) Transportation. A facility's plan must contain a section for transportation that:

(A) provides for a sufficient number of vehicles that are safe and suitable for any special needs of the clients or requires that the facility maintain a contract for transporting clients during an evacuation;

(B) identifies facility staff authorized to drive a vehicle during an evacuation;

(C) establishes alternate transportation arrangements if the vehicles or contracted transportation described in subparagraph (A) of this paragraph are not available;

(D) includes procedures for safely transporting oxygen tanks currently being used by clients and any extra oxygen tanks that may be needed during an evacuation; and

(E) includes procedures that will ensure:

(i) safe transport of records, food, water, equipment, and supplies needed during an evacuation; and

(ii) that the records, food, water, equipment, and supplies, described in clause (i) of this subparagraph, arrive at the alternate location at the same time as the clients.

(7) Health and medical needs. A facility's plan must contain a section for client health and special needs that:

(A) identifies all the facility's special needs clients including clients with conditions requiring assistance during an evacuation; and

(B) ensures the needs of those clients are met during an emergency.

(8) Resource management. A facility's plan must contain a section for resource management that:

(A) includes procedures for accessing medications, records, food, water, equipment and supplies needed during an emergency;

(B) identifies facility staff who are assigned to locate and ensure the transportation of items described in subparagraph (A) of this paragraph during an emergency situation; and

(C) includes procedures to ensure medications are secure and stored at the proper temperatures during an emergency situation.

(e) Training. A facility must:

(1) train all staff on their responsibilities under the plan when hired in accordance with §559.67 of this subchapter (relating to Training);

(2) retrain staff at least annually on the staff member's responsibilities under the plan and when the staff member's responsibilities under the plan change; and

(3) conduct unannounced drills with facility staff for severe weather and other emergency situations identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (c)(1) of this section.

(f) Fire safety plan. A facility's fire safety plan must:

(1) include the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 16 (relating to New Day-Care Occupancies) and Chapter 17 (relating to Existing Day-Care Occupancies), concerning:

(A) use of alarms;

(B) transmission of alarms to the fire department;

(C) response to alarms;

(D) isolation of fire;

(E) evacuation of immediate area;

(F) evacuation of smoke compartment;

(G) preparation of floors and building for evacuation;

and

(H) fire extinguishment;

(2) include procedures to contact HHSC by telephone, at 1-800-458-9858, within 24-hours after a fire in accordance with §559.42 of this chapter (relating to Safety); and

(3) include procedures to submit to HHSC, within 15 days after the fire, the form Fire Report for Long Term Care Facilities;

(4) include in the fire safety plan the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 16 and Chapter 17 concerning drills and inspections, except as superseded by this section; and

(5) establish procedures to:

(A) perform a monthly fire drill with all occupants of the building at expected and unexpected times and under varying conditions;

(B) relocate, during the monthly fire drill, all occupants of the building to a predetermined location where participants must remain until a recall or dismissal signal is given;

(C) complete the HHSC Fire Drill Report Form for each required fire drill;

(D) conduct a monthly fire prevention inspection performed by a trained and senior member of the facility and prepare a report of the inspection results;

(E) maintain copies of the fire prevention inspection report, described in subparagraph (D) of this paragraph, that were prepared by the facility within the last 12 months; and

(F) post a copy of the most recent fire prevention inspection report, described in subparagraph (D) of this paragraph, in a conspicuous place in the facility.

(g) Emergency Response System.

(1) The facility director and designee must enroll in an emergency communication system in accordance with instructions from HHSC.

(2) The facility must respond to requests for information received through the emergency communication system in the format established by HHSC.

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

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For further information, please call: (512) 438-3161



SUBCHAPTER D. LICENSURE AND PROGRAM REQUIREMENTS

26 TAC §§559.61 - 559.64

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.61. *General Requirements.*

§559.62. *Program Requirements.*

§559.63. *Peer Review.*

§559.64. *Emergency Preparedness and Response.*

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

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SUBCHAPTER E. INSPECTIONS, SURVEYS, AND VISITS

26 TAC §§559.81, 559.83, 559.85, 559.87

STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The amendment and new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.81. *Procedural Requirements.*

(a) HHSC may enter the premises of a facility at reasonable times and make an inspection necessary to issue a license or renew a license. HHSC inspection and survey personnel ~~[will]~~ perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits as required for carrying out the responsibilities of licensing.

~~[(b) An inspection may be conducted by a surveyor.]~~

~~(b) [(e)] Generally, all inspections, surveys, complaint investigations, and other visits, whether routine or nonroutine, made for the purpose of determining the appropriateness of client care and day-to-day operations of a facility are will be unannounced. Any exceptions must be justified.~~

~~(c) [(d)] Certain visits may be announced, including initial architectural inspections, visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, systems installation or repairs, or conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.~~

~~(d) [(e)] Any person may request an inspection of a facility by notifying HHSC ~~[in writing]~~ of an alleged violation of a licensing requirement. The complaint should ~~[shall]~~ be as detailed as possible and signed by the complainant; however, HHSC does investigate anonymous complaints. Unless a complaint is anonymous, HHSC responds to the complainant in writing but without the outcome of the investigation. [HHSC performs an on-site inspection as soon as feasible but no later than 30 days after receiving the complaint, unless after an investigation the complaint is found to be frivolous. HHSC will respond to the complainant in writing.]~~

~~(e) If the complaint alleges abuse, neglect, or exploitation, HHSC performs an inspection as soon as feasible but not later than the 14th day after the date HHSC receives the complaint, unless after an investigation the complaint is found to be frivolous. If the complaint does not allege abuse, neglect, or exploitation, HHSC investigates the complaint not later than the 45th day after the date HHSC receives the complaint.~~

~~[(f) HHSC will receive and investigate anonymous complaints.]~~

~~(f) [(g)] The facility must make all ~~[of]~~ its books, records, electronic records, and other documents maintained by or on behalf of a facility accessible to HHSC upon request.~~

~~(1) HHSC is authorized to photocopy documents, photograph clients, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation ~~[that HHSC reasonably believes threaten the health and safety of a client].~~~~

~~(2) Examples of records and documents that may be requested and photocopied or otherwise reproduced are client medical records, including nursing notes, pharmacy records, medication records, and prescribing practitioner's ~~[physician's]~~ orders.~~

~~(3) The facility may charge HHSC at a rate not to exceed the rate HHSC charges for copies. The procedure of copying is the responsibility of the director or his or her designee. If copying requires that the records be removed from the facility, a representative of the facility is expected to accompany the records and ensure ~~[assure]~~ their order and preservation.~~

~~(4) HHSC protects the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and HHSC policy.~~

~~(5) If a facility maintains electronic records, it must have a mechanism for printing all documentation if a surveyor or investigator requests a printed copy.~~

~~(g) [(h)] HHSC does not reveal the ~~[The]~~ source of a ~~[the]~~ complaint ~~[is not revealed].~~~~

(h) [(i)] HHSC inspects a facility at least once every two years after the initial inspection.

§559.83. Determinations and Actions Pursuant to Inspections.

(a) HHSC determines if a facility meets the licensing rules, including both physical plant and facility operation requirements.

(b) Violations of regulations are listed on forms designed for the purpose of the inspection.

(c) At the conclusion of an inspection or survey, any violations are discussed in an exit conference with the facility's management. HHSC leaves a written list of violations with the facility at the time of the exit conference.

(d) If additional violations are cited after the initial exit conference, the violations are communicated to the facility within 10 working days after the initial exit conference.

(e) HHSC provides a clear and concise written summary in nontechnical language of each licensure inspection, inspection of care, and complaint investigation. The summary outlines significant violations noted at the time of the inspection or survey but does not include names of clients, staff, or any other information that would identify individual clients or other prohibited information under general rules of public disclosure. The summary is provided to the facility at the time the report of contact or similar document is provided.

(f) Upon receipt of the final statement of violations, the facility has 10 working days to submit an acceptable plan of correction to the HHSC Regulatory Services Regional Office director. An acceptable plan of correction must address:

(1) how the facility will accomplish the corrective action for those clients affected by each violation;

(2) how the facility will identify other clients with the potential to be affected by the same violation;

(3) how the facility will put the corrective measure into practice or make systemic changes to ensure that the violation does not recur;

(4) how the facility will monitor the corrective action to ensure that the violation is corrected and will not recur; and

(5) the date the corrective action will be completed.

(g) If the facility disagrees with a survey finding regarding a violation of regulations, the facility is entitled to an informal dispute resolution (IDR) for the violation.

(1) The facility must request an IDR by submitting all supporting documentation to HHSC Regulatory Enforcement no later than the tenth day after receipt of the official statement of violations.

(2) HHSC completes the IDR process no later than the 30th day after receipt of a request from a facility.

(3) HHSC notifies the facility of the results of the IDR process in writing, and violations deemed invalid in the IDR are so noted in HHSC's records.

§559.85. Referrals to the Attorney General.

HHSC may refer a facility to the attorney general who may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the requirements or any other law affecting clients if HHSC reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a client; and

(2) an injunction to restrain a person from a violation or threatened violation of the requirements or any other law affecting clients if HHSC reasonably believes that the violation or threatened violation creates a threat to the health and safety of a client.

§559.87. Procedures for Inspection of Public Records.

(a) Procedures for inspection of public records are in accordance with Texas Government Code, Chapter 552, and as further described in this section.

(b) The HHSC Regulatory Services Division is responsible for the maintenance and release of records on licensed facilities and other related records.

(c) The application for inspection of public records is subject to the following criteria.

(1) The application must be made to Regulatory Services, Texas Health and Human Services Commission, Mail Code E-349, P.O. Box 149030, Austin, Texas 78714-9030.

(2) The requester must identify himself or herself.

(3) The requester must specify the records requested.

(4) On written applications, if HHSC is unable to ascertain what records are being requested, HHSC may return the written application to the requester for clarification.

(5) HHSC provides the requested records as soon as possible; however, if the records are in active use, or in storage, or time is needed for proper de-identification or preparation of the records for inspection, HHSC so advises the requester and sets an hour and date within a reasonable time when the records will be available.

(d) Original records may be inspected or copied, but in no instance will original records be removed from HHSC offices.

(e) HHSC Regulatory Services charges for copies of records requested.

(1) If the requester wants to inspect records without requesting copies, the requester specifies the records to be inspected. HHSC does not charge this service, unless the director of HHSC Regulatory Services determines a charge is appropriate based on the nature of the request.

(2) If the requester wants copies of a record, the requester specifies in writing the records to be copied on an appropriate HHSC form, and HHSC completes the form by specifying the cost of the records, which the requester must pay in advance. Checks and other instruments of payment must be made payable to the Texas Health and Human Services Commission.

(3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requester on a cost basis in accordance with costs established by the Office of the Attorney General or HHSC for office machine copies. All applicable sales taxes are added to the cost of copying records.

(4) For documents that are mailed, HHSC charges for postage at the time it charges for the production.

(5) When a request involves information pertaining to multiple facilities, HHSC may consider each facility's information a separate request.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



26 TAC §§559.82 - 559.84

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.82. Determinations and Actions Pursuant to Inspections.

§559.83. Referrals to the Attorney General.

§559.84. Procedures for Inspection of Public Records.

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

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SUBCHAPTER F. ABUSE, NEGLECT, AND EXPLOITATION: COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

26 TAC §§559.91, 559.93, 559.95, 559.97, 559.99

STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for

licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The amendment and new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.91. Definitions of Abuse, Neglect, and Exploitation.

For purposes of this subchapter, the definitions of abuse, neglect, and exploitation are those found in Chapter 48, Human Resources Code, and §559.3 [§98.4] of this chapter [title] (relating to Definitions).

§559.93. Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities.

(a) Any facility staff who has reasonable cause to believe that a client is experiencing abuse, neglect, or exploitation must report the abuse, neglect, or exploitation to HHSC's state office at 1-800-458-9858 immediately and must follow the facility's internal policies regarding abuse, neglect, or exploitation.

(b) The following information must be reported to HHSC:

(1) name, age, and address of the client;

(2) name and address of the person responsible for the care of the client, if available;

(3) nature and extent of the elderly or disabled person's condition;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

(c) The facility must investigate the alleged abuse, neglect, or exploitation and submit a written report of the investigation electronically via the online portal to HHSC no later than the fifth day after the oral report and be available for inspection by HHSC.

§559.95. Complaint Investigation.

(a) A complaint is any allegation received by HHSC regarding abuse, neglect, or exploitation of a client or a violation of state standards.

(b) HHSC must give the facility notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.

§559.97. Investigations of Complaints.

(a) HHSC only investigates complaints of abuse, neglect, or exploitation when the act occurs in the facility, the licensed facility is responsible for the supervision of the client at the time the act occurs, or the alleged perpetrator is affiliated with the facility. HHSC refers complaints of abuse, neglect, or exploitation not meeting these criteria to the Texas Department of Family and Protective Services.

(b) Complaint investigations must include a visit to the facility and consultation with persons thought to have knowledge of the relevant circumstances. If the facility fails to admit HHSC staff for a complaint investigation, HHSC seeks a probate or county court order for admission. Investigators may request of the court that a peace officer accompany them during investigations.

(c) In cases concluded to be physical abuse, HHSC submits the written report of the investigation to the appropriate law enforcement agency.

(d) In cases concluded to be abuse, neglect, or exploitation of a client with a guardian, HHSC submits the written report of the investigation to the probate or county court that oversees the guardianship.

§559.99. Confidentiality.

All reports, records, communications, and working papers used or developed by HHSC in an investigation are confidential and may be released only as provided in this section.

(1) HHSC may furnish the final written investigation report on cases to the district attorney and law enforcement agencies exercising jurisdiction if the investigation reveals abuse that is a criminal offense. HHSC may provide to another state agency or governmental entity information that is necessary for HHSC, the state agency, or entity to properly execute its duties and responsibilities to provide services to the elderly or disabled.

(2) HHSC may release the final written investigation report to the public upon request provided the report is de-identified to remove all names and other personally identifiable data, including any information from witnesses and other person furnished to HHSC as part of the investigation.

(3) HHSC notifies the reporter and the facility of the results of HHSC's investigation of a reported case of abuse, neglect, or exploitation, regardless of whether HHSC concluded that abuse, neglect, or exploitation occurred or did not occur.

(4) Upon the written request of the person who is the subject of a report of abuse, neglect, or exploitation, his or her legal representative, or the personal representative of the person's estate if he or she is deceased, HHSC releases to the person or the representative otherwise confidential information relating to the final report. The request must specify the information desired and be signed and dated by the person making the request. A legal representative or personal representative must also specify the reason the information is requested and include with the request sufficient documentation to establish his or her authority as the representative. HHSC edits the information requested before release to protect the confidentiality of information related to the reporter's identify and to protect any other individual whose safety or welfare may be endangered by disclosure.

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

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26 TAC §§559.92 - 559.95

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.92. Abuse, Neglect, or Exploitation Reportable to DADS by Facilities.

§559.93. Complaint Investigation.

§559.94. Investigations of Complaints.

§559.95. Confidentiality.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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SUBCHAPTER G. ENFORCEMENT

26 TAC §§559.101, 559.103, 559.105, 559.107

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.101. Nonemergency Suspension.

(a) HHSC may suspend a facility's license when the facility's violation of the licensure rules threatens to jeopardize the health and safety of clients.

(b) Suspension of a license may occur simultaneously with any other enforcement provision available to HHSC.

(c) HHSC notifies the facility of its intent to suspend the license, including the facts or conduct alleged to warrant the suspension. The facility has an opportunity to show compliance with all requirements of law for retention of the license as provided in §559.33 of this chapter (relating to Opportunity to Show Compliance). If the facility requests an opportunity to show compliance, HHSC gives the license holder a written affirmation or reversal of the proposed action.

(d) HHSC notifies the facility of a suspension of the facility's license. If HHSC suspends a facility's license, the licensee may request a formal appeal by following HHSC's formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). A formal administrative hearing is conducted in accordance with Texas Government Code, Chapter 2001, and the

formal hearing procedures in 1 TAC Chapter 357, Subchapter I. The suspension takes effect when the deadline for appeal of the suspension passes unless the facility appeals the suspension. If the facility appeals the suspension, the status of the license holder is preserved until final disposition of the contested matter. The license holder must return the license to HHSC within 72 hours of passing the appeal deadline or, if an appeal is filed, the final disposition of the appeal.

(e) The suspension remains in effect until HHSC determines that the reason for suspension no longer exists. A suspension may last no longer than the term of the license. HHSC conducts an on-site investigation before making a determination to lift a suspension.

§559.103. Revocation.

(a) HHSC may revoke a facility's license when the license holder has violated the requirements of Texas Human Resources Code, Chapter 103.

(b) In addition, HHSC may revoke a license if the licensee:

(1) submitted false or misleading statements in the application for a license or any accompanying attachments;

(2) used other evasive means to obtain the license;

(3) concealed a material fact in the application for a license or failed to disclose information required in §559.19 of this chapter (relating to Applicant Disclosure Requirements) that would have been the basis to deny the license under §559.31 of this chapter (relating to Criteria for Denying a License or Renewal of a License); or

(4) violated the rules adopted under this chapter.

(c) Revocation of a license may occur simultaneously with any other enforcement provision available to HHSC.

(d) HHSC notifies the facility of its intent to revoke the license, including the facts or conduct alleged to warrant the revocation. The facility has an opportunity to show compliance with all requirements of law for retention of the license as provided in §559.33 of this title (relating to Opportunity to Show Compliance). If the facility requests an opportunity to show compliance, HHSC gives the license holder a written affirmation or reversal of the proposed action.

(e) If HHSC revokes a facility's license, the licensee may request a formal appeal by following the HHSC's formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). A formal administrative hearing is conducted in accordance with the formal hearing procedures in 1 TAC Chapter 357, Subchapter I. If the facility appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter. The license holder must return the license to HHSC within 72 hours of passing the appeal deadline or, if an appeal is filed, final disposition of the appeal.

§559.105. Emergency Suspension and Closing Order.

(a) HHSC suspends a facility's license or orders an immediate closing of part of the facility if:

(1) HHSC finds that the facility is operating in violation of the licensure rules; and

(2) the violation creates an immediate threat to the health and safety of a client.

(b) The order suspending a license or closing a part of a facility under this section is immediately effective on the date the license holder receives a written notice or on a later date specified in the order.

(c) The order suspending a license or ordering an immediate closing of a part of the facility is valid for ten days after the effective date of the order.

(d) A licensee whose facility is closed under this section is entitled to request a formal administrative hearing under HHSC's formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), but a request for an administrative hearing does not suspend the effectiveness of the order.

(e) When an emergency suspension has been ordered and the conditions in the facility indicate that clients should be relocated, the following requirements apply.

(1) In all circumstances, a client's rights and freedom of choice in selecting another DAHS must be respected.

(2) If a facility or part thereof is closed, the following procedures must be followed.

(A) HHSC notifies the local health department director, city or county health authority, and representatives of the appropriate state agencies of the closure.

(B) The facility staff must notify each client's guardian or responsible party and attending physician, advising them of the action in process.

(C) The client or client's guardian or responsible party must be given opportunity to designate a preference for another specific facility or for other arrangements.

(D) HHSC arranges for relocation to another facility in the area in accordance with the client's preference. A facility chosen for relocation must be in good standing with HHSC and, if certified under Titles XVIII and XIX of the United States Social Security Act, must be in good standing under its contract. The facility chosen must be able to meet the needs of the client.

(E) If necessary to prevent the transport of a client over a substantial distance, HHSC may grant a waiver to a receiving facility to temporarily exceed its licensed capacity, provided the health and safety of clients is not compromised and the facility can meet the increased demands for direct service staff and dietary services. A facility may exceed its licensed capacity under these circumstances, monitored by HHSC staff, until clients can be transferred to a permanent location.

(F) With each client transferred, the following reports, records, and supplies must be transmitted to the receiving institution:

(i) a copy of the current prescribing practitioner's orders for medication, treatment, diet, and special services required;

(ii) personal information such as the name and address of the next of kin, guardian, or responsible party for the client; attending physician; Medicare and Medicaid identification number; social security number; and other identifying information as deemed necessary and available; and

(iii) all medication dispensed in the name of the client for which prescribing practitioner's orders are current. These must be inventoried and transferred with the client.

(G) If the closed facility is allowed to reopen within 90 days, the relocated clients have the first right to return to the facility. Relocated clients may choose to return, to stay in the receiving facility (if the facility is not exceeding its licensed capacity), or any other available accommodations.

(H) Any return to the facility must be treated as a new admission, including exchange of medical information, medications, and completion of required forms.

§559.107. Administrative Penalties.

(a) HHSC may assess an administrative penalty if a facility:

(1) violates Texas Human Resources Code, Chapter 103, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the facility knows or should know is false:

(A) on an application for a license or a renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by HHSC;

(3) refuses to allow an HHSC representative to inspect:

(A) a book, record, or file required to be maintained by a facility; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a representative of HHSC or the enforcement of this chapter;

(5) willfully interferes with an HHSC representative who is preserving evidence of a violation of Texas Human Resources Code, Chapter 103, a rule adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under Texas Human Resources Code, Chapter 103, or a rule adopted under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify HHSC of a change of ownership before the effective date of the change of ownership.

(b) HHSC assesses administrative penalties against a facility in accordance with the schedule of appropriate and graduated penalties established in this section. To determine the amount of an administrative penalty, HHSC considers:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(2) the history of previous violations by a facility;

(3) the amount necessary to deter future violations;

(4) the facility's efforts to correct the violation; and

(5) any other matter that justice may require.

(c) Each day of a continuing violation constitutes a separate violation. The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation that is the subject of a penalty is presumed to continue each successive day until it is corrected. The date of correction alleged by the facility in its written plan of correction is presumed to be the actual date of correction unless it is later determined by HHSC that the correction was not made by that date or was not satisfactory.

(d) The administrative penalty schedule includes violations that warrant an administrative penalty.

Figure: 26 TAC §559.107(d)

(e) HHSC may not collect an administrative penalty from a facility if, not later than the 45th day after the date, the facility receives notice under subsection (j) of this section, the facility corrects the violation to the satisfaction of HHSC.

(f) Subsection (e) of this section does not apply to:

(1) a violation that HHSC determines is:

(A) a pattern of violation that results in actual harm;

(B) widespread in scope and results in actual harm;

(C) widespread in scope, constitutes a potential for more than minimal harm, and relates to:

(i) staffing, including staff ratio, health, and training under §559.61 of this chapter (relating to Staffing Ratio and Hours), §559.63 of this chapter (relating to Infection Prevention and Control), and §559.67 of this chapter (relating to Training);

(ii) administration of medication under §559.69 of this chapter (relating to Medications); or

(iii) emergency preparedness and response under §559.79 of this chapter (relating to Emergency Preparedness and Response);

(D) an immediate threat to the health or safety of an elderly person or a person with a disability receiving services at a facility; or

(E) substantially limits the facility's capacity to provide care;

(2) a violation described by subsection (a)(2) - (7) of this section;

(3) a violation of Texas Human Resources Code, Chapter 102; or

(4) a second or subsequent violation of §559.67(c) of this chapter that occurs before the second anniversary of the date of a previous violation of §559.67(c) of this chapter.

(g) A facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, HHSC may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. HHSC is not required to provide the facility with an opportunity to correct the subsequent violation.

(h) HHSC issues a preliminary report stating the facts on which HHSC concludes that a violation has occurred after HHSC has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(i) In the report, HHSC may recommend the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(j) HHSC provides a written notice of a preliminary report to the facility not later than 10 days after the date HHSC issues the preliminary report. The written notice includes:

(1) a brief summary of each violation;

(2) the amount of each recommended administrative penalty;

(3) a statement of whether a violation is subject to correction in accordance with subsection (e) of this section and, if the violation is subject to correction, a statement of:

(A) the date on which the facility must file with HHSC a plan of correction for approval by HHSC;

(B) the date on which the facility must complete the plan of correction to avoid assessment of the administrative penalty; and

(4) a statement that the facility has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(k) Not later than 20 days after the date on which a facility receives a written notice of a preliminary report, the facility may:

(1) give HHSC written notice that the facility agrees with HHSC report and consents to the recommended penalty; or

(2) make a written request for an administrative hearing.

(l) If a violation is subject to correction under subsection (e) of this section, the facility must submit a plan of correction to HHSC for approval not later than 10 days after the date on which the facility receives the written notice.

(m) If a violation is subject to correction, and the facility reports to HHSC that the violation has been corrected, HHSC inspects the correction or takes any other step necessary to confirm the correction and notify the facility that:

(1) the correction is satisfactory and HHSC will not assess an administrative penalty; or

(2) the correction is not satisfactory and HHSC recommends an administrative penalty.

(n) Not later than 20 days after the date on which a facility receives a notice that the correction is not satisfactory and HHSC recommends an administrative penalty, the facility may:

(1) give HHSC written notice that the facility agrees with HHSC's determination and consents to the recommended administrative penalty; or

(2) make a written request to HHSC for an administrative hearing.

(o) If a facility consents to the recommended administrative penalty or does not timely respond to a notice sent under subsection (j) of this section, the executive commissioner or designee assesses the recommended administrative penalty. If the executive commissioner or designee assesses the penalty, HHSC gives written notice of the penalty to the facility and the facility must pay the penalty within 30 days after receiving the notice.

(p) An administrative hearing is held in accordance with Chapter 110 of this title (relating to Hearings Under the Administrative Procedure Act) and HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(q) An administrative law judge sets a hearing and gives notice of the hearing if a facility that is assessed a penalty requests a hearing.

(r) The hearing is held before an administrative law judge who makes findings of fact and conclusions of law regarding the occurrence of a violation under Texas Human Resources Code, Chapter 103, a rule adopted under this chapter, or a term of a license issued under this chapter.

(s) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the executive commissioner or designee, by order, finds:

(1) a violation has occurred and assesses an administrative penalty; or

(2) a violation has not occurred.

(t) The executive commissioner or designee provides notice of the findings made under subsection (s) of this section to the facility charged with a violation. If the executive commissioner finds that a violation has occurred, the executive commissioner or designee provides written notice to the facility of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable on the penalty and the date on which interest begins to accrue; and

(4) the facility's right to judicial review of the order of the executive commissioner.

(u) Not later than the 30th day after the date on which the order of the executive commissioner or designee is final, the facility assessed an administrative penalty must:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(v) Notwithstanding subsection (o) of this section, HHSC may permit a facility to pay an administrative penalty in installments.

(w) If a facility does not pay an administrative penalty within the period provided by subsection (o) or (u) of this section or in accordance with the installment plan permitted by HHSC:

(1) the penalty is subject to interest; and

(2) HHSC may refer the matter to the attorney general for collection of the penalty and interest.

(x) Interest accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(y) If the amount of a penalty is reduced or the assessment of a penalty is not upheld on judicial review, the executive commissioner or designee must:

(1) remit to the facility the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(z) Accrued interest on the amount remitted by the executive commissioner or designee must be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the facility.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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26 TAC §§559.102 - 559.105

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.102. *Nonemergency Suspension.*

§559.103. *Revocation.*

§559.104. *Emergency Suspension and Closing Order.*

§559.105. *Administrative Penalties.*

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

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Chief Counsel
Health and Human Services Commission
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS

SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §341.204

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §341.204, concerning residential placement.

SUMMARY OF CHANGES

The amendments to §341.204 will include adding that: (1) a juvenile board or juvenile probation department may contract with

a facility that was constructed or previously used for the confinement of adult offenders only after TJJD has determined the facility has been appropriately retrofitted to comply with related standards; and (2) TJJD will maintain a list of pre-approved facilities.

The amendments to §341.204 will also include adding that, if the facility is not on the list of pre-approved facilities, the juvenile board or juvenile probation department must request approval from TJJD and submit any information TJJD needs in order to make a determination under this provision; and noting that a given subsection does not apply to facilities registered with TJJD.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to bring the agency in compliance with statutory changes by ensuring that any facility previously used for the confinement of adult offenders will be appropriately retrofitted to comply with all relevant standards before contracting with a county to house juveniles.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJD.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The amended section is also proposed under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJJ to use facilities previously constructed or used for adult offenders, if TJJJ determines the facility is appropriately retrofitted to meet youth-specific standards.

No other statute, code, or article is affected by this proposal.

§341.204. Residential Placement.

(a) **Duty to Certify Juvenile Justice Facilities.** The juvenile board serving the county where a juvenile justice facility is located must certify and register the facility as required by Texas Family Code §§51.12, 51.125, and 51.126, as applicable.

(b) **Prohibition on Placing Juveniles in Non-licensed Facilities.** The juvenile board must ensure that juveniles under its jurisdiction are placed only in:

(1) juvenile justice facilities that are certified by a juvenile board in Texas; or

(2) public or private residential facilities or programs licensed by a state governmental entity or exempted from licensure by state law.

(c) **Placement in a Facility Constructed or Previously Used for the Confinement of Adult Offenders.**

(1) A juvenile board or juvenile probation department may contract with a facility that was constructed or previously used for the confinement of adult offenders only after TJJJ has determined the facility has been appropriately retrofitted to comply with TJJJ standards related to facilities. TJJJ will maintain a list of pre-approved facilities.

(2) If the facility is not on the list of pre-approved facilities, the juvenile board or juvenile probation department must request approval from TJJJ and submit any information TJJJ needs in order to make a determination under this provision.

(3) This subsection does not apply to facilities registered with TJJJ.

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 22, 2024.

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 490-7278



**CHAPTER 343. SECURE JUVENILE
PRE-ADJUDICATION DETENTION AND
POST-ADJUDICATION CORRECTIONAL
FACILITIES**

**SUBCHAPTER B. PRE-ADJUDICATION AND
POST-ADJUDICATION SECURE FACILITY
STANDARDS**

37 TAC §343.206

The Texas Juvenile Justice Department (TJJJ) proposes to amend 37 TAC §343.206, concerning certification and registration of facility.

SUMMARY OF CHANGES

The amendments to §343.206 will include adding that: (1) TJJJ will not register a facility that was constructed or previously used for the confinement of adult offenders unless TJJJ determines the facility has been appropriately retrofitted to comply with related standards; and (2) a juvenile who has been committed to TJJJ and is awaiting transport to a TJJJ facility may be housed in a post-adjudication secure facility in a bed that is designated as a pre-adjudication bed or dually-designated as a pre-adjudication bed or a post-adjudication bed.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to bring the agency in compliance with statutory changes by ensuring that any facility previously used for the confinement of adult offenders will be appropriately retrofitted before being registered with the agency, and providing greater flexibility while housing a juvenile who is awaiting transport to a TJJJ facility.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the proposed section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJJ.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJJ.

(4) The proposed section does not impact fees paid to TJJJ.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The amended section is also proposed under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJJ to use facilities previously constructed or used for adult offenders, if TJJJ determines the facility is appropriately retrofitted to meet youth-specific standards.

No other statute, code, or article is affected by this proposal.

§343.206. *Certification and Registration of Facility.*

(a) Before the facility admits residents, the juvenile board in the county where the facility is located, shall ensure:

(1) the facility is certified in compliance with §51.12 or §51.125 of the Texas Family Code;

(2) the number of pre-adjudication and post-adjudication beds is designated in the facility certification;

(3) the facility is registered with TJJJ in compliance with §51.12 or §51.125 of the Texas Family Code; and

(4) the current facility certification and TJJJ's facility registration are posted within a public area of the facility.

(b) TJJJ will not register a facility that was constructed or previously used for the confinement of adult offenders unless TJJJ determines the facility has been appropriately retrofitted to comply with TJJJ standards related to facilities.

(c) A juvenile who has been committed to TJJJ and is awaiting transport to a TJJJ facility may be housed in a post-adjudication secure facility in a bed that is designated as a pre-adjudication bed or dually designated as a pre-adjudication bed or a post-adjudication bed.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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CHAPTER 344. EMPLOYMENT, CERTIFICATION, AND TRAINING

The Texas Juvenile Justice Department (TJJJ) proposes to amend 37 TAC §344.110 (concerning interpretation and applicability), §344.200 (concerning general qualifications for positions requiring certification), §344.202 (concerning general qualifications for faculty administrators), and §344.204 (concerning education requirements).

TJJJ also proposes new 37 TAC §344.360 (concerning disclosure and review of applicant's prior history), §344.370 (concerning review by TJJJ regarding eligibility for certification), and §344.690 (concerning credit for training hours for military service members, spouses, and veterans).

In addition, TJJJ proposes to amend 37 TAC §344.866 (concerning certification status).

SUMMARY OF CHANGES

The amendments to §344.110 will include adding that the requirements in this chapter are not subject to a waiver or variance except as provided in this chapter.

The amendments to §344.200 will include deleting the phrases *be of good moral character* from the general requirements for certification as a juvenile probation officer, juvenile supervision officer, and a community activities officer and *possess the work experience or graduate study required elsewhere in this chapter* from the general requirements for certification as a juvenile supervision officer.

The amendments to §344.202 will include deleting the phrase *possess the work experience or graduate study required elsewhere in this chapter* from the general requirements for facility administrators.

The amendments to §344.204 will include: 1) clarifying that to be eligible for certification as a juvenile probation officer, an individual must have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; 2) adding that a new subsection (:Waiver of Education Requirement for Military:) applies only to a person who is a military service member or military veteran who does not have a high school diploma or equivalent and who holds a current license issued by another jurisdiction for a position that is similar and with licensing requirements that are similar to TJJJ's certification requirements for a juvenile supervision officer or community activities officer; and 3) adding that a department or facility that wishes to hire a military service member or military veteran in a position requiring certification as a juvenile supervision officer or community activities officer may request a waiver of the requirement that the person have a high school diploma or GED.

The new §344.360 will include that: 1) a department or facility must require every applicant for any position to complete a TJJJ form that requires the applicant to disclose and provide additional information as given in the rule text; 2) prior to making an offer to allow an applicant who disclosed additional information in order to begin employment or provide services in a position requiring certification or for which certification is optional and will be sought, the department or facility must perform certain actions as given in the rule text; 3) a request for review is required only if the department or facility wants to employ, contract with, or accept the individual as a volunteer; 4) prior to making an offer to allow an applicant who disclosed additional information to begin employment or provide services in a position not requiring certification or for which certification is optional but will not be sought, the juvenile board or designee shall review the informa-

tion received and consider if the person is appropriate to work in the role; 5) a written record of the review must be maintained, including the name of the person(s) conducting the review, the date of the review, and the final decision; and 6) an applicant's failure to disclose the requested information is considered a violation of the Code of Ethics and may result in termination of employment, ineligibility for certification, or revocation of certification.

The new §344.370 will include that: 1) upon receipt of the request for review, TJJD will review the submitted information, seek additional information if warranted, and determine if the person should be denied a certification; 2) TJJD shall notify the person of its decision and of the opportunity to appeal that decision to the executive director; and 3) upon receipt of an appeal, the executive director review the matter and determine if the certification should be denied.

The new §344.690 will include that: 1) the given subsection applies only to a person who is a military service member, military veteran, or military spouse under certain conditions; 2) TJJD may grant credit toward required training hours based on the person's verified military service, training, or education that is directly relevant to the position for which certification is sought; 3) no credit will be given for certain topics required elsewhere in the chapter; 4) the department or facility that employs a person described earlier may submit an application to TJJD for possible credit; and 5) an individual to whom this section applies is also eligible to receive credit as otherwise provided by this chapter, as applicable.

The amendments to §344.866 will include adding subsections for two new certification statuses: provisional and ineligible.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new and amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the new and amended sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring the agency in compliance with statutory changes by ensuring qualification and experience requirements for certain county employees are revised and ensuring there is appropriate accessibility to the profession of juvenile justice for while preserving youth safety and public safety.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new and amended sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

(1) The proposed sections do not create or eliminate a government program.

(2) The proposed sections do not require the creation or elimination of employee positions at TJJD.

(3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed sections do not impact fees paid to TJJD.

(5) The proposed sections do not create a new regulation.

(6) The proposed sections do not expand, limit, or repeal an existing regulation.

(7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §344.110

STATUTORY AUTHORITY

The amended section is proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The amended section is also proposed under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.110. *Interpretation and Applicability.*

(a) Conflicting Standards. If a general provision contained in this chapter conflicts with a specific provision contained in another chapter promulgated by TJJD, the specific language controls.

(b) Use of the Words "Including" and "Includes." When used in this chapter, the words "including" and "includes" are to be understood as introducing a non-exhaustive list unless the context clearly indicates otherwise.

(c) Applicability.

(1) This chapter applies to all juvenile justice programs and facilities in this state unless expressly stated otherwise.

(2) All provisions of this chapter apply regardless of the date an individual is hired or begins service provision unless expressly stated otherwise.

(3) All employment and education requirements in this chapter must have been completed prior to the date an individual begins employment in the position to which the requirements apply.

(d) Waiver or Variance. The requirements in this chapter are not subject to a waiver or variance except as provided in this chapter.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



SUBCHAPTER B. QUALIFICATIONS FOR CERTIFICATION AND EMPLOYMENT

37 TAC §§344.200, 344.202, 344.204

STATUTORY AUTHORITY

The amended sections are proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJJ to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJJ.

The amended sections are also proposed under the following:

1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJJ and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJJ to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJJ to adopt rules regarding provisional certifications; and §§222.053 and

222.054, Human Resources Code, which authorize TJJJ to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJJ for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.200. *General Qualifications for Positions Requiring Certification.*

(a) Juvenile Probation Officer. To be eligible for certification as a juvenile probation officer, supervisor of a juvenile probation officer, or chief administrative officer, an individual must:

(1) be at least 21 years of age;

~~(2) be of good moral character;~~

~~(2) [(3)] have no disqualifying criminal history as described in this chapter;~~

~~(3) [(4)] have no criminal history as described in §344.410(a) of this chapter unless TJJJ has reviewed it and determined the person is not ineligible for certification due to the criminal history;~~

~~(4) [(5)] have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board;~~

~~[(6) possess the work experience required in §344.210 of this chapter or graduate study required in §344.204 of this chapter;]~~

~~(5) [(7)] never have had any type of certification revoked by TJJJ;~~

~~(6) [(8)] complete the training required by this chapter; and~~

~~(7) [(9)] pass the certification exam as required by §344.700 of this chapter.~~

(b) Juvenile Supervision Officer. To be eligible for certification as a juvenile supervision officer, an individual must:

(1) be at least 21 years of age;

~~(2) be of good moral character;~~

~~(2) [(3)] have no disqualifying criminal history as described in this chapter;~~

~~(3) [(4)] have no criminal history as described in §344.410(a) of this chapter unless TJJJ has reviewed it and determined the person is not ineligible for certification due to the criminal history;~~

~~(4) [(5)] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;~~

~~(5) [(6)] never have had any type of certification revoked by TJJJ;~~

~~(6) [(7)] complete the training required by this chapter; and~~

~~(7) [(8)] pass the certification exam as required by §344.700 of this chapter.~~

(c) Community Activities Officer. To be eligible for certification as a community activities officer, an individual must:

(1) be at least 21 years of age;

~~(2) be of good moral character;~~

~~(2) [(3)] have no disqualifying criminal history as described in this chapter;~~

(3) [(4)] have no criminal history as described in §344.410(a) of this chapter unless TJJJ has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4) [(5)] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;

(5) [(6)] never have had any type of certification revoked by TJJJ; and

(6) [(7)] complete the training required by this chapter.

§344.202. *General Qualifications for Facility Administrators.*

To serve as a facility administrator, an individual must:

(1) obtain and maintain an active certification as a juvenile supervision officer in accordance with requirements of this chapter; and

(2) have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; and

[(3) possess the work experience required in §344.210 of this title or graduate study required in §344.204(a) of this title.]

§344.204. *Education Requirements.*

(a) Juvenile Probation Officer. To be eligible for certification as a juvenile probation officer, an individual must have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

[(1) To be eligible for certification as a juvenile probation officer, an individual must meet the following educational requirements:]

[(A) have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; and]

[(B) have either:]

[(i) one year of graduate study at a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by TJJJ; or]

[(ii) qualifying work experience as specified in §344.210 of this title.]

[(2) For purposes of this section, one year of graduate study means successful completion of at least 18 post-graduate credit hours.]

(b) Juvenile Supervision Officer and Community Activities Officer.

(1) Except as provided by subsection (c) of this section, to [To] be eligible for certification as a juvenile supervision officer or community activities officer, an individual must meet one of the following educational requirements:

(A) a diploma from a high school accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense. TJJJ considers the following entities as generally recognized accrediting organizations:

(i) the Texas Education Agency or the equivalent agency in another state;

(ii) an entity approved by the Texas Private School Accreditation Commission; and

(iii) regional accreditation organizations such as:

(I) Middle States Association of Colleges and Schools;

(II) New England Association of Schools and Colleges;

(III) North Central Association of Colleges and Schools;

(IV) Northwest Accreditation Commission;

(V) Southern Association of Colleges and Schools; and

(VI) Western Association of Schools and Colleges;

(B) a high school equivalency certificate (e.g., GED) issued by the Texas Education Agency or equivalent agency in another state;

(C) a diploma or certificate of completion issued in a homeschool setting;

(D) a United States military record that indicates the education level received is equivalent to a United States high school diploma or high school equivalency certificate;

(E) a foreign high school diploma that meets the validation requirements established in §344.206 of this chapter [title]; or

(F) unconditional acceptance into a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

(2) A department or facility may attempt to establish that an entity not listed in paragraph (1)(A) of this subsection is a generally recognized accrediting organization by submitting supporting documentation to the TJJJ certification office. Based on the documentation, TJJJ will determine whether the entity is a generally recognized accrediting organization.

(c) Waiver of Education Requirement for Military.

(1) This subsection applies only to a person who is a military service member or military veteran as those terms are defined in Chapter 55, Occupations Code who does not have a high school diploma or equivalent and holds a current license issued by another jurisdiction for a position that is substantially similar and with licensing requirements that are substantially similar to TJJJ's certification requirements for a juvenile supervision officer or community activities officer, as determined by TJJJ.

(2) A department or facility that wishes to hire a person described by paragraph (1) of this subsection in a position requiring certification as a juvenile supervision officer or community activities officer may request a waiver of the requirement that the person have a high school diploma or GED. The request must be submitted to TJJJ's certification office on a form prescribed by TJJJ and must include sufficient information regarding the person's credentials and experience to allow TJJJ to determine if a waiver of the education requirement should be granted. Incomplete submissions may result in a denial of the waiver.

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 22, 2024.



SUBCHAPTER C. CRIMINAL HISTORY AND BACKGROUND CHECKS

37 TAC §344.360, §344.370

STATUTORY AUTHORITY

The new sections are proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJJ to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJJ.

The new sections are also proposed under the following: (1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJJ and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJJ to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJJ to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJJ to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJJ for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.360. Disclosure and Review of Applicant's Prior History.

(a) The department or facility must require every applicant for any position, including employee, contractor, or volunteer, to complete a form promulgated by TJJJ that requires the applicant to disclose and provide additional information, if applicable, regarding whether the applicant ever:

(1) worked, contracted with, volunteered with, or had an occupational license with a child-serving entity or entity that serves other vulnerable populations, such as elderly persons, persons with disabilities, persons in mental health facilities, or persons who were incarcerated;

(2) had their employment, contract, or volunteer status suspended or terminated or occupational license revoked or suspended;

(3) had a finding of abuse, neglect, or exploitation made against them; or

(4) had their name placed on a "do not hire" or similar registry with an entity that provides services to or regulation of services for children or vulnerable populations.

(b) Prior to making an offer to allow an applicant who disclosed information covered by subsection (a)(2), (3), or (4) of this section to begin employment or provide services in a position requiring certification or for which certification is optional and will be sought, the department or facility must:

(1) obtain additional information from all entities identified by the disclosures;

(2) submit to TJJJ's certification office a request for review as provided in §344.370 of this chapter; and

(3) receive confirmation from TJJJ that the applicant is not prohibited from obtaining a certification.

(c) The request for review described in subsection (b) of this section is required only if the department or facility wants to employ, contract with, or accept the individual as a volunteer.

(d) Prior to making an offer to allow an applicant who disclosed information covered by subsection (a)(2), (3), or (4) of this section to begin employment or provide services in a position not requiring certification or for which certification is optional but will not be sought, the juvenile board or designee shall review the information received and consider if the person is appropriate to work in the role. If the juvenile board makes a designation under this provision, it must be in writing.

(e) A written record of the review conducted in subsection (d) of this section must be maintained, including the name of the person(s) conducting the review, the date of the review, and the final decision.

(f) An applicant's failure to disclose the requested information is considered a violation of the Code of Ethics and may result in termination of employment, ineligibility for certification, or revocation of certification.

§344.370. Review by TJJJ Regarding Eligibility for Certification.

(a) Upon receipt of the request for review described in §344.360 of this chapter, TJJJ will review the submitted information, seek additional information if warranted, and determine if the person should be denied a certification.

(b) TJJJ shall notify the person of its decision and of the opportunity to appeal that decision to the executive director. The notification shall be in writing. The person shall have 10 calendar days to appeal the decision. The appeal must be in writing and timely received. TJJJ may grant an extension at its discretion.

(c) Upon receipt of an appeal, the executive director review the matter and determine if the certification should be denied. The executive director's response shall be in writing. The executive director's decision is final and not subject to appeal.

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

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Jana L. Jones
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7278



SUBCHAPTER E. TRAINING AND CONTINUING EDUCATION

37 TAC §344.690

STATUTORY AUTHORITY

The new sections are proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJJ to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJJ.

The new sections are also proposed under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJJ and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJJ to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJJ to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJJ to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJJ for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.690. Credit for Training Hours for Military Service Members, Spouses, and Veterans.

(a) This section applies only to a person who is a military service member, military veteran, or military spouse as those terms are defined in Chapter 55, Occupations Code, and who:

(1) holds a current license issued by another jurisdiction with licensing requirements that are substantially similar to TJJJ's certification requirements for a juvenile supervision officer or community activities officer, as determined by TJJJ; or

(2) held a certification from TJJJ as a juvenile supervision officer or community activities officer that was active within the five years preceding the person's most recent employment in a position requiring or otherwise eligible for certification.

(b) As provided by this section, TJJJ may grant credit toward the training hours required in §344.600 to persons described by subsection (a) of this section. Any credit granted will be based on the person's

verified military service, training, or education that is directly relevant to the position for which certification is sought.

(c) No credit may be given for topics required by §§344.620, 344.622, 344.624, or 344.626.

(d) The department or facility that employs a person described by subsection (a) of this section may submit an application to TJJJ for possible credit. TJJJ will consider the person's experience and training to determine if credit should be granted and, if so, how much.

(e) An individual to whom this section applies is also eligible to receive credit as otherwise provided by this chapter, as applicable.

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

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SUBCHAPTER G. CERTIFICATION

37 TAC §344.866

STATUTORY AUTHORITY

The amended section is proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJJ to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJJ.

The amended section is also proposed under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJJ and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJJ to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJJ to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJJ to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJJ for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.866. *Certification Status.*

(a) **Active.** A status that indicates a certified officer meets the current requirements of certification as set forth in this chapter and is eligible to perform the duties of a juvenile probation officer, juvenile supervision officer, and/or community activities officer, as applicable.

(b) **Inactive.** A status that indicates an officer's certification has not expired but the officer is ineligible to perform the duties of a certified officer because:

(1) the officer is no longer employed in a position that either requires or is eligible for the certification held;

(2) the officer has been convicted of a disqualifying criminal offense; or

(3) the officer's application for certification or renewal of certification is determined by TJJD to contain deliberately false or misleading information.

(c) **Expired.** A status that indicates an application to renew or reactivate a certification has not been submitted before the end of the grace period or any applicable extension.

(d) **Suspended.** A status that indicates an officer's certification is actively suspended and the officer is no longer eligible for employment in a position requiring certification. If the officer's certification is suspended for failure to pay child support under Section 232.003, Texas Family Code, the suspension remains in effect until TJJD receives an order staying or vacating the suspension.

(e) **Revoked.** A status that indicates an officer's certification has been permanently revoked by TJJD and that the officer is no longer eligible for employment or certification as a juvenile probation officer, juvenile supervision officer, or community activities officer. An individual who has had his/her certification revoked is not eligible for any future certification.

(f) **Voluntarily Relinquished.** A status that indicates an officer has voluntarily relinquished his/her certification as provided in §344.884 of this chapter [title].

(g) **Provisional.** A status that indicates an individual has been hired into a position requiring certification but has not yet been certified.

(h) **Ineligible.**

(1) A status that indicates an individual who was never certified is ineligible for certification as a result of conduct that occurred:

(A) while the person had a provisional certification;

(B) while the person was employed by or under contract with the Texas Juvenile Justice Department; or

(C) prior to either time described in subparagraph (A) or (B) of this paragraph if the conduct was unknown to TJJD.

(2) Prior to being designated as ineligible for certification, the person will be offered the same due process as a person for whom revocation or active or probated suspension of certification is sought.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



SUBCHAPTER B. QUALIFICATIONS FOR CERTIFICATION AND EMPLOYMENT

37 TAC §344.210, §344.220

The Texas Juvenile Justice Department (TJJD) proposes to repeal 37 TAC §344.210 (concerning work experience) and §344.220 (concerning exemptions from required work experience or graduate study).

