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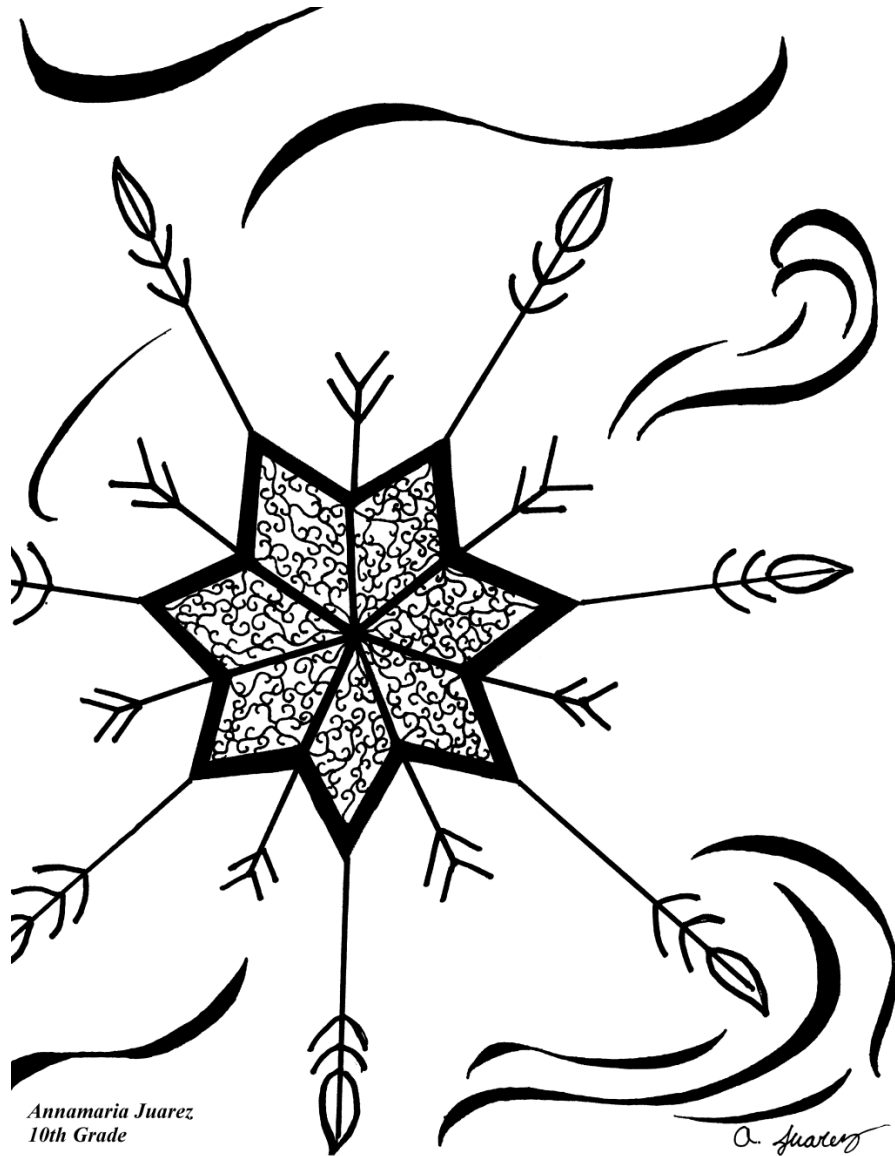
# TEXAS REGISTER

*Volume 40 Number 2*

*January 9, 2015*

*Pages 127 -*

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*Annamaria Juarez  
10th Grade*

*A. Juarez*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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*Texas Register*, (ISSN 0362-4781, USPS 12-0090), is published weekly (52 times per year) for \$259.00 (\$382.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

**POSTMASTER:** Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
P.O. Box 12887  
Austin, TX 78711-3824  
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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.texas.gov](mailto:register@sos.texas.gov).

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

## Requests for Opinions

RQ-1234-GA

### Requestor:

The Honorable René M. Peña

81st Judicial District Attorney

1327 Third Street

Floresville, Texas 78114

Re: Whether a member of a board of trustees of an independent school district may also serve as a trustee of a county hospital board with overlapping jurisdiction (RQ-1234-GA)

### Briefs requested by January 12, 2015

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

TRD-201406280

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: December 23, 2014



## Opinions

Opinion No. GA-1095

The Honorable Nandita Berry

Texas Secretary of State

P.O. Box 12697

Austin, Texas 78711-2697

Re: Authority of a notary public to withhold or redact certain information from copies of entries in a notary public record book (RQ-1209-GA)

### S U M M A R Y

Chapter 406 of the Government Code requires a notary public to provide a certified copy of any entry in the notary public's record book upon the request and payment of fees by any person. A party invoking federal law to avoid compliance with chapter 406 bears the burden to demonstrate that federal law preempts the Legislature's provision for openness. Nothing in the materials provided to this office indicates that the burden has been met in the case about which you ask. Chapter

406 and administrative rules promulgated thereunder authorize the office of the Secretary of State to determine in administrative proceedings whether a notary public has complied with the duty to provide such information, subject to the notary's rights of hearing, adjudication, and appeal.

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

TRD-201406291

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: December 23, 2014



## Opinions

Opinion No. GA-1096

The Honorable Allan B. Ritter

Chair, Committee on Natural Resources

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether municipalities must meet the population requirement in section 43.121 of the Local Government Code to annex property under section 43.129 (RQ-1210-GA)

### S U M M A R Y

Without further guidance from the courts or the Legislature, it is not possible to reliably predict whether a court would require a municipality to meet the 225,000 population requirement in subsection 43.121(a) of the Local Government Code in order to annex for limited purposes by consent under the authority granted by section 43.129.

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

TRD-201406306

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: December 29, 2014





*Xin Zhuang*  
*8th Grade*



# 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 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 102. FEES

##### 22 TAC §102.1

The State Board of Dental Examiners (Board) proposes amendments to §102.1, concerning the Board's fee schedule, to include fees for reinstatement of a canceled dental license and reinstatement of a dental hygiene license. Texas Occupations Code §257.002(d-1) provides that a person who was previously licensed in Texas, moved to another state, and has been in practice in the other state for the two preceding years, may apply to obtain a new license without reexamination. The statute provides that the fee for reinstatement is equal to two times the normally required renewal fee for the license. The current fee schedule does not include the reinstatement fee, and this proposed amendment would reflect the statutorily set amount.

Julie Hildebrand, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to provide funding for the administrative functions of the Board. Ms. Hildebrand has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses who are required to comply with the rule are no more than the relevant fees already set by statute. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amended rule may be submitted to Simone Salloum, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, fax (512) 463-7452, or rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

These amendments are proposed 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. These amendments are also proposed under Texas Occupations Code §257.002(d-1), which sets the fees for reinstatement of a canceled dental license or dental hygiene license.

The following statutes are affected by this proposal: Texas Occupations Code Chapters 254 and 257.

##### §102.1. Fee Schedule.

The Board has established the following reasonable and necessary fees for the administration of its functions:

Figure: 22 TAC §102.1

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 December 29, 2014.

TRD-201406309

Nycia Deal

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 475-0977



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 169. ZOOZONOSIS CONTROL SUBCHAPTER C. TRAINING OF ANIMAL SHELTER PERSONNEL

##### 25 TAC §§169.61 - 169.65

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§169.61 - 169.65, concerning the training of animal shelter personnel.

##### BACKGROUND AND PURPOSE

Health and Safety Code, §823.004, required rules to set standards for the training of animal shelter personnel in animal health and disease control, humane care and treatment of animals, control of animals in an animal shelter, and transportation of animals. The 80th Texas Legislature, Regular Session, 2007, passed Senate Bill (SB) 1562, which repealed Health and Safety Code, §823.004.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that

agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 169.61 - 169.65 have been reviewed and the department has determined that reasons for adopting the sections do not continue to exist because rules on this subject are no longer required due to the repeal of the authorizing statute section.

#### SECTION-BY-SECTION SUMMARY

The repeal of §§169.61 - 169.65 is necessary because SB 1562 repealed Health and Safety Code, §823.004, which was the legal mandate for these rules.

#### FISCAL NOTE

Ms. Imelda Garcia, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of repealing the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Garcia has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed because the sections are no longer necessary. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed repeal of the sections.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Garcia has determined that for each year of the first five years the repeal of the sections is in effect, the public will benefit from the adoption of the repeals. The public benefit anticipated is to eliminate possible confusion caused by outdated policies and procedures being presented in the rules and by rules that are no longer in effect being located in the Texas Administrative Code.

#### REGULATORY ANALYSIS

The department has 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.