SUMMARY OF CHANGES

Section 344.210 and §344.220 are repealed as corresponding changes to the removal of the requirement that a person have one year of specific full-time work experience or one year of graduate study in order to be certified as a juvenile probation officer.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeals.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be to bring the agency in compliance with statutory changes by ensuring qualification and experience requirements for certain county employees are revised and ensuring there is appropriate accessibility to the profession of juvenile justice for while preserving youth safety and public safety.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by adoption of these repeals.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeals are in effect, the repeals will have the following impacts.

(1) The proposed repeals do not create or eliminate a government program.

(2) The proposed repeals do not require the creation or elimination of employee positions at TJJD.

(3) The proposed repeals do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed repeals do not impact fees paid to TJJD.

(5) The proposed repeals do not create a new regulation.

(6) The proposed repeals do not expand, limit, or repeal an existing regulation.

(7) The proposed repeals do not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed repeals will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJJ to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJJ.

The repeals are also proposed under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJJ and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJJ to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJJ to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJJ to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJJ for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure;

No other statute, code, or article is affected by this proposal.

§344.210. *Work Experience.*

§344.220. *Exemptions from Required Work Experience or Graduate Study.*

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Justice Department (TJJJ) proposes new 37 TAC §§349.600, 349.650, and 349.700, concerning advisory council on juvenile services and data.

SUMMARY OF CHANGES

The new §349.600 will include a list of the overarching subjects on which the Advisory Council on Juvenile Services is meant to advise the Texas Juvenile Justice Board and will explain that the goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to TJJJ and its Board.

The new §349.600 will also include a description of the composition of the advisory council, the length of terms, and training received; a description of how vacancies that occur during a member's term are filled; an explanation of what constitutes a quorum; information pertaining to ex officio members; an explanation that the appearance of conflicts of interest should be avoided; a description of updates the advisory council's presiding officer provides to the Board; and an explanation of the statutes the advisory council is and is not subject to.

The new §349.650 will explain that it is a ground for removal from the advisory council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

The new §349.700 will explain that, for planning and research purposes, all juvenile probation departments participating in the state's regionalization plan are authorized to access data that any participating departments have submitted through the case management system.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, 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 administering the sections will be to bring TJJJ in compliance with statutory changes by ensuring there are agency standards regarding the composition and activities of the Advisory Council on Juvenile Services.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJJ.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJJ.

- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER F. ADVISORY COUNCIL ON JUVENILE SERVICES

37 TAC §349.600, §349.650

STATUTORY AUTHORITY

Section 349.600 and §349.650 are proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new sections are also proposed under §203.0081, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires the Board to adopt general rules on the Advisory Council's purpose and procedures, updates the Advisory Council's membership to include the Department of Family and Protective Services, and requires the Advisory Council to make recommendations on sharing information with other child-serving agencies.

No other statute, code, or article is affected by this proposal.

§349.600. Purpose.

(a) The purpose of the Advisory Council on Juvenile Services is to advise the Texas Juvenile Justice Board and Texas Juvenile Justice Department on:

- (1) the needs and problems of juvenile boards and juvenile probation departments;
- (2) long-range strategic planning;
- (3) reviews and proposed revisions to standards affecting juvenile probation programs, services, and facilities;
- (4) the potential cost impact on juvenile probation departments of new standards proposed by the Texas Juvenile Justice Board;
- (5) recommendations to improve information sharing between agencies that serve children, including agencies serving children involved in both the juvenile justice and child welfare systems; and
- (6) any other matter at the request of the Texas Juvenile Justice Board.

(b) The goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to the Texas Juvenile Justice Board and Texas Juvenile Justice Department so the unified juvenile justice system can collectively develop and improve the state's comprehensive continuum of care for youth; prioritize evidence-based rehabilitative services; and ensure safety for youth, staff, and the public.

(c) The advisory council is composed of 15 members, as specified in Chapter 203, Human Resources Code. Members, excluding ex officio members, serve staggered two-year terms. Texas Juvenile Justice Board-appointed members shall receive training on the advisory council's purpose, role, and procedures within 30 days of their appointment.

(d) If a vacancy occurs on the council during a member's term, the Texas Juvenile Justice Board must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(e) A majority of advisory council members, excluding ex officio members as defined in Chapter 203, Human Resources Code, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the Texas Juvenile Justice Board for consideration.

(f) Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(g) An advisory council member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the council that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority.

(h) The advisory council's presiding officer or designee shall periodically update the board on the council's activities, progress on board directives, and issues impacting juvenile probation programs, services, and facilities.

(i) The advisory council is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(j) The advisory council is not subject to Chapter 2110, Government Code. The department shall evaluate the continuing need for and recommendations to improve the council during the rule review process established under Chapter 2001, Government Code.

§349.650. Removal of Members.

It is a ground for removal from the council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



SUBCHAPTER G. DATA

37 TAC §349.700

STATUTORY AUTHORITY

Section 349.700 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The new section is also proposed under §203.017, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires TJJJ to create a regionalization plan.

No other statute, code, or article is affected by this proposal.

§349.700. Access to Data Collected.

For planning and research purposes, all juvenile probation departments participating in the implementation of the state's regionalization plan developed under Chapter 203, Human Resources Code, are authorized to access data that any participating departments have submitted through the juvenile case management system.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



CHAPTER 351. STANDARDS FOR SHORT-TERM DETENTION FACILITIES SUBCHAPTER D. RESTRAINTS

37 TAC §351.49

The Texas Juvenile Justice Department (TJJJ) proposes new 37 TAC §351.49, concerning retrofitted adult facilities.

SUMMARY OF CHANGES

The new §351.49 will explain that before a short-term detention facility accepts residents, the juvenile board in the county where the facility is located must ensure the facility has been approved by TJJJ. It will also explain that TJJJ will not approve a facility that was constructed or previously used for the confinement of adult offenders unless TJJJ determines the facility has been appropriately retrofitted to comply with certain standards.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be to bring the agency in compliance with statutory changes by ensuring the juvenile boards verify a short-term detention fa-

cility has been approved by TJJJ before the facility accepts residents and that such facilities are appropriately retrofitted to comply with certain standards for being approved.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the new section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJJ.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJJ.
- (4) The proposed section does not impact fees paid to TJJJ.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The new section is also proposed §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJJ to use facilities previously constructed or used for adult offenders, if TJJJ determines the facility is appropriately retrofitted to meet youth-specific standards

No other statute, code, or article is affected by this proposal.

§351.49. Retrofitted Adult Facilities.

(a) Before a short-term detention facility accepts residents, the juvenile board in the county where the facility is located must ensure the facility has been approved by TJJJ.

(b) TJJJ will not approve a facility that was constructed or previously used for the confinement of adult offenders unless TJJJ determines the facility has been appropriately retrofitted to comply with TJJJ standards related to facilities.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES

SUBCHAPTER B. APPLICABILITY AND GENERAL PROVISIONS

37 TAC §355.206

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §355.206, concerning certification and registration of facility.

SUMMARY OF CHANGES

The amendments to §355.206 will include adding that a juvenile board may use or contract with a non-secure correctional facility that was constructed or previously used for confinement of adult offenders if the juvenile board can document and TJJD can verify that the facility is appropriately retrofitted to adhere to applicable standards.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to bring the agency in compliance with statutory changes by ensuring a non-secure correctional facility that was constructed or previously used for confinement of adult offenders is appropriately retrofitted to comply with certain standards before being used or contracted with to house juveniles.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended section is also proposed under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJD to use facilities previously constructed or used for adult offenders, if TJJD determines the facility is appropriately retrofitted to meet youth-specific standards.

No other statute, code, or article is affected by this proposal.

§355.206. *Certification and Registration of Facility.*

(a) Non-Secure Correctional Facilities. Before the facility admits residents, the juvenile board in the county or district where a non-secure correctional facility is located shall ensure:

(1) the facility is certified in compliance with §51.126 of the Texas Family Code;

(2) the number of beds is designated in the facility certification;

(3) the facility is registered with TJJD in compliance with §51.126 of the Texas Family Code; and

(4) the current facility certification and TJJD's facility registration are posted within a public area of the facility.

(b) Retrofitted Adult Facilities. A juvenile board may use or contract with a non-secure correctional facility that was constructed or previously used for confinement of adult offenders if the juvenile board can document and TJJD can verify that the facility is appropriately retrofitted to adhere to applicable rules (i.e., standards) in Chapters 344, 345, 355, and 358 of this title.

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 22, 2024.

TRD-202400796



CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §380.8597 (concerning certain actions by the executive director) and §380.9147 (concerning youth career and technical education advisory committee).

SUMMARY OF CHANGES

The new §380.8597 will establish that TJJD tracks the frequency with which the executive director takes certain actions and reports the resulting data to the TJJD Board and the Sunset Advisory Committee; include a list of actions and explain that TJJD must track the frequency the executive director takes those actions; and explain that TJJD must compile frequency data and provide that data to the Board and the Sunset Advisory Committee.

The new §380.9147 will establish the Youth Career and Technical Education Advisory Committee, which assists TJJD with overseeing and coordinating vocational training for youth in state custody; describe the duties and goals of the committee; describe the composition of the committee's membership and the appointment of the presiding officer; and include the following: information pertaining to ex officio committee members, an explanation of what constitutes a quorum, term lengths of committee members, an explanation of how to fill vacancies on the committee, an explanation that the appearance of conflicts of interest should be avoided, a description of updates the advisory council's presiding officer provides to the Board; and information about other statutory requirements.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, 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 administering the sections will be to bring the agency in compliance with statutory changes by ensuring certain actions of the executive director are reported by the agency and creating a Youth Career and Technical Education Advisory Committee.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjtd.texas.gov.

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE DIVISION 7. CERTAIN ACTIONS BY EXECUTIVE DIRECTOR

37 TAC §380.8597

STATUTORY AUTHORITY

Section 380.8597 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new section is also proposed under §203.002, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires TJJD to track the frequency with which the executive director takes certain actions and to report the resulting data to the Board and the Sunset Advisory Commission.

No other statute, code, or article is affected by this proposal.

§380.8597. Certain Actions by the Executive Director:

(a) Purpose. This rule establishes that the Texas Juvenile Justice Department (TJJD) tracks the frequency with which the executive director takes certain actions and reports the resulting data to the TJJD Governing Board and the Sunset Advisory Committee.

(b) General Provisions.

(1) The department shall track the frequency with which the executive director takes the following actions:

(A) selecting youth for a conditional placement;

(B) selecting youth for a home placement;

(C) waiving the requirement for a youth with a determinate sentence to spend the youth's entire minimum period of confinement in a high-restriction facility;

(D) waiving the requirement for a youth to be on intensive supervision when initially released on parole; and

(E) authorizing the early discharge of a youth on parole.

(2) The department shall compile frequency data outlined in paragraph (b)(1) on a quarterly basis. The department shall provide the frequency data from the previous quarter to the TJJD Governing Board and Sunset Advisory Commission at the beginning of each quarter.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



SUBCHAPTER C. PROGRAM SERVICES

DIVISION 2. EDUCATION PROGRAMS

37 TAC §380.9147

STATUTORY AUTHORITY

Section 380.9147 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new section is also proposed under §203.0083, Human Resources Code (as enacted by SB 1727, 88th Legislature, Regular Session), which requires the Board to create a youth career and technical education advisory committee and to adopt rules on the committee's purpose, goals, and membership.

No other statute, code, or article is affected by this proposal.

§380.9147. Youth Career and Technical Education Advisory Committee.

(a) Purpose. This rule establishes the Youth Career and Technical Education Advisory Committee, which assists the Texas Juvenile Justice Department (TJJD) with overseeing and coordinating vocational training for youth in state custody, including training provided by community colleges and other local entities.

(b) General Provisions.

(1) Committee duties include, but are not limited to:

(A) assessing the vocational training needs of youth committed to state custody;

(B) identifying barriers to the success of vocational training programs for youth committed to state custody;

(C) engaging in long-range strategic planning to assist TJJD in establishing goals and actionable plans for expanding the use of vocational training for youth committed to state custody, including opportunities to successfully transition youth from programming in secure facilities to training and employment in the community; and

(D) any other matter at the request of the board.

(2) The goal of the committee is to help TJJD improve its procedures for and outcomes of vocational training to increase youths' success as they reenter Texas communities.

(3) The committee is composed of 11 members appointed by the TJJD's governing board, including:

(A) one representative from the Texas Education Agency;

(B) one representative from the Texas Workforce Commission or a local workforce development board who has experience with programs for youth or young adults;

(C) one representative from the Texas Department of Licensing and Regulation;

(D) one representative from the Texas Department of Family and Protective Services;

(E) two county juvenile probation chiefs;

(F) one certified educator;

(G) two members with professional experience in an occupation relevant to TJJD's vocational training programs, such as agriculture, construction, technology, manufacturing, and business;

(H) one representative from a post-secondary education entity who has experience in the administrative, training, or coordination functions of a career and technical education program; and

(I) one representative from an advocacy group with a primary function to improve education outcomes, safety, or well-being of youth.

(4) The board must appoint a presiding officer for the advisory committee.

(5) Committee members appointed under (c)(1)-(4) serve as ex officio members. Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(6) A majority of committee members, excluding ex officio members, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the board for consideration.

(7) Committee members, excluding ex officio members, serve staggered two-year terms with the terms of half of the members expiring on February 1 of each year. Members may serve multiple terms.

(8) If a vacancy occurs on the committee during a committee member's term, the presiding officer of the board, with the board's approval, must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(9) A committee member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the committee that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority or the employer for whom the member works.

(10) The committee's presiding officer or designee shall periodically update the board on the committee's activities, progress on board directives, and issues impacting vocational training for youth committed to state custody.

(11) The committee is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(12) In accordance with Chapter 2110, Government Code, the committee is abolished on the fourth anniversary of the date of its creation unless the board amends rules to provide for a different abolishment date.

(13) TJJD shall evaluate the continuing need for and recommendations to improve the committee during the rule review process established under Chapter 2001, Government Code.

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

Filed with the Office of the Secretary of State on February 22, 2024.

TRD-202400804

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 490-7278



CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §380.8767, concerning crisis stabilization unit, and §380.9571, concerning procedure for mental-health-status review hearing.

SUMMARY OF CHANGES

The amendments to §380.8767 will include clarifying that a mental-health-status review hearing must be held for each youth within 72 hours (rather than 96 hours) after the youth's arrival at the stabilization unit.

The amendments to §380.9571 will include clarifying that: 1) a mental-health-status review hearing must be held for each youth within 72 hours (rather than 96 hours) after the youth's arrival at the stabilization unit; and 2) if the hearing manager determines an unavoidable absence would prevent a key witness or party from attending the hearing, the hearing may be rescheduled to the earliest possible time but not later than 72 hours (rather than 96 hours) from the original scheduled hearing.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be timely implementation with recommendations from the agency's Internal Auditor by aligning agency rule to current practice.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are re-

quired to comply with the amended sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended sections are in effect, the sections will have the following impacts.

(1) The proposed sections do not create or eliminate a government program.

(2) The proposed sections do not require the creation or elimination of employee positions at TJJD.

(3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed sections do not impact fees paid to TJJD.

(5) The proposed sections do not create a new regulation.

(6) The proposed sections do not expand, limit, or repeal an existing regulation.

(7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER B. TREATMENT

DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS

37 TAC §380.8767

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.8767. Crisis Stabilization Unit.

(a) Purpose. The purpose of this rule is to establish criteria and a process for admitting youth who are experiencing a psychiatric crisis into a crisis stabilization unit (CSU) operated by the Texas Juvenile Justice Department (TJJD).

(b) Definitions.

(1) Designated Mental Health Professional--has the meaning assigned by §380.9187 of this chapter [title].

(2) Psychiatric Provider--has the meaning assigned by §380.9187 of this chapter [title].

(c) References.

(1) For due process procedures for mental health status reviews, see §380.9571 of this chapter [title].

(2) For emergency mental health placements, see §380.8771 of this chapter [title].

(d) Admissions.

(1) Admission Criteria. A youth may be admitted to a CSU only when the following criteria are met:

(A) the youth demonstrates serious dysfunction in behavior, judgment, thinking, or mood; and

(B) the dysfunction is the result of a current neurological deficit, emotional disturbance, and/or psychiatric disorder (e.g., psychosis, major affective disorder, organic disorder, or anxiety disorder) and the dysfunction is not the result of a primary conduct disorder or antisocial personality disorder; and

(C) the youth:

(i) presents a risk of serious harm to self or others; or

(ii) if not treated, will continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration in the youth's [his/her] ability to function independently, as evidenced by the youth's inability to attend to basic needs, such as food, health, personal hygiene, or safety; and

(D) a CSU is the least restrictive intervention that is appropriate and available to safely and effectively meet the treatment needs and to control the dysfunctional behavior.

(2) Referral Documents. The referral must include a current psychiatric evaluation from a psychiatric provider and a psychological evaluation approved by the designated mental health professional, unless the referral is due to an emergency mental health placement under §380.8771 of this chapter [title].

(3) 72-Hour [96-Hour] Admission Review Process. A mental-health-status [mental health status] review hearing must be held for each youth within 72 [96] hours after arrival at the unit. If the 72-hour [96-hour] period ends on a Saturday, Sunday, or official holiday, the hearing must be held on the next workday. The hearing is held to determine whether criteria for unit admission have been met.

(A) If the youth does not meet criteria for admission, the youth [he/she] is not retained in the CSU. Youth who are not admitted are returned to the referring program/location.

(B) If the youth meets criteria for admission, the youth [he/she] is retained and treated in the CSU.

(C) If the youth's treatment needs and appropriateness for admission cannot be determined during the hearing, the youth may be temporarily admitted to the CSU for diagnostic and assessment purposes for up to 45 days from the date of arrival.

(i) A youth may be temporarily admitted for diagnostic and assessment purposes only if the hearing manager determines:

(I) the youth exhibits evidence of psychiatric dysfunction;

(II) the youth has recently engaged in behavior that presents a danger to self or others or has demonstrated a chronic failure to progress in the youth's [his/her] prior programming;

(III) the youth is in need of comprehensive psychiatric and psychological evaluation in a specialized setting; and

(IV) the CSU is the least restrictive setting in which to effectively accomplish this evaluation.

(ii) Before the end of the 45-day diagnostic and assessment period, the CSU staff must:

(I) hold a mental-health-status [mental health status] review hearing to seek admission to CSU; or

(II) transfer the youth out of CSU if a hearing is not held or if the youth is not admitted to CSU.

(e) Program Requirements.

(1) The program focus is on stabilization of the psychiatric dysfunction.

(2) Services are provided in a self-contained unit.

(3) An individualized treatment program, including treatment goals and objectives, is developed for and with each youth.

(4) The treatment team reviews the youth's progress weekly.

(5) The youth must be transferred out of the CSU within 90 days after the admission hearing unless an extension is granted.

(f) Extensions.

(1) Extension Criteria. An extension may be granted beyond 90 days only if:

(A) the youth continues to meet admission criteria and the youth's treatment plan has been implemented appropriately; or

(B) the youth has symptoms of mental illness and continued treatment in the CSU is deemed to be in the youth's best interest.

(2) Due Process Requirements for Extensions.

(A) The due process required to determine whether extension criteria have been met is a mental-health-status [mental health status] review hearing. A youth on parole status, as defined in §380.9550 of this chapter [title], will remain on parole status.

(B) If an extension is recommended, the mental-health-status [mental health status] review hearing must be held:

(i) approximately 75 days but no later than 90 days after the last mental-health-status [mental health status] review hearing; or

(ii) within two workdays after the youth returns to the unit if the youth's [he/she] is in a state hospital at the time the hearing is required.

(C) Multiple extensions may be granted by following procedures in this subsection.

(3) Release and Transition Options.

(A) The extension of time to treat the psychiatric dysfunction must be terminated when placement in a CSU is no longer needed for the primary purpose of treatment of the dysfunction, as determined by a majority vote of the youth's treatment team.

(B) Following termination of the extension, future placement decisions, including the youth's return to [his/her] home parole placement, are made in accordance with other applicable policies and procedures.

(C) No youth may be discharged from TJJJ jurisdiction directly from a CSU unless TJJJ's jurisdiction ends by statute.

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 22, 2024.



**SUBCHAPTER E. BEHAVIOR MANAGEMENT
AND YOUTH DISCIPLINE
DIVISION 2. DUE PROCESS HEARINGS
37 TAC §380.9571
STATUTORY AUTHORITY**

The amended section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9571. *Procedure for Mental-Health-Status Review Hearing.*

(a) Purpose. This rule establishes the due process required to admit a youth into a Texas Juvenile Justice Department (TJJJ) stabilization unit or to extend a youth's stay in a stabilization unit to provide treatment for a psychiatric disorder.

(b) Applicability.

(1) For criteria for admission to a TJJJ stabilization unit, see §380.8767 of this title.

(2) A mental-health-status review hearing is a Level II due process hearing with several procedural exceptions, as noted in this rule. See §380.9555 of this title for Level II hearing procedures.

(c) Procedure.

(1) Decision Makers.

(A) The facility administrator of the TJJJ stabilization unit at which placement is sought appoints a mental health professional, as defined in §380.9187 of this title, to conduct the review hearing and serve as the hearing manager.

(B) The hearing manager must not have direct or primary responsibility in the youth's current treatment or diagnosis.

(C) The hearing manager has the same authority and responsibility as that assigned to a hearing manager in §380.9555 of this title.

(D) The hearing manager must be trained to conduct the review hearing.

(2) Single-Function Hearing. The single function of a mental-health-status review hearing is to consider the facts presented relative to the criteria for admission or extension established in §380.8767 of this title.

(3) Location. All mental-health-status review hearings must be conducted at a TJJJ stabilization unit and are the responsibility of staff at that facility.

(4) Advocate. The youth's advocate is appointed by the facility administrator or designee and must be a mental health professional or a case manager assigned to the stabilization unit.

(5) Timing of Hearing. A mental-health-status review hearing must be held for each youth within 72 [96] hours after the youth's arrival at the stabilization unit. If the 72-hour [96-hour] period ends on a Saturday, Sunday, or official holiday, the hearing must be held on the next regular work day. If the hearing manager determines an unavoidable absence would prevent a key witness or party from attending the hearing, the hearing may be rescheduled to the earliest possible time but not later than 72 [96] hours from the original scheduled hearing.

(6) Teleconference. The hearing may not be conducted by teleconference. However, testimony may be accepted via telephone if the hearing manager determines in-person testimony is impractical or unfeasible. If testimony is accepted via telephone, all persons required to be present at the hearing must be able to simultaneously hear the testimony.

(7) Exclusion from the Hearing. To protect the confidential nature of the hearing, persons other than the youth, the youth's advocate, the staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearing manager. However, any person except the youth's advocate or staff representative may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing or when matters being discussed are of a very sensitive nature. The reason(s) for the exclusions must be stated on the record.

(8) Decision.

(A) Following the presentation of evidence, the hearing manager must announce his/her decision regarding whether criteria for admission or extension have been established.

(B) A hearing manager's decision to admit or extend a youth in the stabilization unit must be supported by expert testimony of a psychiatrist that the youth meets the requisite criteria. The testimony should be given in person when feasible.

(C) The youth must be informed of his/her right to appeal the decision to the executive director in accordance with §380.9353 of this title. The hearing manager's decision will be implemented even if an appeal has been filed and a response is pending.

(9) Hearing Report.

(A) A report that includes the hearing manager's findings and the basis for them must be completed within seven work days after the date of the hearing.

(B) The facility administrator or designee must review the report to ensure accurate and consistent application of this rule. The person who conducted the hearing may not be the person who conducts this review. If necessary, the facility administrator or designee may return the report to the hearing manager for clarification or to reopen the hearing for the purpose of obtaining further information.

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

Filed with the Office of the Secretary of State on February 22, 2024.

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SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §§380.9503, 380.9504, 380.9510

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §§380.9503, 380.9504, and 380.9510, concerning behavior management.

SUMMARY OF CHANGES

The amendments to §380.9503 will include adding that a Level II hearing will be requested for any youth not on parole status who allegedly commits a first- or second-degree felony unless TJJD determines, given all circumstances, a hearing would not be appropriate. Such a decision must be documented. TJJD will review the youth for placement in the most restrictive setting appropriate, including the intervention program in Section 380.9510, if the allegation is proved.

The amendments to §380.9503 will also include: 1) adding a new rule violation entitled *Failure to Comply with Electronic Monitoring Program Conditions*, which applies only to youth in medium-restriction facilities and includes failing to comply with any of the specific electronic monitoring conditions listed in the rule; and 2) changing the definition of the rule violation entitled *Participating in a Major Disruption of Facility Operations* to no longer require that a youth must participate with two or more persons.

The amendments to §380.9504 will include adding that a parole revocation hearing will be requested for any youth who allegedly commits a first- or second-degree felony while on parole, although it may not be held if a deferral is requested by local prosecutors or TJJD determines that, given all circumstances, a hearing would not be appropriate. Also added that TJJD shall review the youth for placement in the most restrictive setting appropriate if the youth's parole is revoked.

The amendments to §380.9504 will also include adding the following to the list of parole rule violations: 1) *Failure to Comply with Electronic Monitoring Program Conditions*, which includes failing to comply with any of the specific conditions listed in the rule; and 2) *Participating in a Major Disruption of Facility Operations*, which is conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs (only for youth on parole status in medium-restriction facilities).

The amendments to §380.9510 will include: 1) adding first- or second-degree felony to the list of violations that require a youth in a high-restriction facility to be reviewed for possible placement in the intervention program; and 2) adding that youth whose parole has been revoked and youth who are transferred from a medium-restriction facility to a high-restriction facility may be reviewed for placement in the intervention program. This review is mandatory if the return to a high-restriction facility is due to a first- or second-degree felony.

The amendments to §380.9510 will also include several changes relating to the primary level of the intervention program: 1) adding that youth in this level of the program move around campus for non-program-related activities in a manner generally comparable to the general campus population; 2) removing a provision stating that youth in this level of the program continue

to sleep at their assigned dorm but engage in other activities at the site of the program; and 3) removing a reference that states which staff divisions are involved in reviewing youth for possible placement in this level of the intervention program.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to more effectively administer TJJD's electronic monitoring program, to clarify certain rule violations, and to bring the agency in compliance with statutory changes by ensuring youth who engage in certain conduct while in the agency's custody are reviewed for the most appropriate setting for the child based on rehabilitative needs while preserving due process rights.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjtd.texas.gov.

STATUTORY AUTHORITY

The amended sections are proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended sections are also proposed under §243.001, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires the board to adopt rules establishing procedures to determine the appropriate placement for youth pending prosecution for an alleged first- or second-degree felony committed while in TJJD custody.

No other statute, code, or article is affected by this proposal.

§380.9503. *Rules and Consequences for Residential Facilities.*

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Attempt to Commit--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) Direct Someone to Commit--occurs when:

(A) a youth communicates with another youth;

(B) the communication is intended to cause the other youth to commit a rule violation; and

(C) the other youth commits or attempts to commit a rule violation.

(4) Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) General Provisions.

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this chapter [title], respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal incident report is not appealable or grievable; only disciplinary consequences may be appealed or grieved, as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter [title].

(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth

shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) Disciplinary Consequences.

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;

(B) restriction from planned activities;

(C) trust-fund restriction; and

(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;

(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;

(C) subjecting a youth to personal injury;

(D) subjecting a youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping;

(F) purposeless or degrading work, including group exercise as a consequence;

(G) placement in the intervention program under §380.9510 of this chapter [title];

(H) disciplinary isolation; and

(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:

(A) a written description of the incident must be prepared;

(B) staff must tell the youth which rule violation the youth allegedly committed and describe the information staff has that establishes the youth committed it;

(C) staff must tell the youth what disciplinary consequence(s) staff is considering imposing; and

(D) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter [title].

(f) Review and Appeal of Consequences.

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter [title].

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter [title].

(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this chapter [title].

(g) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Assault of Another Youth (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) Assault of Staff (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) Assault Causing Bodily Injury to Another Youth--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement for the first 10 days while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJ staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(11) [(40)] Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(12) [(41)] Fighting That Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(13) [(42)] Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(14) [(43)] Misuse of Medication--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) [(44)] Participating in a Major Disruption of Facility Operations--intentionally engaging [participating with two or more persons] in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) [(45)] Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(17) [(46)] Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter [title] for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(18) [(17)] Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(19) [(18)] Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(20) [(19)] Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(21) [(20)] Refusing a Search--refusing to submit to an authorized search of person or area.

(22) [(21)] Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(23) [(22)] Sexual Misconduct--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(24) [(23)] Stealing--intentionally taking property with an estimated value of \$100 or more from another without permission.

(25) [(24)] Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(26) [(25)] Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(27) [(26)] Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(28) [(27)] Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is

something that is capable of inflicting bodily injury in the manner in which it is being used.

(29) [(28)] Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(30) [(29)] Vandalism--intentionally causing \$100 or more in damage to state property or personal property of another.

(31) [(30)] Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's

personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under \$100 from another without permission.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) Undesignated Area--being in any area without the appropriate permission to be in that area.

(18) Vandalism--intentionally causing less than \$100 in damage to state or personal property.

§380.9504. *Rules and Consequences for Youth on Parole.*

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision. Violations of the rules may result in disciplinary consequences, including revocation of parole, that are proportional to the severity and extent of the violation. Appropriate due process must be followed before imposing consequences.

(b) Applicability.

(1) This rule applies to youth on parole status who are assigned to a home placement.

(2) For parole revocation purposes, this rule also applies to youth on parole status who are assigned to a residential placement as a home substitute. However, this rule does not apply to the daily rules of conduct for these youth. For the daily rules of conduct, see §380.9503 of this chapter.

(c) General Provisions.

(1) Conditions of parole are provided to the youth before release on parole.

(2) Conditions of parole, including the rules of conduct, are reviewed with youth when they initially meet with their parole officers and at other times as necessary.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(d) Definitions. Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(e) Parole Rule Violations. It is a violation to knowingly commit, attempt to commit, or aid someone else in committing any of the following:

(1) Abscond--leaving a home placement or failing to return from an authorized leave when:

(A) the youth's parole officer did not give permission; and

(B) the youth's whereabouts are unknown to the youth's parole officer.

(2) Failure to Comply with Electronic Monitoring Program Conditions--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement for the first 10 days while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(3) [(2)] Failure to Comply with Sex Offender Conditions of Parole--intentionally or knowingly failing to comply with one of the following conditions present in the youth's sex offender conditions of parole addendum:

(A) do not have unsupervised contact with children under the age specified by the conditions of parole;

(B) do not babysit or participate in any activity where the youth is responsible for supervising or disciplining children under the age specified by the conditions of parole; or

(C) do not initiate physical contact or touching of any kind with a child, victim, or potential victim.

(4) [(3)] Failure to Report an Arrest or Citation--failing to report an arrest or receipt of a citation to the youth's parole officer within 24 hours of arrest or citation.

(5) Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs. (This parole violation applies only to youth assigned to a residential placement as a substitute for home placement.)

(6) [(4)] Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(7) [(5)] Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(8) [(6)] Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen.

(9) [(7)] Repeated Non-Compliance with a Written, Reasonable Request of Staff--failing on two or more occasions to comply with a specific condition of release under supervision and/or a specific written, reasonable request of staff. If the request requires the youth

to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(10) [(8)] Photos, Videos, or Social Media Posts with Weapon, Ammunition, or Unauthorized Substance--appearing in photos, videos, or other images, whether or not posted to social media, with any weapon, ammunition, or unauthorized substance or related paraphernalia, including any object that reasonably resembles a weapon, ammunition, or unauthorized substance or related paraphernalia. The term weapon includes, but is not limited to, guns, explosive devices, knives, blades, and clubs. The term related paraphernalia includes, but is not limited to, items used to make or deliver unauthorized substances.

(11) [(9)] Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(12) [(10)] Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(13) [(11)] Possession or Use of Unauthorized Substances--possessing, ingesting, inhaling, or otherwise consuming any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol or tobacco products, or related paraphernalia such as that used to deliver or make any unauthorized substance.

(14) [(12)] Violation of Any Law--violating a federal or state law or municipal ordinance.

(f) Possible Consequences.

(1) A parole rule violation may result in a Level I hearing or a Level III hearing conducted in accordance with §380.9551 or §380.9557 of this chapter, respectively.

(A) This subparagraph applies only to youth alleged to have engaged in conduct classified as a first- or second-degree felony while on parole. Except as provided by this subparagraph, a Level I hearing shall be requested on these youth. The hearing may be deferred when requested by local prosecutors, as provided in §380.9551 of this chapter. The designated staff person may determine that, given all circumstances, a Level I hearing is not appropriate. Such decision shall be documented. If a Level I hearing is held and the youth's parole is revoked, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(B) Parole officers are encouraged to be creative in determining a consequence appropriate to address and correct the youth's behavior. Staff should use evidence-based interventions that relate to the youth's risk, needs, and responsibility when appropriate. All assigned consequences should be related to the misconduct when possible.

(2) Consequences through a Level III hearing for a youth on parole include, but are not limited to:

(A) Verbal Reprimand--conference with a youth including a verbal reprimand that draws attention to the misbehavior and serves as a warning that continued misbehavior could result in more severe consequences.

(B) Curfew Restriction--an immediate change in existing curfew requirements outlined in the youth's conditions of parole.

(C) Community Service Hours--disciplinary assignment of a specific number of hours the youth is to perform community service in addition to the hours assigned when the youth was placed on parole. In no event may more than 20 community service hours be assigned through a Level III hearing.

(D) Increased Level of Supervision--an assigned increase in the number of primary contacts between the youth and parole officer in order to increase the youth's accountability.

(E) Electronic Tracking--assignment to a system that electronically tracks a youth's movement and location.

(F) Writing Assignment--an assignment designed for the youth to address the misbehavior and identify appropriate behavior in similar situations.

(3) Consequences through a Level I hearing for a youth on parole, including youth assigned to a residential placement as a home substitute, include:

(A) parole revocation and placement in any high- or medium-restriction program operated by or under contract with the Texas Juvenile Justice Department; and

(B) assignment of a length of stay consistent with §380.8525 of this chapter.

§380.9510. *Intervention Program.*

(a) Purpose. The Texas Juvenile Justice Department (TJJD) delivers interventions in a structured environment for youth who have engaged in certain serious conduct. The interventions are designed to promote violence reduction and skill building to increase safety on TJJD campuses and to help the youth regulate their behavior in order to progress in treatment. Placement in an intervention program is not considered a disciplinary consequence. This rule sets forth eligibility criteria, program requirements, and services to be provided to youth.

(b) Applicability. The program described by this rule operates only at [This rule applies only to] high-restriction facilities operated by TJJD.

(c) Definitions.

(1) Admission, Review, and Dismissal (ARD) Committee--a committee that makes decisions on educational matters relating to special-education-eligible youth.

(2) Individualized Education Program (IEP)--the program of special education and related services developed by a youth's ARD committee.

(3) Isolation--the confinement of a youth in a locked room or cubicle as a tool to manage the behavior of a youth. Rules regarding isolation do not apply:

(A) when doors are routinely locked during normal sleeping hours and isolation has not otherwise been imposed; or

(B) when a youth is placed in the security program.

(4) Manifestation Determination Review--a review conducted by a youth's ARD committee when a decision has been made to change a special-education-eligible youth's school placement due to a violation of the code of conduct. The committee determines whether a youth's conduct is a manifestation of the youth's disability and whether the youth's IEP was fully implemented.

(d) Eligibility.

(1) At a minimum, a youth must be reviewed to determine appropriateness for placement at any level of the intervention program

if the youth engages in one or more of the following rule violations as defined in §380.9503 of this chapter [~~title~~]:

- (A) assault of youth (with or without injury);
- (B) assault of staff (with or without injury);
- (C) fighting (with or without injury);
- (D) threatening another with a weapon;
- (E) escape;
- (F) extortion or blackmail;
- (G) possession of a weapon;
- (H) sexual misconduct;
- (I) threatening others; [~~or~~]
- (J) any first- or second-degree felony; or

(K) [~~(J)~~] any other rule violation that the executive director or designee establishes in writing as an eligible violation.

(2) A youth may be reviewed to determine appropriateness for placement at any level of the intervention program based on any other rule violation defined in §380.9503 of this chapter [~~title~~] or based on a pattern of rule violations that suggests the youth would benefit from the program.

(3) Notwithstanding any other provisions in this rule, a youth whose parole has been revoked may be reviewed for possible placement in the intervention program. Review for possible placement in the intervention program is mandatory for a youth whose parole was revoked for conduct classified as a first- or second-degree felony. If the youth is placed in the intervention program:

(A) the youth may be placed at any level of the program, provided there are no therapeutic contraindications to placement at that level; and

(B) the youth may be moved between levels of the program if the youth was given notice of the potential placement in the program before the Level I hearing.

(4) Notwithstanding any other provisions in this rule, a youth who has been disciplinarily transferred from a medium-restriction facility to a high-restriction facility through a Level II due process hearing may be reviewed for possible placement in the intervention program. Review for possible placement in the intervention program is mandatory for a youth who was transferred for conduct classified as a first- or second-degree felony. If the youth is placed in the intervention program:

(A) the youth may be placed at any level of the program, provided there are no therapeutic contraindications to placement at that level; and

(B) the youth may be moved between levels of the program as outlined in this rule.

(e) Program Intervention Levels.

(1) Primary. The primary level of the intervention program provides short-term intervention that cannot be provided during regular campus programming.

(A) Youth at this level of intervention in the program will move around campus for non-program-related activities in a manner generally comparable to the general campus population but are provided program-related interventions while admitted to the program [continue to sleep at their assigned dorm but other activities are conducted at the site of the program].

(B) A Level II hearing is not required for placement at this level of intervention. However, designated [~~treatment and direct-care~~] staff must review the youth for appropriateness in the intervention program, including the youth's treatment needs and the severity of the youth's behavior.

(2) Moderate. The moderate level of the intervention program provides short-term intervention in a self-contained unit with a gradual transition back to regular campus programming.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this chapter [~~title~~];

(ii) there is a finding of *true* that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a *true* finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(3) Intensive. The intensive level of the intervention program provides longer-term intervention in a highly structured environment.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this chapter [~~title~~];

(ii) there is a finding of *true* that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a *true* finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(f) Placement in the Program.

(1) Each youth being considered for placement in the intervention program is reviewed to determine if placement is appropriate and, if so, which level of the program is appropriate.

(2) If it is determined that the youth should be placed in the intensive level of the program but space is not available, the youth may be temporarily placed in a lower level of the program until space becomes available at the intensive level or the youth otherwise successfully meets the criteria under subsection (j) of this section.

(3) TJJD procedural manuals shall establish a process that allows a youth to be moved from one level of the program to another, if appropriate. A youth may be placed in the moderate or intensive level of the program only if the youth was given notice of the potential placement before the Level II hearing. Once a youth has been removed from the intervention program, new conduct and a new Level II due process hearing, if necessary for the program level, are required to return the youth to the intervention program.

(4) TJJD procedural manuals shall establish the factors to be considered when determining if a youth should be placed in the intervention program and which level of intervention is most appropriate or when determining if a youth should be moved from one level to an-

other. The procedural manuals shall include a requirement that, at a minimum, the following factors be considered:

(A) whether the youth poses a continuing risk to the safety of the facility;

(B) whether less restrictive methods of documented intervention have been attempted when appropriate; and

(C) whether there are any therapeutic contraindications to placing the youth in the intervention program or at a particular level in the intervention program.

(5) A youth shall not be placed at any level in the intervention program if a therapeutic contraindication to placement at that level exists.

(6) TJJD shall make reasonable efforts to provide notice to the parent/guardian that the child is being considered for placement in the intervention program or for moving to a different level of the program.

(g) Additional Considerations for Youth Receiving Special Education Services.

(1) If a youth who is receiving special education services engages in a rule violation during school-related activities and that violation is the basis for placement or potential placement in the intervention program, the requirements of the Individuals with Disabilities Education Act, including a manifestation determination review when required, must be met. TJJD's procedural manuals shall include specific instructions for compliance and shall include a routine review to ensure the requirements are met.

(2) All special education services shall be provided in accordance with ARD committee decisions. For youth who are eligible to participate in special education services, an ARD committee meeting to review the IEP is held within ten days after admission to the intervention program. Subsequent ARD committee meetings and evaluations are completed in compliance with state and federal regulations.

(h) Program Requirements.

(1) The intervention program is administered in units designated for such purpose. Each level may be administered in a different unit.

(2) A structured daily schedule is maintained and posted to provide a predictable and safe environment.

(3) On scheduled academic days, youth shall be provided with the amount of education services established by the approved master schedule for the regular school program.

(4) Youth with limited English proficiency shall be provided with appropriate adaptations to the educational program as recommended by the Language Proficiency Assessment Committee.

(5) An individual plan shall be developed or modified for each youth. The plan shall be written in a language the youth clearly understands. The plan shall address the reasons for admission to the program, including providing strategies for intervention and prevention of the admitting behavior, include a component that addresses transition to the general campus population, and provide clearly written objectives for completion of the program. The plan shall also take into consideration any recommendations by a mental health specialist to address the motivation for the behavior.

(6) TJJD procedural manuals will set out how the individual plan and youth's progress will be reviewed and evaluated. This review shall occur at least once every seven days.

(7) Youth in the moderate and intensive levels of the intervention program are provided daily contact and weekly individual sessions with the assigned case manager or other designated staff for counseling and case management services.

(8) Staff shall immediately refer a youth to a mental health professional if concerns exist as to the youth's mental health status.

(9) Youth shall be provided with at least one hour of large-muscle exercise seven days per week.

(10) Youth are allowed phone calls and visitation with approved family members and other individuals according to program visitation procedures.

(11) A youth in the moderate level of the program:

(A) earns privileges based on progress through the program;

(B) shall be gradually reintegrated into campus programming as soon as he/she demonstrates comprehension of the goals established in the individual plan; and

(C) shall receive weekly mental health status exams by mental health staff as long as the youth's movement and program activities are restricted to the program unit. If deemed necessary by mental health staff, youth shall receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(12) A youth in the intensive level of the program:

(A) earns privileges based on progress through the program; and

(B) shall receive weekly mental health status exams by mental health staff. If deemed necessary by mental health staff, youth receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(13) For youth assigned to the primary and moderate levels, staff not assigned to the intervention program shall review each youth's progress at least once every 30 days to ensure the individual plan is being implemented appropriately.

(14) For youth assigned to the intensive level, staff not assigned to the intervention program shall review each youth's progress when the youth has been at that level for 60 days and every 30 days thereafter to ensure the individual plan is being implemented appropriately.

(15) A youth may remain in the moderate level of the program for more than 90 days only if approved by the executive director or designee.

(16) A youth may remain in the intensive level of the program for more than 120 days only if approved by the executive director or designee.

(17) In all levels of the program, mechanical restraints may be used in a manner consistent with the use of such restraints as provided by §380.9723 of this chapter [title]. In the intensive level of the program only, mechanical restraints may also be used in a manner consistent with the use of such restraints in a security unit as provided by §380.9723 of this chapter [title].

(i) Room Isolation and Security Unit.

(1) Youth may be referred to the security program while assigned to the intervention program if the youth meets criteria in

§380.9740 of this chapter [title]. A security unit and program may be operated at the location of each level of the intervention program.

(2) Room isolation may be used as necessary in accordance with §380.9739 of this chapter [title].

(j) Criteria for Release from the Intervention Program. A youth shall be released from the intervention program upon the earliest of the following events:

(1) a determination by the executive director or designee that the youth has:

(A) met the goals in his/her individual plan; and

(B) based on a totality of circumstances, demonstrated an ability to safely transition to campus programming; or

(2) a decision by the executive director or designee to return the youth to the youth's assigned dorm or transfer to an alternative placement based on a recommendation by a mental health professional due to the youth's mental health condition; or

(3) a decision by appropriate staff not to continue the youth in the intervention program after an administrative transfer of the youth to another high-restriction facility while assigned to the intervention program.

(k) Family Notification. The youth's parent/guardian shall be notified of the decision to place the youth in the intervention program no later than the end of the next business day following the day the decision was made. In accordance with §380.8705 of this chapter [title], the notification may occur only with the youth's consent if the youth is 18 years of age.

(l) Program Monitoring and Youth Rights.

(1) To ensure the intervention program is being implemented according to the provisions of this rule, staff from facility administration shall visit each program unit seven days per week. Staff from psychology administration shall visit each program unit weekly.

(2) Youth rights staff or a designee shall visit each program unit seven days per week to ensure that youth have access to the youth grievance system.

(3) Staff are not required to visit a program unit on days when there are no youth in that unit.

(m) Grievance Regarding Assessment of Progress. A youth in the intervention program may address disagreement with the results of an assessment of progress or may address the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this chapter [title]. The person assigned to respond to the youth's grievance may not be a person involved in the subject of the youth's grievance.

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 22, 2024.

TRD-202400807

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 490-7278

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CHAPTER 385. AGENCY MANAGEMENT
AND OPERATIONS

SUBCHAPTER C. MISCELLANEOUS

37 TAC §385.9921

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §385.9921 (concerning legal sufficiency review for administrative findings of abuse, neglect, or exploitation).

SUMMARY OF CHANGES

The new §385.9921 will establish that all findings in abuse, neglect, and exploitation investigations shall be reviewed for legal sufficiency before the appropriate parties are notified of the findings.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be to bring TJJD in compliance with statutory changes by ensuring certain actions of the executive director are reported by the agency and ensuring legal sufficiency reviews are required before appropriate parties are notified of abuse, neglect, and exploitation investigation findings.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new section is in effect, the section will have the following impacts.

(1) The proposed section will not create or eliminate a government program.

(2) The proposed section will not require the creation or elimination of employee positions at TJJD.

(3) The proposed section will not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section will not impact fees paid to TJJD.

(5) The proposed section will not create a new regulation.

(6) The proposed section will not expand, limit, or repeal an existing regulation.

(7) The proposed section will not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

Section 385.9921 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The new section is also proposed under §203.002, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires TJJJ to track the frequency with which the executive director takes certain actions and to report the resulting data to the Board and the Sunset Advisory Commission.

No other statute, code, or article is affected by this proposal.

§385.9921. Legal Sufficiency Review for Administrative Findings of Abuse, Neglect, or Exploitation.

All findings in abuse, neglect, and exploitation investigations shall be reviewed for legal sufficiency before the appropriate parties are notified of the findings.

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 22, 2024.

TRD-202400806

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General Counsel

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Earliest possible date of adoption: April 7, 2024

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 811. CHOICES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 811, relating to Choices:

Subchapter A. General Provisions, §§811.1 - 811.5

Subchapter B. Choices Services Responsibilities, §§811.11, 811.13, and 811.14

Subchapter C. Choices Services, §811.22 and §811.30

Subchapter D. Choices Activities, §811.50

Subchapter E. Support Services and Other Initiatives, §811.65 and §811.66

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 811 rule change is to update rule language to conform with present terminology, update

definitions to conform with federal statute and regulations under the Social Security Act and Title 45 of the Code of Federal Regulations (CFR), and update Temporary Assistance for Needy Families (TANF) purpose statements to conform with federal regulations.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§811.1. Purpose and Goal

Section 811.1(a)(3) updates one of the TANF purposes to align with current language found in Title IV, Social Security Act, §401.

Section 811.1(c) is amended to change "Texas Workforce Commission" to "Agency."

§811.2. Definitions

Section 811.2(18) amends the definition of secondary school to replace "GED" with "high school equivalency."

Section 811.2(20) is amended to replace "TWIST" with "the TWC case management system. The TWIST case management system is being replaced."

Section 811.2(23) is amended to align the definition of "Work-eligible individual" with the definition of "Work-eligible individual" in CFR Title 45, Subtitle B, Chapter II, Part 261.

Section 811.2(26)(D), is amended to replace "GED" with "high school equivalency."

§811.3. Choices Service Strategy

Section 811.3(b)(2)(B) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

§811.4. Policies, Memoranda of Understanding, and Procedures

Section 811.4(b)(1) is amended to refer to the current eligible training system and Chapter 840 of this title.

Section 811.4(d)(1) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

§811.5. Documentation, Verification, and Supervision of Work Activities

Section 811.5(a), (c), and (d) are amended to replace "TWIST" with "the TWC case management system."

Section 811.5(d) is amended to replace "GED" with "high school equivalency."

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

TWC proposes the following amendments to Subchapter B:

§811.11. Board Responsibilities

Section 811.11(a) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

Section 811.11(f) and (h) are amended to replace "TWIST" with "the TWC case management system."

§811.13. Responsibilities of Choices Participants

Section 811.13(c)(3) is amended to change "Commission's" to "Agency's."

§811.14. Noncooperation

Section 811.14(e) is amended to replace "TWIST" with "the TWC case management system."

SUBCHAPTER C. CHOICES SERVICES

TWC proposes the following amendments to Subchapter C:

§811.22. Assessment

Section 811.22(a)(1)(B) and (e) are amended to replace "GED" with "high school equivalency."

Section 811.22(b)(5) changes "substance abuse" to "substance use that impairs daily life" to align with the new universal needs assessment provided in the new case management system.

Section 811.22(e)(1)(B) is amended to replace "literacy level" with "functional educational level" to align with Human Resources Code, Title 2, Subtitle C, Chapter 31, Subchapter A, Section 31.0065(f)(1).

§811.30. Special Provisions for Teen Heads of Household

Section 811.30(a) and (b) are amended to replace "GED" with "high school equivalency."