#### TAKINGS IMPACT ASSESSMENT

The department 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 Government Code, §2007.043.

#### COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, MPH, Department of State Health Services, Infectious Disease Prevention Section, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas 78714-9347 or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The proposed repeals are authorized under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to make decisive actions on rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed repeals affect the Health and Safety Code, Chapters 823 and 1001; and Government Code, Chapters 531 and 2001.

§169.61. *Purpose.*

§169.62. *Definitions.*

§169.63. *Courses.*

§169.64. *Prerequisites for Course Attendance.*

§169.65. *Course Content.*

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 December 29, 2014.

TRD-201406311

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 776-6972



## SUBCHAPTER E. DOG AND CAT STERILIZATION

### 25 TAC §169.102

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §169.102, concerning the Department of State Health Services Animal Friendly Account.

#### BACKGROUND AND PURPOSE

The amendment is necessary to comply with Health and Safety Code, Chapter 828, "Dog and Cat Sterilization," which requires

the department to make grants to eligible organizations for the purpose of providing low-cost dog and cat sterilization services to the general public. Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.102 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is required by statute and provides guidance for the ongoing program.

#### SECTION-BY-SECTION SUMMARY

The amendment to §169.102 adds the definition of "department;" adds the definition of "releasing agency;" clarifies the definition of "sterilization;" deletes language in subsection (c) because grants are awarded through a competitive bidding process in which geographic location of applicants is not a criterion that is considered; clarifies language in subsection (e) to align more closely with the statute; corrects grammatical errors in subsection (f); and revises the procedures for grant announcements and applications in subsections (g) and (h).

#### FISCAL NOTE

Ms. Imelda Garcia, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Garcia has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

#### PUBLIC BENEFIT

In addition, Ms. Garcia has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be the distribution of funding to provide low-cost surgical sterilization of dogs and cats, thereby reducing the public health threat due to stray animals.

#### REGULATORY ANALYSIS

The department has 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.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment 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 Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, MPH, Department of State Health Services, Infectious Disease Prevention Section, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas 78714-9347 or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §828.014, which provides the department with the authority to make grants to eligible organizations for the purpose of providing low-cost dog and cat sterilization to the general public and requires the department to establish guidelines by rule for spending money in the Animal Friendly Account; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment affects Health and Safety Code, Chapters 828 and 1001; and Government Code, Chapters 531 and 2001.

*§169.102. Department of State Health Services Animal Friendly Account.*

(a) (No change.)

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

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

(3) Department--The Department of State Health Services.

(4) [~~3~~] Local nonprofit veterinary medical association--An organization set up by and comprised of several volunteer veterinarians in their immediate region for the purpose of presenting continuing education, planning group activities, or discussing issues common to their professional field.

(5) [~~4~~] Nonprofit organization--A private, nonprofit, tax-exempt corporation, association or organization under Internal Revenue Code of 1986, §501(c)(3) (26 United States Code §501(c)(3)).

(6) Releasing agency--A public or private animal pound, shelter, or humane organization. The term does not include an indi-

vidual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

(7) ~~[(5)]~~ Sterilization--The surgical removal of the reproductive organs of a dog or cat or the use of nonsurgical methods and technologies approved by the United States Food and Drug Administration or the United States Department of Agriculture to permanently render the animal unable to reproduce. Surgery or nonsurgical sterilization must be performed in accordance with Health and Safety Code, §828.012.

(c) Philosophy.

(1) - (3) (No change.)

~~[(4) Efforts will be made to distribute funds to all areas of the state.]~~

(d) (No change.)

(e) Eligibility for Grants. Eligible applicants include:

(1) (No change.)

(2) an organization that is qualified as a charitable organization under the Internal Revenue Code, §501(c)(3), that has ~~[animal welfare or sterilizing animals owned by the general public at minimal or no cost]~~ as its primary purpose.~~[:; or]~~

(A) animal welfare; or

(B) sterilizing animals owned by the general public at minimal or no cost; or

(3) (No change.)

(f) Requirements for Grants.

(1) (No change.)

(2) Applicants for grants shall submit as a part of their application a plan of how they intend to provide sterilization services to their target population, compliant with the Texas Health and Safety Code, Chapter 828, and this section.

(3) Grant recipients shall make ~~[made]~~ quarterly reports to the department in a form and at a time determined by the department.

(g) Procedures for Grant Announcements.