SUBCHAPTER D. CHOICES ACTIVITIES

TWC proposes the following amendments to Subchapter D:

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential

Section 811.50 is amended to rename the section "Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a High School Equivalency Credential."

Section 811.50(a) is amended to replace "GED" with "high school equivalency."

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

TWC proposes the following amendments to Subchapter E:

§811.65. Wheels to Work

Section 811.65(a) is amended to change "Commission" to "Agency."

§811.66. General Educational Development Credential Testing Payments

Section 811.66 is amended to rename the section "High School Equivalency Credential Testing Payments."

Section 811.66 is amended to replace "GED" with "high school equivalency."

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045 does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to update rule language to conform with present terminology, update definitions to conform with federal rules, update TANF purposes to conform with federal regulations, and update Choices service strategies.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to align these rules with state and federal regulations, and current terminology and definitions.

PART IV. COORDINATION ACTIVITIES

In the development of the proposed rules for publication and public comment, TWC consulted the Texas Health and Human Services Commission via email in August 2023 and determined that no changes were needed relating to local-level memorandum of understanding requirements. Additionally, TWC conducted a conference call with Board executive directors and staff on December 8, 2023, to inform them of the proposed rule amendments and seek their input. TWC considered all information gathered in order to develop clear and concise rules.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than April 8, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§811.1 - 811.5

PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.1. Purpose and Goal.

(a) The purposes of Temporary Assistance for Needy Families (TANF), as set forth in Title IV, Social Security Act, §401 (42 USCA §601) are:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce incidences of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing these pregnancies; and [prevent and reduce the incidence of out-of-wedlock pregnancies; and]
- (4) encourage the formation and maintenance of two-parent families.

(b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. A Local Workforce Development Board (Board) may exercise flexibility in providing services to Choices-eligible individuals to meet this Choices goal. A Board is also provided the flexibility and may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services, which is employment and job retention.

(c) The Agency's goal [The goal of the Texas Workforce Commission (Commission)] is to ensure delivery of the employment and training activities as described in the TANF State Plan and the TANF Work Verification Plan.

(d) Boards shall identify the workforce needs of local employers and design Choices services to ensure that local employer needs are met and that the services are consistent with the goals and purposes of Choices services as referenced in this section, and as authorized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the applicable federal regulations at 45 CFR Parts 260 - 265, the TANF State Plan, the TANF Work Verification Plan, this chapter, and consistent with a Board's approved integrated workforce training and services plan as referenced in §801.17 of this title.

§811.2. Definitions.

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

(1) Applicant--An adult, or teen head of household, in a family who applies for TANF cash assistance, who previously did not leave TANF in a sanctioned status.

(2) Choices-eligible individual--An individual eligible to receive Choices services including an adult or teen head of household who is an applicant, conditional applicant, recipient, nonrecipient parent, former recipient, or sanctioned family as defined in this chapter.

(3) Choices participant--A Choices-eligible individual participating in or outreached for Choices services, including:

(A) Exempt Choices participant--A Choices-eligible individual who is not required under Texas Human Resources Code, Chapter 31 or Texas Health and Human Services Commission (HHSC) rules (1 TAC, Part 15, Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs) to participate in Choices services, but who may voluntarily participate in Choices services.

(B) Mandatory Choices participant--A Choices-eligible individual who is required under Texas Human Resources Code, Chapter 31 or HHSC rules (1 TAC, Part 15, Chapter 372) to participate in Choices services.

(4) Community service--A program that provides employment and training activities to Choices participants through unsalaried, work-based positions in the public or private nonprofit sectors. Community service programs contain structured, supervised activities that are a direct benefit to the community and are designed to improve the employability of Choices participants who have been unable to find employment.

(5) Conditional applicant--An adult or teen head of household who left TANF in a sanctioned status, but who is reapplying for TANF cash assistance and must demonstrate cooperation with Choices program requirements for four consecutive weeks.

(6) Earned Income Deduction (EID)--A standard work-related and income deduction, available for four months through HHSC.

(7) Employment Planning Session (EPS)--A meeting with a TANF recipient to introduce Choices services.

(8) Extended TANF recipient--A recipient who receives TANF cash assistance past the 60-month federal time limit because of a hardship exemption as defined in Texas Human Resources Code, Chapter 31 and HHSC rules (1 TAC, Part 15, Chapter 372).

(9) Former recipient--An adult or teen head of household who no longer receives TANF cash assistance because of employment.

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

(11) Job readiness--Short-term structured activities or a series of activities lasting less than six months designed to prepare a job seeker for unsubsidized employment and increase the job seeker's employability. Activities may include, but are not limited to: interviewing skills, job retention skills, personal maintenance skills, professional conduct skills, and introductory computer skills.

(12) Job search--Acts of seeking or obtaining employment, or preparing to seek or obtain employment, including life skills training, substance abuse treatment, mental health treatment, or rehabilitation activities. Activities may include: information on and referral to available jobs; occupational exploration, including information on local emerging and demand occupations; job fairs; applying or interviewing for job vacancies; and contacting potential employers.

(13) Job skills training--Training or education for job skills required by an employer to provide a Choices participant with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.

(14) Nonrecipient parent--Adults or minor heads of household not receiving TANF cash assistance[;] but living with their own children who are receiving TANF cash assistance. Nonrecipient parents include parents who are not eligible for TANF cash assistance:

(A) due to a disqualification by HHSC [the Texas Health and Human Services Commission]. These disqualifications include parents who:

(i) refuse to comply with Medicaid third-party resource requirements;

(ii) do not comply with Social Security number requirements;

(iii) are found guilty of an intentional program violation;

(iv) fail to report the temporary absence of a certified child;

(v) are fugitives fleeing to avoid prosecution of, or confinement for, a felony criminal conviction, or are found by a court to be violating federal or state probation or parole;

(vi) are convicted of a felony drug offense (not deferred adjudication) committed on or after April 1, 2002; or

(vii) refuse to cooperate with the program integrity assessment process;

(B) because they are receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI); or

(C) because they have exhausted their TANF state time limit.

(15) PRWORA--The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.

(16) Recipient--An adult or teen head of household who receives TANF cash assistance.

(17) Sanctioned family--An adult or teen head of household who must demonstrate cooperation for one month in order to reinstate TANF cash assistance.

(18) Secondary school--Educational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a high school equivalency [GED] credential.

(19) TANF cash assistance--The cash grant provided through HHSC to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including ~~[the]~~ PRWORA, the TANF block grant statutes, the TANF State Plan, TANF cash assistance provided under Texas Human Resources Code, Chapters 31 and 34, and other related regulations.

(20) The TWC case management system [Workforce Information System of Texas (TWIST)]--~~The [the]~~ Agency's automated data processing and case management system for the Texas workforce system.

(21) Vocational educational training--Organized educational programs directly related to preparing Choices participants for employment in current or emerging occupations.

(22) Work-based services--Includes those employment programs defined in Texas Human Resources Code §31.0126.

(23) Work-eligible [Work eligible] individual--Work-eligible [Work eligible] individuals are adults or minor heads of household receiving TANF cash assistance, and nonrecipient parents living with a child receiving such assistance--with the following exceptions:

(A) Noncitizens who are ineligible to receive cash assistance because of their immigration status;

(B) Parents caring for a disabled family member who lives in the home (provided the need for such care is supported by medical documentation), on a case-by-case basis; ~~and]~~

(C) Recipients of SSI or SSDI, on a case-by-case basis; and[-]

(D) A minor parent who is not the head-of-household.

(24) Work experience--Unpaid training in the public or private sector designed to improve the employability of Choices participants who have been unable to find employment.

(25) Work ready--A Choices-eligible individual is considered work ready if he or she has the skills that are required by employers in the local workforce development area. A Board must ensure immediate access to the labor market to determine whether the Choices-eligible individual has those necessary skills to obtain employment.

(26) Work requirement--For the purposes of 42 USC §607 and 45 CFR §261.10, a Choices participant is deemed to be engaged in work by participating in:

(A) unsubsidized employment;

(B) subsidized employment;

(C) on-the-job training (OJT); or

(D) educational services for Choices participants who have not completed secondary school or received a high school equivalency [GED] credential as provided in §811.30 of this chapter.

§811.3. Choices Service Strategy.

(a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:

- (1) determine employers' needs;
- (2) determine emerging and demand occupations; and
- (3) identify employment opportunities, which include those with a potential for career advancement that may assist a Choices-eligible individual's progression toward self-sufficiency.

(b) The Choices service strategy shall include:

(1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants and conditional applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce.

(2) Work First Design.

(A) The work first design:

(i) allows Choices participants to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and

(ii) meets the needs of employers by linking Choices participants with skills that match those job requirements identified by the employer.

(B) Boards shall provide Choices participants access to other services and activities available through the One-Stop Service Delivery System [Network], which includes [the] WOA, to assist with employment in the labor market before certification for TANF cash assistance.

(C) Post-employment services shall be provided in order to assist a Choices participant's progress toward self-sufficiency as described in §811.4(a)(1) of this subchapter and §811.51 of this chapter.

(D) In order to assist a Choices-eligible individual's progress toward self-sufficiency:

(i) Boards shall provide Choices-eligible individuals who are employed, including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID, with information on available post-employment services; or

(ii) Boards may provide Choices-eligible individuals with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51 of this chapter.

(E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:

- (i) employee post-employment education or training;
- (ii) employee child care, transportation, or other support services available to obtain and retain employment; and
- (iii) employer tax credits.

(F) Boards shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for TANF cash assistance.

(3) Post-Employment Services. A Board shall ensure that post-employment services are designed to assist Choices participants with job retention, career advancement, and reemployment, as defined in §811.51 of this chapter. Post-employment services are a continuum in the Choices service strategy to support a Choices participant's job retention, wage gains, career progression, and progression to self-sufficiency.

(4) Adult Services. A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.

(5) Teen Services. A Board shall ensure that services for teen heads of household shall include secondary school, as defined in §811.2(18) of this subchapter [~~§811.2(13)~~], and making the transition from school to employment, as described in §811.30 and §811.50 of this chapter.

(6) Choices-Eligible Individuals with Disabilities. A Board shall ensure that services for Choices-eligible individuals with disabilities include reasonable accommodations to allow the Choices-eligible individuals to access and participate in services, where applicable by law.

(7) Target Populations. A Board shall ensure that services are concentrated, as further defined in §811.4(d)(5) of this subchapter and §811.11(d) of this chapter, on the needs of recipients who [the following]:

(A) [recipients who] have six months or less remaining of their state TANF time limit, irrespective of any extension of time due to a hardship exemption;

(B) [recipients who] have 12 months or less remaining of their 60-month federal TANF time limit, irrespective of any extension of time due to a hardship exemption; and

(C) [recipients who] are extended TANF recipients.

(8) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery System [Network].

§811.4. Policies, Memoranda of Understanding, and Procedures.

(a) A Board shall establish policies regarding the following:

(1) A Choices service strategy, as defined in §811.3 of this subchapter, that coordinates various service delivery approaches to:

(A) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;

(B) use a work first design as referenced in §811.3(b)(2) of this subchapter to provide Choices participants access to the labor market; and

(C) assist former TANF recipients with job retention and career advancement in order to remain independent of TANF cash assistance;

(2) Limits on the amount of funds per Choices participant and the maximum duration for subsidized employment and OJT placements; and

(3) The methods and limitations for provision of work-related expenses.

(b) A Board may establish optional policies that:

(1) require the use of the Eligible Training Provider (ETP) statewide list [Certification System (ETPS)] and Individual Training Account (ITA) system [systems] as described in Chapter 840 [841] of

this title to provide training services [~~for Choices services~~] for Choices participants and paid for with TANF funds; and

(2) make post-employment services available to:

(A) former TANF recipients who are denied TANF cash assistance because of earnings; and

(B) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.

(c) A Board shall ensure that the following memoranda of understanding (MOUs) and collaborative partnerships are developed:

(1) Local-level MOUs with the appropriate agencies to serve Choices-eligible individuals with disabilities to maximize their potential for success in employment;

(2) A local-level MOU with HHSC for providing mental health and substance abuse services to Choices participants; and

(3) A collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.

(d) A Board shall ensure that procedures are developed:

(1) to ensure that job development services are available to Choices participants. These services include:

(A) contacting local employers or industry associations to request that job openings be listed with Workforce Solutions Offices[;] and other entities in the One-Stop Service Delivery System [~~Network~~] selected by the Board;

(B) identifying the hiring needs of employers;

(C) assisting an employer in creating new positions for Choices participants based on the job developer's and employer's analysis of the employer's business needs; and [~~or~~]

(D) finding opportunities with an employer for a specific Choices participant or a group of Choices participants;

(2) to ensure that job placement services are available to Choices participants. Job placement services shall include:

(A) identifying employers' workforce needs;

(B) identifying Choices participants who have sufficient skills and abilities to be successfully linked with employment; and

(C) matching the skills of the Choices participant pool to the hiring needs of local employers;

(3) to notify applicants and conditional applicants--in conjunction with HHSC--on the availability of regularly scheduled [~~Workforce Orientations for Applicants (WOAs)]~~ and alternative WOAs;

(4) to notify HHSC of applicants and conditional applicants who contacted a Workforce Solutions Office to request alternative WOAs;

(5) to ensure that services are concentrated on Choices-eligible individuals approaching their state or federal time limit, as identified in §811.3(b)(7)(A) and (B) of this subchapter. Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a Choices-eligible individual's ability to participate, and targeted job development; and

(6) to determine a family's inability to obtain child care.

(e) If a Board elects to establish one or more of the optional policies described in subsection (b) of this section, the Board must ensure that corresponding procedures are developed for those policies.

§811.5. Documentation, Verification, and Supervision of Work Activities.

(a) A Board shall ensure that all required information related to the documentation and verification of participation in Choices work activities, as described in this section, is documented in the TWC case management system [~~The Workforce Information System of Texas (TWIST)]~~.

(b) A Board shall ensure that all participation in Choices is verified and documented and that self-attestation is not allowed.

(c) For Choices work activities, as described in §§811.42, 811.43, 811.44, and 811.50 of this chapter, Boards shall ensure that all participation is verified and documented in the TWC case management system [~~TWIST~~] at least monthly.

(d) For educational services, as described in §811.50 of this chapter, for teen heads of household who have not completed secondary school or received a high school equivalency [~~GED~~] credential, Boards shall ensure that:

(1) good or satisfactory progress, as determined by the educational institution, is verified and documented in the TWC case management system [~~TWIST~~] at least monthly;

(2) all participation is supervised daily; and

(3) all participation is verified and documented in the TWC case management system [~~TWIST~~] at least monthly.

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

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For further information, please call: (512) 850-8356



SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

40 TAC §§811.11, 811.13, 811.14

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.11. Board Responsibilities.

(a) A Board shall ensure that:

(1) [~~the~~] WOA is offered frequently enough to allow applicants and conditional applicants to comply with the HHSC requirement

that gives applicants and conditional applicants 10 calendar days from the date of their eligibility interview to attend a WOA;

(2) during a regularly scheduled WOA or alternative WOA, applicants and conditional applicants are informed of:

(A) employment services available through the One-Stop Service Delivery System [Network] to assist applicants and conditional applicants in achieving self-sufficiency without the need for TANF cash assistance;

(B) benefits of becoming employed;

(C) impact of time-limited benefits;

(D) individual and parental responsibilities; and

(E) other services and activities, including education and training, available through the One-Stop Service Delivery System [Network], including services and referrals for services available to Choices-eligible individuals with disabilities;

(3) alternative WOAs are developed that allow applicants and conditional applicants with extraordinary circumstances to receive the information listed in paragraph (2) of this subsection;

(4) verification that applicants and conditional applicants attend a scheduled or alternative WOA is completed and HHSC is notified in accordance with HHSC rules (1 TAC, Part 15, Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs); and

(5) applicants and conditional applicants are provided with an appointment to develop a family employment plan (FEP).

(b) A Board shall ensure that:

(1) Choices services are offered to applicants who attend a WOA; and

(2) conditional applicants who attend a WOA are immediately scheduled to begin Choices services.

(c) A Board shall ensure that a Choices participant's eligibility is verified monthly.

(d) A Board shall ensure that all extended TANF recipients are outreached and offered the opportunity to participate in Choices activities.

(e) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to Choices-eligible individuals, including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving EID.

(f) A Board shall ensure that monitoring of Choices program requirements is ongoing and frequent, as determined by the Board, unless otherwise specified in this chapter, and consists of the following:

(1) ensuring receipt of support services;

(2) tracking and reporting all support services and entering them into the TWC case management system [TWIST] at least monthly;

(3) tracking and reporting actual hours of participation in Choices work activities, at least monthly, unless otherwise specified in this chapter;

(4) determining and arranging for any intervention needed to assist the Choices participant in complying with Choices program requirements; and

(5) ensuring that the Choices participant is progressing toward achieving the goals and objectives in the FEP.

(g) A Board shall ensure that:

(1) no fewer than four hours of training regarding family violence is provided to staff who:

(A) provide information to Choices-eligible individuals;

(B) request penalties or grant good cause; or

(C) provide employment planning or employment retention services; and

(2) Choices-eligible individuals who are identified as being victims of family violence are referred to an individual or an agency that specializes in issues involving family violence.

(h) A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices participants, including verification of participation hours, and data is entered into the TWC case management system [TWIST].

(i) A Board shall ensure that a referral program is developed to provide Choices-eligible individuals facing higher than average barriers to employment, as described in this chapter, with referrals to pre-employment and post-employment services offered by community-based and other organizations.

§811.13. Responsibilities of Choices Participants.

(a) A Board shall ensure that Choices participants comply with the provisions contained in this section.

(b) Choices participants shall:

(1) accept a job offer at the earliest possible opportunity;

(2) participate in or receive ancillary services necessary to enable Choices participants to work or participate in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;

(3) report actual hours of participation in Choices work activities, including hours of employment; and

(4) attend scheduled appointments.

(c) Within two-parent families, Choices participants shall participate in assessment and family employment planning sessions and assigned employment and training activities as follows:

(1) participate in Choices employment and training as specified in §811.25(b) - (c) of this chapter;

(2) comply with all requirements specified in the FEP; and

(3) sign a form that contains all the information identified in the Agency's [Commission's] Family Work Requirement form, as described in §811.24 of this chapter.

(d) Within single-parent families, Choices participants shall participate in assessment and employment planning sessions and assigned employment and training activities as follows:

(1) participate in Choices employment and training activities as specified in §811.25(a) of this chapter; and

(2) comply with all requirements specified in the FEP.

(e) A Board shall ensure that mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID:

(1) report to the Board actual hours of work, as defined in §811.34 of this chapter; and

(2) are provided with information on available post-employment services.

§811.14. *Noncooperation.*

(a) A Board shall ensure that cooperation by Choices participants is verified each month to ensure that the Choices participants:

(1) comply with Choices program requirements as set forth in the FEP, as described [specified] in §811.23 of this chapter; or

(2) have good cause as described in §811.16 of this subchapter [chapter].

(b) If Choices participants have not cooperated with Choices program requirements and do not have good cause, a Board shall ensure that:

(1) a penalty is requested for mandatory Choices participants; or

(2) Choices services and support services, except Commission-funded child care, are terminated for exempt Choices participants; and

(3) Choices child care is provided as needed, as specified in §809.45 of this title.

(c) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are made to contact a mandatory Choices participant prior to requesting a penalty to:

(1) determine the reason for noncooperation and whether good cause is applicable, as described in §811.16(c) of this subchapter;

(2) inform the mandatory Choices participant of:

(A) the violation[s] if good cause has not been determined;

(B) the right to appeal; and

(C) the necessary procedures to demonstrate cooperation.

(d) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are made to contact a sanctioned family and conditional applicants upon discovery of noncooperation during their demonstrated cooperation period to determine if good cause exists.

(e) A Board shall ensure that the reasonable attempts to contact a mandatory Choices participant are documented in the TWC case management system [TWIST].

(f) A Board shall ensure that:

(1) HHSC is notified of a mandatory Choices participant's failure to comply with Choices program requirements; and

(2) the notification of noncooperation is submitted as early as possible in the same month in which the noncooperation occurs.

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 20, 2024.

TRD-202400713

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 850-8356

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §811.22, §811.30

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.22. *Assessment.*

(a) A Board shall ensure that initial and ongoing assessments are performed to determine the employability and retention needs, including wage advancement and career development needs, of Choices participants as follows:

(1) An assessment is required for Choices participants who are:

(A) at least age 18; or

(B) heads of household, as determined by HHSC, who are not yet age 18, have not completed secondary school or received a high school equivalency [GED] credential, and are not attending secondary school.

(2) An assessment shall be provided to applicants who choose to participate in Choices services.

(3) Ongoing assessments shall be provided to former recipients who choose to participate in Choices services.

(b) Assessments shall include evaluations of strengths and potential barriers to obtaining and retaining employment, such as:

(1) skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;

(2) pre- and post-employment skills development needs to determine the necessity for job-specific training;

(3) unmet housing needs and whether those needs are a barrier to full participation in the workforce and progression to self-sufficiency;

(4) support services needs; and

(5) individual and family circumstances that may affect participation, including the existence of family violence, substance use that impairs daily life [abuse], mental health, or disability-related issues, as one of the factors considered in evaluating employability.

(c) A Board shall ensure that the assessment identifies Choices-eligible individuals with higher-than-average barriers to employment, as defined by the Board.

(d) A Board shall ensure that if the skills assessment indicates that a Choices participant requires job-specific training for placement in a job paying wages that equal or exceed the Board's identified self-sufficiency wage, the Board shall, to the extent funds are available and

to the extent allowed under this chapter, place the Choices participant in vocational educational training activities or job skills training activities that are designed to improve employment and wage outcomes and job retention.~~;~~ ~~and~~

(e) A Board shall ensure that ~~For~~ mandatory Choices participants who are at least age 18, or who are heads of household but are not yet age 18 and have not completed secondary school or received a high school equivalency [GED] credential and are not attending secondary school:

(1) The assessments shall also include evaluations of the mandatory Choices participants':

(A) vocational and educational skills, experience, and needs; and

(B) functional educational level [literacy level] by using a statewide standard literacy assessment instrument unless the Choices participants are mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID.

(2) A Board shall ensure that the grade-level results or other literacy information are provided to HHSC for use in determining the appropriateness of the initial state time-limit designation for TANF cash assistance as described in ~~the~~ Texas Human Resources Code §31.0065, relating to state time-limited benefits.

(f) Assessment Outcome. Assessments shall result in the development of a family employment plan, as described in §811.23 of this subchapter.

§811.30. Special Provisions for Teen Heads of Household.

(a) A Board shall ensure that teen heads of household who have not completed secondary school or received a high school equivalency [GED] credential are enrolled in educational activities as defined in §811.50 of this chapter.

(b) Teen heads of household who have not completed secondary school or received a high school equivalency [GED] credential count as engaged in work if they:

(1) maintain satisfactory attendance at a secondary school or the equivalent during months in which school is in session;

(2) participate in allowable activities, as described in §811.25 of this subchapter, during months in which school is not in session;

(3) participate in education directly related to employment for at least an average of 20 hours per week during the month; or

(4) participate in Choices employment and training activities as described [specified] in §811.25 of this subchapter.

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

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Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: April 7, 2024
For further information, please call: (512) 850-8356



SUBCHAPTER D. CHOICES ACTIVITIES

40 TAC §811.50

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule makes changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a High School Equivalency [General Educational Development] Credential.

(a) Educational services are only available for Choices participants who have not completed secondary school or who have not received a high school equivalency [GED] credential.

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants who are age 20 and older for any of the following educational or other training services:

(1) secondary school, as defined in §811.2(18) of this chapter, when required as a prerequisite for employment;

(2) Adult Basic Education (ABE), language instruction, or literacy instruction; or

(3) other educational activities that [which] are directly related to employment.

(c) A Board shall ensure educational services related to employment directly provide education, knowledge, and skills for specific occupations, work settings, jobs, or job offers.

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

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TRD-202400715
Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356



SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §811.65, §811.66

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.65. Wheels to Work.

(a) The Agency [~~Commission~~] may develop a Wheels to Work initiative in which local nonprofit organizations provide automobiles for Choices-eligible individuals who have obtained employment but are unable to accept or retain the employment solely because of a lack of transportation.

(b) A Board may, through local policies and procedures, establish services to assist Choices-eligible individuals who verify the need for an automobile to accept or retain employment by referring them to available providers.

(c) Persons or organizations donating automobiles under a Wheels to Work initiative shall receive a charitable donation receipt for federal income tax purposes.

§811.66. High School Equivalency [General Educational Development] Credential Testing Payments.

A Board shall ensure that the cost of high school equivalency credential [GED] testing and issuance [of the ~~credential~~] is paid through direct payments to the high school equivalency credential [GED] test centers and the Texas Education Agency for Choices participants referred for testing by a Board's provider of Choices services.

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

Filed with the Office of the Secretary of State on February 20, 2024.

TRD-202400716

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 850-8356



CHAPTER 843. JOB MATCHING SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §843.2

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 843, relating to Job Matching Services:

Subchapter A. General Provisions, §843.2

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 843 rule change is to amend references to "Veteran Preference for Public Employment" to "Military Employment Preference" in accordance with changes to Texas Government Code Chapters 656 and 657 resulting from the passage of Senate Bill (SB) 1376 by the 88th Texas Legislature, Regular Session (2023).

SB 1376 expands the categories of eligibility for military employment preference, formerly known as "veterans preference." The expanded eligibility provides military employment preference to spouses of active members of the United States armed forces or Texas National Guard, as well as spouses of veterans where the spouse is the primary source of income for the household.

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has

conducted a rule review of Chapter 843, Job Matching Services, and any changes are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§843.2. Public Employer Requirements Regarding Veterans Preference

Section 843.2 is amended to change "veterans preferences" to "military employment preferences." The section title is also amended to change Public Employer Requirements Regarding Veterans Preference to Public Employer Requirements Regarding Military Employment Preference.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043.

The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend references to "Veteran Preference for Public Employment" to "Military Employment Preference" in accordance with changes to Texas Government Code resulting from passage of SB 1376 by the 88th Texas Legislature, Regular Session (2023).

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules /will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to expand the categories of eligibility for military employment preference, formerly known as "veterans preference." Specifically, the change provides that the spouse of a member of the United States armed forces or Texas National Guard serving on active duty qualifies for military employment preference. This preference will also be provided to the spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70 percent or on individual unemployability.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

SB 1376 amended Texas Government Code Chapter 656 and Chapter 657, making it necessary for TWC to update rules under Texas Administrative Code Chapter 843, Job Matching Services, accordingly.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than April 8, 2024.

PART VI. STATUTORY AUTHORITY

The rules are proposed under:

--Texas Government Code §657.009(c), which provides TWC with the authority to adopt rules to facilitate the exchange of employment information between state agencies and individuals entitled to military preference; and

--Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement changes made to Texas Government Code Chapters 656 and 657 by SB 1376 of the 88th Texas Legislature, Regular Session, (2023).

§843.2. *Public Employer Requirements Regarding Military Employment [Veterans] Preference.*

(a) A public entity or public work shall provide information to the Agency, as specified in Texas Government Code §657.009, regarding any open position subject to the military employment [veterans] preferences set forth in Texas Government Code Chapter 657 [as specified in Texas Government Code §657.009], unless specifically exempted under the state statute.

(b) A public entity or public work shall provide information by one or more of the methods indicated in §843.1(b)(1) - (3) relating to the Employer Postings of Job Openings and submit basic information regarding the opening to the Agency as soon as practical, including the following:

- (1) the name of the public entity;
- (2) the location where the job is to be performed including city and state;
- (3) a description of the job opening;
- (4) the minimum educational and work experience required for the position; and
- (5) contact information regarding the opening.

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 20, 2024.

TRD-202400717

Les Trobman

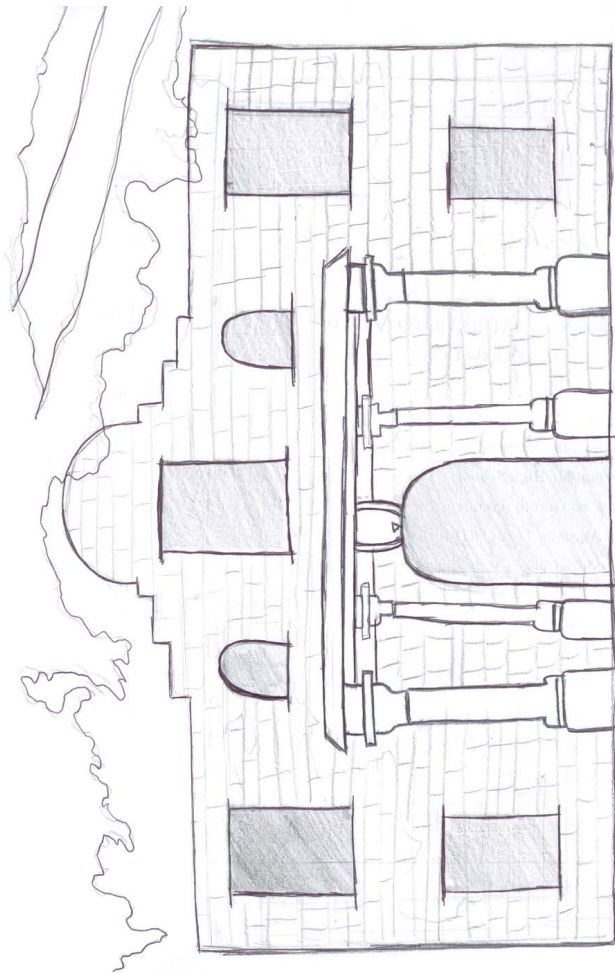
General Counsel

Texas Workforce Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 850-8356





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 382. WOMEN'S HEALTH SERVICES SUBCHAPTER A. HEALTHY TEXAS WOMEN

1 TAC §§382.1, 382.5, 382.7, 382.9, 382.15, 382.17

The Texas Health and Human Services Commission withdraws proposed amendments to 1 TAC §§382.1, 382.5, 382.7, 382.9, 382.15 and 382.17 which appeared in the January 26, 2024, issue of the *Texas Register* (49 TexReg 308).

Filed with the Office of the Secretary of State on February 23, 2024.

TRD-202400818

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 23, 2024

For further information, please call: (512) 815-1887



1 TAC §382.3, §382.11

The Texas Health and Human Services Commission withdraws the proposed repeal of 1 TAC §382.3 and §382.11 which appeared in the January 26, 2024, issue of the *Texas Register* (49 TexReg 308).

Filed with the Office of the Secretary of State on February 23, 2024.

TRD-202400819

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 23, 2024

For further information, please call: (512) 815-1887



SUBCHAPTER B. FAMILY PLANNING PROGRAM

1 TAC §§382.101, 382.105, 382.107, 382.109, 382.113, 382.115, 382.119, 382.121, 382.123, 382.125, 382.127

The Texas Health and Human Services Commission withdraws proposed amendments to 1 TAC §§382.101, 382.105, 382.107, 382.109, 382.113, 382.115, 382.119, 382.121, 382.123, 382.125 and 382.127 which appeared in the January 26, 2024, issue of the *Texas Register* (49 TexReg 308).

Filed with the Office of the Secretary of State on February 23, 2024.

TRD-202400820

Karen Ray

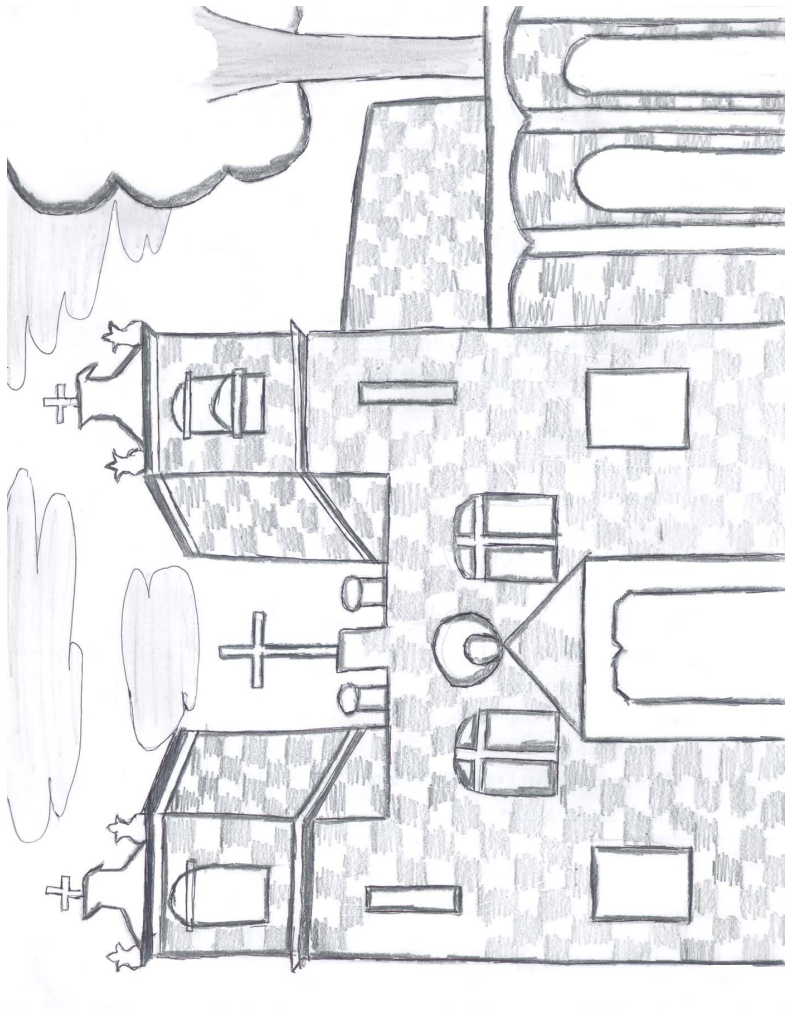
Chief Counsel

Texas Health and Human Services Commission

Effective date: February 23, 2024

For further information, please call: (512) 815-1887





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 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 15. CORPORATE ACTIVITIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to Chapter 15 of Title 7 of the Texas Administrative Code, concerning loans and investments by state banks. Sections 15.1, 15.3, 15.4, 15.5, 15.6, 15.7, 15.103, 15.121, and 15.122 are the affected sections. These amendments are adopted without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8077). The amended rules will not be republished.

The amendments conform these rules to changes in applicable Texas law, federal regulation, and accounting standards. The amendments do not materially change the requirements of the rules.

The department received no comments regarding the proposed amendments.

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §§15.1, 15.3 - 15.7

The amendments are adopted pursuant to Finance Code §11.301, which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This adoption affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statutes are affected by this adoption.

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

Filed with the Office of the Secretary of State on February 21, 2024.

TRD-202400730
Robert K. Nichols, III
General Counsel
Texas Department of Banking
Effective date: March 12, 2024
Proposal publication date: December 29, 2023
For further information, please call: (512) 475-1301

SUBCHAPTER F. APPLICATIONS FOR MERGER, CONVERSION, AND PURCHASE OR SALE OF ASSETS

7 TAC §15.103

The amendments are adopted pursuant to Finance Code §11.301, which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This adoption affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statutes are affected by this adoption.

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

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TRD-202400731
Robert K. Nichols, III
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Texas Department of Banking
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For further information, please call: (512) 475-1301

SUBCHAPTER G. CHARTER AMENDMENTS AND CERTAIN CHANGES IN OUTSTANDING STOCK

7 TAC §15.121, §15.122

The amendments are adopted pursuant to Finance Code §11.301, which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This adoption affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statutes are affected by this adoption.

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

Filed with the Office of the Secretary of State on February 21, 2024.

TRD-202400732

Robert K. Nichols, III
General Counsel

Texas Department of Banking

Effective date: March 12, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 475-1301



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

The Texas State Library and Archives Commission (commission) adopts amendments to §§2.1, Definitions; 2.2, Responsibilities of Commission and the Director and Librarian; 2.3, Procedures of Commission; 2.5, Advisory Committees; General Requirements; 2.7, Library Systems Act Advisory Board (LSA Board); 2.8, Texas Historical Records Advisory Board (THRAB); 2.9, TexShare Library Consortium Advisory Board (TexShare Advisory Board); 2.46, Negotiated Rulemaking; 2.48, Petition for Adoption of Rules; 2.53, Service Complaints; 2.55, Protest Procedure; 2.56, Training and Education of Staff; 2.60, Friends Groups; 2.70, Vehicle Fleet Management; 2.77, Contract Approval Authority and Responsibilities; 2.111, General Selection Criteria; 2.112, Eligible and Ineligible Expenses; 2.113, Peer Review; 2.114, Funding Decisions; and 2.120, Applicant Eligibility; and new §§2.54, HUB Program; 2.110 Scope of Subchapter and Standards; and 2.115, Grant Recommendation and Award Process. The amendments and new sections are adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6831). The rules will not be republished.

The amendments and new sections were identified as necessary following the commission's recent quadrennial review of the rules as required by Government Code, §2001.039. In general, the changes update, modernize, and clarify the rules, improve grammar and readability, conform the language to *Texas Register* preferences, and align the rules with best practices. The commission also adopts the repeals of several sections within 13 Texas Administrative Code, Chapter 2, to coincide with these amendments and new sections. The adopted repeals are published in this same issue of the *Texas Register*.

Explanation of Adopted Amendments and New Sections

Amendments to §2.1 modify the definition of "commission" to mean the seven-member governing body of the Texas State Library and Archives Commission and add a definition of "agency" to mean the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections,

archives, operations, programs, and property of the Texas State Library and Archives Commission.

Amendments to §§2.2, 2.3, 2.5, 2.46, 2.48, 2.55, 2.56, 2.60, 2.70, and 2.77 change "commission" to "agency," "chairman" to "chair," and "vice chairman" to "vice-chair" as necessary. Additional amendments to these sections delete unnecessary language and improve existing language. An amendment to §2.5 also updates language regarding reporting by advisory committees to the commission and the commission's evaluation of advisory committees. An amendment to §2.53 updates and simplifies the agency's process for receiving, reviewing, and responding to complaints. An amendment to §2.56 changes the person responsible for approving employee training to the director and librarian or designee.

Amendments to §§2.7, 2.8, and 2.9 continue the commission's advisory committees for another four years.

Amendments to §2.111 make minor wording improvements to the section.

Amendments to §2.112 update the list of items that are generally ineligible for funding through competitive grants to mirror the requirements as stated in TSLAC's Notices of Funding Opportunities, which are written in compliance with federal and state guidelines. An additional amendment updates a citation.

Amendments to §2.113 change the title of the section to Selection Process and fold in the requirements of previous §2.117 (relating to Grant Review and Award Process) to the amended rule. Additional amendments update and clarify the language. As amended, §2.113 outlines TSLAC staff's review of grant applications and the process for staff in working with grant applicants on their applications; authorizes and explains the process for peer review panels; and outlines the process for the scoring of applications.

Amendments to §2.114 make minor language updates and move the language previously codified at §2.115 (relating to Awarding of Grants) to new subsection (e).

Amendments to §2.120 make a minor wording update.

New §2.54 updates the commission's HUB Program rule to reference the correct citations. New §2.110 updates the chapter's scope to establish guidelines applicable to the awarding of grants and other rules necessary to the administration of TSLAC's grant programs. An amendment to this section also adopts the Uniform Grant Management Standards and the Texas Grant Management Standards as published by the Texas Comptroller of Public Accounts. This provision was previously a stand-alone section, §2.116 (relating to Texas Grant Management Standards). New §2.115 is titled Grant Recommendation and Award Process and consists of the language formerly codified at §2.118 (relating to Decision Making Process).

SUMMARY OF COMMENTS. The commission received comments from one individual on the proposed amendments and new sections.

COMMENT. The individual commented that §2.2(b)(7) does not appear to be functioning as written, noting her recent experience requesting an appeal to the commission.

RESPONSE. The commission acknowledges the comment and understands that the commenter disagrees with the actions taken by the agency in response to her complaint. However, the commission disagrees that §2.2(b)(7) does not function as written and declines to make a change to this section. Under

Government Code, §441.002, the director and librarian is the executive and administrative officer of the commission and shall discharge the administrative and executive functions of the commission. The fact that the commenter disagrees with how a complaint was handled does not provide justification to change a rule regarding the commission's role as a final board of appeals for certain matters.

COMMENT. The individual commented in relation to §2.3, Procedures of the Commission, that transparency regarding the work of the commission would be greatly increased, as would the ability for individuals to participate publicly, if the commission and committee meetings were routinely published on the agency's website. The individual also suggested that recordings be made of advisory committee meetings, noting that minutes are the "lowest possible bar allowed by law" and suggesting in relation to §2.5, Advisory Committees; General Requirements, that the commission consider the recent adoption of House Bill 4611, 88th Legislature, Regular Session (2023) (HB 4611).

RESPONSE. The commission acknowledges the comment and notes that all commission and committee meetings are posted with the Secretary of State in compliance with Government Code, Chapter 551, Subchapter C and on the agency's website. Commission meeting agendas are also posted on the agency's website. In addition, though not required, the commission routinely allows participation in commission and committee meetings by videoconference, which increases public participation. The commission keeps minutes of its open meetings in compliance with Government Code, §551.021, which requires a governmental body to prepare and keep minutes or make a recording of each open meeting of the body. Government Code, §551.022 provides that the minutes and recordings of an open meeting are public records and shall be available for public inspection and copying *on request to the governmental body's chief administrative officer or the officer's designee*. After a meeting, any member of the public may request recordings and other records related to commission meetings under the Public Information Act. Finally, Government Code, Chapter 522, as added by HB 4611 applies to the Texas Health and Human Services Commission. Therefore, the commission declines to make a change in response to this comment.

COMMENT. The individual commented in relation to §2.53, Service Complaints, that the complaint system is not functioning according to the state law regarding customer service in the Compact with Texans. The commenter also noted that a review of the complaint process and maintenance of the complaint record should be codified, as only two complaints since 2012 were returned when she made a Public Information Act request, indicating to the commenter that retention of complaint records is not being undertaken.

RESPONSE. The commission disagrees with the comment for several reasons. The Compact with Texans is established in Government Code, §2114.006, which requires each state agency to create a "Compact with Texans" that must be approved by the Governor's Office of Budget and Planning and the Legislative Budget Board. The statute requires each Compact with Texans to set customer service standards and describe customer service principles for the agency that address the following:

1. The agency's procedures for responding to public contacts and complaints;
2. Applicable licensing and certification procedures; and

3. Customer waiting time for access and service delivery and responses to complaints.

The commission's approved Compact with Texans, published on the agency's website at <https://www.tsl.texas.gov/customer/compact>, outlines procedures for responding to complaints and a timeframe for responding to complaints. Regarding the commenter's allegation that the commission is not retaining records related to complaints, the commission notes that a lack of records is not an indication that records are not being maintained but rather an indication that the commission has not received many complaints from the public. The commission declines to make a change in response to this comment.

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.1 - 2.3, 2.5, 2.7 - 2.9, 2.46, 2.48, 2.53 - 2.56, 2.60, 2.70, 2.77

STATUTORY AUTHORITY. The amendments and new rules are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §441.006, General Powers and Duties, which directs the commission to govern the state library; and Government Code, §441.0065, Advisory Committees, which directs the commission to adopt rules regarding advisory committees.

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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Sarah Swanson
General Counsel

Texas State Library and Archives Commission
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For further information, please call: (512) 463-5460

SUBCHAPTER C. GRANT POLICIES

13 TAC §§2.110 - 2.115, 2.120

STATUTORY AUTHORITY. The amendments and new rules are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.0091, Grant Program for Local Libraries, which authorizes the commission to adopt by rule guidelines for awarding grants; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

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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Sarah Swanson

General Counsel

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CHAPTER 2. GENERAL POLICIES AND PROCEDURES

The Texas State Library and Archives Commission (commission) adopts the repeal of §§2.4, Principles; 2.10, Dual Office Holding; 2.58, Use of Technology; 2.54, Bid Procedures and HUB Program; 2.110, Scope of Subchapter; 2.115, Awarding of Grants; 2.116, Texas Grant Management Standards; 2.117, Grant Review and Award Process; 2.118, Decision Making Process; 2.210, Negotiated Grants; 2.211, Resource Sharing--Interlibrary Loan Grants; 2.212, Technical Assistance Grants; 2.213, System Integrated Negotiated Grants; 2.610, Goals and Purposes; 2.611, Eligible Applicants; 2.612, Criteria for Award; 2.810, Goals and Purposes; 2.811, Definitions; 2.812, Eligible Applicants; 2.813, Eligible Expenses; 2.814, Funding Formula; 2.815, Application Review and Awarding Process; 2.910, Goals and Purposes; 2.911, Eligible Applicants; and 2.912, Criteria for Award. The repeals are adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6841). The rules will not be republished.

The repeals were identified as necessary during the commission's recent review of the rules in Chapter 2, General Policies and Procedures, as required by Government Code, §2001.039.

Specifically, the repeal of §2.4, Principles, is appropriate because the rule is outdated and does not implement, interpret, or prescribe law or policy or describe a commission procedure or practice requirement. The repeal of §2.10, Dual Office Holding, is appropriate as this requirement is unnecessary and inappropriate in a commission rule. Dual office holding is prohibited by Texas law, based on the Texas constitutional restriction on holding two civil offices of emolument and common-law incompatibility. The repeal of §2.58, Use of Technology, is appropriate because it does not implement, interpret, or prescribe law or policy or describe a commission procedure or practice requirement.

The repeal of §2.110, Scope of Subchapter, is appropriate because the commission is updating the language for this section. Rather than amend the existing rule, the commission determined it was more efficient to repeal the existing rule and propose a new rule in its place. New §2.110 is published in this same issue of the *Texas Register*.

The repeal of §§2.115, Awarding of Grants; 2.116, Texas Grant Management Standards; 2.117, Grant Review and Award Process; and 2.118, Decision Making Process, is necessary because the commission is reorganizing the rules within Subchapter C (Grant Policies), Division 1 (General Grant Guidelines). The amended and new sections are published in this same issue of the *Texas Register*.

Lastly, the repeal of §§2.210, Negotiated Grants; 2.211, Resource Sharing--Interlibrary Loan Grants; 2.212, Technical Assistance Grants; 2.213, System Integrated Negotiated Grants; 2.610, Goals and Purposes; 2.611, Eligible Applicants; 2.612, Criteria for Award; 2.810, Goals and Purposes; 2.811, Definitions; 2.812, Eligible Applicants; 2.813, Eligible Expenses; 2.814, Funding Formula; 2.815, Application Review and Awarding Process; 2.910, Goals and Purposes; 2.911, Eligible Applicants; and 2.912, Criteria for Award is necessary because each of these sections relate to grant programs the commission no longer administers. Furthermore, the rules are unnecessary, as the commission's general grant rules apply to all of the commission's grant programs and individual rules pertaining to specific grant programs are not necessary, unless required by statute. In this case, none of the specific grant programs described in the repealed sections are required in statute to be adopted by rule.

SUMMARY OF COMMENTS. The commission received comments from one individual on the proposed repeals.

COMMENT. The individual commented that she was surprised to find that §2.4, Principles, was proposed for repeal, noting that the rule appeared to codify upright behavior when discussing access and nondiscrimination. The commenter also noted that aspects of the rule are assurances promised as a requirement of funding from the Library Services Technology Act (LSTA), which, she stated, requires "those things" to be codified through state law. The commenter questioned whether removing the rule would cause problems with funding from the LSTA.

RESPONSE. The commission appreciates the comment. However, as noted in the preamble proposing the repeals, §2.4 does not implement, interpret, or prescribe law or policy or describe a commission procedure or practice requirement. Rather, it restates requirements noted elsewhere in state law, states requirements that are not necessary in agency rule, or describes internal agency management or organization. In addition, the commission provides annual assurances and certifications to the Institute of Museum and Library Services for funding under the LSTA. As such, the commission declines to make a change in response to this comment.

COMMENT. The individual commented that the repeal of §2.10, Dual Office Holding, seemed to be eliminating an important mechanism of enforcement for Article XVI of the Texas Constitution.

RESPONSE. As noted in the preamble proposing the repeals, dual office holding is prohibited by Texas law, based on the Texas constitutional restriction on holding two civil offices of emolument and common-law incompatibility. In some cases, acceptance of a second public office can result in automatic resignation from a person's current public office. Furthermore, any violation of the prohibition on dual office holding would not be a matter of enforcement by the commission but would have to be challenged through a civil action in a district court. As such, the commission declines to make a change in response to this comment.

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.4, 2.10, 2.54, 2.58

STATUTORY AUTHORITY. The repeals are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Government

Code, §441.006, General Powers and Duties, which directs the commission to govern the state library.