(1) Before applications are requested, the department shall distribute a notice of grant availability throughout the state (such as by mail or email). ~~[publish one or more notices of grant availability in the Texas Register. These notices shall also be distributed throughout the state through mail and electronic means.]~~ The notices will include details about the grants, instructions for obtaining a request for proposals, and the names of persons to contact in the department for further information.

(2) The department shall maintain a list of persons and organizations to be notified of request ~~[requests]~~ for proposals. Any person or organization wanting to be placed on the list should contact: Animal Friendly Account, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas ~~[TX]~~ 78714-9347.

(3) (No change.)

(h) Procedures for Grant Applications.

(1) - (3) (No change.)

(4) Applicants will be given a minimum of 60 calendar days to file applications after a request for proposals is published. Applications must be received by the department on or before the closing date specified in the request for proposals. Applications received after

the closing date must be postmarked with a date equal to or prior to the closing date.

(i) - (l) (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 December 29, 2014.

TRD-201406310

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 776-6972



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION

#### REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

##### 37 TAC §15.25

The Texas Department of Public Safety (the department) proposes amendments to §15.25, concerning Address. These amendments are intended to clarify options available to spouses and dependents of military personnel when providing a residence address as part of the application process for a Texas driver license or identification certificate. The proposed amendments make grammatical changes for clarity and update language to comply with the 83rd Legislature, 2013, SB 686.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be the establishment of clearer guidelines for the issuance of Texas driver licenses and identification certificates to military personnel and their spouses and dependents.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce

risks to human health from environmental exposure 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment.

Comments on this proposal may be submitted to Chris Sawyer, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, Sections 521.121, 521.141, and 521.142.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.25. *Address.*

The address requirement for a driver license and identification certificate is:

(1) - (6) (No change.)

(7) Military personnel and the spouse or dependent of a member of the armed forces [~~their dependents~~] should give a complete address such as: John Henry Smith, Co. B, 25th Inf., Camp Berkeley, Abilene, Texas. If a member of the armed forces or the spouse or dependent of a member of the armed forces has a residence address in Texas, it should be provided and used. A member of the armed forces and the spouse or dependent of a member of the armed forces may provide a residence address outside of Texas.

(8) The department shall conduct an audit of driver license and identification certificate address information provided by driver license customers. This audit shall [~~consist of~~]:

(A) Validate [~~Validation~~] that the addresses being reviewed are residential addresses;[;] and/or[;]

(B) Determine [~~To determine~~] if the same address has been provided by ten (10) or more driver license or identification certificate holders.

(9) - (10) (No change.)

(11) Peace officers, as defined in the Code of Criminal Procedure, Article 2.12, may use an alternate address on their driver license under Texas Transportation Code, §521.1211. The alternate address will be the street address of the courthouse in the county of the officer's residence. An eligible officer must:

(A) Apply in person for an original or duplicate driver license and surrender any other driver license issued to the applicant by the department or another state. No online transactions will be allowed for issuance of duplicate or renewed licenses issued under this paragraph.

(B) Present a license issued by the Texas Commission on Law Enforcement (TCOLE) [~~Officer Standards and Education~~]

(~~TCLEOSE~~) and a Peace Officer Identification Card and Badge issued by the officer's employing agency to establish eligibility.

(C) - (F) (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 December 22, 2014.

TRD-201406234

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 424-5848



## CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

### 37 TAC §23.41

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 37 TAC §23.41(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the January 9, 2015, issue of the Texas Register.)*

The Texas Department of Public Safety (the department) proposes amendments to §23.41, concerning Vehicle Inspection Items, Procedures, and Requirements. The proposed amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The proposed amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with this rule as proposed. There is no anticipated economic cost to individuals who are required to comply with this rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing this rule will be that the public will be informed of new requirements concerning the vehicle inspection program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.41. *Passenger (Non-Commercial) Vehicle Inspection Items.*

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the DPS Training and Operations [and Training] Manual prior to the issuance of a vehicle [an] inspection report [certificate].

(b) All items must be inspected in accordance with the attached inspection procedures. (The figure in this section reflects excerpts from the DPS Training and Operations [and Training] Manual, Chapter 4.)  
Figure: 37 TAC §23.41(b)

(c) A vehicle inspection report [certificate] may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

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

(d) - (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 December 22, 2014.