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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Sarah Swanson
General Counsel
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SUBCHAPTER C. GRANT POLICIES
DIVISION 1. GENERAL GRANT GUIDELINES
13 TAC §§2.110, 2.115 - 2.118

STATUTORY AUTHORITY. The repeals are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and Government Code, §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

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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Sarah Swanson
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DIVISION 2. NEGOTIATED GRANTS
13 TAC §§2.210 - 2.213

STATUTORY AUTHORITY. The repeals are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and Government Code, §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

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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DIVISION 6. LIBRARY SERVICES AND TECHNOLOGY ACT, GUIDELINES FOR LIBRARY SYSTEMS
13 TAC §§2.610 - 2.612

STATUTORY AUTHORITY. The repeals are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and Government Code, §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

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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DIVISION 8. LOAN STAR LIBRARIES GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES
13 TAC §§2.810 - 2.815

STATUTORY AUTHORITY. The repeals are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code,

§441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and Government Code, §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

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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Sarah Swanson
General Counsel

Texas State Library and Archives Commission

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DIVISION 9. IMPACT GRANTS FOR LIBRARY INNOVATION AND IMPROVEMENT

13 TAC §§2.910 - 2.912

STATUTORY AUTHORITY. The repeals are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and Government Code, §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

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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Sarah Swanson
General Counsel

Texas State Library and Archives Commission

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

22 TAC §111.5

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §111.5, concerning electronic prescribing waivers without changes to the proposal as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7280). The rule will not be republished. The adopted amendment removes the requirement that a dentist must submit a written statement and supporting documentation describing the circumstances necessitating a waiver, and instead requires a dentist to attest to the circumstances necessitating a waiver. This amendment will make it less burdensome on the dentist when submitting a waiver request to the Board, and it will make the Board's waiver process more efficient.

The Texas Dental Association (TDA) provided a written comment in support of adoption of the rule as proposed. No changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 16, 2024.

TRD-202400691

Lauren Studdard
General Counsel

State Board of Dental Examiners

Effective date: March 7, 2024

Proposal publication date: December 15, 2023

For further information, please call: (512) 305-8910



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.8

The State Board of Dental Examiners (Board) adopts this new rule 22 TAC §114.8, concerning the retired status of a dental assistant registration, without changes to the proposal as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7281) and will not be republished. This rule will allow registered dental assistants to apply to the Board to retire their registrations and also to reinstate their retired registrations.

The Texas Dental Association (TDA) provided a written comment in support of adoption of the rule as proposed. No changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules

necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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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Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: March 7, 2024
Proposal publication date: December 15, 2023
For further information, please call: (512) 305-8910



22 TAC §114.13

The State Board of Dental Examiners (Board) adopts this new rule 22 TAC §114.13, concerning the reinstatement of a cancelled registration, without changes to the proposal as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7283) and will not be republished. This rule will allow registered dental assistants to apply to the Board to reinstate a cancelled registration.

The Texas Dental Association (TDA) provided a written comment in support of adoption of the rule as proposed. No changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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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Laren Studdard
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-8910



PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 151. GENERAL ADMINISTRATION

22 TAC §§151.1 - 151.7

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new rules 22 TAC §151.1, Definitions, §151.2, Charges for Copies of Public Information, §151.3, Employee Training and Education, §151.4, Historically Underutilized Businesses Program, §151.5, Bid Opening and Tabulation, §151.6, Negotiation and Mediation of Certain Contract Disputes, and §151.7, Vendor Protest Procedures.

The new rules are adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6847) and will not be republished.

The new rules create a General Administration Chapter for rules of general applicability to TALCB's administration. The changes create a new definitions section in §151.1 for ease of reading and terminology consistent with terms utilized by both the Texas Real Estate Commission and TALCB. In §151.2, the new rule outlines TALCB's approach to fees related to the production of documents in response to public information requests. In §151.3, the new rule addresses the Board's payment of education and training for TALCB employees. Finally, in §151.4, Historically Underutilized Businesses Program; §151.5, Bid Opening and Tabulation; §151.6, Negotiation and Mediation of Certain Contract Disputes; and §151.7, Vendor Protest Procedures, the new rules relate TALCB's contracting and procurement processes.

No comments were received regarding adoption of the new rules.

The new rules are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; §1103.154, which authorizes TALCB to adopt rules relating to professional conduct; and §1103.156 which authorizes TALCB to establish reasonable fees to administer Chapter 1103, Texas Occupations Code; and Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations 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.

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TRD-202400828
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: March 17, 2024
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For further information, please call: (512) 936-3652



CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.12, §153.16

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.12, Criminal History Checks and §153.16, License Reinstatement.

The amendments are adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6849) and will not be republished.

The amendments to §153.12 accurately reflect the process of criminal history checks. The amendments to §153.16 refine the requirements related to the reinstatement of an expired license. Specifically, the amendments remove reexamination as a requirement for reinstatement, clarify that the requirements are consistent with that of the Appraisal Qualifications Board, and specify the circumstances when an applicant must demonstrate experience in compliance with USPAP.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652



CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.110

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.110, AMC National Registry.

The amendments are adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6851) and will not be republished.

The amendments allow for greater flexibility in addressing AMCs that fail to pay the AMC registry fee.

One comment was received, but it did not pertain to the amendments as published.

The amendments are adopted under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations 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.

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.9

The Texas State Board of Pharmacy adopts amendments to §283.9, concerning Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity. These amendments are adopted without changes to the proposed text as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7288). The rule will not be republished.

The amendments clarify how the board calculates the fee for failing to timely submit the initial renewal application and license fee for a license to practice pharmacy and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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 16, 2024.

TRD-202400686

Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: March 7, 2024
Proposal publication date: December 15, 2023
For further information, please call: (512) 305-8033



22 TAC §283.12

The Texas State Board of Pharmacy adopts amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. These amendments are adopted without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7745). The rule will not be republished.

The amendments clarify that the requirements for obtaining an interim license for a military service member or military spouse do not affect rights that may be provided under federal law.

The Board received comments from the Texas Medical Association suggesting the phrase "federal law" be replaced with the more specific phrase "Sec. 705A of the Servicemembers Civil Relief Act (50 U.S.C. § 4025A)." The Board declined to make this change.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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.

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Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8033



CHAPTER 291. PHARMACIES SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74

The Texas State Board of Pharmacy adopts amendments to §291.74, concerning Operational Standards. These amendments are adopted with changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7748). The rule will be republished.

The amendments specify prepackaging and labeling requirements for a participating provider to dispense donated prescription drugs under Chapter 442, Health and Safety Code, in accordance with House Bill 4332.

The Board received comments from George Wang, Ph.D., with SIRUM in support of the amendments and suggesting the addition of an omitted word for consistency with statutory language. The Board agreed and added "written" as an option for the signature of the packer in the recordkeeping requirements to align with the language in §442.0515, Health and Safety Code.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.74. *Operational Standards.*

(a) Licensing requirements.

(1) A Class C pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class C pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class C pharmacy which changes location and/or name shall notify the board of the change as specified in §291.3 of this title.

(4) A Class C pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change following the procedures in §291.3 of this title.

(5) A Class C pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(6) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(7) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(8) A Class C pharmacy, licensed under the Act, §560.051(a)(3), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1) (Community Pharmacy (Class A)) or the Act, §560.051(a)(2) (Nuclear Pharmacy (Class B)), is not required to secure a license for the such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title

(relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class C pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations).

(10) Class C pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy.

(11) A Class C pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) A Class C pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(13) A Class C pharmacy with an ongoing clinical pharmacy program that proposes to allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist shall make application to the board and submit any information specified on the application.

(14) A rural hospital that wishes to allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title (relating to Personnel), shall make application to the board and submit any information specified on the application.

(A) A rural hospital may not allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(B) Every two years, in conjunction with the application for renewal of the pharmacy license, the pharmacist-in-charge shall update the application for pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title and shall attest as required on the application.

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) The institutional pharmacy shall be properly lighted and ventilated.

(E) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of

drugs. The temperature of the refrigerator and/or freezer shall be maintained within a range compatible with the proper storage of drugs.

(F) If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) The institutional pharmacy shall store antiseptics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The institutional pharmacy shall be enclosed and capable of being locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) Equipment and supplies. Institutional pharmacies distributing medication orders shall have the following equipment:

(1) data processing system including a printer or comparable equipment; and

(2) refrigerator and/or freezer and a system or device (e.g., thermometer) to monitor the temperature to ensure that proper storage requirements are met.

(d) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and regulations; and

(D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text;

(3) a current or updated reference on injectable drug products;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal;

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph; and

(v) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph;

(iv) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days; and

(v) The pharmacist shall perform a drug regimen review as specified in subsection (g)(1)(B) of this section as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed seven (7) days; or

(II) If the facility has an average inpatient daily census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours.

(vi) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (B)(v)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable:

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days.

(3) Rural hospitals. In rural hospitals when a pharmacy technician performs the duties listed in §291.73(e)(2)(D) of this title, the following is applicable:

(A) the pharmacy technician shall make a record of all drugs distributed from the pharmacy. The record shall be maintained in the pharmacy for two years and contain the following information:

(i) name of patient or location where floor stock is distributed;

(ii) name of device or drug, strength, and dosage form;

(iii) dose prescribed or ordered;

(iv) quantity distributed;

(v) time and date of the distribution; and

(vi) signature (first initial and last name or full signature) or electronic signature of nurse or practitioner that verified the actions of the pharmacy technician.

(B) The original or direct copy of the medication order may substitute for the record specified in subparagraph (A) of this paragraph, provided the medication order meets all the requirements of subparagraph (A) of this paragraph.

(C) The pharmacist shall:

(i) verify and document the verification of all distributions made from the pharmacy in the absence of a pharmacist as soon as practical, but in no event more than seven (7) days from the time of such distribution;

(ii) perform a drug regimen review for all medication orders as specified in subsection (g)(1)(B) of this section and document such verification including any discrepancies noted by the pharmacist as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review as soon as practical, but in no event more than seven (7) days from the time of such distribution; or

(II) If the facility has an average daily inpatient census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours;

(iii) review any discrepancy noted by the pharmacist with the pharmacy technician(s) and make any change in procedures or processes necessary to prevent future problems; and

(iv) report any adverse events that have a potential for harm to a patient to the appropriate committee of the hospital that reviews adverse events.

(D) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (C)(ii)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(D) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility. For the purpose of this section, a formulary is a compilation of pharmaceuticals that reflects the current clinical judgment of a facility's medical staff.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(C) A practitioner may grant approval for pharmacists at the facility to interchange, in accordance with the facility's formulary, for the prescribed drugs on the practitioner's medication orders provided:

(i) the pharmacy and therapeutics committee has developed a formulary;

(ii) the formulary has been approved by the medical staff committee of the facility;

(iii) there is a reasonable method for the practitioner to override any interchange; and

(iv) the practitioner authorizes pharmacists in the facility to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(3) Prepackaging of drugs.

(A) Distribution within a facility.

(i) Drugs may be prepackaged in quantities suitable for internal distribution by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepackager; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Distribution to other Class C (Institutional) pharmacies under common ownership.

(i) Drugs may be prepackaged in quantities suitable for distribution to other Class C (Institutional) pharmacies under common ownership by a pharmacist or by pharmacy technicians or phar-

macy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

literature;

(III) expiration date based on currently available

than one; and

(IV) quantity of the drug, if the quantity is greater

aging the drug.

(V) name of the facility responsible for prepack-

show:

(iii) Records of prepackaging shall be maintained to

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

prepacker;

(IX) name, initials, or electronic signature of the

responsible pharmacist; and

(X) name, initials, or electronic signature of the

aged drug.

(XI) name of the facility receiving the prepack-

records shall be quarantined together until checked/released by the pharmacist.

(iv) Stock packages, prepackaged units, and control

pharmacist.

the recall of any drug prepackaged for another Class C pharmacy under common ownership. The recall procedures shall require:

(I) notification to the pharmacy to which the prepackaged drug was distributed;

(II) quarantine of the product if there is a suspicion of harm to a patient;

(III) a mandatory recall if there is confirmed or probable harm to a patient; and

(IV) notification to the board if a mandatory recall is instituted.

(4) Sterile preparations prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location, if not immediately administered;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (2)(C) of this subsection.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Pharmacy technicians and pharmacy technician trainees may not receive oral medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) pharmaceutical care services;

drugs and waste;

(II) handling, storage and disposal of cytotoxic

(III) disposal of unusable drugs and supplies;

(IV) security;

(V) equipment;

(VI) sanitation;

(VII) reference materials;

(VIII) drug selection and procurement;

(IX) drug storage;

(X) controlled substances;

ing of protocols from the principal investigator;

(XII) prepackaging and manufacturing;

(XIII) stop orders;

drug reactions/events, and drug product defects;

(XV) physician orders;

(XVI) floor stocks;

(XVII) drugs brought into the facility;

(XVIII) furlough medications;

(XIX) self-administration;

(XX) emergency drug supply;

- (XXI) formulary;
- (XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;
- (XXIII) control of drug samples;
- (XXIV) outdated and other unusable drugs;
- (XXV) routine distribution of patient medication;
- (XXVI) preparation and distribution of sterile preparations;
- (XXVII) handling of medication orders when a pharmacist is not on duty;
- (XXVIII) use of automated compounding or counting devices;
- (XXIX) use of data processing and direct imaging systems;
- (XXX) drug administration to include infusion devices and drug delivery systems;
- (XXXI) drug labeling;
- (XXXII) recordkeeping;
- (XXXIII) quality assurance/quality control;
- (XXXIV) duties and education and training of professional and nonprofessional staff;
- (XXXV) procedures for a pharmacy technician to verify the accuracy of work performed by another pharmacy technician, if applicable;
- (XXXVI) operation of the pharmacy when a pharmacist is not on-site; and
- (XXXVII) emergency preparedness plan, to include continuity of patient therapy and public safety.

(6) Discharge Prescriptions. Discharge prescriptions must be dispensed and labeled in accordance with §291.33 of this title (relating to Operational Standards) except that certain medications packaged in unit-of-use containers, such as metered-dose inhalers, insulin pens, topical creams or ointments, or ophthalmic or otic preparation that are administered to the patient during the time the patient was a patient in the hospital, may be provided to the patient upon discharge provided the pharmacy receives a discharge order and the product bears a label containing the following information:

- (A) name of the patient;
- (B) name and strength of the medication;
- (C) name of the prescribing or attending practitioner;
- (D) directions for use;
- (E) duration of therapy (if applicable); and
- (F) name and telephone number of the pharmacy.

(7) Redistribution of Donated Prepackaged Prescription Drugs.

(A) A participating provider may dispense to a recipient donated prescription drugs that are prepackaged and labeled in accordance with §442.0515, Health and Safety Code, and this paragraph.

(B) Drugs may be prepackaged in quantities suitable for distribution to a recipient only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

nicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(C) The label of a prepackaged prescription drug a participating provider dispenses to a recipient shall indicate:

- (i) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;
- (ii) participating provider's lot number;
- (iii) participating provider's beyond use date; and
- (iv) quantity of the drug, if the quantity is greater than one.

(D) Records of prepackaged prescription drugs dispensed to a recipient shall be maintained to show:

- (i) name of the drug, strength, and dosage form;
- (ii) participating provider's lot number;
- (iii) manufacturer or distributor;
- (iv) manufacturer's lot number;
- (v) manufacturer's expiration date;
- (vi) quantity per prepackaged unit;
- (vii) number of prepackaged units;
- (viii) date packaged;
- (ix) name, initials, or written or electronic signature of the packager; and
- (x) written or electronic signature of the responsible pharmacist.

(E) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(g) Pharmaceutical care services.

(1) The pharmacist-in-charge shall assure that at least the following pharmaceutical care services are provided to patients of the facility:

(A) Drug utilization review. A systematic ongoing process of drug utilization review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(B) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate medication orders and patient medication records for:

- (I) known allergies;
- (II) rational therapy--contraindications;
- (III) reasonable dose and route of administration;
- (IV) reasonable directions for use;
- (V) duplication of therapy;
- (VI) drug-drug interactions;
- (VII) drug-food interactions;
- (VIII) drug-disease interactions;

(IX) adverse drug reactions;
(X) proper utilization, including overutilization or underutilization; and

(XI) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(ii) The drug regimen review shall be conducted on a prospective basis when a pharmacist is on duty, except for an emergency order, and on a retrospective basis as specified in subsection (e)(1) or (e)(3) of this section when a pharmacist is not on duty.

(iii) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(iv) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(C) Education. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies that assure that:

(i) the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use; and

(ii) health care providers are provided with patient specific drug information.

(D) Patient monitoring. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies to ensure that the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider.

(2) Other pharmaceutical care services which may be provided by pharmacists in the facility include, but are not limited to, the following:

(A) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(B) administering immunizations and vaccinations under written protocol of a physician;

(C) managing patient compliance programs;

(D) providing preventative health care services; and

(E) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(h) Emergency rooms.

(1) During the times a pharmacist is on duty in the facility any prescription drugs supplied to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty in the facility, the following is applicable for supplying prescription drugs to be taken home by the patient for self-administration from the emergency room. If the patient has been admitted to the emergency room and assessed by a practitioner at the hospital, the following procedures shall be observed in supplying prescription drugs from the emergency room.

(A) Dangerous drugs and/or controlled substances may only be supplied in accordance with the system of control and accountability for dangerous drugs and/or controlled substances administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(B) Only dangerous drugs and/or controlled substances listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs and/or controlled substances of the nature and type to meet the immediate needs of emergency room patients.

(C) Dangerous drugs and/or controlled substances may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately pre-labeled (including necessary auxiliary labels) by the institutional pharmacy.

(D) At the time of delivery of the dangerous drugs and/or controlled substances, the practitioner or licensed nurse under the supervision of a practitioner shall appropriately complete the label with at least the following information:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(vii) quantity supplied; and

(viii) unique identification number.

(E) The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient and explain the correct use of the drug.

(F) A perpetual record of dangerous drugs and/or controlled substances supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(v) quantity supplied; and

(vi) unique identification number.

(G) The pharmacist-in-charge, or staff pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(i) Radiology departments.

(1) During the times a pharmacist is on duty, any prescription drugs dispensed to an outpatient, including radiology department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty, the following procedures shall be observed in supplying prescription drugs from the radiology department.

(A) Prescription drugs may only be supplied to patients who have been scheduled for an x-ray examination at the facility.

(B) Prescription drugs may only be supplied in accordance with the system of control and accountability for prescription drugs administered or supplied from the radiology department and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only prescription drugs listed on the radiology drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's radiology committee (or like group or persons responsible for policy in that department) and shall consist of drugs for the preparation of a patient for a radiological procedure.

(D) Prescription drugs may only be supplied in prepackaged quantities in suitable containers and prelabeled by the institutional pharmacy with the following information:

- (i) name and address of the facility;
- (ii) directions for use;
- (iii) name and strength of the prescription drug--if generic name, the name of the manufacturer or distributor of the prescription drug;
- (iv) quantity;
- (v) facility's lot number and expiration date; and
- (vi) appropriate ancillary label(s).

(E) At the time of delivery of the prescription drug, the practitioner or practitioner's agent shall complete the label with the following information:

- (i) date supplied;
- (ii) name of physician;
- (iii) name of patient; and
- (iv) unique identification number.

(F) The practitioner or practitioner's agent shall give the appropriately labeled, prepackaged prescription drug to the patient.

(G) A perpetual record of prescription drugs supplied from the radiology department shall be maintained in the radiology department. Such records shall include the following:

- (i) date supplied;
- (ii) practitioner's name;
- (iii) patient's name;
- (iv) brand name and strength of the prescription drug; or if no brand name, then the generic name, strength, dosage form, and the name of the manufacturer or distributor of the prescription drug;
- (v) quantity supplied; and
- (vi) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(j) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading unlabeled drugs into an automated compounding or counting device shall be maintained to show:

- (i) name of the drug, strength, and dosage form;
- (ii) manufacturer or distributor;
- (iii) manufacturer's lot number;
- (iv) expiration date;
- (v) date of loading;
- (vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and
- (vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated medication supply systems.

(A) Authority to use automated medication supply systems. A pharmacy may use an automated medication supply system to fill medication orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated medication supply system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated medication supply system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated medication supply system to fill medication orders shall operate according to a written program for quality assurance of the automated medication supply system which:

(i) requires continuous monitoring of the automated medication supply system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every

six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated medication supply system is used to store or distribute medications for administration pursuant to medication orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated medication supply system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review and approval of each original or new medication order prior to withdrawal from the automated medication supply system:

(-a-) before the order is filled when a pharmacist is on duty except for an emergency order;

(-b-) retrospectively within 72 hours in a facility with a full-time pharmacist when a pharmacist is not on duty at the time the order is made; or

(-c-) retrospectively within 7 days in a facility with a part-time or consultant pharmacist when a pharmacist is not on duty at the time the order is made;

(III) provide for access to the automated medication supply system for stocking and retrieval of medications which is limited to licensed healthcare professionals, pharmacy technicians, or pharmacy technician trainees acting under the supervision of a pharmacist;

(IV) provide that a pharmacist is responsible for the accuracy of the restocking of the system. The actual restocking may be performed by a pharmacy technician or pharmacy technician trainee;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated medication supply system;

(VI) require a prospective or retrospective drug regimen review is conducted as specified in subsection (g) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated medication supply system.

(ii) A pharmacy which uses an automated medication supply system to fill medication orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may restock an automated medication supply system located outside of the pharmacy department with prescription drugs provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system except as specified in §291.73(e)(2)(C)(ii) of this title; or

(ii) all of the following occur:

(I) the prescription drugs to restock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(II) either:

(-a-) the drugs are in tamper evident product packaging, packaged by an FDA registered repackager or manufacturer, that is shipped to the pharmacy; or

(-b-) if any manipulation of the product occurs in the pharmacy prior to restocking, such as repackaging or extemporaneous compounding, the product must be checked by a pharmacist; and

(III) quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) Recovery Plan. A pharmacy which uses an automated medication supply system to store or distribute medications for administration pursuant to medication orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated medication supply system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated medication supply system is experiencing downtime;

(ii) procedures for response when an automated medication supply system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board and other appropriate agencies whenever an automated medication supply system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Verification of medication orders prepared by the pharmacy department through the use of an automated medication supply system. A pharmacist must check drugs prepared pursuant to medication orders to ensure that the drug is prepared for distribution accurately as prescribed. This paragraph does not apply to automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department.

(A) This check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed preparation of the medication order and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated medication supply system contains unlabeled stock drugs, a pharmacist verifies that those drugs have been accurately stocked; and

(II) a pharmacist checks the accuracy of the data entry of each original or new medication order entered into the automated medication supply system before the order is filled.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The medication order preparation process must be fully automated from the time the pharmacist releases the medica-

tion order to the automated system until a completed medication order, ready for delivery to the patient, is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated medication supply system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated medication supply system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after a drug is prepared for distribution but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) The final check of a drug prepared pursuant to a medication order shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new medication order.

(ii) the medication order is prepared, labeled, and made ready for delivery to the patient in compliance with Class C (Institutional) pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the medication order has been prepared safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

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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Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8033



CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.10

The Texas State Board of Pharmacy adopts amendments to §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. These amendments are adopted without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7757). The rule will not be republished.

The amendments clarify that the requirements for obtaining an interim registration for a military service member or military spouse do not affect rights that may be provided under federal law.

The Board received comments from the Texas Medical Association suggesting the phrase "federal law" be replaced with the more specific phrase "Sec. 705A of the Servicemembers Civil Relief Act (50 U.S.C. § 4025A)." The Board declined to make this change.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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.

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CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.9

The Texas State Board of Pharmacy adopts amendments to §315.9, concerning Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016. These amendments are adopted without changes to the proposed text as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7289). The rule will not be republished.

The amendments clarify that the requirements for dispensing a Schedule II controlled substance prescription issued by a practitioner in another state apply to an electronic prescription and remove the effective date from the short title.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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.

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 338. DISASTER RULE FLEXIBILITIES FOR LOCAL INTELLECTUAL

AND DEVELOPMENTAL DISABILITY AUTHORITIES (LIDDAs)

26 TAC §338.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §338.1, concerning Disaster Rule Flexibilities for Local Intellectual and Developmental Disability Authorities (LIDDAs). The new §338.1 is adopted with changes to the proposed text as published in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7123). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rule is to allow LIDDAs to use certain flexibilities to rules when providing services during a declared disaster under Texas Government Code §418.014. LIDDAs provide essential services to individuals with intellectual or developmental disabilities (IDD). This vulnerable population relies on LIDDA staff to assist them in securing the services they need, achieving their desired outcomes and best quality of life. Disaster rule flexibilities for LIDDAs ensure that when a disaster declaration is in effect, HHSC may issue timely guidance and authorize flexibilities for LIDDAs to provide services.

The new rule allows HHSC to notify LIDDAs of certain flexibilities immediately upon a disaster declaration to prevent interruption of service delivery. These flexibilities include allowing service coordination to be delivered via audio-only or audio-visual communication to ensure continuity of services, as well as extending some timeframes for LIDDAs. In addition, the rule requires that LIDDAs follow HHSC guidance related to the rules, comply with all applicable requirements related to security and privacy of information, and notify persons impacted by the flexibilities, if applicable.

COMMENTS

The 31-day comment period ended on January 8, 2024.

During this period, HHSC received no comments regarding the proposed rule.

HHSC made minor editorial changes to correct a cross-reference to another rule in §338.1(c)(2)(B) and add "synchronous" to the definitions of "audio-only" and "audio-visual" to align the definitions with the Medicaid State Plan amendment.

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program; and Texas Health & Safety Code §533A.0355(a), which provides that the Executive Commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

§338.1. Disaster Flexibilities.

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

(1) Audio-only--A synchronous, interactive, two-way audio communication that uses only sound and that meets the privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication. Audio-only does not include face-to-face communication.

(2) Audio-visual--A synchronous, interactive, two-way audio and video communication that conforms to privacy requirements under the Health Insurance Portability and Accountability Act. Audio-visual does not include audio-only or in-person communication.

(3) Face-to-face--In-person or audio-visual communication that meets the requirements of the Health Insurance Portability and Accountability Act. Face-to-face does not include audio-only communication.

(4) In-person (or in person)--Within the physical presence of another person. In-person or in person does not include audio-visual or audio-only communication.

(b) The Texas Health and Human Services Commission (HHSC) may allow local intellectual and developmental disability authorities (LIDDAs) to use the flexibilities described in subsection (c) of this section while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. HHSC will notify LIDDAs when a flexibility is permitted and the date the flexibility must no longer be used, which may be before the declaration of a state of disaster expires.

(c) Subject to the notification by HHSC, the following flexibilities may be available to LIDDAs to the extent the flexibility is permitted by and does not conflict with other laws or obligations of the LIDDA and is allowed by federal and state law.

(1) Service coordination required to be provided in person under 26 TAC §331.11(d) of this title (relating to LIDDA's Responsibilities) may be provided using audio-visual or audio-only communication.

(2) HHSC may extend the timeframes for LIDDAs in the following rules:

(A) the timeframe to request an administrative hearing in 40 TAC §4.156 (relating to Request for an Administrative Hearing);

(B) the timeframe for a person and legally authorized representative (LAR) to request a review of a decision to deny or terminate services in 26 TAC §301.155(e)(3) (relating to Notification and Appeals Process);

(C) the timeframe for a person or the person's parent to comply with the applicable accountability requirement in 40 TAC §2.105(f)(1) (relating to Accountability) in order for the LIDDA to retroactively adjust the person's account; and

(D) the timeframe for a person or parent to submit a request to review a LIDDA's appeal decision to HHSC in 40 TAC §2.109(e)(3) (relating to Payments, Collections, and Non-payment).

(d) LIDDAs that use one or more of the flexibilities allowed under subsection (c) of this section must comply with:

(1) all policy guidance applicable to the rules identified in subsection (c) of this section issued by HHSC Community Services Division during the declaration of disaster that is published by HHSC on its LIDDA website or in another communication format HHSC determines appropriate; and

(2) all policy guidance applicable to the rules identified in subsection (c) of this section issued by HHSC Medicaid and CHIP Services.

(e) LIDDAs must ensure audio-only or audio-visual communication complies with all applicable requirements related to security and privacy of information.

(f) LIDDAs must notify the person, the LAR, or the person's parent if the person is younger than 18 years of age, of the extension of timeframes permitted under subsection (c)(2) of this section that apply to the person receiving services.

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

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Karen Ray

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CHAPTER 556. NURSE AIDES

26 TAC §§556.2, 556.3, 556.5, 556.8

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments §556.2, concerning Definitions; §556.3, concerning NATCEP Requirements; §556.5, concerning Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements; and §556.8, concerning Withdrawal of Approval of a NATCEP.

The amendments to §§556.2, 556.3, 556.5, and 556.8 are adopted without changes to the proposed text as published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6332). These rules will be not republished.

BACKGROUND AND JUSTIFICATION

The amended rules stipulate that Nurse Aide Competency Evaluation Programs (NATCEPs) must accept 60 hours of classroom training through HHSC's computer-based training (CBT) for nurse aide candidates seeking to qualify for the Certified Nurse Aide (CNA) exam. The amendments update definitions and references associated with the nurse aide CBT training and clarify related requirements. The amended rules also revise language regarding credentials for NATCEP directors and instructors, making them more consistent with federal requirements. Specifically, the Code of Federal Regulations (CFR) does not differentiate between the credentials required by the NATCEP program director versus the program instructor. It states that the program must train nurse aides under the general supervision of a registered nurse with at least two years of nursing experience, at least one of which must be in providing long term care services. The amended rules remove specific credentialing requirements for NATCEP directors and instructors and replace them with language allowing either or both to meet the federal requirements outlined in the CFR.

COMMENTS

The 31-day comment period ended November 27, 2023. During this period, HHSC received eight comments regarding the

proposed rules from eight commenters: a nursing facility administrator, several NATCEP directors, and a NATCEP consultant.

HHSC received eight general comments on the proposed rule amendments. These comments were not related to a specific rule but rather to the overall amendments.

Comment: Six commenters conveyed a misunderstanding that the CBT would constitute the nurse aide training in full, and that after finishing it, trainees would go into the workforce and begin caring for clients independently.

Response: No rule changes are necessary. The CBT is intended to provide an optional method for nurse aide trainees to complete only the classroom portion of the training. Trainees will still be required to complete the clinical portion of the training, under supervision, as specified by Texas Administrative Code (TAC), Title 26 §556.3(n)(2), and to take and pass the CNA certification exam as specified by 26 TAC §556.6. NATCEPs may continue to provide in-person classroom training. HHSC's CBT is simply an additional option for the classroom component of the preparation for the CNA exam.

Comment: One commenter registered concern that the CBT could negatively impact NATCEPs that cannot offer a virtual classroom or online instruction.

Response: No rule changes are necessary. NATCEPs do not need to offer a virtual classroom. Trainees are not required to complete the CBT in a NATCEP classroom. HHSC will host the CBT on the agency website and trainees can complete the training in any setting.

Comment: Five commenters expressed concern that the CBT will not include direct skills training with residents.

Response: HHSC declines to make changes to the rules in response to these comments. Instruction in direct skills is provided by NATCEPs in the clinical portion of the training.

Comment: Six commenters conveyed concern that the online training would be lower in quality than in-person instruction and could result in a range of unfavorable outcomes, such as lower motivation to learn, less retention of training material in trainees, and reduced graduation rates for NATCEPs.

Response: HHSC declines to make changes to the rules in response to these comments. HHSC is creating the CBT to ensure the curriculum meets regulatory standards. Trainees will be able to choose between CBT training and traditional classroom training based on their own preferred learning styles and methods of motivation. Moreover, the rules already allow NATCEPs to use online training instead of, or in addition to, in-person training.

Comment: Six commenters expressed concern about the financial impact statement of the rule proposal's preamble. They stated that NATCEPs will face a reduction in business revenue due to HHSC's provision of CBT and requirement that NATCEPs accept completion of it as completion of the classroom portion of the nurse aide training.

Response: HHSC recognizes these concerns but declines to make changes to the rules in response to the comments. HHSC does not regulate how private businesses structure their business model or fees. Additionally, some NATCEPs—including those operated by nursing facilities under a Medicaid contract and public high schools—do not charge any fees for the training provided. NATCEPs may choose to operationalize their businesses as they deem appropriate and may make changes to

their business practices including any fees associated with the services provided.

Comment: One commenter proposed that HHSC create a NATCEP taskforce.

Response: No changes to the rules are necessary. HHSC has a nurse aide workgroup that provides input on policy and rule and will continue to work with its members.

Comment: One commenter offered to create the CBT.

Response: No changes to the rules are necessary. HHSC is developing the CBT internally as the regulating agency that sets the standards for the curriculum and will release it to the public when it becomes available and the rules regarding it go into effect.

Comment: One commenter stated that the CBT is an excellent idea to keep up with national regulations and remain up to date with technology that will also streamline the process and help to educate more CNAs.

Response: No changes to the rules are necessary. HHSC appreciates this feedback and acknowledges the benefits of the CBT highlighted therein.

Comment: Five commenters asked how they would be able to verify authenticity of the CBT completion certificates from HHSC. One commenter requested that HHSC consider adding a feature to the Texas Unified Licensure Information Portal (TULIP) to allow a NATCEP director to confirm a trainee's CBT completion.

Response: No changes to the rules are necessary. HHSC will issue guidance about determining the authenticity of CBT certificates. CBT scores will be retained in a learning management system for trainees, not in TULIP.

Comment: One commenter asked if the CBT would be mandatory.

Response: No changes to the rules are necessary. A NATCEP is not required to use the CBT--only to accept the results of those applicants who do choose to use it. NATCEPs may still utilize the classroom training for trainees who opt for that instead of the CBT.

Comment: One commenter asked what benefits would be conferred by offering the option of CBT without a change to pay or promotional education.

Response: No changes to the rules are necessary. The benefits are to provide more flexibility and a free option for part of the training, at the trainee's own pace.

Comment: One commenter asked who would develop the CBT and what the passing standards for it would be.

Response: No changes to the rules are necessary. HHSC is developing the CBT and is not changing the passing standards for the written portion of the training.

Comment: One commenter requested clarification regarding credentialing requirements for a NATCEP instructor and program director.

Response: No changes to the rules are necessary. These requirements are delineated at §556.5(a) - (d).

Comment: One commenter asked how long the CBT would be valid for.

Response: No changes to the rules are necessary. As required in §556.3(n), the NATCEP must ensure that the trainee completes the classroom portion of the training within the preceding 12 months.

Comment: Four commenters suggested indicating in the rules who nurse aide trainees should contact for technical assistance with the CBT.

Response: The rulemaking process does not encompass including information on technical assistance in the rules. HHSC will publish resources for troubleshooting technical issues.

Comment: One commenter had a concern regarding amended §556.3(n), stating that holding NATCEPs responsible for ensuring that trainees complete 60 hours of classroom training in CBT appears to be unfair, as the NATCEP would not provide this.

Response: HHSC declines to make changes to the rule in response to this comment. The NATCEP is responsible for determining that a trainee has completed the CBT by obtaining and retaining the trainee's certificate of CBT completion.

Comment: Four commenters requested that HHSC include in amended §556.3(n) that a NATCEP may, at its discretion, require a nurse aide trainee to demonstrate competency in the classroom portion of the training.

Response: HHSC declines to make this change. If trainees complete the CBT and provide the NATCEP their certificate of CBT completion, this demonstrates their competency in the training's classroom portion.

Comment: Four commenters requested an addition to amended §556.3(n) to state that if trainees request to be re-trained in the didactic portion, fail competency assessment, or fail the written exam, then the NATCEP may re-train them at a cost decided by the NATCEP.

Response: HHSC declines to make this change to the rule. The rule does not prohibit a nurse aide trainee from requesting re-training that is not CBT. If a trainee requests re-training from the NATCEP, this is a business decision between the trainee and the NATCEP.

Comment: Regarding amended §556.3(n)(1)(B), four commenters asked HHSC to consider requiring the nurse aide trainee to engage or select a NATCEP for the clinical portion of the training upon enrollment in the CBT, to ensure that the NATCEP follows up with the trainee.

Response: No changes to the rule are necessary. HHSC will issue guidance, including a recommendation that trainees select and contact a NATCEP for the clinical training upon starting the CBT.

Comment: Four commenters advocated adding to amended §556.3(n)(2) that a portion of the 40 hours of clinical training include skills training must be in a laboratory or classroom setting, such as the NATCEP itself.

Response: HHSC declines to make this change. HHSC allows the use of laboratory settings in clinical training in certain circumstances, as described in §556.3(e). The NATCEP may structure its program as it deems appropriate, within the parameters described in Chapter 556. The rules do not prohibit using a variety of training methods.

Comment: One commenter proposed that HHSC include a statement in §556.3(n)(2) that a NATCEP may charge for the clinical portion of the training.

Response: HHSC does not require NATCEPs to charge any fees and declines to change the rule in response to this comment. HHSC does not regulate how private businesses structure their business model or fees. Additionally, some NATCEPs—including those operated by nursing facilities under a Medicaid contract and public high schools—do not charge any fees for the training provided. NATCEPs may choose to operationalize their businesses as they deem appropriate and may make changes to their business practices including any fees associated with the services provided.

Comment: One commenter expressed concern regarding proposed §556.3(q), asserting that requiring a NATCEP to accept trainees who have completed the CBT is not allowing the NATCEP to determine who it admits to its program. The commenter asked that HHSC remove this language.

Response: HHSC declines to make this change. If trainees pass the CBT and opt to complete their clinical training at a NATCEP, the NATCEP cannot deny admitting them because they made use of the CBT option.

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 Health and Safety Code §250.0035(d), which stipulates that the Executive Commissioner of HHSC shall adopt rules necessary to implement §250.0035, related the issuance and renewal of certificates of registration and the regulation of nurse aides as necessary to protect the public health and safety.

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 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amended 28 TAC §§133.10, 133.20, 133.200, and 133.502, concerning billing and reimbursement for certain workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and maximum

medical improvement (MMI) evaluations and impairment rating (IR) examinations by treating and referred doctors. The amendments implement Texas Labor Code Chapters 408 and 413, which govern workers' compensation benefits, including medical examinations required to establish benefit entitlements, and medical review to ensure compliance with DWC rules for health care, including medical policies and fee guidelines. The DWC medical advisor recommended the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b). The amendments to §§133.10, 133.20, and 133.502 are adopted with three changes to the proposed text published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8153). The changes clarify the effective dates in §§133.10(l), 133.20(o), and 133.502(g). These rules will be republished. Section 133.200 is adopted without changes and will not be republished.

REASONED JUSTIFICATION. Amending §§133.10, 133.20, 133.200, and 133.502 is necessary to attract and retain designated doctors, required medical examination doctors, and doctors that perform MMI evaluations and IR examinations by addressing billing and reimbursement issues, reducing disputes, and decreasing the administrative burden of participating in the program. Labor Code Chapter 408 entitles an employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. Specifically, the employee is entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. To help determine the health care that meets those standards, the designated doctor program established under Chapter 408 provides for commissioner-ordered medical examinations to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. Maintaining a viable program that ensures that injured employees can access examinations in a timely way is essential to meeting the statutory mandate of providing health care for injured employees.

Having too few doctors in the program has a negative impact on the doctors that remain in the system, on injured employees, and on insurance carriers. When there are too few doctors able to conduct the examinations needed to determine benefit levels, injured employees must often wait longer and travel farther to attend an examination, which can delay dispute resolution and other essential processes. DWC last adjusted reimbursement rates for workers' compensation-specific services in January 2008 (33 TexReg 364). Over the past 14 years, DWC has experienced a decline in the numbers of doctors providing workers' compensation-specific services. This decline has been particularly pronounced among designated doctors certified under Labor Code §408.1225 and providing designated doctor examinations as Labor Code §408.0041 requires, and especially among licensed medical doctors and doctors of osteopathy. In December 2022, for the entire state of Texas, there were only 63 available medical doctors, 10 doctors of osteopathic medicine, 177 doctors of chiropractic, and no doctors of podiatry, dental science, or optometry. Yet in that month, there were 1,259 designated doctor appointments for those 250 designated doctors to cover.

DWC held stakeholder meetings in March, September, and December 2022 to discuss issues with declining participation in the

designated doctor program, including issues with billing logistics and reimbursement rates. DWC invited public comments on three separate informal drafts posted on DWC's website in August 2022, November 2022, and June 2023. In addition, DWC conducted a stakeholder survey to gather information about anticipated implementation costs and benefits in September 2023. DWC considered the comments it received at the meetings and on the informal drafts when drafting the proposal. DWC also considered comments it received in a public hearing on the proposal on January 23, 2024, as well as written comments it received by the January 29, 2024, deadline, when drafting this adoption order.

In April 2023, after gathering data about the program and soliciting input from system participants about how to maintain and increase participation in the designated doctor program and allow better access to specialized examinations, DWC adopted amendments to Chapter 127 of this title, concerning designated doctor procedures and requirements, and §180.23 of this title, concerning division-required training for doctors. Those rules addressed certification, training, and procedures for designated doctors and were required to address administrative and logistical inefficiencies, and to improve access to examinations, to make participation in the program possible and attractive for more doctors. They were one part of the project to ensure the designated doctor program's viability, in compliance with the Labor Code. After their adoption, DWC saw a near-immediate increase in the numbers of doctors applying to the program, which was very encouraging.

However, the common theme throughout the input-gathering process about how to improve the program was billing and reimbursement for certain workers' compensation-specific services, especially designated doctor examinations. Nearly every comment DWC received mentioned some combination of issues about the fees for designated doctor examinations--that they were insufficient, had not been adjusted for inflation or other economic factors in over a decade, did not take into account missed appointments or the time spent reviewing injured employees' medical records, and other similar issues. In adopting the amendments to Chapter 127 and §180.23, DWC stated that billing and reimbursement issues would be addressed in a separate rule project. As a result, the changes in this rule proposal are another part of the project and are necessary to account for past and future inflation, examination complexity, and other economic factors that affect participation in the designated doctor program.

The amendments to §§133.10, 133.20, 133.200, and 133.502 require an assignment number in the prior authorization field of the medical billing forms to identify designated doctor-associated billing. DWC expects the format of the assignment number to be 12345678DD01. The numbers on the left would be the DWC claim number. The "DD" would denote a designated doctor-associated examination. The numbers on the right would indicate whether it is the first, second, third, and so forth, ordered examination for the claim. The DWC-provided assignment number is for identification purposes and does not create a preauthorization or utilization review requirement. The current rules do not provide a billing mechanism to distinguish designated doctor examinations or any additional testing or referral evaluations that result from a designated doctor examination. This produces confusion and delays in payment. For example, under Labor Code §408.1225, insurance carriers must pay for designated doctor examinations, and §127.10(c) of this title requires a designated doctor to perform additional testing and refer an injured

employee to other health care providers when necessary to resolve the issue in question. Any required additional testing or referral is not subject to preauthorization requirements and cannot be denied retrospectively based on medical necessity, extent of injury, or compensability. However, if the insurance carrier cannot easily see that an examination is a designated doctor examination or a referral from a designated doctor examination, processing the bill could be unnecessarily delayed, which creates additional work and expense. Requiring an assignment number in the preauthorization field addresses this problem by linking the designated doctor examination and any additional testing or referral evaluations to the DWC-provided assignment number that distinguishes them as designated doctor examinations.

In addition, the amendments clarify that the 95-day period for timely submission of a designated doctor examination bill, where the designated doctor has referred the injured employee for additional testing or evaluation, begins on the date of service for the additional testing or evaluation. This ensures that any delays in scheduling or performing the additional testing or evaluation do not penalize the designated doctor by making compliance with the billing timeline impossible, which could make the bill unpayable. It gives the designated doctor time to complete the examination report.

The amendments also correct a typographical error in a rule reference and include nonsubstantive editorial and formatting changes throughout that make updates for plain language and agency style to improve the rule's clarity.

Section 133.10. The amendments to §133.10 require an assignment number in the prior authorization field of the 1500 Health Insurance Claim Form Version 02/12 (CMS-1500), Uniform Bill 04 (UB-04), Statement of Pharmacy Services (DWC Form-066), and 2006 American Dental Association Dental Claim Form (ADA 2006) for DWC-ordered designated doctor examinations, and for additional testing or evaluation that a designated doctor refers. They also clarify the dates that apply to the additional testing or evaluation. Amending §133.10 is necessary to better identify that a bill is for a designated doctor examination, and to help associate a bill for additional testing or evaluation that occurs as a result of a designated doctor examination with the original designated doctor examination. These amendments will help insurance carriers and bill review agents identify these types of bills and associate them with the proper examination types, and they will increase the likelihood that the bills will be paid without unnecessary administrative delay.

Section 133.20. The amendments to §133.20 clarify that the 95-day period for timely submission of a bill for additional testing or evaluation under §127.10 of this title begins on the date of service of the additional testing or evaluation. They also require a designated doctor that refers an injured employee for additional testing or evaluation to provide the assignment number to the health care provider performing the testing or evaluation, and they require a designated doctor or a health care provider performing additional testing or evaluation to include the assignment number on the medical bill to conform with amended §133.10. Amending §133.20 is necessary to ensure consistency in billing deadlines, to allow the designated doctor time to complete the designated doctor report after receiving the results from the additional testing or evaluation, and to prevent the designated doctor from being penalized unfairly if scheduling or performing the additional testing or evaluation takes more than a few weeks.

Section 133.200. The amendments to §133.200 correct an incorrect reference to §133.10. Amending §133.200 is necessary to ensure the reference's accuracy.

Section 133.502. The amendments to §133.502 apply the requirement to include the assignment number in the prior authorization field in §133.10 and §133.20 to professional, institutional or hospital, dental, and pharmacy electronic medical bills. Amending §133.502 is necessary to ensure consistency in billing between paper and electronic formats, and to allow DWC to better identify designated doctor and designated doctor referral billing in the DWC database of medical charges.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received 30 written comments by the January 29, 2024, deadline, and three oral comments at the January 23, 2024, hearing. Because DWC published the Chapter 133 proposal and the Chapter 134 proposal at the same time and discussed both proposals in the hearing, some commenters submitted comments specifically on both proposals, while others acknowledged both proposals but only commented specifically on one. Twenty-two individuals acknowledged both proposals in their comments but did not specifically state a position on the Chapter 133 proposal. Commenters specifically in support of the Chapter 133 proposal were: the Office of Injured Employee Counsel; the Texas Chiropractic Association; the Insurance Council of Texas; Texas Independent Evaluators, LLC; and three individuals. Commenters specifically in support of the Chapter 133 proposal with changes were: Texas Mutual Insurance Company. No commenters were against the Chapter 133 proposal.

Comments on Chapter 133. Seven commenters stated that they supported the proposal. One commenter expressed support and appreciation for DWC's efforts to provide free training for insurance carriers and health care providers on the new billing requirements and reimbursement rates.

Agency Response to Comments on Chapter 133. DWC appreciates the comments.

Comments on Chapter 133 (assignment number). One commenter stated that the assignment number was for clarity purposes. One commenter stated that they support and appreciate DWC's clarification on the format for designated doctor order numbers, which will allow insurance carriers to distinguish a designated doctor order number in the preauthorization field of a medical bill from a preauthorization number.

Agency Response to Comments on Chapter 133. DWC appreciates the comments and agrees.

Comment on §133.20 (95-day period). One commenter asked DWC to clarify the start of the 95-day period for timely submission of a designated doctor exam bill.

Agency Response to Comment on §133.20 (95-day period). DWC appreciates the comment. Under §133.10, when a designated doctor refers an injured employee for additional testing or evaluation, the "From" date is the date of the designated doctor examination, and the "To" date is the date of service of the additional testing or evaluation. Under §133.20, the 95-day period for timely submission of a bill for additional testing or evaluation begins on the date of service of the additional testing or evaluation (the "To" date in the dates of service field in the CMS-1500/field 24A).

Comment on Chapter 133 (effective dates). One commenter recommended that references to effective dates throughout Chapter 133 be changed to say "effective for services provided on or after (insert final effective date)" to correspond with the applicability date references in §134.209(b) of this title.

Agency Response to Comment on Chapter 133 (effective dates). DWC appreciates the comment and has added to the text in §§133.10(l), 133.20(o), and 133.502(g) to clarify the effective dates for medical bills submitted as a result of an examination that was ordered or referred as the result of an order issued on or after the effective date of the rule.

Comment on §133.10 (health care provider type). One commenter recommended that DWC add a health care provider type "AP" for advanced practice registered nurse to the list of provider types in §133.10(i).

Agency Response to Comment on §133.10 (health care provider type). DWC appreciates the suggestion but declines to make the change because it is out of scope for this rule. If DWC later initiates a rule project to review all of the health care provider types in §133.10, DWC will consider recommendations for additions or deletions at that time.

Comment on §133.10 and §133.502 (pharmacy). One commenter recommended that DWC remove any new billing guidance for additional designated doctor-ordered testing or evaluation services on pharmacy bills. The commenter requested, alternatively, that DWC provide clarification regarding how an insurance carrier would treat such a bill received from a pharmacy.

Agency Response to Comment on §133.10 and §133.502 (pharmacy). DWC appreciates the suggestion but declines to make the change. It is conceivable that a pharmacy provider could need to complete and bill for designated doctor-ordered testing or evaluation services, and omitting pharmacy providers from the billing guidance could inadvertently create confusion in that situation. An insurance carrier would handle the bill through its normal billing process. DWC will address general questions about the normal billing process through training.

Comment on §133.20 (reference to §126.9). One commenter recommended that DWC revise §133.20(l) to include a reference to §126.9 of this title as an additional condition under which a health care provider may bill an injured employee.

Agency Response to Comment on §133.20 (reference to §126.9). DWC appreciates the suggestion but declines to make the change because it is out of scope for this rule. If DWC later initiates a rule project to review the conditions under which a health care provider may bill an injured employee, DWC will consider recommendations for additions or deletions at that time.

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.10, §133.20

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to §133.10 and §133.20 under Labor Code §§408.004, 408.0041, 408.021, 408.023, 408.0251, 408.0252, 408.1225, 413.007, 413.011, 413.012, 413.015, 413.0511, 413.053, 402.00111, 402.00116, and 402.061.

Labor Code §408.004 provides that the commissioner may require an employee to submit to medical examinations to resolve

any question about the appropriateness of the health care the employee receives, or at the request of the insurance carrier after the insurance carrier has tried and failed to get the employee's permission and concurrence for the examination. It also requires the insurance carrier to pay for those examinations, as well as the reasonable expenses incident to the employee in submitting to them.

Labor Code §408.0041 provides that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues.

Labor Code §408.021 entitles an employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.0251 requires the commissioner of workers' compensation, in cooperation with the commissioner of insurance, to adopt rules about the electronic submission and processing of medical bills by health care providers to insurance carriers and establish exceptions. It also requires insurance carriers to accept electronically submitted medical bills in accordance with the rules, and it allows the commissioner of workers' compensation to adopt rules about the electronic payment of medical bills by insurance carriers to health care providers.

Labor Code §408.0252 provides that the commissioner of workers' compensation may, by rule, identify areas of this state in which access to health care providers is less available, and adopt appropriate standards, guidelines, and rules about the delivery of health care in those areas.

Labor Code §408.1225 requires the commissioner of workers' compensation to develop a process for certifying designated doctors, which requires DWC to evaluate designated doctors' educational experience, previous training, and demonstrated ability to perform the specific designated doctor duties in §408.0041. It also requires standard training and testing for designated doctors.

Labor Code §413.007 requires DWC to maintain a statewide database of medical charges, actual payments, and treatment protocols that may be used by the commissioner in adopting the medical policies and fee guidelines, and by DWC in administering the medical policies, fee guidelines, or rules. The database must contain information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols, and must be able to be used in a meaningful way to allow DWC to control medical costs.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as needed to meet occupational injury requirements. It requires the commissioner to adopt the most current methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services (CMS), including applicable payment policies relating to coding, billing, and reporting; and allows the commissioner to modify documentation requirements as needed to meet the requirements of §413.053. It also requires the commissioner, in determining the appropriate fees, to develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of §413.011(d); and requires the commissioner to provide for reasonable fees for the evaluation and management of care as required by §408.025(c) and commissioner rules. The commissioner may not adopt the Medicare fee schedule or conversion factors or other payment adjustment factors based solely on those factors as developed by the federal CMS. Fee guidelines must be fair and reasonable, and designed to ensure the quality of medical care and achieve medical cost control. They may not provide for payment of a fee that exceeds the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. When establishing the fee guidelines, §413.011 requires the commissioner to consider the increased security of payment that Subtitle A, Title 5, Labor Code affords. It allows network contracts under Insurance Code §1305.006. It specifically authorizes the commissioner and the commissioner of insurance to adopt rules as necessary to implement §413.011.

Labor Code §413.012 requires the medical policies and fee guidelines to be reviewed and revised at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable and necessary at the time the review and revision is conducted.

Labor Code §413.015 requires insurance carriers to pay appropriate charges for medical services under Subtitle A, Title 5, Labor Code, and requires the commissioner by rule to review and audit those payments to ensure compliance with the adopted medical policies and fee guidelines. The insurance carrier must pay the expenses of the review and audit.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about IRs; reviewing compliance with those guidelines; regulating or performing other acts related to medical benefits as required by the commissioner; and determining minimal modifications to the reimbursement methodology and model used by the Medicare system as needed to meet occupational injury requirements.

Labor Code §413.053 requires the commissioner by rule to establish standards of reporting and billing governing both form and content.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§133.10. Required Billing Forms/Formats.

(a) Health care providers, including those providing services for a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 or to political subdivisions with contractual relationships under Labor Code §504.053(b)(2), must submit medical bills for payment in an electronic format in accordance with §133.500 and §133.501 of this title (relating to Electronic Formats for Electronic Medical Bill Processing and Electronic Medical Bill Processing), unless the health care provider or the billed insurance carrier is exempt from the electronic billing process in accordance with §133.501 of this title.

(b) Except as provided in subsection (a) of this section, health care providers, including those providing services for a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 or to political subdivisions with contractual relationships under Labor Code §504.053(b)(2), must submit paper medical bills for payment on:

(1) the 1500 Health Insurance Claim Form Version 02/12 (CMS-1500);

(2) the Uniform Bill 04 (UB-04); or

(3) applicable forms prescribed for pharmacists, dentists, and surgical implant providers specified in subsections (c), (d), and (e) of this section.

(c) Pharmacists and pharmacy processing agents must submit bills using the division form DWC-066. A pharmacist or pharmacy processing agent may submit bills using an alternate billing form if:

(1) the insurance carrier has approved the alternate billing form prior to submission by the pharmacist or pharmacy processing agent; and

(2) the alternate billing form provides all information required on the division form DWC-066.

(d) Dentists must submit bills for dental services using the 2006 American Dental Association (ADA) Dental Claim form.

(e) Surgical implant providers requesting separate reimbursement for implantable devices must submit bills using:

(1) the form prescribed in subsection (b)(1) of this section when the implantable device reimbursement is sought under §134.402 of this title (relating to Ambulatory Surgical Center Fee Guideline); or

(2) the form prescribed in subsection (b)(2) of this section when the implantable device reimbursement is sought under §134.403 or §134.404 of this title (relating to Hospital Facility Fee Guideline--Outpatient and Hospital Facility Fee Guideline--Inpatient).

(f) All information submitted on required paper billing forms must be legible and completed in accordance with this section. The parenthetical information following each term in this section refers to the applicable paper medical billing form and the field number corresponding to the medical billing form.

(1) The following data content or data elements are required for a complete professional or noninstitutional medical bill related to Texas workers' compensation health care:

- (A) patient's Social Security number (CMS-1500/field 1a) is required;
- (B) patient's name (CMS-1500/field 2) is required;
- (C) patient's date of birth and gender (CMS-1500/field 3) is required;
- (D) employer's name (CMS-1500/field 4) is required;
- (E) patient's address (CMS-1500/field 5) is required;
- (F) patient's relationship to subscriber (CMS-1500, field 6) is required;
- (G) employer's address (CMS-1500, field 7) is required;
- (H) workers' compensation claim number assigned by the insurance carrier (CMS-1500/field 11) is required when known; the billing provider must leave the field blank if the workers' compensation claim number is not known by the billing provider;
- (I) date of injury and "431" qualifier (CMS-1500, field 14) are required;
- (J) name of referring provider or other source is required when another health care provider referred the patient for the services; no qualifier indicating the role of the provider is required (CMS-1500, field 17);
- (K) referring provider's state license number (CMS-1500/field 17a) is required when there is a referring doctor listed in CMS-1500/field 17; the billing provider must enter the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX');
- (L) referring provider's National Provider Identifier (NPI) number (CMS-1500/field 17b) is required when CMS-1500/field 17 contains the name of a health care provider eligible to receive an NPI number;
- (M) diagnosis or nature of injury (CMS-1500/field 21) is required; at least one diagnosis code and the applicable ICD indicator must be present;
- (N) prior authorization number (CMS-1500/field 23) is required in the following situations:
- (i) Preauthorization, concurrent review, or voluntary certification was approved, and the insurance carrier provided an approval number to the requesting health care provider. Include the approval number in the prior authorization field (CMS-1500/field 23).
- (ii) The division ordered a designated doctor examination and provided an assignment number. Include the assignment number in the prior authorization field (CMS-1500/field 23).
- (iii) The designated doctor referred the injured employee for additional testing or evaluation, and the division provided an assignment number. Include the assignment number in the prior authorization field (CMS-1500/field 23).
- (O) date or dates of service (CMS-1500, field 24A) is required;
- (i) If the designated doctor referred the injured employee for additional testing or evaluation, the "From" date is the date of the designated doctor examination, and the "To" date is the date of service of the additional testing or evaluation.
- (ii) If the designated doctor did not refer the injured employee for additional testing or evaluation, the "From" and "To" dates are the date of the designated doctor examination.
- (P) place of service code or codes (CMS-1500, field 24B) is required;
- (Q) procedure/modifier code (CMS-1500, field 24D) is required;
- (R) diagnosis pointer (CMS-1500, field 24E) is required;
- (S) charges for each listed service (CMS-1500, field 24F) is required;
- (T) number of days or units (CMS-1500, field 24G) is required;
- (U) rendering provider's state license number (CMS-1500/field 24j, shaded portion) is required when the rendering provider is not the billing provider listed in CMS-1500/field 33; the billing provider must enter the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX');
- (V) rendering provider's NPI number (CMS-1500/field 24j, unshaded portion) is required when the rendering provider is not the billing provider listed in CMS-1500/field 33 and the rendering provider is eligible for an NPI number;
- (W) supplemental information (shaded portion of CMS-1500/fields 24d - 24h) is required when the provider is requesting separate reimbursement for surgically implanted devices or when additional information is necessary to adjudicate payment for the related service line;
- (X) billing provider's federal tax ID number (CMS-1500/field 25) is required;
- (Y) total charge (CMS-1500/field 28) is required;
- (Z) signature of physician or supplier, the degrees or credentials, and the date (CMS-1500/field 31) is required, but the signature may be represented with a notation that the signature is on file and the typed name of the physician or supplier;
- (AA) service facility location information (CMS-1500/field 32) is required;
- (BB) service facility NPI number (CMS-1500/field 32a) is required when the facility is eligible for an NPI number;
- (CC) billing provider name, address, and telephone number (CMS-1500/field 33) is required;
- (DD) billing provider's NPI number (CMS-1500/Field 33a) is required when the billing provider is eligible for an NPI number; and
- (EE) billing provider's state license number (CMS-1500/field 33b) is required when the billing provider has a state license number; the billing provider must enter the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX').
- (2) The following data content or data elements are required for a complete institutional medical bill related to Texas workers' compensation health care:
- (A) billing provider's name, address, and telephone number (UB-04/field 01) is required;
- (B) patient control number (UB-04/field 03a) is required;
- (C) type of bill (UB-04/field 04) is required;

(D) billing provider's federal tax ID number (UB-04/field 05) is required;

(E) statement covers period (UB-04/field 06) is required;

(F) patient's name (UB-04/field 08) is required;

(G) patient's address (UB-04/field 09) is required;

(H) patient's date of birth (UB-04/field 10) is required;

(I) patient's gender (UB-04/field 11) is required;

(J) date of admission (UB-04/field 12) is required when billing for inpatient services;

(K) admission hour (UB-04/field 13) is required when billing for inpatient services other than skilled nursing inpatient services;

(L) priority (type) of admission or visit (UB-04/field 14) is required;

(M) point of origin for admission or visit (UB-04/field 15) is required;

(N) discharge hour (UB-04/field 16) is required when billing for inpatient services with a frequency code of "1" or "4" other than skilled nursing inpatient services;

(O) patient discharge status (UB-04/field 17) is required;

(P) condition codes (UB-04/fields 18 - 28) are required when there is a condition code that applies to the medical bill;

(Q) occurrence codes and dates (UB-04/fields 31 - 34) are required when there is an occurrence code that applies to the medical bill;

(R) occurrence span codes and dates (UB-04/fields 35 and 36) are required when there is an occurrence span code that applies to the medical bill;

(S) value codes and amounts (UB-04/fields 39 - 41) are required when there is a value code that applies to the medical bill;

(T) revenue codes (UB-04/field 42) are required;

(U) revenue description (UB-04/field 43) is required;

(V) HCPCS/Rates (UB-04/field 44):

(i) HCPCS codes are required when billing for outpatient services and an appropriate HCPCS code exists for the service line item; and

(ii) accommodation rates are required when a room and board revenue code is reported;

(W) service date (UB-04/field 45) is required when billing for outpatient services;

(X) service units (UB-04/field 46) is required;

(Y) total charge (UB-04/field 47) is required;

(Z) date bill submitted, page numbers, and total charges (UB-04/field 45/line 23) is required;

(AA) insurance carrier name (UB-04/field 50) is required;

(BB) billing provider NPI number (UB-04/field 56) is required when the billing provider is eligible to receive an NPI number;

(CC) billing provider's state license number (UB-04/field 57) is required when the billing provider has a state license number; the billing provider must enter the license number and jurisdiction code (for example, '123TX');

(DD) employer's name (UB-04/field 58) is required;

(EE) patient's relationship to subscriber (UB-04/field 59) is required;

(FF) patient's Social Security number (UB-04/field 60) is required;

(GG) workers' compensation claim number assigned by the insurance carrier (UB-04/field 62) is required when known, the billing provider must leave the field blank if the workers' compensation claim number is not known by the billing provider;

(HH) preauthorization number (UB-04/field 63) is required when:

(i) preauthorization, concurrent review, or voluntary certification was approved, and the insurance carrier provided an approval number to the health care provider; or

(ii) a designated doctor referred the injured employee for additional testing or evaluation, and the division provided an assignment number to the designated doctor.

(II) principal diagnosis code and present on admission indicator (UB-04/field 67) are required;

(JJ) other diagnosis codes (UB-04/field 67A - 67Q) are required when these conditions exist or subsequently develop during the patient's treatment;

(KK) admitting diagnosis code (UB-04/field 69) is required when the medical bill involves an inpatient admission;

(LL) patient's reason for visit (UB-04/field 70) is required when submitting an outpatient medical bill for an unscheduled outpatient visit;

(MM) principal procedure code and date (UB-04/field 74) is required when submitting an inpatient medical bill and a procedure was performed;

(NN) other procedure codes and dates (UB-04/fields 74A - 74E) are required when submitting an inpatient medical bill and other procedures were performed;

(OO) attending provider's name and identifiers (UB-04/field 76) are required for any services other than nonscheduled transportation services, the billing provider must report the NPI number for an attending provider eligible for an NPI number and the state license number by entering the 'OB' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX');

(PP) operating physician's name and identifiers (UB-04/field 77) are required when a surgical procedure code is included on the medical bill; the billing provider must report the NPI number for an operating physician eligible for an NPI number and the state license number by entering the 'OB' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX'); and

(QQ) remarks (UB-04/field 80) is required when separate reimbursement for surgically implanted devices is requested.

(3) The following data content or data elements are required for a complete pharmacy medical bill related to Texas workers' compensation health care:

- (A) dispensing pharmacy's name and address (DWC-066/field 1) is required;
- (B) date of billing (DWC-066/field 2) is required;
- (C) dispensing pharmacy's National Provider Identification (NPI) number (DWC-066/field 3) is required;
- (D) billing pharmacy's or pharmacy processing agent's name and address (DWC-066/field 4) is required when different from the dispensing pharmacy (DWC-066/field 1);
- (E) invoice number (DWC-066/field 5) is required;
- (F) payee's federal employer identification number (DWC-066/field 6) is required;
- (G) insurance carrier's name (DWC-066/field 7) is required;
- (H) employer's name and address (DWC-066/field 8) is required;
- (I) injured employee's name and address (DWC-066/field 9) is required;
- (J) injured employee's Social Security number (DWC-066/field 10) is required;
- (K) date of injury (DWC-066/field 11) is required;
- (L) injured employee's date of birth (DWC-066/field 12) is required;
- (M) prescribing doctor's name and address (DWC-066/field 13) is required;
- (N) prescribing doctor's NPI number (DWC-066/field 14) is required;
- (O) workers' compensation claim number assigned by the insurance carrier (DWC-066/field 15) is required when known; the billing provider must leave the field blank if the workers' compensation claim number is not known by the billing provider;
- (P) dispensed as written code (DWC-066/field 19) is required;
- (Q) date filled (DWC-066/field 20) is required;
- (R) generic National Drug Code (NDC) code (DWC-066/field 21) is required when a generic drug was dispensed or if dispensed as written code '2' is reported in DWC-066/field 19;
- (S) name brand NDC code (DWC-066/field 22) is required when a name brand drug is dispensed;
- (T) quantity (DWC-066/field 23) is required;
- (U) days supply (DWC-066/field 24) is required;
- (V) amount paid by the injured employee (DWC-066/field 26) is required if applicable;
- (W) drug name and strength (DWC-066/field 27) is required;
- (X) prescription number (DWC-066/field 28) is required;
- (Y) amount billed (DWC-066/field 29) is required;
- (Z) preauthorization number (DWC-066/field 30) is required when:

(i) preauthorization, voluntary certification, or an agreement was approved, and the insurance carrier provided an approval number to the requesting health care provider; or

(ii) a designated doctor referred the injured employee for additional testing or evaluation, and the division provided an assignment number to the designated doctor.

(AA) for billing of compound drugs, refer to the requirements in §134.502 of this title (relating to Pharmaceutical Services).

(4) The following data content or data elements are required for a complete dental medical bill related to Texas workers' compensation health care:

(A) type of transaction (ADA 2006 Dental Claim Form/field 1);

(B) preauthorization number (ADA 2006 Dental Claim Form/field 2) is required when:

(i) preauthorization, concurrent review, or voluntary certification was approved, and the insurance carrier provided an approval number to the health care provider; or

(ii) a designated doctor referred the injured employee for additional testing or evaluation, and the division provided an assignment number to the designated doctor.

(C) insurance carrier name and address (ADA 2006 Dental Claim Form/field 3) is required;

(D) employer's name and address (ADA 2006 Dental Claim Form/field 12) is required;

(E) workers' compensation claim number assigned by the insurance carrier (ADA 2006 Dental Claim Form/field 15) is required when known; the billing provider must leave the field blank if the workers' compensation claim number is not known by the billing provider;

(F) patient's name and address (ADA 2006 Dental Claim Form/field 20) is required;

(G) patient's date of birth (ADA 2006 Dental Claim Form/field 21) is required;

(H) patient's gender (ADA 2006 Dental Claim Form/field 22) is required;

(I) patient's Social Security number (ADA 2006 Dental Claim Form/field 23) is required;

(J) procedure date (ADA 2006 Dental Claim Form/field 24) is required;

(K) tooth number or numbers or letter or letters (ADA 2006 Dental Claim Form/field 27) is required;

(L) procedure code (ADA 2006 Dental Claim Form/field 29) is required;

(M) fee (ADA 2006 Dental Claim Form/field 31) is required;

(N) total fee (ADA 2006 Dental Claim Form/field 33) is required;

(O) place of treatment (ADA 2006 Dental Claim Form/field 38) is required;

(P) treatment resulting from (ADA 2006 Dental Claim Form/field 45) is required; the provider must check the box for occupational illness/injury;

(Q) date of injury (ADA 2006 Dental Claim Form/field 46) is required;

(R) billing provider's name and address (ADA 2006 Dental Claim Form/field 48) is required;

(S) billing provider's NPI number (ADA 2006 Dental Claim Form/field 49) is required if the billing provider is eligible for an NPI number;

(T) billing provider's state license number (ADA 2006 Dental Claim Form/field 50) is required when the billing provider is a licensed health care provider; the billing provider must enter the license type, license number, and jurisdiction code (for example, 'DS1234TX');

(U) billing provider's federal tax ID number (ADA 2006 Dental Claim Form/field 51) is required;

(V) rendering dentist's NPI number (ADA 2006 Dental Claim Form/field 54) is required when different than the billing provider's NPI number (ADA 2006 Dental Claim Form/field 49) and the rendering dentist is eligible for an NPI number;

(W) rendering dentist's state license number (ADA 2006 Dental Claim Form/field 55) is required when different than the billing provider's state license number (ADA 2006 Dental Claim Form/field 50); the billing provider must enter the license type, license number, and jurisdiction code (for example, 'MDF1234TX'); and

(X) rendering provider's and treatment location address (ADA 2006 Dental Claim Form/field 56) is required when different from the billing provider's address (ADA Dental Claim Form/field 48).

(g) If the injured employee does not have a Social Security number as required in subsection (f) of this section, the health care provider must leave the field blank.

(h) Except for facility state license numbers, state license numbers submitted under subsection (f) of this section must be in the following format: license type, license number, and jurisdiction state code (for example 'MDF1234TX').

(i) In reporting the state license number under subsection (f) of this section, health care providers should select the license type that most appropriately reflects the type of medical services they provided to the injured employees. When a health care provider does not have a state license number, the field is submitted with only the license type and jurisdiction code (for example, DMTX). The license types used in the state license format must be one of the following:

- (1) AC for Acupuncturist;
- (2) AM for Ambulance Services;
- (3) AS for Ambulatory Surgery Center;
- (4) AU for Audiologist;
- (5) CN for Clinical Nurse Specialist;
- (6) CP for Clinical Psychologist;
- (7) CR for Certified Registered Nurse Anesthetist;
- (8) CS for Clinical Social Worker;
- (9) DC for Doctor of Chiropractic;
- (10) DM for Durable Medical Equipment Supplier;
- (11) DO for Doctor of Osteopathy;
- (12) DP for Doctor of Podiatric Medicine;
- (13) DS for Dentist;

- (14) IL for Independent Laboratory;
- (15) LP for Licensed Professional Counselor;
- (16) LS for Licensed Surgical Assistant;
- (17) MD for Doctor of Medicine;
- (18) MS for Licensed Master Social Worker;
- (19) MT for Massage Therapist;
- (20) NF for Nurse First Assistant;
- (21) OD for Doctor of Optometry;
- (22) OP for Orthotist/Prosthetist;
- (23) OT for Occupational Therapist;
- (24) PA for Physician Assistant;
- (25) PM for Pain Management Clinic;
- (26) PS for Psychologist;
- (27) PT for Physical Therapist;
- (28) RA for Radiology Facility; or
- (29) RN for Registered Nurse.

(j) When resubmitting a medical bill under subsection (f) of this section, a resubmission condition code may be reported. In reporting a resubmission condition code, the following definitions apply to the resubmission condition codes established by the Uniform National Billing Committee:

(1) W3 - Level 1 Appeal means a request for reconsideration under §133.250 of this title (relating to Reconsideration for Payment of Medical Bills) or an appeal of an adverse determination under Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage);

(2) W4 - Level 2 Appeal means a request for reimbursement as a result of a decision issued by the division, an independent review organization, or a network complaint process; and

(3) W5 - Level 3 Appeal means a request for reimbursement as a result of a decision issued by an administrative law judge or judicial review.

(k) The inclusion of the appropriate resubmission condition code and the original reference number is sufficient to identify a resubmitted medical bill as a request for reconsideration under §133.250 of this title or an appeal of an adverse determination under Chapter 19, Subchapter U of this title provided the resubmitted medical bill complies with the other requirements contained in the appropriate section.

(l) Effective Date.

(1) This section is effective for medical bills submitted on or after June 1, 2024.

(2) For medical bills submitted as a result of an examination that was ordered or referred as the result of an order issued on or after June 1, 2024, the provisions of subsection (f) of this section are effective on and after June 1, 2024.

§133.20. *Medical Bill Submission by Health Care Provider.*

(a) The health care provider must submit all medical bills to the insurance carrier except when billing the employer in accordance with subsection (j) of this section.

(b) Except as provided in Labor Code §408.0272(b), (c), or (d), a health care provider must not submit a medical bill later than the 95th day after the date the services are provided.

(1) If a designated doctor refers an injured employee for additional testing or evaluation under §127.10 of this title, the 95-day period for timely submission of the bill begins on the date of service of the additional testing or evaluation.

(2) In accordance with subsection (c) of the statute, the health care provider must submit the medical bill to the correct workers' compensation insurance carrier no later than the 95th day after the date the health care provider is notified of the health care provider's erroneous submission of the medical bill.

(3) A health care provider who submits a medical bill to the correct workers' compensation insurance carrier must include a copy of the original medical bill submitted, a copy of the explanation of benefits (EOB) if available, and sufficient documentation to support why one or more of the exceptions for untimely submission of a medical bill under §408.0272 should be applied. The medical bill submitted by the health care provider to the correct workers' compensation insurance carrier is subject to the billing, review, and dispute processes established by Chapter 133, including §133.307(c)(2)(A) - (H) of this title (relating to MDR of Fee Disputes), which establishes the generally acceptable standards for documentation.

(c) A health care provider must include correct billing codes from the applicable division fee guidelines in effect on the date or dates of service when submitting medical bills.

(d) The health care provider that provided the health care must submit its own bill, unless:

(1) the health care was provided as part of a return-to-work rehabilitation program in accordance with the division fee guidelines in effect for the dates of service;

(2) the health care was provided by an unlicensed individual under the direct supervision of a licensed health care provider, in which case the supervising health care provider must submit the bill;

(3) the health care provider contracts with an agent for purposes of medical bill processing, in which case the health care provider agent may submit the bill; or

(4) the health care provider is a pharmacy that has contracted with a pharmacy processing agent for purposes of medical bill processing, in which case the pharmacy processing agent may submit the bill.

(e) A medical bill must be submitted:

(1) for an amount that does not exceed the health care provider's usual and customary charge for the health care provided in accordance with Labor Code §§413.011 and 415.005; and

(2) in the name of the licensed health care provider that provided the health care or that provided direct supervision of an unlicensed individual who provided the health care.

(f) Health care providers must not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an EOB except in accordance with §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills).

(g) Health care providers may correct and resubmit as a new bill an incomplete bill that has been returned by the insurance carrier.

(h) Not later than the 15th day after receipt of a request for additional medical documentation, a health care provider must submit to the insurance carrier:

(1) any requested additional medical documentation related to the charges for health care rendered; or

(2) a notice the health care provider does not possess requested medical documentation.

(i) The health care provider must indicate on the medical bill if documentation is submitted related to the medical bill.

(j) The health care provider may elect to bill the injured employee's employer if the employer has indicated a willingness to pay the medical bill or bills. Such billing is subject to the following:

(1) A health care provider who elects to submit medical bills to an employer waives, for the duration of the election period, the rights to:

(A) prompt payment, as provided by Labor Code §408.027;

(B) interest for delayed payment as provided by Labor Code §413.019; and

(C) medical dispute resolution as provided by Labor Code §413.031.

(2) When a health care provider bills the employer, the health care provider must submit an information copy of the bill to the insurance carrier, which clearly indicates that the information copy is not a request for payment from the insurance carrier.

(3) When a health care provider bills the employer, the health care provider must bill in accordance with the division's fee guidelines and §133.10 of this chapter (relating to Required Billing Forms/Formats).

(4) A health care provider must not submit a medical bill to an employer for charges an insurance carrier has reduced, denied, or disputed.

(k) A health care provider must not submit a medical bill to an injured employee for all or part of the charge for any of the health care provided, except as an informational copy clearly indicated on the bill, or in accordance with subsection (l) of this section. The information copy must not request payment.

(l) The health care provider may only submit a bill for payment to the injured employee in accordance with:

(1) Labor Code §413.042;

(2) Insurance Code §1305.451; or

(3) §134.504 of this title (relating to Pharmaceutical Expenses Incurred by the Injured Employee).

(m) A designated doctor must include the assignment number on the medical bill in accordance with §133.10 of this title (relating to Required Billing Forms/Formats).

(n) A designated doctor who refers the injured employee for additional testing or evaluation under §127.10 must provide the assignment number to the health care provider performing the testing or evaluation. The health care provider performing the testing or evaluation must include the assignment number on the medical bill in accordance with §133.10.

(o) This section is effective for medical bills submitted on or after June 1, 2024, including medical bills submitted as a result of an

examination that was ordered or referred as the result of an order issued on or after June 1, 2024.

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) 804-4703



SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

28 TAC §133.200

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to §133.200 under Labor Code §§413.053, 402.00111, 402.00116, and 402.061.

Labor Code §413.053 requires the commissioner by rule to establish standards of reporting and billing governing both form and content.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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SUBCHAPTER G. ELECTRONIC MEDICAL BILLING, REIMBURSEMENT, AND DOCUMENTATION

28 TAC §133.502

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to §133.502 under Labor Code §§408.0251, 413.053, 402.00111, 402.00116, and 402.061.

Labor Code §408.0251 requires the commissioner of workers' compensation, in cooperation with the commissioner of insurance, to adopt rules about the electronic submission and processing of medical bills by health care providers to insurance carriers and establish exceptions. It also requires insurance carriers to accept electronically submitted medical bills in accordance with the rules, and it allows the commissioner of workers' compensation to adopt rules about the electronic payment of medical bills by insurance carriers to health care providers.

Labor Code §413.053 requires the commissioner by rule to establish standards of reporting and billing governing both form and content.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§133.502. Electronic Medical Billing Supplemental Data Requirements.

(a) In addition to the data requirements and standards adopted under §133.500(a) of this title (relating to Electronic Formats for Electronic Medical Bill Processing), all professional, institutional or hospital, and dental electronic medical bills submitted before January 1, 2012, must contain:

- (1) the telephone number of the submitter;
- (2) the workers' compensation claim number assigned by the insurance carrier or, if that number is not known by the health care provider, a default value of "UNKNOWN";
- (3) the injured employee's Social Security number as the subscriber member identification number;
- (4) the injured employee's date of injury;
- (5) the rendering health care provider's state provider license number;
- (6) the referring health care provider's state provider license number;
- (7) the billing provider's state provider license number, if the billing provider has a state provider license number;
- (8) the attending physician's state medical license number, when applicable;
- (9) the operating physician's state medical license number, when applicable;

(10) the claim supplemental information, when electronic documentation is submitted with an electronic medical bill; and

(11) the resubmission condition code, when the electronic medical bill is a duplicate, request for reconsideration, or other resubmission.

(b) In reporting the injured employee Social Security number and the state license numbers under subsection (a) of this section, health care providers must follow the data content and format requirements contained in §133.10 of this title (relating to Required Billing Forms/Formats).

(c) In addition to the data requirements contained in the standards adopted under §133.500(c) of this title, all professional, institutional or hospital, and dental electronic medical bills submitted on or after January 1, 2012, must contain:

(1) the telephone number of the submitter;

(2) the workers' compensation claim number assigned by the insurance carrier or, if that number is not known by the health care provider, a default value of "UNKNOWN";

(3) the injured employee's date of injury;

(4) the claim supplemental information, when electronic documentation is submitted with an electronic medical bill;

(5) the resubmission condition code, when the electronic medical bill is a duplicate, request for reconsideration, or other resubmission; and

(6) for a designated doctor and a health care provider performing a test or evaluation as a result of a designated doctor's referral, the assignment number in the prior authorization field.

(d) In addition to the data requirements contained in the standards adopted under §133.500 of this title, all pharmacy electronic medical bills must contain:

(1) the dispensing pharmacy's National Provider Identification number;

(2) the prescribing doctor's National Provider Identification number; and

(3) for a health care provider performing a test or evaluation as a result of a designated doctor's referral, the assignment number in the prior authorization field.

(e) In reporting the resubmission condition code under this section, the resubmission condition codes must have the definitions specified in §133.10(j) of this title.

(f) This section does not apply to paper medical bills submitted for payment under §133.10(b) of this title.

(g) This section is effective for medical bills submitted on or after June 1, 2024, including medical bills submitted as a result of an examination that was ordered or referred as the result of an order issued on or after June 1, 2024.

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 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts the repeal of 28 TAC §§134.235, 134.239, and 134.240; and new and amended 28 TAC §§134.209, 134.210, 134.235, 134.239, 134.240, 134.250, and 134.260, concerning medical fee guidelines for certain workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and maximum medical improvement (MMI) evaluations and impairment rating (IR) examinations by treating and referred doctors. The sections implement Texas Labor Code Chapters 408 and 413, which govern workers' compensation benefits, including medical examinations required to establish benefit entitlements, and medical review to ensure compliance with DWC rules for health care, including medical policies and fee guidelines. The DWC medical advisor recommended the changes to the commissioner of workers' compensation under Labor Code §413.0511(b). The repealed, new and amended sections are adopted without changes to the proposed text published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8165). The rules will not be republished.

REASONED JUSTIFICATION. The changes in the new and amended sections adjust the billing methodology and reimbursement rates for certain workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and MMI evaluations and IR examinations by treating and referred doctors. They adjust the fees once by applying the Medicare Economic Index (MEI) percentage adjustment factor for the period 2009 - 2024, and then after the initial adjustment, adjust the fees annually on January 1 by applying the MEI percentage adjustment factor in §134.203(c)(2), which is how most other professional fees are adjusted annually in the system. They round the fees to whole dollars to simplify calculations and reduce errors. They eliminate unnecessary billing modifiers, eliminate a required sequence for modifiers, and replace the diagnosis-related estimate and range of motion billing methods with a single method of billing. They also create a \$100 missed appointment fee and a \$300 specialist fee. In addition, they eliminate tiering. For designated doctors and required medical examination doctors, all issues addressed within one examination will be paid at the established fee and not reduced.

The changes include restructuring and reorganization to move the requirements for each type of examination into a section that is specific to that type of examination, which will help to reduce the need for system participants to look in multiple different rules to find out what their obligations are. To that end, the changes repeal and replace: §134.235 to address billing and reimbursement for required medical examinations, §134.239 to clarify that the requirements for billing for work status reports align across the ordered examinations, and §134.240 to address

billing and reimbursement for designated doctor examinations. The changes amend and restructure §134.250, concerning MMI and IR examinations by treating doctors, to conform with the other sections; and add new §134.260, concerning MMI and IR examinations by referred doctors, to clarify the specific provisions that apply to examinations that are conducted by authorized doctors as a result of a referral from a treating doctor under §130.1 of this title, concerning certification of MMI and evaluation of permanent impairment.

The changes are necessary to attract and retain doctors that perform certain workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and MMI evaluations and IR examinations by treating and referred doctors, by addressing billing and reimbursement issues, reducing disputes, and by decreasing the administrative burden of participating in the program. Labor Code Chapter 408 entitles an employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. Specifically, the employee is entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. To help determine the health care that meets those standards, the treating doctor manages and coordinates the injured employee's health care for the compensable injury, including referring the employee to a doctor authorized to determine MMI and to assign IRs when needed. The designated doctor program established under Chapter 408 provides for commissioner-ordered medical examinations to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. Maintaining a viable program that ensures that injured employees can access examinations in a timely way is essential to meeting the statutory mandate of providing health care for injured employees.

Having too few doctors in the program has a negative impact on the doctors that remain in the system, injured employees, and insurance carriers. When there are too few doctors able to conduct the examinations needed to determine benefit levels, injured employees must often wait longer and travel farther to attend an examination, which can delay dispute resolution and other essential processes. DWC last adjusted reimbursement rates for workers' compensation-specific services in January 2008 (33 TexReg 364). Over the past 14 years, DWC has experienced a decline in the numbers of doctors providing workers' compensation-specific services. This decline has been particularly pronounced among designated doctors certified under Labor Code §408.1225 and providing designated doctor examinations as Labor Code §408.0041 requires, and especially among licensed medical doctors and doctors of osteopathy. In December 2022, for the entire state of Texas, there were only 63 available medical doctors, 10 doctors of osteopathic medicine, 177 doctors of chiropractic, and no doctors of podiatry, dental science, or optometry. Yet in that month, there were 1,259 designated doctor appointments for those 250 designated doctors to cover.

DWC held stakeholder meetings in March, September, and December 2022 to discuss issues with declining participation in the designated doctor program, including issues with billing logistics and reimbursement rates. DWC invited public comments on three separate informal drafts posted on DWC's website in August 2022, November 2022, and June 2023. In addition, DWC

conducted a stakeholder survey to gather information about anticipated implementation costs and benefits in September 2023. DWC considered the comments it received at the meetings and on the informal drafts when drafting the proposal. DWC also considered comments it received in a public hearing on the proposal on January 23, 2024, as well as written comments it received by the January 29, 2024, deadline, when drafting this adoption order.

In April 2023, after gathering data about the program and soliciting input from system participants about how to maintain and increase participation in the designated doctor program and allow better access to specialized examinations, DWC adopted amendments to Chapter 127 of this title, concerning designated doctor procedures and requirements, and §180.23 of this title, concerning division-required training for doctors. Those rules addressed certification, training, and procedures for designated doctors and were required to address administrative and logistical inefficiencies, and to improve access to examinations, to make participation in the program possible and attractive for more doctors. They were one part of the project to ensure the designated doctor program's viability, in compliance with the Labor Code. After their adoption, DWC saw a near-immediate increase in the numbers of doctors applying to the program, which was very encouraging.

However, the common theme throughout the input-gathering process about how to improve the program was billing and reimbursement for certain workers' compensation-specific services, especially designated doctor examinations. Nearly every comment DWC received mentioned some combination of issues about the fees for designated doctor examinations--that they were insufficient, had not been adjusted for inflation or other economic factors in over a decade, did not take into account missed appointments or the time spent reviewing injured employees' medical records, and other similar issues. In adopting the amendments to Chapter 127 and §180.23, DWC stated that billing and reimbursement issues would be addressed in a separate rule project. As a result, the changes in this rule proposal are another part of the project, and are necessary to account for past and future inflation, examination complexity, and other economic factors that affect participation in the designated doctor program.

Labor Code Chapter 408 governs workers' compensation benefits. It entitles an injured employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. It requires a variety of workers' compensation-specific services, including required medical examinations; designated doctor examinations; MMI evaluations and IR examinations; and return-to-work and evaluation of medical care examinations.

Labor Code Chapter 413, Subchapter B, Medical Services and Fees, requires in part that the commissioner of workers' compensation adopt health care reimbursement policies and guidelines, develop one or more conversion factors or other payment adjustment factors, and provide for reasonable fees for the evaluation and management of care. Fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. Medical policies and guidelines must be designed to ensure the quality of medical care and to achieve effective medical cost control; designed to enhance a timely and appropriate return to work; and consistent with §§413.013, 413.020, 413.052, and 413.053.

The changes are necessary to comply with the mandates for administering the workers' compensation benefit and fee system in Labor Code Chapters 408 and 413. They also include nonsubstantive editorial and formatting changes throughout that make updates for plain language and agency style to improve the rule's clarity.

Section 134.209. The amendments to §134.209 add references to new §134.260 and clarify that the new and amended sections apply to workers' compensation-specific codes, services, and programs provided on or after June 1, 2024. Amending §134.209 is necessary to conform §134.209 to the new and amended sections and ensure that the rules are accurate.

Section 134.210. The amendments to §134.210 clarify that reimbursement for a missed appointment under §134.240 does not qualify for the 10% incentive payment for services performed in designated workers' compensation underserved areas. The amendments provide that fees established in §§134.235, 134.240, 134.250, and 134.260 of this title will be:

- adjusted once by applying the MEI percentage adjustment factor for the period 2009 - 2024;
- adjusted annually by applying the MEI percentage adjustment factor in §134.203(c)(2);
- rounded to whole dollars; and
- effective on January 1 of each new calendar year.

The amendments clarify that, for services provided under §§134.235, 134.240, 134.250, or 134.260, health care providers must bill and be reimbursed the maximum allowable reimbursement (MAR).

In addition, the amendments simplify the modifiers that health care providers must use when billing professional medical services for correct coding, reporting, billing, and reimbursement based on procedure codes. The amendments add modifier 25 and specify that it must be added to Current Procedural Terminology (CPT) code 99456 for designated doctor examinations involving one or more of the diagnoses listed in §127.130(b)(9)(B) - (I) of this title, including traumatic brain injuries, spinal cord injuries and diagnoses, severe burns, complex regional pain syndrome, joint dislocation, one or more fractures with vascular injury, one or more pelvis fractures, multiple rib fractures, complicated infectious diseases requiring hospitalization or prolonged intravenous antibiotics, chemical exposure, and heart or cardiovascular conditions. The amendments add modifier 52 and specify that it must be added to CPT code 99456 when DWC ordered the designated doctor to perform an examination of an injured employee, and the injured employee failed to attend the examination. The amendments correct an error that listed the incorrect CPT code for multiple IRs. The amendments delete the RE, SP, TC, and WP modifiers. The amendments realign the "V" modifiers that must be added to CPT code 99455 by deleting V1 and V2 and replacing the more subjective descriptors ("minimal," "self-limited," "minor," "low to moderate," and "moderate to high severity") with references to CPT code standards. For example, per the amendments, modifier V3, treating doctor evaluation of MMI, must now be added to CPT code 99455 when the office visit level of service is equal to CPT code 99213. The amendments also include CPT code 97546 for modifiers WC (work conditioning) and WH (work hardening).

Amending §134.210 is necessary to decrease administrative burdens by eliminating unnecessary billing modifiers and eliminating a required sequence for modifiers, to update the

reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines, and to attract and retain doctors in the system. As fees were last adjusted in 2008, an increase to account for the intervening years of inflation is indicated, and the amendment to §134.210 that adjusts fees annually to account for future inflation is necessary to align with the annual updates in §134.203 of this chapter, concerning the medical fee guideline for professional services.

Section 134.235. New §134.235 renames the section "Required Medical Examinations" to capture the types of examinations more accurately than just the previous title of "Return to Work/Evaluation of Medical Care." It contains statutory references, requires that each examination and its individual billable components be reimbursed separately, and describes the billing methods and reimbursement amounts for a required medical examination (RME) doctor examining an injured employee for MMI or IR. Those billing methods and requirements were previously in §134.250 of this title, but have been moved to new §134.235 to allow RME doctors to find their billing requirements in one section. In addition, new §134.235 describes what the MMI or IR examination must include, specifies increased reimbursement rates for MMI evaluations and IR examinations for musculoskeletal and non-musculoskeletal body areas, and, for testing that is not outlined in the American Medical Association (AMA) guides, requires billing and reimbursement for the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for the MMI and IR examinations. New §134.235 sets increased rates for examinations to determine extent of injury, disability, return to work, other similar issues, and appropriateness of health care. In addition, for required medical examination doctors, all issues addressed within one examination will be paid at the established fee and not reduced. Finally, new §134.235 sets billing and reimbursement requirements for when the RME doctor refers testing to a specialist. It also requires documentation of the referral.

Repealing §134.235 and adopting new §134.235 is necessary to consolidate RME doctors' billing and reimbursement requirements into one section to increase efficiency and ease of use and decrease the possibility of errors, to update the reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines, and to attract and retain doctors in the system.

Section 134.239. New §134.239 states that work status reports may not be billed or reimbursed separately when they are completed as a component of an ordered examination. Repealing §134.239 and adopting new §134.239 is necessary to update references to conform with the restructured sections and clarify the language. The change does not affect how work status reports are billed in practice.

Section 134.240. New §134.240 specifies billing and reimbursement requirements for designated doctor examinations. It contains statutory references, provides for a \$100 missed appointment fee, requires that each examination and its individual billable components be reimbursed separately, and describes the billing methods and reimbursement amounts for a designated doctor examination. In addition, new §134.240 sets the total MAR for an MMI or IR examination, describes what the MMI or IR examination must include and how it must be billed and reimbursed, specifies increased reimbursement rates for MMI eval-

uations and IR examinations for musculoskeletal and non-musculoskeletal body areas, and, for testing that is not outlined in the AMA guides, requires billing and reimbursement for the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for the MMI and IR examinations. New §134.240 sets increased rates for examinations to determine extent of injury, disability, return to work, and other similar issues. New §134.240 also sets billing and reimbursement requirements for when the designated doctor refers testing to a specialist, and it requires documentation of the referral. It specifies that the 95-day period for timely submission of the designated doctor bill for the examination begins on the date of service of the additional testing or evaluation, and that the designated doctor and any referral health care providers must include the DWC-provided assignment number in the prior authorization field, per §133.10(f)(1)(N) of this title. In addition, for designated doctors, all issues addressed within one examination will be paid at the established fee and not reduced. Finally, new §134.240 sets a \$300 specialist fee in addition to the examination fee for certain specialized diagnoses.

Based on feedback from many designated doctors in the system, DWC included the missed appointment fee to recognize and compensate, at least in part, designated doctors that schedule an examination appointment with an injured employee, do the required medical record review, prepare for the examination, travel to the appointment, and then have the injured employee not attend the appointment. In the current system, those designated doctors would not be compensated for that missed appointment or the work they performed to prepare for it. The missed appointment fee acknowledges the work the designated doctors are required to do to prepare for an examination.

The specialist fee also acknowledges designated doctors' time and effort spent in gaining specialty certifications and expertise. It reimburses board-certified physicians that participate in the designated doctor program and examine injured employees with certain complex injuries or diagnoses. DWC expects that the specialist fee will help increase the numbers of board-certified physicians in the program, which will reduce delays in examinations for employees with complex injuries or diagnoses and contribute to overall system health and efficiency.

Repealing §134.240 and adopting new §134.240 is necessary to consolidate designated doctors' billing and reimbursement requirements into one section to increase efficiency and ease of use and decrease the possibility of errors. It is also necessary to put in place a missed appointment fee to compensate designated doctors for the time and expense they incur in reviewing medical records and traveling to the exam location when the injured employee does not attend the examination; and to set a specialist fee for examinations that require particular board certifications and expertise. In addition, repealing §134.240 and adopting new §134.240 is necessary to update the reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines. It is also necessary to attract and retain doctors in the system.

Section 134.250. The amendments to §134.250 rename the section "Maximum Medical Improvement Evaluations and Impairment Rating Examinations by Treating Doctors" to reflect the restructuring in this rule. The amendments move the requirements for required medical examinations into new §134.235, for designated doctors into new §134.240, and for referred doctors into new §134.260. The amendments make §134.250 specific to

treating doctors, so treating doctors will be able to find their billing requirements in one section. They specify the billing methods and reimbursement requirements for MMI and IR examinations, and they permit a treating doctor that is not authorized to assign an IR to refer the injured employee to an authorized doctor for the examination and certification of MMI and IR, specifying that the referred doctor must bill under §134.260. In addition, the amendments to §134.250 specify increased reimbursement rates for MMI evaluations and IR examinations for musculoskeletal and non-musculoskeletal body areas, and, for testing that is not outlined in the AMA guides, require billing and reimbursement for the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for examination by the treating doctor. Finally, the amendments increase the reimbursement rate for a treating doctor reviewing the certification of MMI and assignment of IR performed by another doctor (referred doctor). Amending §134.250 is necessary to consolidate treating doctors' billing and reimbursement requirements into one section to increase efficiency and ease of use and decrease the possibility of errors, to update the reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines, and to attract and retain doctors in the system.

Section 134.260. New §134.260 concerns MMI evaluations and IR examinations by referred doctors. It describes what the MMI or IR examination must include, specifies increased reimbursement rates for MMI evaluations and IR examinations for musculoskeletal and non-musculoskeletal body areas, and, for testing that is not outlined in the AMA guides, requires billing and reimbursement for the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for the MMI and IR examinations. Adopting new §134.260 is necessary to consolidate referred doctors' billing and reimbursement requirements into one section to increase efficiency and ease of use and decrease the possibility of errors, to update the reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines, and to attract and retain doctors in the system.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received 30 written comments by the January 29, 2024, deadline, and three oral comments at the January 23, 2024, hearing. Because DWC published the Chapter 133 proposal and the Chapter 134 proposal at the same time and discussed both proposals in the hearing, some commenters submitted comments specifically on both proposals, while others acknowledged both proposals but only commented specifically on one. Three acknowledged both proposals in their comments but did not specifically state a position on the Chapter 134 proposal. Commenters specifically in support of the Chapter 134 proposal were: the Office of Injured Employee Counsel and two individuals. Commenters specifically in support of the Chapter 134 proposal with changes were: Texas Mutual Insurance Company; the Insurance Council of Texas; the Texas Chiropractic Association; Texas Independent Evaluators, LLC; and 19 individuals. No commenters were against the Chapter 134 proposal. Some commenters included logistical or practical questions or examples about how the rules will function once adopted. DWC will address those questions in the upcoming training sessions about how to comply with the updated rules.

Comment on Chapter 134 (notice of examination). A commenter stated that DWC should send an automated text and email in addition to a physical letter to claimants about the designated doctor examination, and that the days of snail mail are over.

Agency Response to Comment on Chapter 134 (notice of examination). DWC appreciates the comment but declines to make this change because it is out of scope for this rule project.

Comment on §134.240 (missed appointment fee). A commenter stated that the missed appointment fee should be recouped from the injured employee's temporary income benefits (TIBs), and that the insurance carrier should not be financially responsible for the claimant's choice to not attend.

Agency Response to Comment on §134.240 (missed appointment fee). DWC appreciates the comment. The missed appointment fee is necessary to compensate designated doctors for the work they are required to do in advance of an ordered examination, even if the injured employee does not attend the appointment. Section 127.25 of this title, Failure to Attend a Designated Doctor Examination, allows an insurance carrier to suspend TIBs if an injured employee fails, without good cause, to attend a designated doctor examination or a referral examination under §127.10(c) of this title, General Procedures for Designated Doctor Examinations.

Comments on §134.240 (missed appointment fee). Two commenters stated that they appreciated the new no-show fee.

Agency Response to Comments on §134.240 (missed appointment fee). DWC appreciates the comments.

Comments on §134.240 (missed appointment fee). Three commenters stated that the no-show fee should be higher. One stated that the minimum amount should be \$200. Another stated that the minimum amount should be \$250.

Agency Response to Comments on §134.240 (missed appointment fee). DWC appreciates the comments but declines to make the change at this time because of the significant one-time fee increases and annual inflation adjustments in this rule.

Comments on §134.240 (missed appointment fee). Fourteen commenters stated that DWC should provide a broken or missed appointment fee for all designated doctors, required medical examination doctors, treating doctors, and referral doctors. Three of those commenters also stated that DWC should include the same increase for MMI, IR, and other services.

Agency Response to Comments on §134.240 (missed appointment fee). DWC appreciates the comments but declines to make the change. DWC's rules do not require travel to appointments, missed or attended. In addition, designated doctors are the only ones that are required by rule to review medical records from the treating doctor and insurance carrier before conducting the examination. That is distinct from an MMI or IR examination, where the examination itself includes a review of the records and films. The missed appointment fee is intended to compensate designated doctors for the work the rule requires them to perform before they go to perform the examination, only to find that they cannot perform the examination--and get paid for it--because the injured employee is not there.

Comment on §134.240 (missed appointment fee). One commenter stated that the \$100 missed appointment fee proposed in §134.240 is consistent with the amount of the missed appointment fee proposed as part of House Bill (HB) 2702, 88th Legislature, Regular Session (2023), which failed to pass. The com-

menter stated that because the proposed rules include significant fee increases for all examinations, which will have a sizable cost impact on the workers' compensation system, the commenter did not support a fee amount greater than that which was proposed.

Agency Response to Comment on §134.240 (missed appointment fee). DWC appreciates the comment and agrees that the \$100 missed appointment fee is appropriate.

Comments on Chapter 134 (record review fee). Three commenters stated that DWC needs to adopt a record review fee. One of those commenters stated that the fee should be \$25 per 50 pages for records totaling more than 200 pages, and suggested that insurance carriers should have to pay extra for sending duplicated, useless, and out-of-order pages.

Agency Response to Comments on Chapter 134 (record review fee). DWC appreciates the comments but declines to make the change. DWC explored that option during the informal draft process, but found that a record review fee is not logistically feasible at this time. In addition, penalizing insurance carriers for sending duplicate pages is not in the scope of this rule. If an insurance carrier is not complying with the requirement to send records, or is abusing the system by sending voluminous, non-responsive material, DWC encourages the doctor to file a complaint.

Comment on Chapter 134 (print fee). A commenter recommended that DWC allow a designated doctor to bill a print fee for medical records.

Agency Response to Comment on Chapter 134 (print fee). DWC appreciates the comment but declines to make the change, as it is not in scope for this rule. In addition, printing is not necessary to comply with the review requirement in the rule.

Comment on Chapter 134 (retroactive effect). A commenter asked DWC to consider making the fee schedule increase retroactive to January 1, 2024.

Agency Response to Comment on Chapter 134 (retroactive effect). DWC appreciates the comment but declines to make the change. System participants need to be able to program their systems and prepare for compliance in advance of the effective date. Making medical billing changes retroactive would increase medical fee disputes exponentially. In addition, the system does not have a practical way to process amended bills on that scale retroactively.

Comments on Chapter 134 (fee amounts). Two commenters stated that fee amounts should be higher.

Agency Response to Comments on Chapter 134 (fee amounts). DWC appreciates the comments but declines to make the change, as this rule has already increased fees significantly across the board to ensure fair compensation, and the fees will be adjusted annually to account for inflation.

Comments on Chapter 134 (fee amounts). Three commenters stated that the fee increases are fair as proposed. One of those commenters would not support a fee increase greater than what was proposed, and that going forward, the application of the annual adjustment factor will ensure that fees are adjusted as needed in the future. One commenter expressed support for increasing designated doctor compensation via the MEI, adjusting compensation annually to reflect changes in the MEI, and compensating multiple examinations performed concurrently without a discount.

Agency Response to Comments on Chapter 134 (fee amounts). DWC appreciates the comments and agrees.

Comments on Chapter 134 (extent of injury). Fifteen commenters stated that extent-of-injury examinations should be paid more. Thirteen of those commenters recommended reimbursing \$50 for each condition after the initial fee when a designated doctor or a required medical examination doctor is required to answer extent-of-injury questions. One of those commenters recommended that for each disputed condition that has to be addressed after the initial condition, an additional \$150 should be allowed.

Agency Response to Comments on Chapter 134 (extent of injury). DWC appreciates the comments but declines to make the changes at this time. As proposed, the rule already increased the fees for extent-of-injury examinations significantly, and the fees will be adjusted annually to account for inflation. In addition, the rule eliminates the tiering discount for designated doctors and required medical examination doctors, ensuring that all issues addressed within one examination will be paid at the established fee and not reduced. DWC believes that these changes will ensure that doctors are compensated fairly for extent-of-injury examinations.

Comments on §134.210 (MEI annual adjustment). Two commenters expressed uncertainty about how the MEI is calculated. One of those commenters was concerned about attaching fees to Medicare and wanted to be sure that, if the Medicare rate trended down in the future, the fees would not decrease.

Agency Response to Comments on §134.210 (MEI annual adjustment). DWC appreciates the comments, and offers the following explanation of the MEI, but declines to adjust the rule to remove the MEI factor. DWC sets its own fee schedule and modifies it based on the MEI to allow the fees to increase in relation to changes in the prices of goods and services, including physician-specific costs and compensation.

The MEI is a measure of practice cost inflation that was developed in 1975 and is updated quarterly to estimate annual changes in physicians' operating costs and establish appropriate Medicare physician payment updates. It consists of two categories: physician practice costs and physician compensation. The physician practice costs portion of the current MEI includes components for nonphysician compensation, such as fringe benefits; medical supplies; professional liability insurance; and other expenses, including other professional services. Medicare assigns each component a weight and uses various proxy indices to estimate price changes. The physician compensation category of the MEI reflects increases in general earnings and is currently proxied by changes in the wages and benefits of professional occupations in the United States from the Bureau of Labor Statistics. Medicare then adjusts the change in the combined practice costs and physician compensation components by the 10-year average of multifactor productivity for the economy.

Comments on §134.210 (MEI annual adjustment). Fourteen commenters stated that DWC should retroactively include the MEI percentage adjustment factor for the years 2004 - 2008.

Agency Response to Comments on §134.210 (MEI annual adjustment). DWC appreciates the comments but declines to make the change. When DWC adopted amended medical reimbursement policies and medical fee guidelines in §§134.203 and 134.204 (proposed 32 TexReg 6966, October 5, 2007, with corrections at 32 TexReg 7329, October 12, 2007, and

adopted 33 TexReg 364, January 11, 2008), the order stated that the commissioner adopted them to comply with Labor Code §413.012, which directs fee guidelines to be reviewed and revised to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable and necessary at the time the review and revision are conducted. DWC, in consultation with the medical advisor, considered the change in the MEI from 2002 to 2007 and found that, at the time of adoption, the fee for designated doctor activities was fair and reasonable, after consideration of duties involved, including the additional duties HB 7, 79th Legislature, Regular Session (2005) added to Labor Code §408.0041.

Comment on §134.210 (MEI annual adjustment). One commenter stated, "While we understand the methodology for the one-time increase to account for the lack of fee increases since 2009, some members have expressed concern about the one-time large fee increase referenced in proposed 28 TAC 134.210(a)(1)(A). In addition to DDs, this increase would also apply to all RMEs under new rule 134.235. The purpose of this increase is because of a decline in DDs between 2009 - 2023. However, the proposed revisions in new rule 134.210(a)(1)(A) require an increase for current doctors using a MEI percentage adjustment for all years between 2009 - 2024. This is an average increase of 56% and seems to conflict with statutory provisions requiring DWC adjustment of fees every two years. See Labor Code 413.012."

Agency Response to Comment on §134.210 (MEI annual adjustment). DWC appreciates the comment but disagrees with the assertion that the one-time and annual adjustments are inappropriate or excessive and conflict with Labor Code §413.012. For the affected programs, DWC estimates that based on calendar year (CY) 2022 activity, the total system impact from the changes will be about \$9 million over CY 2022 reimbursement. That includes a one-time initial adjustment in rates based on the accrued changes in the MEI since the rates were last adopted, plus costs associated with removing tiering, adding the missed appointment fee, and adding the specialist fee. For the past five years, the annual change in the MEI has ranged from 1.4% to 4.6%, averaging 2.8%. Based on this estimated average future year over previous year percentage, DWC estimates the increase in reimbursement to be a little more than \$1 million per year. To help offset costs for teaching and training staff on the changes, DWC expects to provide free training presentations with specific billing examples after the rule is adopted but before it becomes effective.

The one-time adjustment is necessary to achieve fair and reasonable fees, and the annual inflation adjustment is necessary to ensure that future one-time large increases won't be needed. Labor Code §413.012 requires DWC to review medical policies and fee guidelines *at least* every two years to reflect fair and reasonable fees and medical treatment or ranges of treatment that are reasonable and necessary at the time the review and revision is conducted. DWC reviewed billing methodologies and reimbursement amounts to ensure that these medical policies and fee guidelines align with the need to attract and retain an adequate number of qualified designated doctors, RME doctors, and MMI and IR-certified doctors participating in the workers' compensation system.

Comment on §134.240 (specialist fee). Two commenters asked DWC to clarify what the \$300 specialist fee is. Another commenter thought that DWC had confused "specialist" with "complex exam."

Agency Response to Comment on §134.240 (specialist fee). DWC appreciates the comment. The specialist fee is in §134.240(g)(3). It applies when DWC orders a designated doctor to perform an examination of an injured employee with one or more of the diagnoses listed in §127.130(b)(9)(B) - (I) of this title, Qualification Standards for Designated Doctor Examinations.

Comments on §134.240 (specialist fee). Three commenters recommended that DWC eliminate the additional \$300 for specialists in §134.240(g)(3).

Agency Response to Comments on §134.240 (specialist fee). DWC disagrees with the recommendation. The specialist fee acknowledges designated doctors' time and effort spent in gaining specialty certifications and expertise. It reimburses board-certified physicians that participate in the designated doctor program and examine injured employees with certain complex injuries or diagnoses. The specialist fee is a necessary incentive for board-certified physicians to participate in the program, which reduces delays in examinations for employees with complex injuries or diagnoses and contributes to overall system health and efficiency.

Comments on §134.240 (specialist fee and tiering). One commenter stated that the extra costs incurred for specialist declaration should be compensated accordingly at an appropriate rate. With regard to eliminating tiering, the commenter stated that it is unfair to compensate differently for the same work product based on title (unless it is a specialist fee, as noted above). Another commenter expressed support for compensating multiple examinations performed concurrently without a discount.

Agency Response to Comments on §134.240 (specialist fee and tiering). DWC appreciates the comment and agrees that the specialist fee is necessary and appropriate. DWC also agrees that eliminating tiering is necessary so that, for designated doctors and required medical examination doctors, all issues addressed within one examination are paid at the established fee and not reduced.

Comment on Chapter 134 (tiering). One commenter recommended that DWC retain tiered reimbursement as set out in current rule §134.240, which provides that the first issue examined by a DD beyond MMI or IR will be paid at 100% of the fee guideline, the second issue will be paid at 50% of the fee guideline, and subsequent issues will be paid at 25% of the fee guideline.

Agency Response to Comment on Chapter 134 (tiering). DWC appreciates the comment but declines to make the change. Eliminating tiering is necessary so that, for designated doctors and required medical examination doctors, all issues addressed within one examination are paid at the established fee and not reduced. Compensating designated doctors and required medical examination doctors for the actual work performed, instead of imposing a discount for examining an issue just because the patient happens to have other issues as well, is fair and reasonable, in addition to being necessary to encourage participating providers to remain in the program and entice more providers to participate.

Comment on Chapter 134 (IR spine and MMI). One commenter stated that the fee for IR spine is too low. The commenter said that sometimes they have cases with multiple fusions that also fail back surgery, and that the fee should be higher because they have to use the diagnosis-related estimate model but still have to do all range of motion of the spine. The commenter also stated that the fee for "none MMI" evaluation should be much higher-

-more than just \$350--since they have to do the examination, make a decision at the end, and review all the records.

Agency Response to Comment on Chapter 134 (IR spine and MMI). DWC appreciates the comment but declines to make the changes. The rule replaces the diagnosis-related estimate and range-of-motion billing methods with a single method of billing. In addition, the rules provide for a significant one-time increase in the fees established in §§134.235, 134.240, 134.250, and 134.260 by applying the MEI percentage adjustment factor for the period 2009 - 2024, as well as an annual MEI adjustment in those fees going forward. DWC made those adjustments to comply with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines, and to attract and retain doctors in the system.

Comment on Chapter 134 (clarification letter). One commenter asked DWC to consider a small fee of \$50 for a clarification letter. The commenter stated that in federal cases for any clarification letter they have a fee of \$75 to resolve issues with any clarification response.

Agency Response to Comment on Chapter 134 (clarification letter). DWC appreciates the comment but declines to make the change, as it is out of scope for this rule project. In addition, clarification letters are not part of an examination, and DWC does not find it appropriate to charge for clarifying a report that should have been written clearly.

Comment on Chapter 134 (car accidents). One commenter asked whether there is a better system for payment in the case of patients in a car accident where workers' compensation applies. The commenter stated that those accidents always show multiple body parts, such as shoulder, elbow, wrist, knee, hip, and spine, and today the system is only based on three body parts maximum.

Agency Response to Comment on Chapter 134 (car accidents). DWC appreciates the comment but declines to make the change, as it is out of scope for this rule project. In addition, changing the payment system for car accidents in workers' compensation would create many medical fee disputes and would be inconsistent with the way all other examinations are paid.

Comment on Testing. One commenter stated that DWC should continue to require doctors to test, instead of accepting all doctors who took the test some 10 years ago.

Agency Response to Comment on Testing. DWC appreciates the comment but declines to make the change, as it is out of scope for this rule project.

Comment on Chapter 134 (effective date). One commenter estimated that a minimum of 90 days after the rules become effective will be needed to implement the proposed changes.

Agency Response to Comment on Chapter 134 (effective date). DWC appreciates the comment and has attempted to ensure a minimum of 90 days' lead time between publication of the order and the date the rules become effective.

Comment on Chapter 134. One commenter expressed support and appreciation for DWC's efforts to provide free training for insurance carriers and health care providers on the new billing requirements and reimbursement rates.

Agency Response to Comment on Chapter 134. DWC appreciates the comment.

Comment on §134.210 (incentive payment). One commenter stated that they support the proposed amendments to §§134.210 and 134.240, which would exclude the proposed designated doctor missed appointment fee from the §134.2 incentive payment. The commenter requested that DWC clarify that the HPSA incentive payment, the physician scarcity bonus, and the §134.2 incentive payment be exempted from application to all designated doctor examination fees, including fees provided for in §134.240(g)(3) authorizing a \$300 additional fee for examinations involving diagnoses listed in §127.130(b)(9)(B) - (I) and the missed appointment fees provided for in §134.240. The commenter stated that without this clarification, insurance carriers would be left to interpret the existing statute and rules without guidance, which could lead to unnecessary medical fee disputes.

Agency Response to Comment on §134.210 (incentive payment). DWC appreciates the comment but declines to make this change. Section 134.210(b)(3), as proposed and adopted, applies the 10% incentive payment to the maximum allowable reimbursement (MAR) for services that are performed in designated workers' compensation underserved areas and that are outlined in §§134.220 (case management services), 134.225 (functional capacity evaluations), 134.235 (required medical examinations), 134.240 (designated doctor examinations), 134.250 (MMI and IR examinations by treating doctors), 134.260 (MMI evaluations and IR examinations by referred doctors), and §134.210(d), which refers to services in §§134.215, 134.220, 134.225, and 134.230 where there is no negotiated or contracted amount that complies with Labor Code §413.011. It specifically exempts reimbursement for a missed appointment under §134.240 from the 10% incentive payment.

Comment on §134.210 (annual adjustment factor). One commenter expressed support for the addition of an annual adjustment factor, but stated that the annual adjustment factor should not be applied to the missed appointment fee and the §127.130 expert exam fees. The commenter recommended that §134.210 be revised to exclude the application of the annual adjustment factor to reimbursements for expert examinations under §134.240(g)(3) and the missed appointment fees provided for in §134.240. The commenter also recommended that DWC publish the MEI-adjusted designated doctor, required medical examination doctor, treating doctor, and referral doctor examination fees each year in the same way it publishes the MEI adjuster professional fee conversion factors to ensure that all insurance carriers pay the correct reimbursement rates.

Agency Response to Comment on §134.210 (annual adjustment factor). DWC appreciates the comment but declines to exclude the specialist fee in §134.240(g)(3) from the annual adjustment based on the MEI, because it would increase the complexity of the bill and could lead to more errors. The missed appointment fee, unlike the specialist fee, is a one-time, one-line fee that would not apply to every examination and would not be billed as part of the examination. For example, if the designated doctor in the underserved area is also evaluating MMI and IR, and the injury is a traumatic brain injury, so the \$300 specialist fee applies, excluding the 10% incentive payment from the specialist fee but not from other components of the examination would be confusing and time-consuming. In addition, the purpose of the annual adjustment is to ensure that payments keep pace with inflation, preventing the need for another comprehensive update to the fees in the future, and excepting the \$300 specialist fee does not accomplish this goal. To the commenter's other recommendation, which does not require a change in the rule text--DWC

agrees and plans to publish the MEI-adjusted designated doctor, required medical examination doctor, treating doctor, and referral doctor examination fees each year in the same way it publishes the MEI adjuster professional fee conversion factors.

Comment on §134.235 (reference). One commenter suggested that §134.235(a) be revised to include a reference to Labor Code §408.0044.

Agency Response to Comment on §134.235 (reference). DWC appreciates the comment but declines to make the change because Labor Code §408.004 lists §§408.0043 and 408.0045, but does not list §408.0044.

Comment on Chapter 134 (modifiers). One commenter recommended that DWC create modifiers for various types of required medical examinations and retain the current modifier for appropriateness of health examinations.

Agency Response to Comment on Chapter 134 (modifiers). DWC appreciates the comment but declines to make those changes at this time. DWC understands that the suggested modifier, RE, exists, but is not used explicitly for required medical exams; and if it were required as the commenter suggests, it would not be used in billing, but instead only in an internal tracking system. One of DWC's goals in updating the billing and reimbursement rules in Chapters 133 and 134 has been to reduce administrative burdens by simplifying the modifiers. Adding new modifier requirements would be counter to this goal.

SUBCHAPTER C. MEDICAL FEE GUIDELINES

28 TAC §§134.209, 134.210, 134.235, 134.239, 134.240, 134.250, 134.260

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts amended §§134.209, 134.210, and 134.250; and new §§134.235, 134.239, 134.240, and 134.260 under Labor Code §§408.004, 408.0041, 408.021, 408.023, 408.0251, 408.0252, 408.1225, 413.007, 413.011, 413.012, 413.015, 413.0511, 413.053, 402.00111, 402.00116, and 402.061.

Labor Code §408.004 provides that the commissioner may require an employee to submit to medical examinations to resolve any question about the appropriateness of the health care the employee receives, or at the request of the insurance carrier after the insurance carrier has tried and failed to get the employee's permission and concurrence for the examination. It also requires the insurance carrier to pay for those examinations, as well as the reasonable expenses incident to the employee in submitting to them.

Labor Code §408.0041 provides that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work; or other similar issues.

Labor Code §408.021 entitles an employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery,

or enhances the ability of the employee to return to or retain employment.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.0251 requires the commissioner of workers' compensation, in cooperation with the commissioner of insurance, to adopt rules about the electronic submission and processing of medical bills by health care providers to insurance carriers and establish exceptions. It also requires insurance carriers to accept electronically submitted medical bills in accordance with the rules, and it allows the commissioner of workers' compensation to adopt rules about the electronic payment of medical bills by insurance carriers to health care providers.

Labor Code §408.0252 provides that the commissioner of workers' compensation may, by rule, identify areas of this state in which access to health care providers is less available, and adopt appropriate standards, guidelines, and rules about the delivery of health care in those areas.

Labor Code §408.1225 requires the commissioner of workers' compensation to develop a process for certifying designated doctors, which requires DWC to evaluate designated doctors' educational experience, previous training, and demonstrated ability to perform the specific designated doctor duties in §408.0041. It also requires standard training and testing for designated doctors.

Labor Code §413.007 requires DWC to maintain a statewide database of medical charges, actual payments, and treatment protocols that may be used by the commissioner in adopting the medical policies and fee guidelines, and by DWC in administering the medical policies, fee guidelines, or rules. The database must contain information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols, and must be able to be used in a meaningful way to allow DWC to control medical costs.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as needed to meet occupational injury requirements. It requires the commissioner to adopt the most current methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services (CMS), including applicable payment policies relating to coding, billing, and reporting; and allows the commissioner to modify documentation requirements as needed to meet the requirements of §413.053. It also requires the commissioner, in determining the appropriate fees, to develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of §413.011(d); and requires the commissioner to provide for reasonable fees for the evaluation and management of care as required by §408.025(c) and commissioner rules. The commissioner may

not adopt the Medicare fee schedule or conversion factors or other payment adjustment factors based solely on those factors as developed by the federal CMS. Fee guidelines must be fair and reasonable, and designed to ensure the quality of medical care and achieve medical cost control. They may not provide for payment of a fee that exceeds the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. When establishing the fee guidelines, §413.011 requires the commissioner to consider the increased security of payment that Subtitle A, Title 5, Labor Code affords. It allows network contracts under Insurance Code §1305.006. It specifically authorizes the commissioner and the commissioner of insurance to adopt rules as necessary to implement §413.011.

Labor Code §413.012 requires the medical policies and fee guidelines to be reviewed and revised at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable and necessary at the time the review and revision is conducted.

Labor Code §413.015 requires insurance carriers to pay appropriate charges for medical services under Subtitle A, Title 5, Labor Code, and requires the commissioner by rule to review and audit those payments to ensure compliance with the adopted medical policies and fee guidelines. The insurance carrier must pay the expenses of the review and audit.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about IRs; reviewing compliance with those guidelines; regulating or performing other acts related to medical benefits as required by the commissioner; and determining minimal modifications to the reimbursement methodology and model used by the Medicare system as needed to meet occupational injury requirements.

Labor Code §413.053 requires the commissioner by rule to establish standards of reporting and billing governing both form and content.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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 23, 2024.

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Effective date: June 1, 2024
Proposal publication date: December 29, 2023
For further information, please call: (512) 804-4703



28 TAC §§134.235, 134.239, 134.240

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeal of §§134.235, 134.239, and 134.240 under Labor Code Chapter 408; Chapter 413, Subchapter B; and §§402.00111, 402.0016, and 402.061.

Labor Code Chapter 408 governs workers' compensation benefits. It entitles an injured employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. It requires a variety of workers' compensation-specific services, including required medical examinations; designated doctor examinations; MMI evaluations and IR examinations; and return-to-work and evaluation of medical care examinations.

Labor Code Chapter 413, Subchapter B, Medical Services and Fees, requires in part that the commissioner of workers' compensation adopt health care reimbursement policies and guidelines, develop one or more conversion factors or other payment adjustment factors, and provide for reasonable fees for the evaluation and management of care. Fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. Medical policies and guidelines must be designed to ensure the quality of medical care and to achieve effective medical cost control; designed to enhance a timely and appropriate return to work; and consistent with §§413.013, 413.020, 413.052, and 413.053.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES
SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §§651.207 - 651.209

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code Chapter 651, §651.209 Forensic Analyst and Forensic Technician License Expiration, Reinstatement, and Procedure for Denial of Initial Application and Reconsideration is adopted without changes. Section 651.207 Forensic Analyst and Forensic Technician License Expiration and §651.208 Forensic Analyst and Forensic Technician License Renewal are adopted with changes to the text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7029). Section 651.209 will not be republished. Sections 651.207 and 651.208 are adopted with changes and will be republished. The adopted amendments change the Commission's forensic analyst and forensic technician license expiration dates to expire on the licensee's birthdate.

Reasoned Justification for Rule Adoption. Under the adopted rules, forensic analyst and forensic technician licenses will expire on the last day of the licensee's birth month after each two-year license cycle, rather than every two years from their initial application. Prior to these changes and the inception of the Commission's forensic analyst licensing program on January 1, 2019, a majority of the Commission's licenses expired at the same time in the even-numbered years in the Fall, placing a heavy administrative burden both on Commission staff and licensees waiting on their licenses to be renewed at the same time. The adopted changes also include a monthly proration of the required fees and continuing forensic education requirements for current and first-time license applicants depending on the number of months in the applicant's first license term. The changes also require all new license applicants to complete the Commission's Mandatory Legal and Professional Responsibility Course.

Public Comment. Pursuant to § 2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on December 1, 2023, and ended on January 5, 2024. The Commission did not receive any comments from the public.

Statutory Authority. The rules are adopted under the general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to license forensic analysts under Article 38.01 § 4-a(b). This rule has been reviewed by legal counsel and found to be within the state agency's authority to adopt.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01.

§651.207. *Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring and Mandatory Legal and Professional Responsibility.*

(a) Issuance. The Commission may issue an individual's Forensic Analyst License under this section.

(b) Application. Before being issued a Forensic Analyst or Forensic Technician License, an applicant must:

(1) demonstrate that he or she meets the definition of Forensic Analyst or Forensic Technician set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians for the twenty-four months of the Initial License Term. If the Analyst or Technician's Initial License Term under subsection (b) of this section exceeds twenty-four months, the Analyst or Technician shall pay an additional prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month exceeding two years. If the Analyst or Technician's Initial License Term under subsection (b) of this section is less than twenty-four months, the Analyst or Technician shall pay a prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month in the Initial License Term;

(B) Temporary License fee of \$100;

(C) Provisional License fee of \$110 for Analysts and \$75 for Technicians; An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted;

(D) License Reinstatement fee of \$220;

(E) *De Minimis* License fee of \$200 per ten (10) licenses;

(F) Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses; and/or

(G) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (g)(5)(C) of this section;

(4) provide accurate and current address and employment information to the Commission and update the Commission within five (5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(c) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(d) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data,

reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to

impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(e) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(f) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

- (A) The American Board of Forensic Toxicology;
- (B) The American Board of Clinical Chemistry;
- (C) The American Board of Criminalistics;
- (D) The International Association for Identification; or
- (E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(g) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law or employed by an agency rendering them eligible for a voluntary license under §651.222 (*Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee and Procedure for Denial of*

Initial Application or Renewal Application and Reconsideration) of this subchapter to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent casework in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

(i) forensic anthropology;

(ii) the location, identification, collection or preservation of physical evidence at a crime scene;

(iii) crime scene reconstruction;

(iv) latent print processing or examination;

(v) digital evidence (including computer forensics, audio, or imaging);

(vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

(vii) document examination, including document authentication, physical comparison, and product determination.

(h) Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

(i) Mandatory Legal and Professional Responsibility Course:

(1) All Forensic Analyst and Forensic Technician License applicants must complete the current Commission-sponsored mandatory legal and professional responsibility update at the time of their

application or demonstrate that they have taken the training within the 12-month period preceding the date of their application.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

§651.208. *Forensic Analyst and Forensic Technician License Renewal.*

(a) Timing of Application for Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 60 days before the expiration of the individual's license term.

(b) Renewal Term. The renewal date of a Forensic Analyst or Forensic Technician License will be every two years on the last day of the license holder's birth month.

(c) Renewal Fees. The biennial renewal fee is \$200 for Forensic Analysts and \$130 for Forensic Technicians. Fees for Forensic Analysts and Forensic Technicians seeking to renew their licenses between January 1, 2024 and December 31, 2025, will be pro-rated on a monthly basis depending upon the birth month of the renewing license holder and the number of months in the renewal term as describe in subsection (b) of this section. The pro-rated fee will be assessed at \$8.33 per month (for Forensic Analysts) and \$5.42 per month (for Forensic Technicians).

(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education and other requirements set forth in this section.

(e) Proficiency Monitoring Certification Form for Renewal Applicants Employed by an Accredited Laboratory. An applicant for a Forensic Analyst or Forensic Technician License renewal must provide an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties. The form must be:

(1) signed by the licensee's authorized laboratory representative; and

(2) designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized or currently participating in a training program to become authorized to perform supervised or independent forensic casework.

(f) Proficiency Monitoring Certification Form for Renewal Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in a Forensic Discipline Not Covered by the Scope of the Laboratory's Accreditation.

(1) An applicant for a Forensic Analyst or Forensic Technician license renewal who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must provide:

(A) an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates

in the laboratory or employing entity's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties:

(i) signed by the licensee's authorized laboratory representative; and

(ii) designating the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent forensic casework;

(B) written proof of the Forensic Science Commission's approval of the laboratory or employing entity's proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties; and

(C) written documentation of performance in conformance with expected consensus results in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties.

(g) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements by the expiration of each two-year license cycle:

(A) Completion of thirty-two (32) continuing forensic education hours per 2-year license cycle.

(B) Sixteen (16) hours of the thirty-two (32) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours. If a licensee is licensed in multiple forensic disciplines, at least eight (8) hours of discipline-specific training in each forensic discipline are required, subject to the provisions set forth in subsection (f) of this section.

(C) The remaining sixteen (16) hours may be general forensic training, peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(h) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following continuing forensic education requirements apply for the supplemental forensic discipline:

(1) If the supplemental forensic discipline is added less than six (6) months prior to the expiration of the analyst's current license, no additional discipline-specific training is required for the supplemental forensic discipline.

(2) If the supplemental forensic discipline is added six (6) months or more but less than eighteen (18) months prior to the expiration of the analyst's current license, four (4) additional discipline-specific training hours are required for the supplemental forensic discipline.

(3) If the supplemental forensic discipline is added eighteen (18) months or more prior to the expiration of the analyst's current license, eight (8) additional discipline-specific training hours are required for the supplemental forensic discipline.

(i) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

(j) Temporary Exception to Continuing Forensic Education Requirements During January 2024 to December 2026 Transition from Application to Birthdate-Based Renewal Terms. For any licensee who has less than two years to complete the continuing forensic education requirements in subsection (g) of this section as a result of the transition from application-based renewal to birthdate-based renewal, the number of required continuing education hours in subsection (g)(3)(A) and (B) of this section for license renewal shall be pro-rated based on the number of months in the renewal term.

(k) Subsections (j) and (k) of this section expire on December 31, 2026.

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 28, 2024.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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Proposal publication date: December 1, 2023

For further information, please call: (512) 936-0661



SUBCHAPTER F. DNA QA DATABASE; STORAGE AND REMOVAL OF CERTAIN DNA RECORDS

37 TAC §§651.501 - 651.503

The Texas Forensic Science Commission (Commission) adopts new §651.501 and §651.503, Subchapter F DNA QA Database;

Storage and Removal of Certain DNA Records without changes, §651.502 is adopted with changes to the text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7036). Sections §651.501 and §651.503 will not be republished. Section 651.502 will be republished. The adopted amendments are responsive to the 88th Texas Legislature's passage of HB 3506, which requires the Commission to adopt prescribed rules for the removal of elimination sample DNA records from a crime laboratory's deoxyribonucleic acid (DNA) Quality Assurance (QA) database, a database maintained by a crime laboratory and used to identify possible contamination or other quality assurance events with respect to a DNA sample.

Reasoned Justification for Rule Adoption. Under the new rules, the Commission, in accordance with HB 3506: (1) requires all crime laboratories that maintain a DNA QA database to maintain the database separately from any other local, state, or federal database, including the CODIS DNA database established by the Federal Bureau of Investigation; (2) prohibits crime laboratories from uploading or storing a DNA record created from an elimination sample, or any other information derived from that record, in any database other than the DNA QA database maintained by the crime laboratory; and (3) requires each crime laboratory that maintains a DNA QA database to, not later than three months after the date on which a forensic DNA analysis of an elimination sample is completed, remove from the DNA QA database the DNA record created from the elimination sample and any other information derived from that record that is contained in the database.

Public Comment. Pursuant to § 2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on December 1, 2023, and ended on January 5, 2024. The Commission did not receive any comments from the public.

Statutory Authority. The new rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to regulate crime laboratories under Article 38.01 § 3-b(a). It also conforms to changes made by HB 3506. This adoption has been reviewed by legal counsel and found to be within the state agency's authority to adopt.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01.

§651.502. Definitions.

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

(1) DNA--deoxyribonucleic acid.

(2) DNA QA Database--a database maintained by a crime laboratory and used to identify possible contamination or other quality assurance events with respect to a DNA sample.

(3) Elimination sample--a blood sample or other biological sample or specimen voluntarily provided by the victim of an offense or another individual not involved in the alleged offense whose DNA is likely to be present at the scene of the crime to isolate and identify the DNA of a potential perpetrator.

(A) The designation of any sample as an "elimination sample" is based upon factual information provided by the submitting law enforcement or other investigative agency.

(B) Samples maintained by a crime laboratory for the purpose of administering a blind proficiency testing program are not considered elimination samples subject to this subchapter.

(4) QA--quality assurance system in a crime laboratory.

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) 936-0661



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts the repeal of §2.132 concerning Gulf Intracoastal Waterway Projects and new §§2.351 - 2.364 concerning Gulf Intracoastal Waterway Projects. The repeal of §2.132 and new §§2.351 - 2.364 are adopted without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6574) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The purpose of this rulemaking is to reorganize and clarify the rules of the Texas Transportation Commission (commission) concerning the requirements for state participation in dredge disposal plans and projects for the beneficial use of dredged materials related to the Gulf Intracoastal Waterway. The rulemaking also removes references in the rules to the Gulf Intracoastal Waterway Advisory Committee, which has been abolished.

Section 2.132, Gulf Intracoastal Waterway Projects, is repealed and the substance of that section is revised and moved to new Subchapter J of Chapter 2, which consists of new §§2.351 - 2.364.

New §2.351, Definitions, provides the defined terms used in Subchapter J.

New §2.352, Maintenance and Sponsorship of GIWW, is derived from §2.132(b) and clarifies that the State of Texas is the non-federal sponsor of the GIWW and the commission serves as the state's designee.

New §2.353, Disposal Plans, is a non-substantive revision of §2.132(c)(1) and (2).

New §2.354, State Participation in Beneficial Use Project, is a non-substantive revision of §2.132(c)(3).

New §2.355, Interagency Coordination, is derived from §2.132(a)(2) and (c)(4). The section clarifies that the U.S. Army Corps of Engineers is responsible for overseeing and initiating coordination of projects for the beneficial use of dredged material.

New §2.356, Investigation of Proposed Disposal Plan or Beneficial Use Project, is derived from §2.132(c)(5). The section recognizes that investigations will be led by the interagency coordination team rather than the department and that membership of interagency coordination team is determined by the U.S. Army Corps of Engineers.

New §2.357, Preparation of Environmental Review Document and Public Participation, is a non-substantive revision of §2.132(d).

New §2.358, Notification of and Assistance to Property Owners, is a non-substantive revision of §2.132(f)(1)(A) - (C). The new section clarifies that the department gives notification and assistance to the owners of real property that is being acquired for a dredged material placement area and if requested, meets with other affected real property owners.

New §2.359, Public Meeting, is a non-substantive revision of §2.132(f)(1)(D) and (2). The new section clarifies that the department may hold one or more public meetings on a proposed dredged material placement area and clarifies where notice of all meetings held under the section must be published.

New §2.360, Procedures for State Acquisition of Real Property, is a non-substantive revision of §2.132(e)(1). The new section clarifies that the procedures provided by the section apply to a proposal to use the real property as a dredged material placement area. It also clarifies where notice of a plan, proposal, or project to which the section applies must be published.

New §2.361, Commission approval, is derived from §2.132(a)(5) and (e)(2). The new section replaces the requirement that a beneficial use project demonstrate "substantial" local support with a requirement that the project demonstrate local support evidenced by an official document from the governing body with jurisdiction over the project. The definition of "jurisdiction" is deleted, and its substance is integrated into the section to clarify the way in which local support is to be shown. The new section does not include the limitation of current §2.132(e)(2)(B)(vi)(I) and (II), which prohibits the department from contributing more than 50 percent of the difference between the federal share and the cost of a beneficial use project, because such a limitation is unnecessarily restrictive. The new section expressly provides that it applies to a proposal to use the real property as a dredged material placement area.

New §2.362, Agreement to Participate in Beneficial Use Project, is a non-substantive revision of §2.132(e)(3).

New §2.363, Participation in Existing Beneficial Use Project, provides the procedure for state participation in an existing beneficial use project. There is no corresponding provision in §2.132.

New §2.364, Prohibition on Use of Funds, is a non-substantive revision of §2.132(e)(2)(B)(vi)(III).

COMMENTS

No comments on the proposed repeal and new sections were received.

SUBCHAPTER F. REQUIREMENTS FOR SPECIFIC TYPES OF PROJECTS AND PROGRAMS

43 TAC §2.132

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and, more specifically, Transportation Code, §51.009, which requires the commission to establish eligibility criteria for a project to beneficially use dredge material.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 51.

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 22, 2024.

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Becky Blewett

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-3164



SUBCHAPTER J. GULF INTRACOASTAL WATERWAY PROJECTS

43 TAC §§2.351 - 2.364

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and, more specifically, Transportation Code, §51.009, which requires the commission to establish eligibility criteria for a project to beneficially use dredge material.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 51.

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) 463-3164



CHAPTER 4. EMPLOYMENT PRACTICES SUBCHAPTER B. JOB APPLICATION PROCEDURES

43 TAC §4.10, §4.15

The Texas Department of Transportation (department) adopts amendments to §4.10 and §4.15, concerning to Job Application Procedures. The amendments to §4.10 and §4.15 are adopted without changes to the proposed text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7037) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The purpose of the amendments is to align the rules with changes made by Senate Bill No. 1376, Acts of the 88th Legislature, Regular Session, 2023, relating to employment preferences for members of the military and their spouses. S.B. 1376 amended Government Code, Chapter 657, by expanding the state's employment preference for veterans to the spouse of a member of the United States armed forces or Texas National Guard serving on active duty as well as the spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70 percent or on individual unemployability. The bill grants the spouse priority in the order of preference after a veteran, with or without a disability, but before a qualifying surviving spouse or qualifying orphan of a veteran. The bill also replaces references to veteran's employment preference with references to a military employment preference and includes military members and their dependents.

Amendment to §4.10, Purpose, replaces the reference to employment preference for veterans with employment preference for military related service to align with the new terminology that was added by Senate Bill 1376, Acts of the 87th Legislature, Regular Session, 2023.

Amendment to §4.15, Preferences, updates the heading of Government Code, Chapter 657.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 657.

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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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill (S.B.) 200, addressing the reorganization of health and human services delivery in Texas. To comply with the requirements of S.B. 200, the *Texas Register* created new Title 26, Health and Human Services, in the Texas Administrative Code. Rules currently in the Texas Administrative Code that concern health and human services may transition to the new title. This transition may affect all or part of the agency's rules in Title 1, Part 15, Texas Health and Human Services Commission. The HHSC rules in Texas Administrative Code, Title 1, Part 15, Chapter 379, Family Violence Program are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 356, Family Violence Program.

The rules will be transferred in the Texas Administrative Code effective April 1, 2024.

The following table outlines the rule transfer:

Figure: 1 TAC Chapter 379

TRD-202400877

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill (S.B.) 200, addressing the reorganization of health and human services delivery in Texas. To comply with the requirements of S.B. 200, the *Texas Register* created new Title 26, Health and Human Services, in the Texas Administrative Code. Rules currently in the Texas Administrative Code that concern health and human services may transition to the new title. This transition may affect all or part of the agency's rules in Title 1, Part 15, Texas Health and Human Services Commission. The HHSC rules in Texas Administrative Code, Title 1, Part 15, Chapter 379, Family Violence Program are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 356, Family Violence Program.

The rules will be transferred in the Texas Administrative Code effective April 1, 2024.

The following table outlines the rule transfer:

Figure: 1 TAC Chapter 379

TRD-202400878

Figure: 1 TAC Chapter 379

Current Rules	Move to
Title 1. Administration	Title 26. Health and Human Services
Part 15. Texas Health and Human Services Commission	Part 1. Texas Health and Human Services Commission
Chapter 379. Family Violence Program	Chapter 356. Family Violence Program
Subchapter A. Definitions	Subchapter A. Definitions
§379.1. Definitions.	§356.1. Definitions.
Subchapter B. Shelter Centers	Subchapter B. Shelter Centers
Division 1. Board of Directors	Division 1. Board of Directors
§379.101. Fiscal Oversight and Accountability.	§356.101. Fiscal Oversight and Accountability.
§379.102. Shelter Center's Board Handbook.	§356.102. Shelter Center's Board Handbook.
§379.103. Board of Directors Training.	§356.103. Board of Directors Training.
§379.104. Confidentiality.	§356.104. Confidentiality.
Division 2. Contract Standards	Division 2. Contract Standards
§379.201. Special Nonresidential Project Contract.	§356.201. Special Nonresidential Project Contract.
§379.202. Satellite Shelter Funding.	§356.202. Satellite Shelter Funding.
§379.203. Satellite Shelter Requirements.	§356.203. Satellite Shelter Requirements.
§379.204. Internal Monitoring System.	§356.204. Internal Monitoring System.
§379.205. Funding Waivers.	§356.205. Funding Waivers.
§379.206. Requesting a Variance or Waiver.	§356.206. Requesting a Variance or Waiver.
§379.207. More than One Funding Percentage Waiver.	§356.207. More than One Funding Percentage Waiver.
Division 3. Fiscal Management	Division 3. Fiscal Management
§379.301. Accounting System Requirements.	§356.301. Accounting System Requirements.
§379.302. Cash/Non-Cash Documentation.	§356.302. Cash/Non-Cash Documentation.
Division 4. Personnel	Division 4. Personnel
§379.401. Personnel Policies.	§356.401. Personnel Policies.
§379.402. Personnel Files.	§356.402. Personnel Files.
§379.403. Drug and Alcohol Policy.	§356.403. Drug and Alcohol Policy.
§379.404. New Employee Orientation and Training.	§356.404. New Employee Orientation and Training.
§379.405. Staff Development.	§356.405. Staff Development.
§379.406. Children's Advocate.	§356.406. Children's Advocate.
§379.407. Legal Advocate.	§356.407. Legal Advocate.
§379.408. Volunteer Coordinator.	§356.408. Volunteer Coordinator.
Division 5. Facility, Safety, and Health Requirements	Division 5. Facility, Safety, and Health Requirements
§379.501. Facility Requirements for the 24-Hour-a-Day Shelter Center.	§356.501. Facility Requirements for the 24-Hour-a-Day Shelter Center.
§379.502. Preparing, Providing, and Serving Food to Residents.	§356.502. Preparing, Providing, and Serving Food to Residents.

§379.503. Security System.	§356.503. Security System.
§379.504. Security Policies and Procedures.	§356.504. Security Policies and Procedures.
§379.505. Shelter Center and Satellite Shelter Staffing.	§356.505. Shelter Center and Satellite Shelter Staffing.
§379.506. Providing Hygiene Items to Residents.	§356.506. Providing Hygiene Items to Residents.
§379.507. Types of Facilities Allowed by the Commission for a 24-hour-a-Day Shelter.	§356.507. Types of Facilities Allowed by the Commission for a 24-hour-a-Day Shelter.
§379.508. Exceptions to Allowable Types of Facilities for a 24-Hour-a-Day Shelter.	§356.508. Exceptions to Allowable Types of Facilities for a 24-Hour-a-Day Shelter.
§379.509. Additional Requirements if a Shelter Center Uses a Series of Safe Homes.	§356.509. Additional Requirements if a Shelter Center Uses a Series of Safe Homes.
§379.510. Using a Motel as a Type of Shelter	§356.510. Using a Motel as a Type of Shelter
Division 6. Program Administration	Division 6. Program Administration
§379.601. Required Services.	§356.601. Required Services.
§379.602. Charging for Services.	§356.602. Charging for Services.
§379.603. Eligibility.	§356.603. Eligibility.
§379.604. Federal and State Laws Regarding Eligibility.	§356.604. Federal and State Laws Regarding Eligibility.
§379.605. Eligibility Criteria.	§356.605. Eligibility Criteria.
§379.606. Denial of Services.	§356.606. Denial of Services.
§379.607. Eligibility of Previously Involuntarily Terminated Residents or Nonresidents.	§356.607. Eligibility of Previously Involuntarily Terminated Residents or Nonresidents.
§379.608. Access to Services for People with Limited English Proficiency.	§356.608. Access to Services for People with Limited English Proficiency.
§379.609. Services at Capacity.	§356.609. Services at Capacity.
§379.610. Emergency Shelter or Care for an Unaccompanied Minor.	§356.610. Emergency Shelter or Care for an Unaccompanied Minor.
§379.611. Nonresidential Services for a Person Under 18 Years of Age.	§356.611. Nonresidential Services for a Person Under 18 Years of Age.
§379.612. Termination of Services.	§356.612. Termination of Services.
§379.613. General Confidentiality Policy.	§356.613. General Confidentiality Policy.
§379.614. Confidentiality Information for Adult Residents and Nonresidents.	§356.614. Confidentiality Information for Adult Residents and Nonresidents.
§379.615. Confidentiality Agreements.	§356.615. Confidentiality Agreements.
§379.616. Confidentiality Training.	§356.616. Confidentiality Training.
§379.617. Information in Resident or Nonresident Files.	§356.617. Information in Resident or Nonresident Files.
§379.618. Policies and Procedures Regarding Entries in a Resident or Nonresident File.	§356.618. Policies and Procedures Regarding Entries in a Resident or Nonresident File.
§379.619. Maintaining Control over Resident and Nonresident Files.	§356.619. Maintaining Control over Resident and Nonresident Files.
§379.620. Release of Resident or Nonresident Information.	§356.620. Release of Resident or Nonresident Information.

§379.621. Release of Resident or Nonresident Information Document.	§356.621. Release of Resident or Nonresident Information Document.
§379.622. Court Orders.	§356.622. Court Orders.
§379.623. Procedures Regarding Court Orders.	§356.623. Procedures Regarding Court Orders.
§379.624. Notification of Court Orders.	§356.624. Notification of Court Orders.
§379.625. Policies and Procedures for the Retention and Destruction of Documentation.	§356.625. Policies and Procedures for the Retention and Destruction of Documentation.
§379.626. Disruption in Providing Services	§356.626. Disruption in Providing Services.
§379.627. Maximum Length of Stay for Shelter Center Residents.	§356.627. Maximum Length of Stay for Shelter Center Residents.
§379.628. Resident and Nonresident Rights.	§356.628. Resident and Nonresident Rights.
§379.629. Resident's Belongings.	§356.629. Resident's Belongings.
§379.630. Cooperation with Criminal Justice Officials.	§356.630. Cooperation with Criminal Justice Officials.
§379.631. Community Education.	§356.631. Community Education.
§379.632. Volunteer Program.	§356.632. Volunteer Program.
§379.633. Volunteer Recruitment.	§356.633. Volunteer Recruitment.
§379.634. Content of Training for Direct Service Volunteers.	§356.634. Content of Training for Direct Service Volunteers.
§379.635. Content of Training for Non-Direct Service Volunteers.	§356.635. Content of Training for Non-Direct Service Volunteers.
Division 7. Service Delivery	Division 7. Service Delivery
§379.701. Shelter Center Services.	§356.701. Shelter Center Services.
§379.702. Data Collection.	§356.702. Data Collection.
§379.703. Promoting Cooperative Living in the Shelter.	§356.703. Promoting Cooperative Living in the Shelter.
§379.704. Crisis Call Hotline.	§356.704. Crisis Call Hotline.
§379.705. Subcontracting the Crisis Call Hotline.	§356.705. Subcontracting the Crisis Call Hotline.
§379.706. Medical Care.	§356.706. Medical Care.
§379.707. Residents' Medications.	§356.707. Residents' Medications.
§379.708. Resident's Orientation.	§356.708. Resident's Orientation.
§379.709. Nonresident's Orientation.	§356.709. Nonresident's Orientation.
§379.710. Service Plan.	§356.710. Service Plan.
§379.711. Group Intervention.	§356.711. Group Intervention.
§379.712. Religion and Intervention Services.	§356.712. Religion and Intervention Services.
§379.713. Delivery of Children's Direct Services.	§356.713. Delivery of Children's Direct Services.
§379.714. Intervention Services for Children Residing in the Shelter.	§356.714. Intervention Services for Children Residing in the Shelter.
§379.715. Safety Policies and Procedures for Delivering Services to Children.	§356.715. Safety Policies and Procedures for Delivering Services to Children.

§379.716. Texas Department of Family and Protective Services' (DFPS) Child Care Permit.	§356.716. Texas Department of Family and Protective Services' (DFPS) Child Care Permit.
§379.717. Legal Assistance Services.	§356.717. Legal Assistance Services.
§379.718. Educational Services for Children of Adult Residents.	§356.718. Educational Services for Children of Adult Residents.
§379.719. Training and Employment Services.	§356.719. Training and Employment Services.
Subchapter C. Special Nonresidential Projects	Subchapter C. Special Nonresidential Projects
Division 1. Board of Directors	Division 1. Board of Directors
§379.801. Fiscal Oversight and Accountability.	§356.801. Fiscal Oversight and Accountability.
§379.802. Notification Regarding Special Nonresidential Projects.	§356.802. Notification Regarding Special Nonresidential Projects.
§379.803. Confidentiality.	§356.803. Confidentiality.
Division 2. Contract Standards	Division 2. Contract Standards
§379.901. Internal Monitoring System.	§356.901. Internal Monitoring System.
§379.902. Requesting a Variance or Waiver.	§356.902. Requesting a Variance or Waiver.
§379.903. Primary Services to an Unserved or Underserved Population.	§356.903. Primary Services to an Unserved or Underserved Population.
Division 3. Fiscal Management	Division 3. Fiscal Management
§379.1001. Accounting System Requirements.	§356.1001. Accounting System Requirements.
§379.1002. Cash/Non-cash Resources Documentation.	§356.1002. Cash/Non-cash Resources Documentation.
Division 4. Personnel	Division 4. Personnel
§379.1101. Personnel Policies.	§356.1101. Personnel Policies.
§379.1102. Personnel Files.	§356.1102. Personnel Files.
§379.1103. Drug and Alcohol Policy.	§356.1103. Drug and Alcohol Policy.
§379.1104. New Employee Orientation and Training.	§356.1104. New Employee Orientation and Training.
§379.1105. Staff Development.	§356.1105. Staff Development.
Division 5. Facility, Safety, and Health Requirements	Division 5. Facility, Safety, and Health Requirements
§379.1201. Facility Requirements for the Special Nonresidential Project.	§356.1201. Facility Requirements for the Special Nonresidential Project.
§379.1202. Security System Policies and Procedures.	§356.1202. Security System Policies and Procedures.
Division 6. Program Administration	Division 6. Program Administration
§379.1301. Required Services.	§356.1301. Required Services.
§379.1302. Charging for Services.	§356.1302. Charging for Services.
§379.1303. Eligibility.	§356.1303. Eligibility.
§379.1304. Federal and State Laws Regarding Eligibility.	§356.1304. Federal and State Laws Regarding Eligibility.

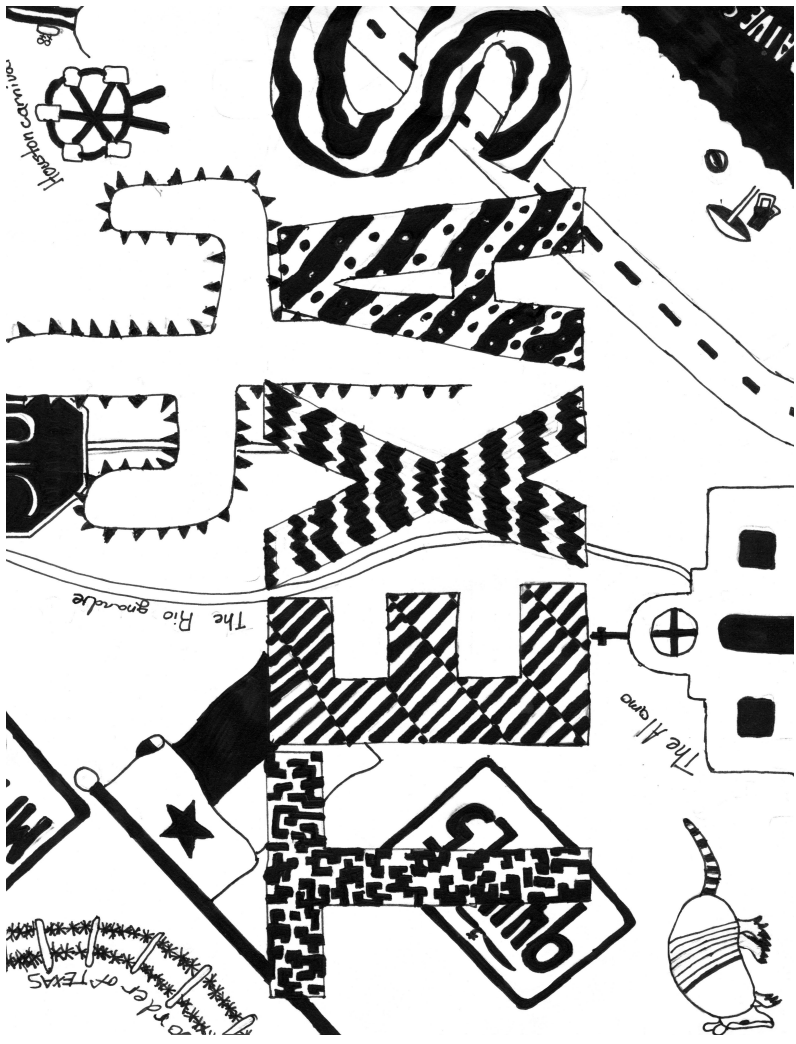
§379.1305. Eligibility Criteria.	§356.1305. Eligibility Criteria.
§379.1306. Denial of Services.	§356.1306. Denial of Services.
§379.1307. Access to Services for People with Limited English Proficiency.	§356.1307. Access to Services for People with Limited English Proficiency.
§379.1308. Nonresidential Services for a Person Under 18 Years of Age.	§356.1308. Nonresidential Services for a Person Under 18 Years of Age.
§379.1309. Termination of Services.	§356.1309. Termination of Services.
§379.1310. General Confidentiality Policy.	§356.1310. General Confidentiality Policy.
§379.1311. Confidentiality Information for Program Participants.	§356.1311. Confidentiality Information for Program Participants.
§379.1312. Confidentiality Agreements.	§356.1312. Confidentiality Agreements.
§379.1313. Confidentiality Training.	§356.1313. Confidentiality Training.
§379.1314. Provision of Health and Human Services Commission (HHSC)-funded Services by Attorneys or Other Licensed Professionals.	§356.1314. Provision of Health and Human Services Commission (HHSC)-funded Services by Attorneys or Other Licensed Professionals.
§379.1315. Information in Program Participant Files.	§356.1315. Information in Program Participant Files.
§379.1316. Policies and Procedures Regarding Entries in a Program Participant's File.	§356.1316. Policies and Procedures Regarding Entries in a Program Participant's File.
§379.1317. Maintaining Control over Program Participant Files.	§356.1317. Maintaining Control over Program Participant Files.
§379.1318. Release of Program Participant Information.	§356.1318. Release of Program Participant Information.
§379.1319. Release of Program Participant Information Document.	§356.1319. Release of Program Participant Information Document.
§379.1320. Court Orders.	§356.1320. Court Orders.
§379.1321. Procedures Regarding Court Orders.	§356.1321. Procedures Regarding Court Orders.
§379.1322. Notification of Court Orders.	§356.1322. Notification of Court Orders.
§379.1323. Policies and Procedures for the Retention and Destruction of Documentation.	§356.1323. Policies and Procedures for the Retention and Destruction of Documentation.
Division 7. Service Delivery	Division 7. Service Delivery
§379.1401. Special Nonresidential Project Services.	§356.1401. Special Nonresidential Project Services.
§379.1402. Data Collection.	§356.1402. Data Collection.
§379.1403. Crisis Call Hotline.	§356.1403. Crisis Call Hotline.
§379.1404. Subcontracting the Crisis Call Hotline.	§356.1404. Subcontracting the Crisis Call Hotline.
§379.1405. Program Participant's Orientation.	§356.1405. Program Participant's Orientation.
§379.1406. Religion and Intervention Services.	§356.1406. Religion and Intervention Services.
§379.1407. Safety Policies and Procedures if Providing Services to Children.	§356.1407. Safety Policies and Procedures if Providing Services to Children.

§379.1408. Texas Department of Family and Protective Services' (DFPS) Child Care Licensing.	§356.1408. Texas Department of Family and Protective Services' (DFPS) Child Care Licensing.
Subchapter D. Nonresidential Centers	Subchapter D. Nonresidential Centers
Division 1. Board of Directors	Division 1. Board of Directors
§379.1501. Fiscal Oversight and Accountability.	§356.1501. Fiscal Oversight and Accountability.
§379.1502. Nonresidential Center's Board Handbook.	§356.1502. Nonresidential Center's Board Handbook.
§379.1503. Board of Directors Training.	§356.1503. Board of Directors Training.
§379.1504. Confidentiality.	§356.1504. Confidentiality.
Division 2. Contract Standards	Division 2. Contract Standards
§379.1601. Primary Services to an Unserved or Underserved Population.	§356.1601. Primary Services to an Unserved or Underserved Population.
§379.1602. Special Nonresidential Project Contract.	§356.1602. Special Nonresidential Project Contract.
§379.1603. Internal Monitoring System.	§356.1603. Internal Monitoring System.
§379.1604. Funding Waivers.	§356.1604. Funding Waivers.
§379.1605. Requesting a Variance or Waiver.	§356.1605. Requesting a Variance or Waiver.
Division 3. Fiscal Management	Division 3. Fiscal Management
§379.1701. Accounting System Requirements.	§356.1701. Accounting System Requirements.
§379.1702. Cash/Non-Cash Resources Documentation.	§356.1702. Cash/Non-Cash Resources Documentation.
Division 4. Personnel	Division 4. Personnel
§379.1801. Personnel Policies.	§356.1801. Personnel Policies.
§379.1802. Personnel Files.	§356.1802. Personnel Files.
§379.1803. Drug and Alcohol Policy.	§356.1803. Drug and Alcohol Policy.
§379.1804. New Employee Orientation and Training.	§356.1804. New Employee Orientation and Training.
§379.1805. Staff Development.	§356.1805. Staff Development.
§379.1806. Legal Advocate.	§356.1806. Legal Advocate.
§379.1807. Volunteer Coordinator.	§356.1807. Volunteer Coordinator.
Division 5. Facility, Safety, and Health Requirements	Division 5. Facility, Safety, and Health Requirements
§379.1901. Facility Requirements for the Nonresidential Center.	§356.1901. Facility Requirements for the Nonresidential Center.
§379.1902. Security System.	§356.1902. Security System.
§379.1903. Security Policies and Procedures.	§356.1903. Security Policies and Procedures.
Division 6. Program Administration	Division 6. Program Administration
§379.2001. Required Services.	§356.2001. Required Services.
§379.2002. Charging for Services.	§356.2002. Charging for Services.
§379.2003. Eligibility.	§356.2003. Eligibility.
§379.2004. Federal and State Laws Regarding Eligibility.	§356.2004. Federal and State Laws Regarding Eligibility.

§379.2005. Eligibility Criteria.	§356.2005. Eligibility Criteria.
§379.2006. Denial of Services.	§356.2006. Denial of Services.
§379.2007. Eligibility of Previously Involuntarily Terminated Program Participants.	§356.2007. Eligibility of Previously Involuntarily Terminated Program Participants.
§379.2008. Access to Services for People with Limited English Proficiency.	§356.2008. Access to Services for People with Limited English Proficiency.
§379.2009. Nonresidential Services for a Person Under 18 Years of Age.	§356.2009. Nonresidential Services for a Person Under 18 Years of Age.
§379.2010. Termination of Services.	§356.2010. Termination of Services.
§379.2011. General Confidentiality Policy.	§356.2011. General Confidentiality Policy.
§379.2012. Confidentiality Information for Adult Program Participants.	§356.2012. Confidentiality Information for Adult Program Participants.
§379.2013. Confidentiality Agreements.	§356.2013. Confidentiality Agreements.
§379.2014. Confidentiality Training.	§356.2014. Confidentiality Training.
§379.2015. Information in Program Participant Files.	§356.2015. Information in Program Participant Files.
§379.2016. Policies and Procedures Regarding Entries in Program Participant's Files.	§356.2016. Policies and Procedures Regarding Entries in Program Participant's Files.
§379.2017. Maintaining Control over Program Participant Files.	§356.2017. Maintaining Control over Program Participant Files.
§379.2018. Release of Program Participant Information.	§356.2018. Release of Program Participant Information.
§379.2019. Release of Program Participant Information Document.	§356.2019. Release of Program Participant Information Document.
§379.2020. Court Orders.	§356.2020. Court Orders.
§379.2021. Procedures Regarding Court Orders.	§356.2021. Procedures Regarding Court Orders.
§379.2022. Notification of Court Orders.	§356.2022. Notification of Court Orders.
§379.2023. Policies and Procedures for the Retention and Destruction of Documentation.	§356.2023. Policies and Procedures for the Retention and Destruction of Documentation.
§379.2024. Minimum Hours for a Nonresidential Center.	§356.2024. Minimum Hours for a Nonresidential Center.
§379.2025. Requirements if a Victim of Family Violence Needs Shelter Services.	§356.2025. Requirements if a Victim of Family Violence Needs Shelter Services.
§379.2026. Disruption in Providing Services.	§356.2026. Disruption in Providing Services.
§379.2027. Program Participant Rights.	§356.2027. Program Participant Rights.
§379.2028. Cooperation with Criminal Justice Officials.	§356.2028. Cooperation with Criminal Justice Officials.
§379.2029. Community Education.	§356.2029. Community Education.
§379.2030. Volunteer Program.	§356.2030. Volunteer Program.
§379.2031. Volunteer Recruitment.	§356.2031. Volunteer Recruitment.
§379.2032. Content of Training for Direct Service Volunteers.	§356.2032. Content of Training for Direct Service Volunteers.

§379.2033. Content of Training for Non-Direct Service Volunteers.	§356.2033. Content of Training for Non-Direct Service Volunteers.
Division 7. Service Delivery	Division 7. Service Delivery
§379.2101. Nonresidential Center Services.	§356.2101. Nonresidential Center Services.
§379.2102. Data Collection.	§356.2102. Data Collection.
§379.2103. Crisis Call Hotline.	§356.2103. Crisis Call Hotline.
§379.2104. Subcontracting the Crisis Call Hotline.	§356.2104. Subcontracting the Crisis Call Hotline.
§379.2105. Medical Care.	§356.2105. Medical Care.
§379.2106. Program Participant's Orientation.	§356.2106. Program Participant's Orientation.
§379.2107. Individual Service Plans.	§356.2107. Individual Service Plans.
§379.2108. Group Intervention.	§356.2108. Group Intervention.
§379.2109. Religion and Intervention Services.	§356.2109. Religion and Intervention Services.
§379.2110. Delivery of Children's Direct Services.	§356.2110. Delivery of Children's Direct Services.
§379.2111. Safety Policies and Procedures for Delivering Services to Children.	§356.2111. Safety Policies and Procedures for Delivering Services to Children.
§379.2112. Texas Department of Family and Protective Services' (DFPS) Child Care Permit.	§356.2112. Texas Department of Family and Protective Services' (DFPS) Child Care Permit.
§379.2113. Legal Assistance Services	§356.2113. Legal Assistance Services.
§379.2114. Training and Employment Services.	§356.2114. Training and Employment Services.

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REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Department of Savings and Mortgage Lending

Title 7, Part 4

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending (department) files this notice of its intent to review and consider for re-adoption, re-adoption with amendments, or repeal by the commission the following chapters of 7 TAC Part 4:

Chapter 78, Wrap Mortgage Loans (§§78.1 - 78.3, 78.100 - 78.102, 78.200, 78.201, 78.300 - 78.303, 78.400 - 78.403);

Chapter 79, Residential Mortgage Loan Servicers (§§79.1 - 79.5, 79.20, 79.30, 79.40, 79.50);

Chapter 80, Residential Mortgage Loan Companies (§§80.1 - 80.5, 80.100 - 80.102, 80.105 - 80.107, 80.200 - 80.206, 80.300 - 80.302); and

Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators (§§81.1 - 81.5, 81.100 - 81.111, 81.200 - 81.206, 81.300 - 81.302).

The review will be conducted in accordance with Government Code §2001.039. The department, in conducting the rule review, will assess whether the reasons for originally adopting the rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, reflects current policy considerations and procedures of the department, and whether it is in compliance with Government Code Chapter 2001 (Administrative Procedure Act).

Written comments regarding the rule review and whether the reasons for initially adopting the sections under review continue to exist should be submitted to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this notice. Any proposed changes to the rules resulting from rule review will be published separately in the Proposed Rules section of the *Texas Register* and will be open for public comment at that time, prior to potential adoption by the commission.

TRD-202400831

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Filed: February 26, 2024

Adopted Rule Reviews

Department of State Health Services

Title 25, Part 1

The Texas 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 (TAC):

Chapter 227, Minimum Guidelines for Human Donor Milk Banks

Notice of the review of this chapter was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8392). HHSC and DSHS received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 227 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 agencies determined that the original reasons for adopting all rules in the chapter no longer exist and Chapter 227 will be repealed. The repeal of Chapter 227 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 227 as required by the Texas Government Code, §2001.039.

TRD-202400880

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: February 27, 2024

The Texas 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 (TAC):

Chapter 230, Specific Additional Requirements for Drugs

Notice of the review of this chapter was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8392). HHSC and DSHS received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 230 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 agencies determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 230. Any amendments or repeals to Chapter 230 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 230 as required by the Texas Government Code, §2001.039.

TRD-202400760

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: February 21, 2024



Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 350, Early Childhood Intervention Services

Notice of the review of this chapter was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8393). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 350 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 350. Any appropriate amendments to Chapter 350 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC 350 as required by the Texas Government Code, §2001.039.

TRD-202400881

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: February 27, 2024



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code (TAC) Chapter 214, Secondary Containment Requirements for Underground Storage Tank Systems Located Over Certain Aquifers, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re Adoption, re Adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intention to Review these rules in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4675).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 214 are required to implement Texas Water Code (TWC), §26.3476 (adopted by the 77th Legislature, 2001), by establishing requirements for underground storage tank systems over certain aquifers to incorporate a method of secondary containment.

Public Comment

The public comment period closed on September 26, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 214 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202400785

Charmaine K. Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 22, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 295, Water Rights, Procedural, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re Adoption, re Adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intention to Review these rules in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4676).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 295 contain the procedural requirements to implement Texas Water Code (TWC), Chapter 11, Water Rights, and TWC, Chapter 18, Marine Seawater Desalination Projects. The rules include filing and fee requirements, descriptions of the public notices required for applications, information related to contested case hearings, special actions that may be taken by the commission related to specific types of water rights, miscellaneous filing and reporting requirements, and a subchapter relating to marine seawater desalination projects. The rules are necessary for the regulation of state water by TCEQ.

Public Comment

The public comment period closed on September 26, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 295 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202400786

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 22, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 317, Design Criteria Prior to 2008, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re Adoption, re Adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intention to Review these rules in the January 6, 2023, issue of the *Texas Register* (48 TexReg 57).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 317 are required because they provide design standards that TCEQ used prior to 2008 for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastewater. The rules also provide the standards that TCEQ used in its review and approval of design plans and specifications prior to 2008. The rules are necessary to ensure that facilities whose design plans and specifications were approved prior to 2008 are operating and

maintaining the facility in compliance with the rules under which the design plans and specifications were approved.

Public Comment

The public comment period closed on February 7, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 317 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202400780

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 22, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 350, Texas Risk Reduction Program, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4676).

The review assessed whether the reasons for initially adopting the rules continue to exist and TCEQ has determined that those reasons do continue to exist. The rules in Chapter 350 are required because they es-

tablish the regulatory framework needed to provide a consistent assessment and corrective action process to protect human health and the environment while balancing the economic welfare of the citizens of Texas. Chapter 350 establishes a process for meeting certain criteria identified in the Texas Water Code, Chapters 5 and 26, and the Texas Health and Safety Code, Chapter 361. The rules establish procedures to demonstrate compliance with cleanup standards, and also include requirements for monitoring, data collection, and reporting to assess affected property, post-response action care, notice to prospective landowners, and financial assurance. The rules use a tiered approach that incorporates risk-based assessment techniques which helps focus site investigations and determine appropriate protective concentration levels for human health and/or ecological receptors and response actions that are protective of human health and the environment.

Public Comment

The public comment period closed on September 26, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 350 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202400781

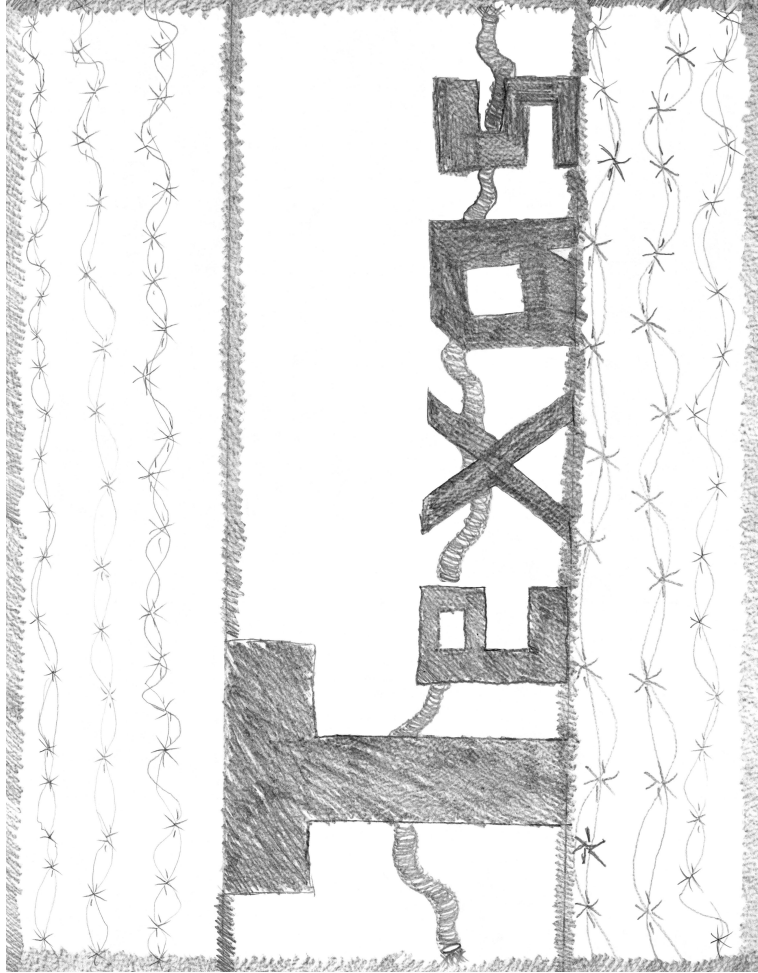
Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 22, 2024





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §40.6(b)(1)(I)

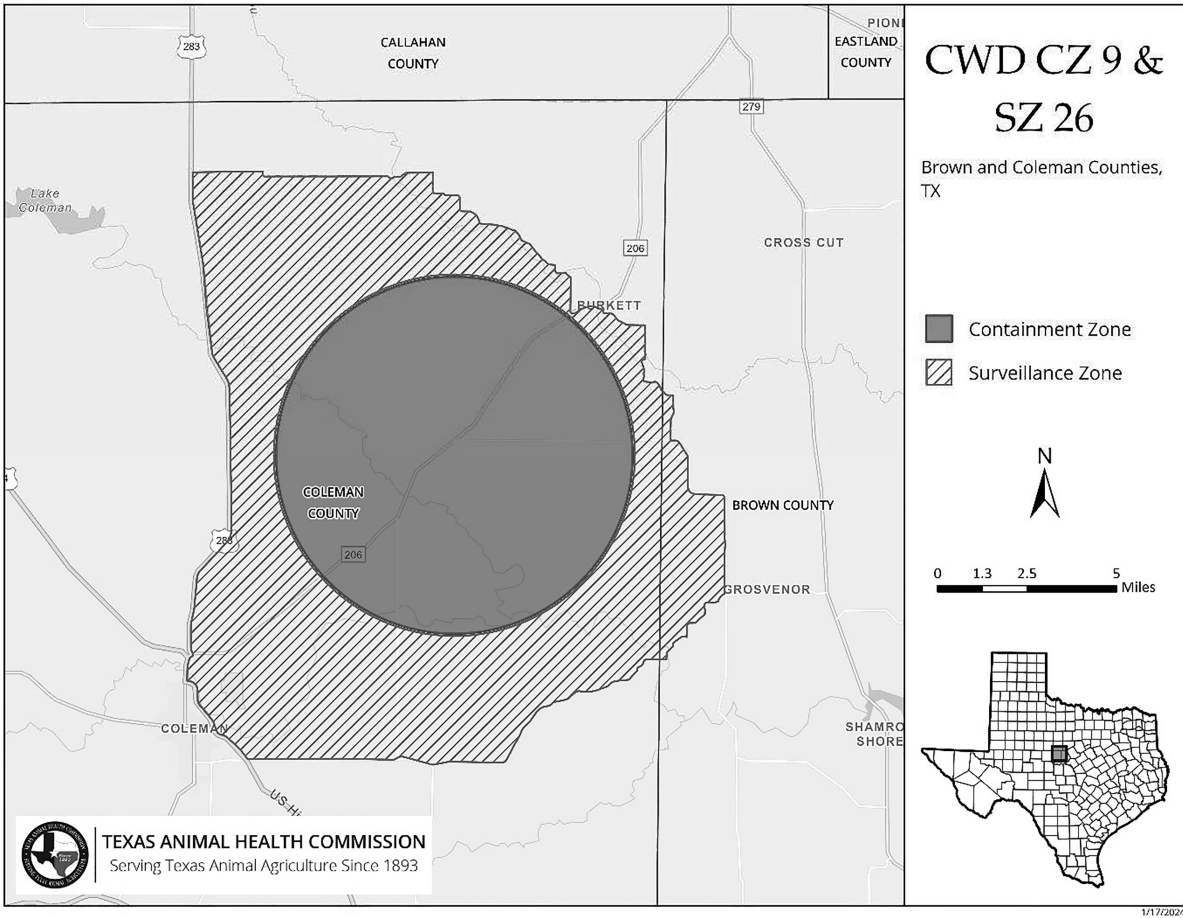


Figure: 4 TAC §40.6(b)(2)(V)

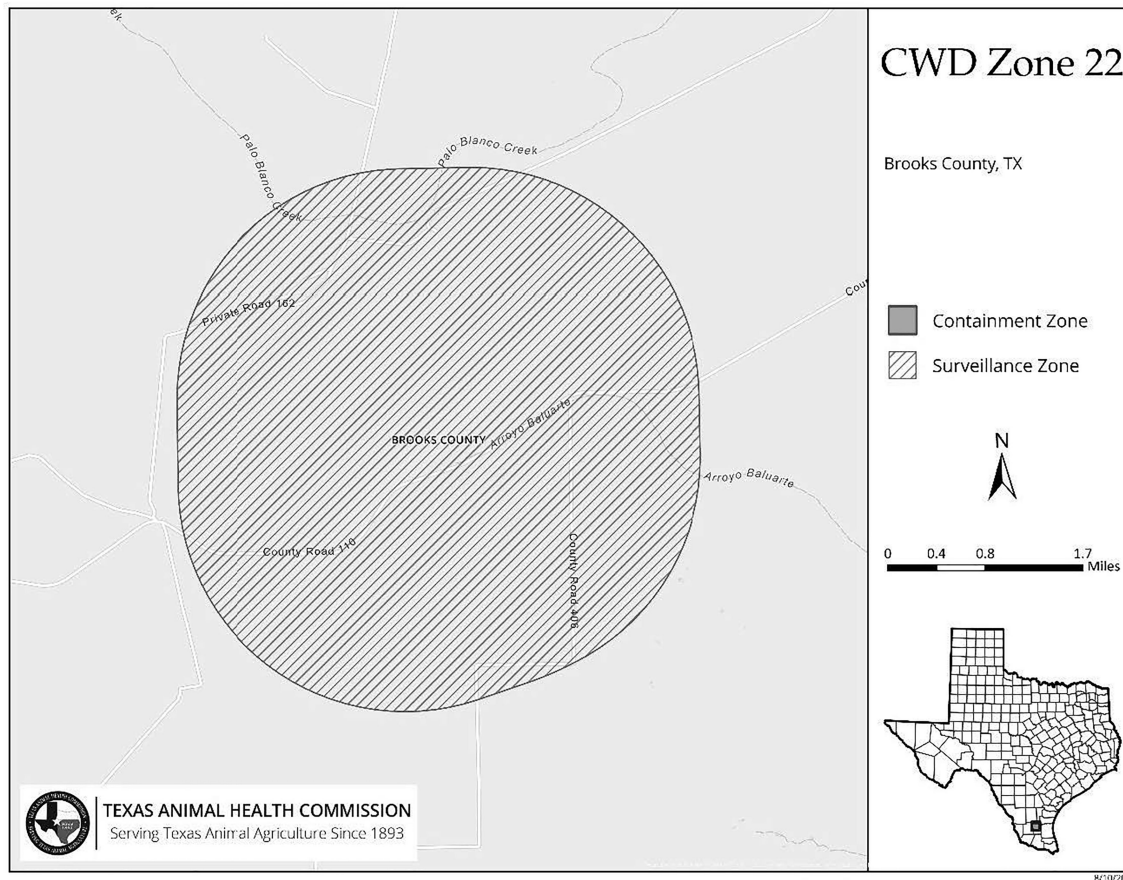


Figure: 4 TAC §40.6(b)(2)(W)

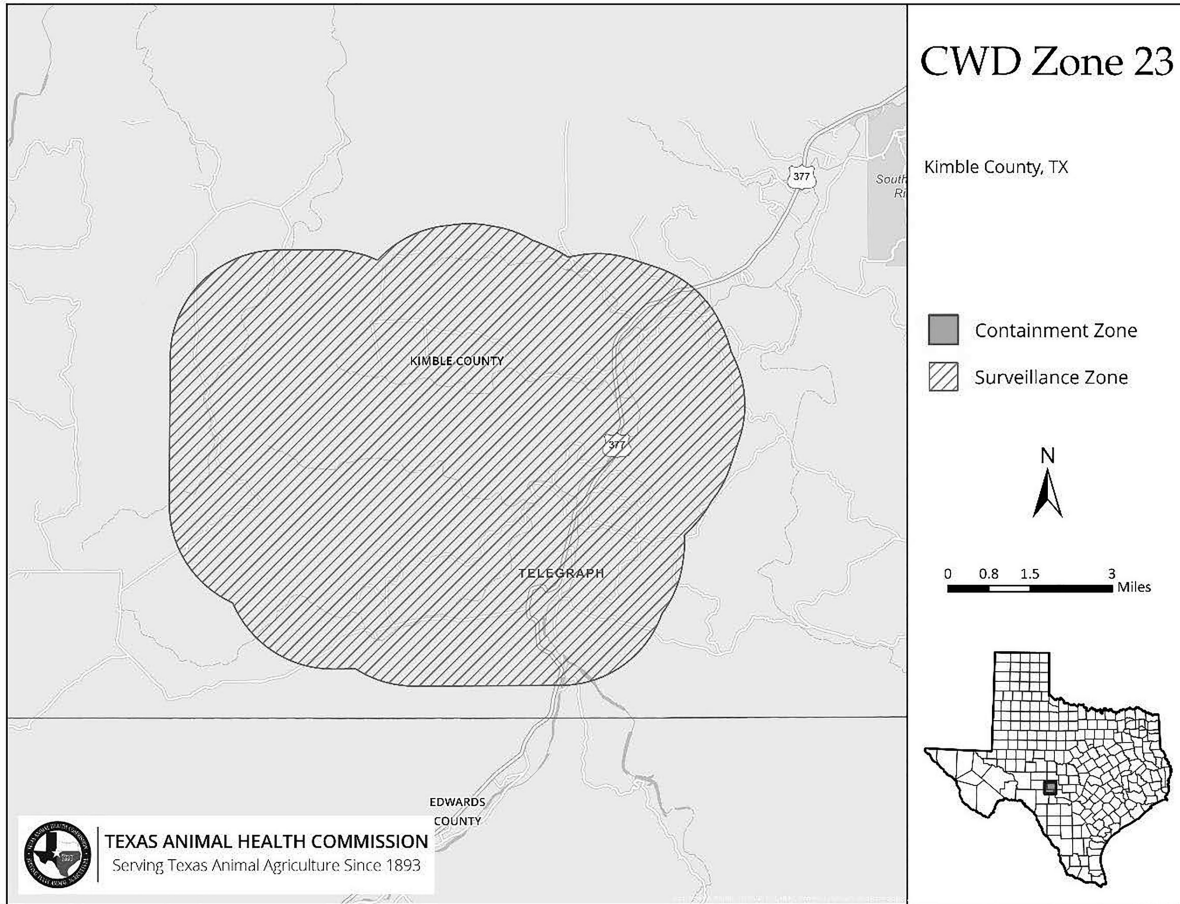


Figure: 4 TAC §40.6(b)(2)(X)

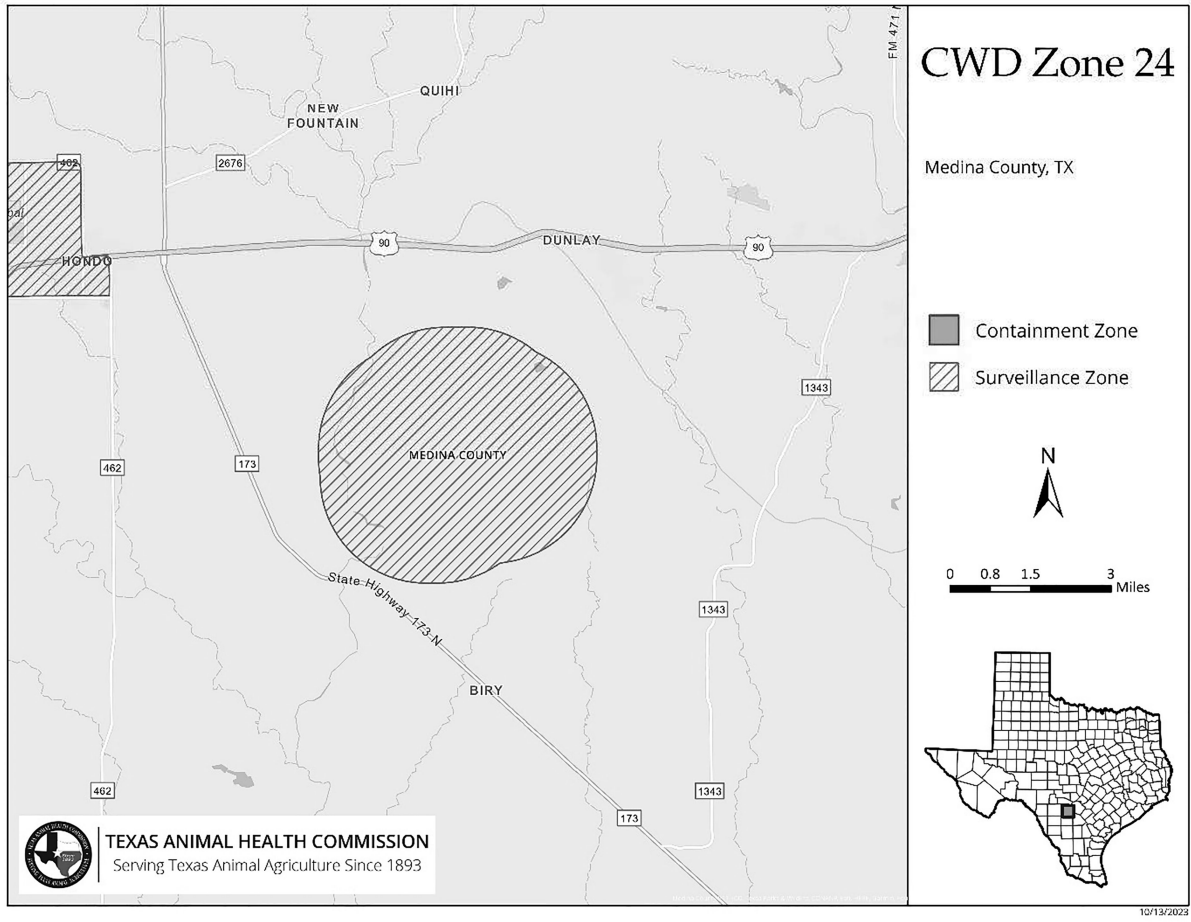


Figure: 4 TAC §40.6(b)(2)(Y)

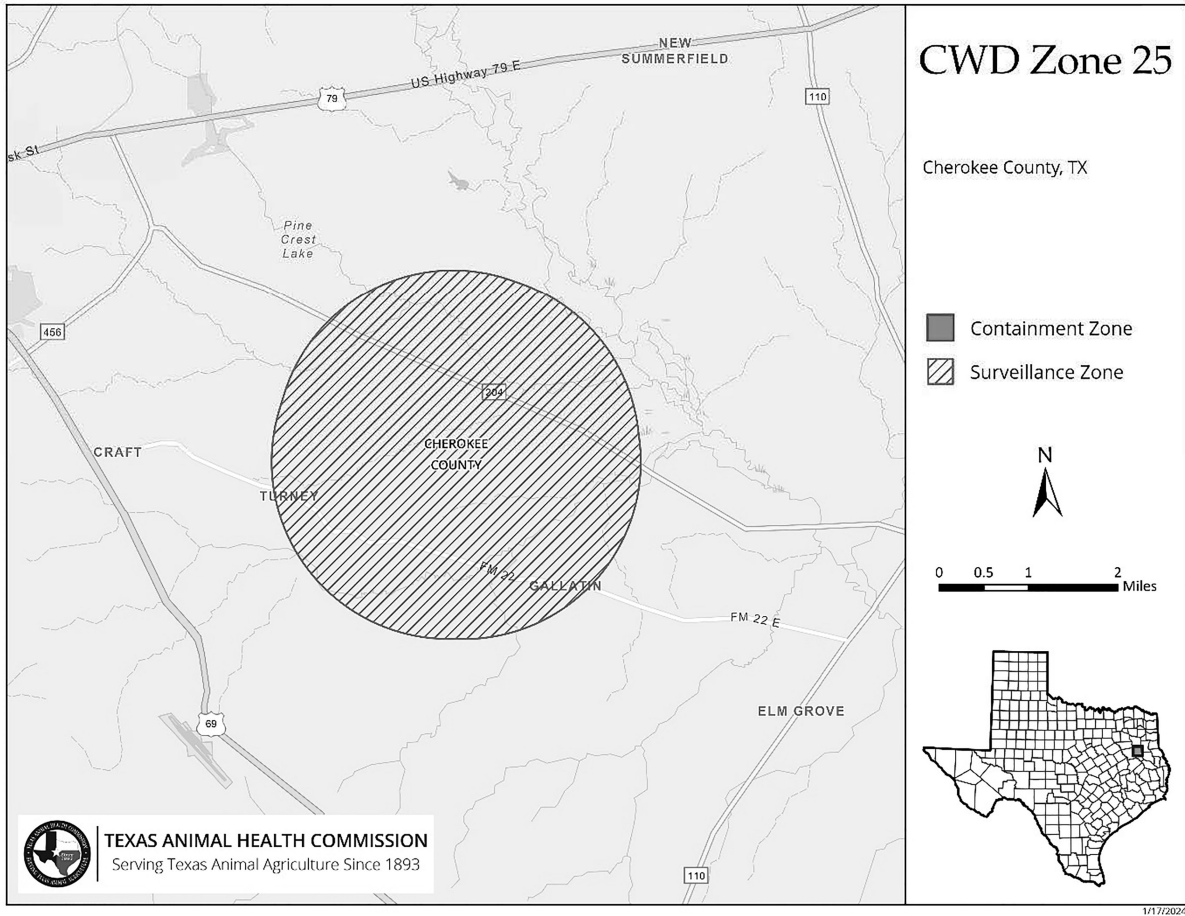


Figure: 4 TAC §40.6(b)(2)(Z)

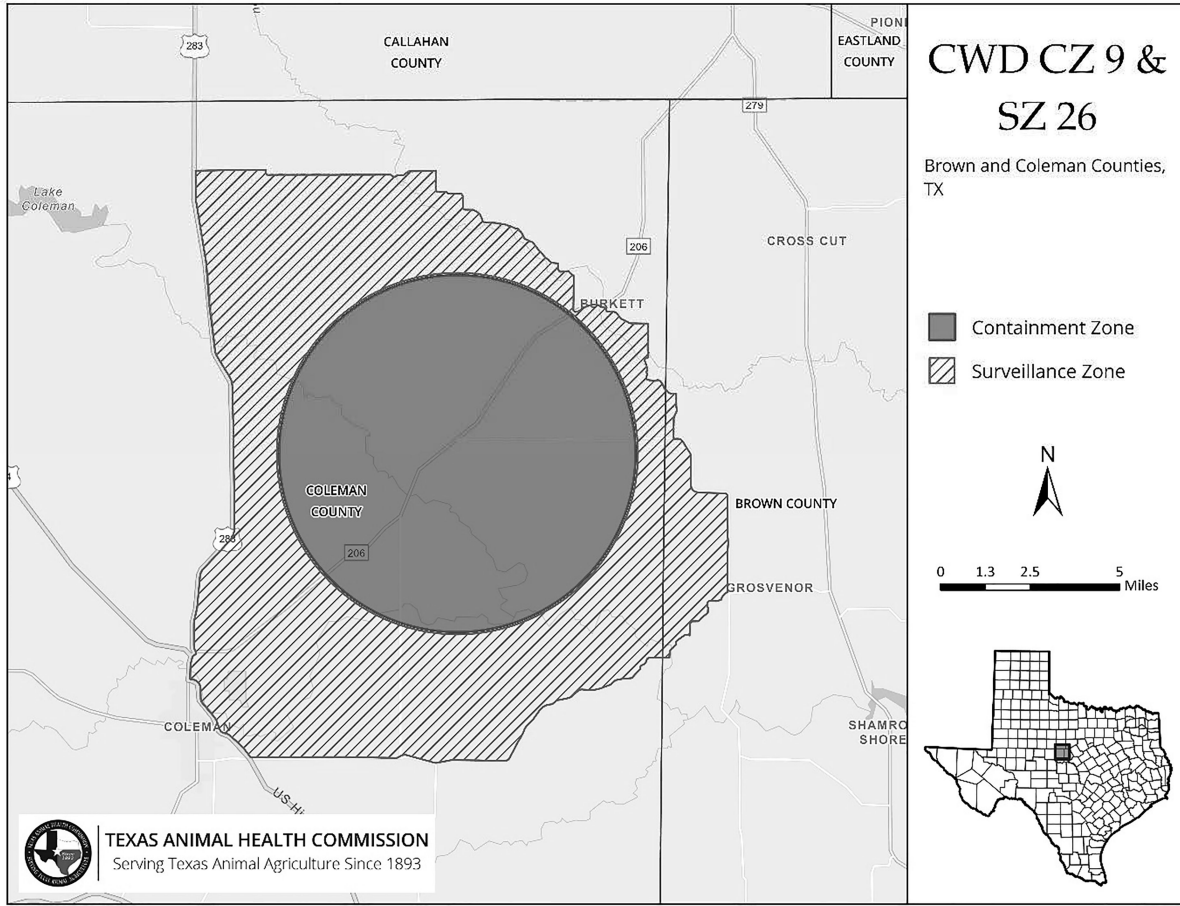


Figure: 26 TAC §559.107(d)

S E V E R E I T Y		Isolated	Pattern	Widespread
	Immediate threat	\$350 - \$500 J	\$350 - \$500 K	\$350 - \$500 L
	Actual harm	\$200 - \$350 G	\$200 - \$350 H	\$200 - \$350 I
	No actual harm with a potential for more than minimal harm	\$100 - \$200 D	\$100 - \$200 E	\$100 - \$200 F
	No actual harm with a potential for minimal harm	\$0 A	\$0 B	\$0 C

S C O P E

Note: To assist in using the administrative penalty schedule, the following example is provided: a facility cited for a violation that is an immediate threat to the health or safety of elderly persons or persons with disabilities and is widespread in scope will have an administrative penalty assessed in the amount of \$350-\$500, as shown in box "L."



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.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - January 2024

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period January 2024 is \$49.85 per barrel for the three-month period beginning on October 1, 2023, and ending December 31, 2023. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of January 2024, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period January 2024 is \$1.56 per mcf for the three-month period beginning on October 1, 2023, and ending December 31, 2023. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2024, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of January 2024 is \$73.86 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of January 2024, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of January 2024 is \$2.72 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of January 2024, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

Issued in Austin, Texas, on February 26, 2024.

TRD-202400848

Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: February 26, 2024

Office of Consumer Credit Commissioner

Adjustments to 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).

The amount of the debt management setup fee in TEX. FIN. CODE §394.210(f)(1) is adjusted to \$136.00.

The amount of the debt management monthly service fee in TEX. FIN. CODE §394.210(f)(2) is adjusted to the lesser of \$14.00 per account or \$68.00.

The amount of the debt settlement setup fee in TEX. FIN. CODE §394.210(g)(1) is adjusted to \$544.00.

The amount of the debt settlement monthly service fee in TEX. FIN. CODE §394.210(g)(2) is adjusted to the lesser of \$14.00 per account or \$68.00.

The amount of the counseling or education if no debt management or settlement service provided fee in TEX. FIN. CODE §394.210(l) is adjusted to \$136.00.

The amount of the fee for dishonored payment in TEX. FIN. CODE §394.210(n) remains at \$30.00.

Note: These calculations are based on comparing the reference base index for December 2011 (225.672) to the index for December 2023 (306.764). The percentage change is a 35.9336% increase, rounded to the nearest dollar.

TRD-202400896

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 28, 2024

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in TEX. FIN. CODE §341.203.⁽¹⁾

The amounts of brackets in TEX. FIN. CODE §342.201(a) are changed to \$2,640.00 and \$22,000.00, respectively.

The amounts of brackets in TEX. FIN. CODE §342.201(e) are changed to \$4,400.00, \$9,240.00, and \$22,000.00, respectively.

The ceiling amount in TEX. FIN. CODE §§342.251 and 342.259 are changed to \$880.00 and \$1,760.00, respectively.

The amounts of the brackets in TEX. FIN. CODE §345.055 are changed to \$4,400.00 and \$8,800.00, respectively.

The amount of the bracket in TEX. FIN. CODE §345.103 is changed to \$4,400.00.

The ceiling amount of TEX. FIN. CODE §371.158 is changed to \$22,000.00.

The amounts of the brackets in TEX. FIN. CODE §371.159 are changed to \$264.00, \$1,760.00, and \$2,640.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2024, and extending through June 30, 2025.

^①Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2023 Index = 895.777. The percentage of change is 881.67%. This equates to an increase of 880% after disregarding the percentage of change in excess of multiples of 10%.

TRD-202400895
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 28, 2024



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 03/04/24 - 03/10/24 is 18% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/04/24 - 03/10/24 is 18% for commercial² credit.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment, or other similar purpose.

TRD-202400894
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 28, 2024



Texas Education Agency

Request for Applications Concerning the 2024-2025 Texas Education for Homeless Children and Youth Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-24-123 is authorized by Public Law 107-110, Title X, Part C, Homeless Education; and the McKinney-Vento Homeless Act, Title VII, Subtitle B (42 U.S.C. §11431 et seq.).

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-24-123 from eligible applicants, which include all local educational agencies (LEAs) and education service centers.

Description. 2024-2025 Texas Education for Homeless Children and Youth Grant applicants must establish rigorous goals and innovative activities to promote equitable access by removing barriers to enrollment and identification; increase levels of support services; and utilize academic, program, and outcome data to foster the overall success of students experiencing homelessness. Applicants must demonstrate how they will utilize data to develop early warning support systems to identify interventions, measure progress, and ensure that appropriate academic and overall supports are in place so that students experiencing homelessness achieve grade level standards, achieve on state mandated assessments, promote on grade-level, and graduate on time with their peers and persist to post-secondary. Applicants will accomplish these goals and activities in a variety of ways based on the unique individual needs provided in the application. Applicants are expected to ensure that their campus and LEA staff are equipped to enroll, identify, and place students experiencing homelessness in the most rigorous and appropriate academic setting. Student academic and assessment progress should be addressed in collaboration with Title I, Part A, and other

special programs (e.g., special education, English learners, gifted and talented, career and technical education, etc.) to assist in the review, evaluation, and implementation of a data-driven plan to accomplish targeted performance measures during the grant period. Applicants are required to describe how their project collaborates with community partners, social service providers, and federal and academic programs within their LEA to identify students and remove barriers.

Dates of Project. The 2024-2025 Texas Education for Homeless Children and Youth Grant will be implemented during the 2024-2025 school year. Applicants should plan for a starting date of no earlier than September 1, 2024, and an ending date of no later than August 31, 2025.

Project Amount. Approximately \$9,393,990 million is available for funding the 2024-2025 Texas Education for Homeless Children and Youth Grant. It is anticipated that approximately 80 grants will be awarded up to approximately \$375,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on March 22, 2024, from 1:00 p.m. to 2:15 p.m. Questions relevant to the RFA may be emailed to HomelessEducation@tea.texas.gov prior to 5:00 p.m. (Central Time) on March 15, 2024. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and the RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to homelesseducation@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than April 5, 2024. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by April 16, 2024. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be submitted to competitivetgrants@tea.texas.gov. Applications must be received no

later than 11:59 p.m. (Central Time), April 23, 2024, to be considered eligible for funding.

Issued in Austin, Texas, on February 28, 2024.

TRD-202400892

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 28, 2024

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 **April 8, 2024**. 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 **April 8, 2024**. 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: Alon USA, LP; DOCKET NUMBER: 2023-0419-AIR-E; IDENTIFIER: RN100250869; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 49154 and 53425, Special Conditions Number 1, Federal Operating Permit Number O1505, General Terms and Conditions and Special Terms and Conditions Number 19, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$19,425; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,770; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(2) COMPANY: City of New Summerfield; DOCKET NUMBER: 2021-1165-MWD-E; IDENTIFIER: RN101918282; LOCATION: New Summerfield, Cherokee County; TYPE OF FACILITY: waste-

water treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013585001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,200; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: CMPW Properties LLC; DOCKET NUMBER: 2023-0670-WQ-E; IDENTIFIER: RN111581690; LOCATION: Mineola, Wood County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sediment into or adjacent to any water in the state; 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR1502KS, Part III, Sections F.2.(b)iii and G.2, by failing to initiate stabilization measures where construction activities had temporarily ceased and would not resume within 14 days or where construction activities had permanently ceased; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR1502KS, Part III, Section F.2.(c)i.(A)(4), by failing to properly select, install, and maintain control measures according to the manufacturer's or designer's specifications; and 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR1502KS, Part III, Section F.6(d), by failing to remove accumulations of sediment at a frequency that minimizes off-site impacts; PENALTY: \$23,625; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(4) COMPANY: CSWR-Texas Utility Operating Company, LLC; DOCKET NUMBER: 2022-0894-PWS-E; IDENTIFIER: RN101182830; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picocuries per liter (pCi/L) for gross alpha particle activity and 5 pCi/L for combined radium-226 and radium-228 based on the running annual average; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: East Montgomery County Municipal Utility District Number 3; DOCKET NUMBER: 2021-1632-MWD-E; IDENTIFIER: RN102671427; LOCATION: New Caney, Montgomery 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 WQ0014379001, Interim II Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$11,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$9,300; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: HLH DEVELOPMENT, LLC; DOCKET NUMBER: 2023-1140-WQ-E; IDENTIFIER: RN111738399; LOCATION: Mico, Medina County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: SILGAN CONTAINERS MANUFACTURING CORPORATION; DOCKET NUMBER: 2022-0665-AIR-E; IDEN-

TIFIER: RN100225374; LOCATION: Paris, Lamar County; TYPE OF FACILITY: can manufacturing plant; RULES VIOLATED: 30 TAC §§116.115(c), 122.143(4), and 122.144(1)(A), New Source Review Permit Number 21720, Special Conditions Number 3, Federal Operating Permit (FOP) Number O1781, General Terms and Conditions (GTC) and Special Terms and Conditions Number 3, and Texas Health and Safety Code (THSC), §382.085(b), by failing to perform weekly visible emissions observations; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O1781, GTC, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance and failing to submit the deviation report no later than 30 days after the end of each reporting period; PENALTY: \$20,699; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: Staff Water Supply Corporation; DOCKET NUMBER: 2022-0636-PWS-E; IDENTIFIER: RN101198711; LOCATION: Eastland, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(b)(4) and (f)(6) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter (mg/L) free chlorine throughout the distribution system in more than 5.0% of the samples collected each month, for any two consecutive months; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 mg/L for haloacetic acids, and 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: \$4,950; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: TPG Pressure, Incorporated dba Forterra Pressure Pipe Grand Prairie; DOCKET NUMBER: 2023-0160-PST-E; IDENTIFIER: RN102597267; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: industrial manufacturing facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,888; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: TRICON PRECAST, LTD.; DOCKET NUMBER: 2022-0836-WQ-E; IDENTIFIER: RN100241728; LOCATION: Houston, Harris County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System Permit Number TXR112052, Part IV.7.f., by failing to submit monitoring results at intervals specified in the permit; PENALTY: \$675; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

TRD-202400873

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 27, 2024



Enforcement Orders

An agreed order was adopted regarding ASAA ENTERPRISES INC dba Stop & Save, Docket No. 2021-1181-PST-E on February 28, 2024 assessing \$4,500 in administrative penalties with \$900 deferred. Infor-

mation concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Brownfield, Docket No. 2022-0054-MWD-E on February 28, 2024 assessing \$1,750 in administrative penalties with \$350 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Castillo & Torres Services, LLC dba D & N GROCERY, Docket No. 2022-0510-PST-E on February 28, 2024 assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Lauren Little, 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 Goya C-Stores INC dba Zip in Grocery, Docket No. 2022-1137-PST-E on February 28, 2024 assessing \$1,625 in administrative penalties with \$325 deferred. Information concerning any aspect of this order may be obtained by contacting Justin Prichard, 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 A&B TRADING, LLC dba Country Side, Docket No. 2022-1392-PST-E on February 28, 2024 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, 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 Aqua Utilities, Inc., Docket No. 2023-0747-PWS-E on February 28, 2024 assessing \$1,125 in administrative penalties with \$225 deferred. Information concerning any aspect of this order may be obtained by contacting Daphne Greene, 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 Ball Metal Beverage Container Corp., Docket No. 2023-0768-AIR-E on February 28, 2024 assessing \$287 in administrative penalties with \$57 deferred. Information concerning any aspect of this order may be obtained by contacting Karyn Olschesky, 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 UNITED AGRICULTURAL COOPERATIVE, INC. dba United Ag General Store, Docket No. 2023-0823-PST-E on February 28, 2024 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Kaisie Hubschmitt, 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 BPX Operating Company, Docket No. 2023-0972-AIR-E on February 28, 2024 assessing \$3,938 in administrative penalties with \$787 deferred. Information concerning any aspect of this order may be obtained by contacting Karyn Olschesky, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Danul Petty, Docket No. 2023-1661-WQ-E on February 28, 2024 assessing \$875 in administra-

tive penalties. Information concerning any aspect of this citation may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding Caddo Mills Industrial Park Llc, Docket No. 2023-1692-WQ-E on February 28, 2024 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Shane Glantz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Quail Ridge Operating LLC, Docket No. 2023-1698-WR-E on February 28, 2024 assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Nancy Sims, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Halfmann, Charles, Docket No. 2023-1712-WR-E on February 28, 2024 assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Nancy Sims, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202400891

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 28, 2024



Notice and Comment Hearing Draft Permit No.: O1598

This is a notice for a notice and comment hearing on Federal Operating Permit Number O1598. During the notice and comment hearing informal questions on the Federal Operating Permit will be answered and formal comments will be received. The Texas Commission on Environmental Quality (TCEQ) has scheduled the notice and comment hearing regarding this application and draft permit as follows:

Date: April 11, 2024

Time: 7 p.m.

Location: Raul Yzaguirre Schools for Success

2950 Broadway Street

Houston, Texas

Location phone: (713) 475-7409

Application and Draft Permit. TPC Group LLC, 8600 Park Place Blvd., Houston, Texas 77017-2513, an All Other Basic Organic Chemical Manufacturing facility, has applied to the TCEQ for a Renewal of Federal Operating Permit (herein referred to as permit) No. O1598, Application No. 33608 to authorize operation of the Houston Plant. The area addressed by the application is located at 8600 Park Place Blvd. in Houston, Harris County, Texas 77017-2513. This application was received by the TCEQ on April 19, 2022.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, will codify the conditions under which the site must operate. The TCEQ Executive Director recommends issuance of the draft permit. The purpose of a federal operating permit is to improve overall compliance with the rules governing air pollution control by clearly

listing all applicable requirements, as defined in Title 30 Texas Administrative Code 30 TAC §122.10. The permit will not authorize new construction or new emissions.

Notice and Comment Hearing. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration and an informal discussion period with commission staff members will begin during the first 30 minutes. During the informal discussion period, the public is encouraged to ask questions and engage in open discussion with the applicant and the TCEQ staff concerning this application and draft permit. Issues raised during this discussion period **will only** be addressed in the formal response to comments if the issue is also presented during the hearing. After the conclusion of the informal discussion period, the TCEQ will conduct a notice and comment hearing regarding the application and draft permit. Individuals may present oral statements when called upon in order of registration. A reasonable time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing. The purpose of this hearing will be to receive formal public comment which the TCEQ will consider in determining whether to revise and/or issue the permit and in determining the accuracy and completeness of the permit. Any person may attend this meeting and submit written or oral comments. The hearing will be conducted in accordance with the Texas Clean Air Act § 382.0561, as codified in the Texas Health and Safety Code, and 30 TAC §122.340.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the TCEQ Public Education Program toll free at (800) 687-4040 or (800) RELAY-TX (TDD), at least five business days prior to the hearing.

Any person may also submit written comments before the hearing to the Texas Commission on Environmental Quality, Office of Chief Clerk, MC-105, P. O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Written comments should include (1) your name, address, and daytime telephone number, and (2) the draft permit number found at the top of this notice.

A notice of proposed final action that includes a response to comments and identification of any changes to the draft permit will be mailed to everyone who submitted: written comments and/or hearing requests, attended and signed in at the hearing, or requested to be on the mailing list for this application. This mailing will also provide instructions for public petitions to the U.S. Environmental Protection Agency (EPA) to request that the EPA object to the issuance of the proposed permit. After receiving a petition, the EPA may only object to the issuance of a permit which is not in compliance with applicable requirements or the requirements of 30 TAC Chapter 122.

Mailing List. In addition to submitting public comments, a person may ask to be placed on a mailing list for this application by sending a request to the TCEQ Office of the Chief Clerk at the address above. Those on the mailing list will receive copies of future public notices (if any) mailed by the Chief Clerk for this application.

Information. For additional information about this permit application or the permitting process, please contact the Texas Commission on Environmental Quality, Public Education Program, MC-108, P.O. Box 13087, Austin, Texas 78711-3087 or toll free at (800) 687-4040. General information about the TCEQ can be found at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained for TPC Group LLC by calling Jason Sanders, Environmental Manager at (713) 475-7409.

Notice Issuance Date: February 23, 2024

TRD-202400889

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 28, 2024



Notice of an Amendment to a Certificate of Adjudication
Application No. 12-5311C

Notice Issued February 27, 2024

Gibbons Tract 1, LP (Owner/Applicant), 162 Private Road 5743, Thornton, Texas 76687, Applicant, seeks to amend Certificate of Adjudication No. 12-5311 to authorize use of the bed and banks of Gibbons Creek, the Navasota River, and the Brazos River to convey not to exceed 9,740 acre-feet of water per year released from Gibbons Creek Reservoir for subsequent diversion downstream. Under a water rights lease with The Dow Chemical Company (Dow), water released from Gibbons Creek reservoir will be diverted at diversion rates and points authorized under Dow's Certificate of Adjudication No. 12-5328, as amended. The Applicant also seeks authorization to use the bed and banks of Oyster Creek in the San Jacinto-Brazos Coastal Basin to convey released water diverted from the Brazos River at Dow's authorized diversion points and conveyed through Dow's distribution system in accordance with the authorizations in Certificate of Adjudication No. 12-5328, as amended.

More information on the application and how to participate in the permitting process is given below.

The Executive Director has completed the technical review of the application and prepared a draft permit. The application was received on August 15, 2023 and fees were received on August 16, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 24, 2023.

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 measurement requirements for the released water. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by April 01, 2024. 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 April 01, 2024. The Executive Director may approve the application unless a written request for a contested case hearing is filed by April 01, 2024.

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 prop-

erty 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 5311 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. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al www.tceq.texas.gov.

TRD-202400890
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 28, 2024



Notice of an Application for a Water Use Permit Application
No. 13728

The Lavaca-Navidad River Authority (LNRA/Applicant), 4631 FM 3131, Edna, Texas 77957, has applied for a water use permit (Permit) to construct and maintain a reservoir impounding 240 acre-feet of water on the Lavaca River, Lavaca River Basin, divert 96,022 acre-feet of water per year from a diversion reach on the Lavaca River for municipal, industrial, and mining purposes in Calhoun, Jackson, Matagorda, Wharton, and Victoria counties in the Lavaca River Basin and the Colorado-Lavaca and Lavaca-Guadalupe Coastal Basins, authorize use of the bed and banks of the Navidad River (Lake Texana) to convey the diverted water and/or store the diverted water in an off-channel reservoir, overdraft Lake Texana under specified conditions, authorize reuse of the water diverted and used under the permit, and temporarily use 1,500 acre-feet of the authorized water for industrial purposes.

More information on the application and how to participate in the permitting process is given below.

The application and fees were received on March 23, 2020. Additional information was received on June 25, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 10, 2020. Additional information was received on February 24, and March 19, 2021, and March 8, 2023.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and maintenance of an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ webpage at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk 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 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 WRPERM 13728 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. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202400887

Laurie Gharis
Chief Clerk

Texas Commission on Environmental Quality
Filed: February 28, 2024



Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 8, 2024**.

TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 8, 2024**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Trinity; DOCKET NUMBER: 2021-0717-PWS-E; TCEQ ID NUMBER: RN101218105; LOCATION: intersection of Railroad Street and East Madison Street, Trinity, Trinity County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315 and 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system at all times; 30 TAC §290.46(q)(1), by failing to provide a copy of the boil water notice (BWN) to the executive director (ED) within 24 hours after issuance by the facility and a signed Certificate of Delivery to the ED within ten days after issuance of the BWN; 30 TAC §290.46(f)(2), (3)(A)(iii), (iv), and (B)(iii), by failing to maintain water works operations and maintenance records and make them readily available for review by the ED upon request; and 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: \$4,928; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202400874

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 27, 2024



Notice of Public Meeting for Municipal Solid Waste Permit Proposed Permit No. 2419

Application. Hill Country Waste Solutions, LLC has submitted an application to the Texas Commission on Environmental Quality (TCEQ) for a new municipal solid waste transfer station. The facility is proposed to be located at 11301 US Highway 281 North, Spring Branch, Comal County, Texas 78070-6301. The TCEQ received this application on May 19, 2023. 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://arcgis.is/1Kv9C2>. For the exact location, refer to the application.

Additional Notice. TCEQ's Executive Director has determined the application is technically complete. The Executive Director has prepared a draft permit and issued 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. A public meeting is not a contested case hearing under the Administrative Procedure Act. The public meeting will be held at 7:30 p.m. on Thursday April 4, 2024, at Smithson Valley Middle School, located at 6101 FM 311, Spring Branch, Texas 78070. The applicant and TCEQ staff will be available before the public meeting to answer individual's questions from 6:30 p.m. to 7:30 p.m..

The Public Meeting is to be held:

Thursday, April 4, 2024, at 7:30 p.m.

Question and Answer Time from 6:30 p.m. to 7:30 p.m.

Smithson Valley Middle School

6101 FM 311

Spring Branch, Texas 78070

Any comments or questions asked during the question and answer period before the start of the public meeting will not be considered before a decision is reached on the permit application and no formal response will be made. At 7:30 p.m. the formal comment period will begin, and members of the public may state their formal comments orally into the official record. A written response to all formal 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.

Information. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application is available for viewing and copying at Mammen Family Public Library, 131 Bulverde Crossing, Bulverde, Comal County, Texas 78163, and may be viewed online at <https://www.hcwastesolutions.com/transfer>. Further information may also be obtained from Hill Country Waste Solutions, L.L.C., at the mailing P.O. Box 960, Spring Branch, Texas 78070 or by calling Mr. Karlis Ercums, IV, President at (830) 885-5512.

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.

Issued Date: February 27, 2024

TRD-202400888

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 28, 2024



Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016260001

APPLICATION AND PRELIMINARY DECISION. 705 Limmerloop JV LLC, 5900 Balcones Drive, Suite 100, Austin, Texas 78731, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016260001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. TCEQ received this application on November 29, 2022.

The facility will be located approximately 650 feet northeast of the intersection of Etna Way and Limmer Loop (County Road 109), in Williamson County, Texas 78634. 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://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.594469,30.563358&level=18>

The treated effluent will be discharged to an unnamed ditch, thence to an unnamed tributary, thence to McNutt Creek, thence to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed ditch, limited aquatic life use for the unnamed tributary, and high aquatic life use for the McNutt Creek. The designated uses for Segment No. 1244 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. The aquifer protection use applies to the contributing, recharge, and transition zones of the Edwards Aquifer. However, this facility is downstream of these areas.

In accordance with 30 Texas Administrative Code §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 McNutt Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has 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. Dur-

ing 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, April 9, 2024 at 7:00 p.m.

Hutto High School Gymnasium

101 FM 685

Hutto, Texas 78634

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español puede llamar (800) 687-4040.* General information about the TCEQ can be found at our 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 Hutto Public Library, 500 West Live Oak Street, Hutto, Texas. Further information may also be obtained from 705 Limmerloop JV LLC at the address stated above or by calling Mr. Brian Tucker, Senior Vice President of Development, at (512) 675-6864.

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 22, 2024

TRD-202400886

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 28, 2024



General Land Office

Notice of Funds 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 2025 and state GOMESA funds are expected

in April 2025. The GLO, the agency responsible for administering 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.

The GLO and the CCAC will accept applications for NOAA-funded and GOMESA-funded projects through a competitive application process. Projects must address at least one of the CMP funding priorities listed in the CMP Cycle 30 Guidance document.

The GLO will hold three 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 three workshops.

Workshop 1 - South Padre Island

Tuesday, April 16, 2024

9:00 a.m. - 12:00 p.m.

South Padre Island Birding and Nature Center

6801 Padre Boulevard

South Padre Island, Texas 78597

Workshop 2 - Port Aransas

Wednesday, April 17, 2024

9:00 a.m. - 12:00 p.m.

The Patton Center

855 E Cotter Ave

Port Aransas, Texas 78373

Workshop 3 - League City

Friday, April 19, 2024

9:00 a.m. - 12:00 p.m.

Johnnie Adolfo Civic Center

400 W Walker St

League City, Texas 77573

Registration is required to attend the workshops. Registration for all workshops will close on Friday, April 12, 2024, at 5:00 pm. Workshop registration links are shown below.

South Padre Island: texas-coastal-management-program.ticketleap.com/south-padre-island-workshop/

Port Aransas: texas-coastal-management-program.ticketleap.com/port-aransas-workshop/

League City: texas-coastal-management-program.ticketleap.com/league-city---cmp-grant-workshop/

The requirements to receive federal or state grant funds are outlined in the CMP Cycle 30 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/>.

Applications for NOAA-funded projects and GOMESA funded Projects of Special Merit are due by 5:00 p.m. on June 5, 2024.

To be considered for funding, applications must be submitted electronically in the online application portal. The Cycle 30 application for NOAA-based and PSM funding is similar to a Letter of Intent. If a project is selected to move forward to development, the applicant will receive a conditional Intent to Fund notification in **August 2024**. The applicant and CMP staff will then work to develop the work plan and budget. The applicant will also be responsible for providing all required supporting documentation by **November 6, 2024**. If the applicant and CMP staff successfully develop a project scope, the applicant will receive a Final Funding Confirmation notice in early 2025.

TRD-202400825

Mark Havens

Chief Clerk

General Land Office

Filed: February 26, 2024

◆ ◆ ◆
Texas Health and Human Services Commission

Public Hearing - Revised Date - Texas State Hospital Long-Range Planning Report Meetings

HHSC will conduct two hybrid (in-person and virtual) meetings on March 13th and April 16th, 2024, to receive public comment on the draft long-range planning report for the Texas State Hospitals. A draft report will be available to the public on the HHS website prior to the March 19th meeting. The report will address:

- (1) projected future bed requirements for state hospitals;
- (2) documenting the methodology used to develop the projection of future bed requirements;
- (3) projected maintenance costs for institutional facilities;
- (4) recommended strategies to maximize the use of institutional facilities; and
- (5) how each state hospital will:
 - (A) serve and support the communities and consumers in its service area; and
 - (B) fulfill statewide needs for specialized services.

The initiatives outlined in this report will guide the Texas State Hospitals for the next six years. This report is developed under the authority of Texas Health and Safety Code §533.032.

What

Meeting on the Texas State Hospitals Long Range Plan

When

Wednesday, March 13, 2024 - 1 p.m.

Tuesday, April 16, 2024 - 1 p.m.

Where

John H. Winters Building - Room 125E - 701 W. 51st St. Austin, Texas 78751

Virtual: Access a live stream of the meeting here: <https://www.hhs.texas.gov/about/live-archived-meetings>

Virtual Oral Comments

Members of the public must pre-register to provide oral comments virtually during the meeting by completing a Public Comment Registration form for March 13th at <https://forms.office.com/r/5s0FVmYYMC>. The April 16th form is located at <https://forms.office.com/r/DL7fFaUi3t>. The forms must be completed no later than 5:00 p.m. Tuesday, March 12, 2024, and Monday, April 15, 2024.

Please mark the correct box on the Public Comment Registration form and provide your name, either the organization you are representing or that you are speaking as a private citizen, and your direct phone number. If you have completed the Public Comment Registration form, you will receive an email the day before the meeting with instructions for providing virtual public comment. Public comment is limited to three minutes. Each speaker providing oral public comments virtually must ensure their face is visible and their voice audible to the other participants while they are speaking. Each speaker must state their name and for whom they are speaking (if anyone). If you pre-register to speak and wish to provide a handout before the meeting, please submit an electronic copy in accessible PDF format that will be distributed to the appropriate HHSC staff. Handouts are limited to two pages (paper size: 8.5" by 11", one side only). Handouts must be emailed to SHS_Central_Administration@hhsc.state.tx.us immediately after pre-registering, but no later than 5:00 p.m. Tuesday, March 12, 2024, and Monday, April 15th, 2024, and must include the name of the person who will be commenting. Do not include health or other confidential information in your comments or handouts. Staff will not read handouts aloud during the hearing, but handouts will be provided to the appropriate HHSC staff.

In-Person Oral Comments

Members of the public may provide oral public comment during the hearing in person at the hearing location either by pre-registering using the form above or without pre-registering by completing a form at the entrance to the meeting room. Do not include health or other confidential information in your comments.

Written Comments

A member of the public who wishes to provide written public comments must either email the comments to SHS_Central_Administration@hhsc.state.tx.us no later than 5:00 p.m. Tuesday, March 12, 2024, and Monday, April 15th, 2024, or send written comments via U.S. mail, overnight mail, special deliver mail, or hand delivery to the mailing address at the bottom of this notice. Please include your name and the organization you are representing or that you are speaking as a private citizen. Written comments are limited to two pages (paper size: 8.5" by 11", one side only). Do not include health or other confidential information in your comments. Staff will not read written comments

aloud during the meeting, but comments will be provided to the appropriate HHSC staff.

Additional Information for Written Comments

Written comments, requests to review comments or both 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
Health and Specialty Care System / Texas State Hospitals
Attention: Terina McIntyre, Mail Code 2023
Austin State Hospital
4110 Guadalupe Street, Austin, Texas 78751

Overnight Mail, Special Delivery Mail or Hand Delivery

Texas Health and Human Services Commission
Health and Specialty Care System / Texas State Hospitals
Attention: Terina McIntyre, Mail Code 2023
Austin State Hospital
4110 Guadalupe Street, Austin, Texas 78751

Email

Terina.McIntyre01@hhs.texas.gov

Contact

If you have any questions, please contact Terina McIntyre at (512) 574-3218 or Terina.McIntyre01@hhs.texas.gov

TRD-202400790
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 22, 2024



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 April 1, 2024.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for Family Planning Services.

The proposed amendment is estimated to result in an annual aggregate expenditure of \$3,058 for federal fiscal year (FFY) 2024, consisting of \$2,735 in federal funds and \$306 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is \$6,050 consisting of \$5,445 in federal funds and \$605 in state general revenue. For FFY 2026, the estimated annual aggregate expenditure is \$5,987 consisting of \$5,388 in federal funds and \$599 in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website under the proposed effective date at: <https://pfd.hhs.texas.gov/rate-packets>.

Rate Hearing.

A Rate Hearing was conducted in person and online on February 5, 2024. Information about the proposed rate changes and hearings was published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 438). 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 Nicole Hotchkiss, 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@hhs.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

Preferred Communication.

For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202400849
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 26, 2024



Texas Higher Education Coordinating Board

Meeting of Negotiated Rulemaking Committee on Texas Research Incentive Program (TRIP)

Date of Meeting: March 19, 2024

Start Time of Meeting: 9:30 a.m.

Additional Information Obtained From: Laurie Frederick, Convener, Laurie.Frederick@highered.texas.gov

Agenda:

- 1. Introductions
- 2. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
- 3. Brief Overview of Roles and Responsibilities
 - a) Role of Facilitator
 - b) Role of Sponsor Agency
 - c) Role of Committee Members
- 4. Consideration and Possible Action to Approve Facilitator
- 5. Procedural Issues
 - a) Consideration and Possible Action to Approve Ground Rules
 - b) Consideration and Possible Action to Approve Definition of Consensus
- 6. Discussion of Draft Rule Language on Texas Research Incentive Program
- 7. Consideration and Possible Action to Approve Proposed Rule Language on Texas Research Incentive Program

Individuals who may require auxiliary aids or services for this meeting should contact Glenn Tramel, ADA Coordinator, at (512) 427-6193 at least five days before the meeting so that appropriate arrangements can be made.

TRD-202400884

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: February 27, 2024



Notice of Opportunity to Comment on Proposed Field of Study Curriculum for Communications

The Texas Higher Education Coordinating Board (Coordinating Board) staff is providing an opportunity for written public comment on a revision of the Field of Study Curriculum (FOSC) for Communications.

Texas Education Code (TEC) Chapter 61, Subchapter S, establishes policies to facilitate statewide transfer, including the FOSC. Institutions must accept partially or fully completed Field of Study Curricula for academic credit toward the degree program in which the transfer student enrolls (TEC §61.823). The Coordinating Board has promulgated rules related to transfer policy in 19 Texas Administrative Code (TAC) Chapter 1, Subchapter V, and Chapter 4, Subchapter B. Posting requirements may be found in 19 TAC §4.33(f) and §1.239(b).

The Communications Discipline-Specific Subcommittee met on October 18 - 19, 2023, to consider and make recommendations to the Texas Transfer Advisory Committee regarding the FOSC for this discipline. On November 27, 2023, the Texas Transfer Advisory Committee adopted the subcommittee recommendations for the designated Texas Core Curriculum courses and the Discipline Foundation Courses and

recommended their submission to the Commissioner of Higher Education for final approval.

The recommended courses are as follows:

Designated Core Courses in the Field of Study: There were no courses identified to be included in the designated core courses for the revised political science Field of Study.

Discipline Foundation Courses (12 semester credit hours):

SPCH 1311: Introduction to Speech Communication

SPCH 1315: Public Speaking

SPCH 1318: Interpersonal Communication

SPCH 1321: Business and Professional Communication

In addition to these courses, each general academic institution will have the opportunity to submit to the Coordinating Board at least six (6) semester credit hours of Directed Electives selected by the institution from the Academic Course Guide Manual. The complete FOSC will consist of the Designated Core Courses and Discipline Foundation Courses listed above, as well as Directed Electives selected by the relevant general academic institutions in compliance with the transfer rules in TAC Chapter 4, Subchapter B, including §§4.23(4), 4.32(b)(3), and 4.33.

General academic institutions will be required to transfer these courses and apply them for academic credit towards degree programs with majors in the following CIP Code:

09.0100: Communication, General

09.0101: Communication Studies/Speech Communication and Rhetoric

Written comments about the proposed field of study must be sent to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email to Elizabeth.Mayer@highered.texas.gov. Comments must be received by 5:00 p.m., April 6, 2024, to be considered.

TRD-202400883

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: February 27, 2024



Notice of Public Hearing: State of Texas College Student Loan Bonds and State of Texas College Student Loan Refunding Bonds

NOTICE IS HEREBY GIVEN of a public hearing to be held by the Texas Higher Education Coordinating Board (the "Issuer") on March 18, 2024, at 10:00 a.m., at the offices of the Issuer, 1801 N. Congress Ave. Room 11.101/Conference Room 11A Austin, Texas 78701, with respect to the issuance by the Issuer of one or more series of State of Texas College Student Loan Bonds ("Loan Bonds") and State of Texas College Student Loan Refunding Bonds ("Refunding Bonds") (collectively, the "Bonds") in an aggregate amount of not more than (i) \$175,000,000 in Loan Bonds, the proceeds of which will be used by the Issuer to originate student loans to student borrowers at eligible institutions of higher education in the State of Texas under Chapter 52, Texas Education Code (the "Loan Program") and (ii) \$112,000,000 in Refunding Bonds, the proceeds of which will be used by the Issuer to refund certain student loan bonds that were previously issued by the

Issuer for the Loan Program to achieve a debt service savings. Descriptions of the Loan Program, the Bonds and the particular bonds to be refunded have been and will be kept on file at the office of the Issuer at the address set forth above. The Bonds will be general obligations of the State of Texas.

All interested persons are invited to attend such public hearing to express their views with respect to the Loan Program and the proposed issuance of the Bonds. Questions or requests for additional information may be directed to Anthony Infantini, Assistant Commissioner-Financial Services/Chief Financial Officer, 1801 N. Congress Ave. Suite 11.500 Austin, Texas 78701 or emailed to Anthony.Infantini@highered.texas.gov.

Persons who plan to attend are encouraged, in advance of the public hearing, to inform the Issuer either in writing or by telephone at (512) 427-6173. Any interested persons unable to attend the hearing may submit their views in writing to the Issuer prior to the date scheduled for the hearing.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public hearing prerequisite to the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

TRD-202400882
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: February 27, 2024

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Atlantes Insurance Reciprocal Exchange, a domestic reciprocal. The home office is in Dallas, Texas.

Application for incorporation in the state of Texas for USAA Falcon Property & Casualty Insurance Company, a domestic fire and/or casualty company. The home office is in San Antonio, Texas.

Application for Envolve Vision of Texas, Inc. d/b/a Centene Vision Services. The home office is in Austin, Texas.

Application for Envolve Dental of Texas, Inc. d/b/a Centene Dental Services. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202400885
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: February 28, 2024

◆ ◆ ◆
Texas Windstorm Insurance Association--Rating Rules Filing

Reference No. P-0224-01
SERFF Tracking No. TWIA-133992349
State Tracking No. S719059

In accordance with 28 TAC §5.4911, the Texas Windstorm Insurance Association (TWIA) has filed revised rating rules with the Texas Department of Insurance for approval.

TWIA is revising its Rating Rules manual to conform to House Bill 3208, 88th Legislature, 2023. Under HB 3208, if a policyholder cancels their policy, TWIA will keep the entire annual premium unless the cancellation is for one of the reasons listed in Insurance Code §2210.204(d). **This filing does not change TWIA's rates.**

The revisions state that for policies effective on or after September 1, 2023, when a policyholder cancels a policy, TWIA will keep the entire annual premium, unless the policy was cancelled due to:

- the purchase of similar coverage in the private market,
- the death of the policyholder,
- the total loss of the property, or
- the sale of the insured property.

You can view the revised rating rules, TWIA's description of the filing, and other supporting information online at www.tdi.texas.gov/submissions/indextwia.html#form. You can also get a copy of the filing from the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

Public Comment: Comments on the revised rating rule filing may be sent to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030 by 5:00 p.m., central time, on April 8, 2024.

Hearing Requests: To request a public hearing about the revised rating rules filing, you must submit a request separately by 5:00 p.m., central time, on March 28, 2024. Send the hearing request by email to ChiefClerk@tdi.texas.gov or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711-2030.

TRD-202400824
Jessica Barta
General Counsel
Texas Department of Insurance
Filed: February 26, 2024

◆ ◆ ◆
Texas Lottery Commission

Scratch Ticket Game Number 2581 "SUPER CROSSWORD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2581 is "SUPER CROSSWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2581 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2581.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B,

C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100 and \$500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2581 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
BLACKENED SQUARE SYMBOL	

\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2581), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2581-000001-001.

H. Pack - A Pack of the "SUPER CROSSWORD" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SUPER CROSSWORD" Scratch Ticket Game No. 2581.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "SUPER CROSSWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose the Play Symbols as indicated per the game instructions from the total one hundred ninety-seven (197) Play Symbols. SUPER CROSSWORD PLAY INSTRUCTIONS: The player completely scratches all of the YOUR 20 LETTERS Play Symbols to reveal 20 letters. The player then scratches all the letters found in

GAME 1 and GAME 2 that exactly match the YOUR 20 LETTERS Play Symbols. If the player has scratched at least 3 complete WORDS within a GAME, the player wins the prize found in the corresponding PRIZE LEGEND. WORDS revealed in one GAME cannot be combined with WORDS revealed in the other GAME. Each GAME is played separately. Only 1 prize paid per GAME. Only letters within the same GAME that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least 3 letters. GAME 1 can win by revealing 3 to 11 complete WORDS. GAME 2 can win by revealing 3 to 6 complete WORDS. BONUS WORD PLAY INSTRUCTIONS: The player scratches all the letters in the BONUS WORD that exactly match the YOUR 20 LETTERS Play Symbols. If the player scratches a complete BONUS WORD, the player wins the BONUS WORD PRIZE. A completed BONUS WORD cannot be used to win in GAME 1 or GAME 2. Each GAME and the BONUS WORD are played separately. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly one hundred ninety-seven (197) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly one hundred ninety-seven (197) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the one hundred ninety-seven (197) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the one hundred ninety-seven (197) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- B. GENERAL: A Ticket can win as indicated by the prize structure.
- C. GENERAL: There will be no correlation between any exposed data on a Ticket and its status as a winning or Non-Winning Ticket.
- D. GENERAL: Each Ticket consists of a GAME 1 puzzle grid, a GAME 2 puzzle grid, a BONUS WORD puzzle grid, a BONUS WORD PRIZE play area and a YOUR 20 LETTERS play area.
- E. GENERAL: Each Ticket in a Pack will have different GAMES (i.e., the GAME 1 puzzle grid and the GAME 2 puzzle grid will have different words and configurations of words).
- F. GENERAL: A Ticket can only win one (1) time per GAME and BONUS WORD for a total of up to three (3) times per Ticket, as dictated by the prize structure.
- G. GENERAL: The BONUS WORD Prize Symbols will only appear in the BONUS WORD PRIZE play area and will never appear in the BONUS WORD puzzle grid, GAME 1 puzzle grid, GAME 2 puzzle grid or YOUR 20 LETTERS play area.
- H. GAME 1 AND GAME 2: The GAME 1 puzzle grid will be formatted with at least one thousand (1,000) configurations and the GAME 2 puzzle grid will be formatted with at least five hundred and sixty (560) configurations (i.e., puzzle layouts not including words).
- I. GAME 1 AND GAME 2: All GAME 1 puzzle grid configurations will be formatted within a grid that contains eleven (11) spaces (height) by eleven (11) spaces (width). All GAME 2 puzzle grid configurations will be formatted within a grid that contains seven (7) spaces (height) by seven (7) spaces (width).
- J. GAME 1 AND GAME 2: There will be no matching words on a Ticket.
- K. GAME 1 AND GAME 2: There will be no matching Play Symbols in the YOUR 20 LETTERS play area.
- L. GAME 1 AND GAME 2: Each GAME 1 grid will contain the following: a) Four (4) 3"letter words, b) Five (5) 4"letter words, c) Three (3) 5"letter words, d) Three (3) 6"letter words, e) One (1) 7"letter word, f) Two (2) 8"letter words, g) One (1) 9"letter word.
- M. GAME 1 AND GAME 2: Each GAME 2 grid will contain the following: a) Two (2) 3"letter words, b) Three (3) 4"letter words, c) Two (2) 5"letter words, d) Two (2) 6"letter words.
- N. GAME 1 AND GAME 2: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.
- O. GAME 1 AND GAME 2: All words will contain a minimum of three (3) letters.
- P. GAME 1 AND GAME 2: All words will contain a maximum of nine (9) letters.
- Q. GAME 1 AND GAME 2: All words used will be from TX_Aproved_Words_Vers.2.042321.doc.
- R. GAME 1 AND GAME 2: Words from TX_Prohibited_Words_Vers.2.042321.docx will not appear horizontally in the YOUR 20 LETTERS play area when read from left to right or right to left.
- S. GAME 1 AND GAME 2: A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally

(in either direction) in the YOUR 20 LETTERS play area that matches a word in the grid.

T. GAME 1 AND GAME 2: Each grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted grids (i.e., the same puzzle grid), all "approved words" will appear in every logical (i.e., 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e., this will not place the word "ZOO" in a position that causes an intersection word to require the second letter to be "Z" when in fact, there are no approved words with a "Z" in the second letter position).

U. GAME 1 AND GAME 2: No consonant will appear more than nine (9) times in the GAME 1 grid.

V. GAME 1 AND GAME 2: No consonant will appear more than seven (7) times in the GAME 2 grid.

W. GAME 1 AND GAME 2: Each non-winning grid (GAME 1/GAME 2) will have two (2) completed words.

X. GAME 1 AND GAME 2: At least fifteen (15) of the YOUR 20 LETTERS Play Symbols will open at least one (1) letter in the GAME 1, GAME 2 and BONUS WORD play areas.

Y. GAME 1 AND GAME 2: The presence or absence of any letter in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

Z. GAME 1 AND GAME 2: GAME 1 will not have more than eleven (11) words completed.

AA. GAME 1 AND GAME 2: GAME 2 will not have more than six (6) words completed.

BB. BONUS WORD: The BONUS WORD can be completed and won, as indicated by the prize structure.

CC. BONUS WORD: The BONUS WORD will contain exactly six (6) letters and will not match any word in either the GAME 1 or GAME 2 grids.

DD. BONUS WORD: On winning Tickets when only the BONUS WORD is completed, two (2) completed words will be revealed in each of the non-winning GAME 1 and GAME 2 grids.

EE. BONUS WORD: The BONUS WORD will have at least two (2) letter play spots opened by the YOUR 20 LETTERS.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER CROSSWORD" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER CROSSWORD" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER CROSSWORD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "SUPER CROSSWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "SUPER CROSSWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial

bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned

by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 30,240,000 Scratch Tickets in Scratch Ticket Game No. 2581. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2581 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	3,225,600	9.38
\$10.00	1,209,600	25.00
\$15.00	1,209,600	25.00
\$20.00	806,400	37.50
\$25.00	604,800	50.00
\$50.00	302,400	100.00
\$100	62,496	483.87
\$200	5,880	5,142.86
\$500	2,184	13,846.15
\$1,000	300	100,800.00
\$100,000	13	2,326,153.85

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.07. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket

Game No. 2581 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2581, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202400871
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 26, 2024



Scratch Ticket Game Number 2586 "MILLION DOLLAR LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2586 is "MILLION DOLLAR LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2586 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2586.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: ARMADILLO SYMBOL, BAT SYMBOL, BICYCLE SYMBOL, BLUEBONNET SYMBOL, BOAR SYMBOL, BUTTERFLY SYMBOL, CACTUS SYMBOL, CARDINAL SYMBOL, CHERRIES SYMBOL, CHILE PEPPER SYMBOL, CORN SYMBOL, COVERED WAGON SYMBOL, COW SYMBOL, COWBOY SYMBOL, COWBOY HAT SYMBOL, DESERT SYMBOL, FIRE SYMBOL, FOOTBALL SYMBOL, GEM SYMBOL, GUITAR SYMBOL, HEN SYMBOL, HORSE SYMBOL, HORSESHOE SYMBOL, JACKRABBIT SYMBOL, LIZARD SYMBOL, LONE STAR SYMBOL, MARACAS SYMBOL, MOCKINGBIRD SYMBOL, MOONRISE SYMBOL, MORTAR PESTLE SYMBOL, NEWSPAPER SYMBOL, OIL RIG SYMBOL, PECAN TREE SYMBOL, PIÑATA SYMBOL, RACE CAR SYMBOL, RATTLESNAKE SYMBOL, ROADRUNNER SYMBOL, SADDLE SYMBOL, SHIP SYMBOL, SHOES SYMBOL, SOCCER BALL SYMBOL, SPEAR SYMBOL, SPUR SYMBOL, STRAWBERRY SYMBOL, SUNSET SYMBOL, WHEEL SYMBOL, WINDMILL SYMBOL, CHECK SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, MONEY BAG SYMBOL, STAR SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, COINS SYMBOL, STACK OF BILLS SYMBOL, VAULT SYMBOL, \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$5,000, \$20,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2586 - 1.2D

PLAY SYMBOL	CAPTION
ARMADILLO SYMBOL	ARMADILLO
BAT SYMBOL	BAT
BICYCLE SYMBOL	BICYCLE
BLUEBONNET SYMBOL	BLUEBONNET
BOAR SYMBOL	BOAR
BUTTERFLY SYMBOL	BUTTERFLY
CACTUS SYMBOL	CACTUS
CARDINAL SYMBOL	CARDINAL
CHERRIES SYMBOL	CHERRIES
CHILE PEPPER SYMBOL	CHILE PEPPER
CORN SYMBOL	CORN
COVERED WAGON SYMBOL	COVERED WAGON
COW SYMBOL	COW
COWBOY SYMBOL	COWBOY
COWBOY HAT SYMBOL	COWBOY HAT
DESERT SYMBOL	DESERT
FIRE SYMBOL	FIRE
FOOTBALL SYMBOL	FOOTBALL
GEM SYMBOL	GEM
GUITAR SYMBOL	GUITAR
HEN SYMBOL	HEN
HORSE SYMBOL	HORSE
HORSESHOE SYMBOL	HORSESHOE
JACKRABBIT SYMBOL	JACKRABBIT
LIZARD SYMBOL	LIZARD
LONE STAR SYMBOL	LONE STAR
MARACAS SYMBOL	MARACAS
MOCKINGBIRD SYMBOL	MOCKINGBIRD
MOONRISE SYMBOL	MOONRISE
MORTAR PESTLE SYMBOL	MORTAR PESTLE

NEWSPAPER SYMBOL	NEWSPAPER
OIL RIG SYMBOL	OIL RIG
PECAN TREE SYMBOL	PECAN TREE
PIÑATA SYMBOL	PIÑATA
RACE CAR SYMBOL	RACE CAR
RATTLESNAKE SYMBOL	RATTLESNAKE
ROADRUNNER SYMBOL	ROADRUNNER
SADDLE SYMBOL	SADDLE
SHIP SYMBOL	SHIP
SHOES SYMBOL	SHOES
SOCCER BALL SYMBOL	SOCCER BALL
SPEAR SYMBOL	SPEAR
SPUR SYMBOL	SPUR
STRAWBERRY SYMBOL	STRAWBERRY
SUNSET SYMBOL	SUNSET
WHEEL SYMBOL	WHEEL
WINDMILL SYMBOL	WINDMILL
CHECK SYMBOL	CHECK
GOLD BAR SYMBOL	GOLD BAR
HEART SYMBOL	HEART
MONEY BAG SYMBOL	MONEYBAG
STAR SYMBOL	STAR
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
COINS SYMBOL	COINS
STACK OF BILLS SYMBOL	STACKOFBILLS
VAULT SYMBOL	VAULT
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$40.00	FRTY\$
\$50.00	FFTY\$

\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$20,000	20TH
\$1,000,000	TPPZ

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2586), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2586-0000001-001.

H. Pack - A Pack of the "MILLION DOLLAR LOTERIA" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MILLION DOLLAR LOTERIA" Scratch Ticket Game No. 2586.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly 78 (seventy-eight) Play Symbols. A prize winner in the "MILLION DOLLAR LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAYBOARD 1 INSTRUCTIONS: 1) The player completely scratches the CALLER'S CARD area to reveal 27 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the

player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAYBOARDS 2 INSTRUCTIONS: The player scratches ONLY the symbols on each PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals all 4 symbols in a column, the player wins the PRIZE for that column. PLAY AREA 3 INSTRUCTIONS (BONUS GAMES): The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. PLAY AREA 4 INSTRUCTIONS (BONUS): If the player reveals 2 matching symbols in the BONUS \$100, the player wins \$100. If the player reveals 2 matching symbols in the BONUS \$200, the player wins \$200. TABLA DE JUEGO 1: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 27 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa horizontal, vertical o diagonal, el jugador gana el premio para esa línea. TABLAS DE JUEGO 2: El jugador SOLAMENTE raspa los símbolos en cada de las TABLAS DE JUEGO que son exactamente iguales a los símbolos revelados in la CARTA DEL GRITÓN. Si el jugador revela todos los 4 símbolos en una columna, el jugador gana el PREMIO para esa columna. ÁREA DE JUEGO 3 (JUEGOS DE BONO): El jugador SOLAMENTE raspa los símbolos en los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. ÁREA DE JUEGO 4 (BONO): Si el jugador revela 2 símbolos iguales en el área de BONO \$100, el jugador gana \$100. Si el jugador revela 2 símbolos iguales en el área de BONO \$200, el jugador gana \$200. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 78 (seventy-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly 78 (seventy-eight) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 78 (seventy-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 78 (seventy-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to fourteen (14) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: There will be no duplicate Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD 1/TABLA DE JUEGO 1: At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD 1/TABLA DE JUEGO 1 play area.

E. PLAYBOARD 1/TABLA DE JUEGO 1: No identical Play Symbols are allowed on the same PLAYBOARD 1/TABLA DE JUEGO 1 play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$1,000, \$5,000, \$20,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MILLION DOLLAR LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MILLION DOLLAR LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 25,200,000 Scratch Tickets in Scratch Ticket Game No. 2586. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2586 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	3,024,000	8.33
\$30	1,764,000	14.29
\$40	504,000	50.00
\$50	1,008,000	25.00
\$100	902,160	27.93
\$150	201,600	125.00
\$200	181,440	138.89
\$250	65,520	384.62
\$500	11,760	2,142.86
\$1,000	2,520	10,000.00
\$5,000	336	75,000.00
\$20,000	42	600,000.00
\$1,000,000	10	2,520,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2586 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2586, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202400870

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: February 26, 2024

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Public Utility Commission of Texas

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on February 16, 2024, to adjust the high-cost support received from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to current rates.

Docket Title and Number: Application of Cap Rock Telephone Cooperative, Inc. to Adjust High Cost Support Under 16 TAC §26.407(h), Docket Number 56235.

Cap Rock Telephone Cooperative, Inc. requests a high-cost support adjustment increase of \$699,020 in annual high-cost support. According to Cap Rock Telephone, the requested adjustment complies with the cap of 140% of the annualized support the provider was authorized to receive in the 12 months ending February 1, 2024, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 56235.

TRD-202400810
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 2024



Workforce Solutions Deep East Texas

Request for Proposal #24-424 Lease Space for Workforce Solutions Deep East Texas Nacogdoches County Workforce Center in Nacogdoches, Texas

The Deep East Texas Local Workforce Development Board dba Workforce Solutions Deep East Texas Board (Board) is soliciting proposals for lease space for its Workforce Solutions Deep East Texas Nacog-

doches County Workforce Center (WFC) to be located in Nacogdoches, (Nacogdoches County), Texas. The purpose of this Request for Proposal (RFP) is to solicit proposals to lease existing space, renovate existing space, and/or construct a facility that can be leased in whole or part to the Board.

Anyone interested in submitting a proposal should obtain a copy of the Request for Proposal (RFP) at www.detwork.org or request a copy of the RFP by emailing procurement@detwork.org.

Release Date: February 22, 2024

Bidders Conference: March 12, 2024, 9:00 a.m. (CST)

Deadline for Submission of Questions: March 22, 2024, 2:00 p.m. (CST)

Proposal Due Date and Time: April 19, 2024, 4:00 p.m. (CST)

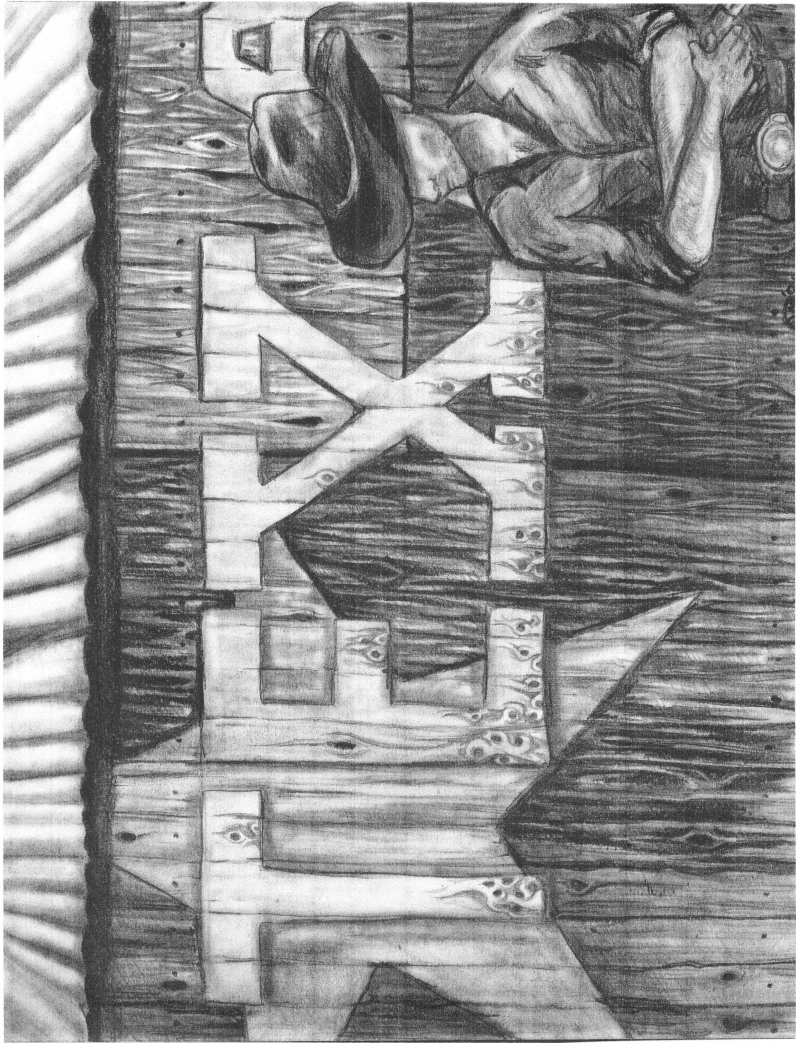
Projected Notice of Award Date: June 1, 2024

Proposals must be submitted via email to procurement@detwork.org.

Workforce Solutions Deep East Texas is an equal opportunity employer/program. Auxiliary aids and services are available, upon request, to individuals with disabilities.

TRD-202400779
Mark Durand
Executive Director
Workforce Solutions Deep East Texas
Filed: February 22, 2024





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 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

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 “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 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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