TRD-201406235

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 424-5848



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §9.153, concerning definitions; §9.154, concerning description of the home and community-based services (HCS) program; §9.158, concerning process for enrollment of applicants; §9.159, concerning individual plan of care (IPC); §9.170, concerning reimbursement; §9.171, concerning DADS review of a program provider and residential visit; §9.174, concerning certification principles: service delivery; §9.177, concerning certification principles: staff member and service provider requirements; §9.185, concerning program provider compliance and corrective action; §9.190, concerning local authority requirements for providing service coordination in the HCS program; §9.192, concerning service limits; in Subchapter D, Home and Community-based Services (HCS) Program; §9.553, concerning definitions; §9.576, concerning DADS review of a program provider; and §9.577, concerning program provider compliance and corrective action; in Subchapter N, Texas Home Living (TxHmL), in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

#### BACKGROUND AND PURPOSE

The proposed rules implement an amendment to the HCS waiver application, approved by the Centers for Medicare and Medicaid Services (CMS), that requires DADS to make transition assistance services (TAS) available as a new service in the HCS Program and allows an individual to receive pre-enrollment minor home modifications (MHMs) and a pre-enrollment MHMs assessment. TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments are available to applicants enrolling in the HCS Program and being discharged from a nursing facility, an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), or a general residential operation (GRO) (a child-care facility regulated by the Department of Family and Protective Services).

TAS assists an applicant who is moving out of certain institutions in setting up a household in the community. Examples of TAS are payment for a security deposit on a lease or the purchase of essential home furnishings. The proposed rules state that an applicant who is not going to receive residential support, supervised living, or host home/companion care may receive up to \$2,500 of TAS. This limit is included in the waiver application and is consistent with DADS rules in Chapter 62, Transition Assistance Services, as proposed elsewhere in this issue of the *Texas Register*, for applicants leaving certain institutions and enrolling into waiver programs other than the HCS Program. In addition, the proposed rules state that an applicant who is going to receive residential support, supervised living, or host home/companion care may receive up to \$1,000 of TAS. This lower limit is created for applicants who are going to receive residential support, supervised living, or host home/companion care because those

settings are partially established by the HCS program provider or host home service provider. Consistent with the proposed TAS rules in Chapter 62, the proposed rules state that an applicant enrolling into the HCS Program may receive TAS only once in the individual's lifetime.

Pre-enrollment MHMs are modifications to a home that are completed before an applicant is enrolled in the HCS Program and pre-enrollment MHMs assessments are the related assessments conducted by a licensed professional needed for authorization of the modifications. These options help ensure that, at the time the applicant moves to a community setting, the setting protects the individual's health, welfare, and safety. The type of pre-enrollment modifications allowed are the same as those MHMs allowed for an individual already enrolled in the HCS Program.

To help ensure that applicants are qualified for TAS and pre-enrollment MHMs and pre-enrollment MHMs assessments and that these services are properly authorized by DADS, the proposed rules require a service coordinator to determine whether an applicant meets the criteria specified in the rules to receive TAS or pre-enrollment MHMs. If the applicant meets the criteria, the proposed rules require the service coordinator to complete a DADS form specifying the TAS the applicant needs and an estimate of the cost of the TAS, and a DADS form specifying the pre-enrollment MHMs the applicant needs, the pre-enrollment MHMs assessments conducted, the cost of the pre-enrollment MHMs to be completed, and the cost of the MHMs assessments conducted.

The proposed rules require the service coordinator to submit the completed forms to DADS for authorization, send the forms authorized by DADS to the selected program provider, and include the TAS or pre-enrollment MHMs and pre-enrollment MHMs assessments on the applicant's proposed initial individual plan of care (IPC).

The proposed rules clarify that the provision of TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments are exceptions to the requirement prohibiting an HCS program provider from providing services until an applicant is enrolled in the HCS Program. The proposed rules also clarify that the payment of TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments is an exception to the requirement that DADS will not pay for a service if the applicant is residing in an institution or the applicant is not enrolled in the HCS Program. The proposed rules also state that, subject to the requirements in the HCS Program Billing Guidelines, DADS pays for pre-enrollment MHMs and pre-enrollment MHMs assessments regardless of whether the applicant enrolls with the program provider. This provision is included so that a provider is ensured of being reimbursed for costs incurred in completing the modifications even if the applicant is unable or chooses not to enroll in the HCS Program.

To ensure that TAS and pre-enrollment MHMs are completed in a timely manner, the proposed rules require a program provider to complete these services at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, unless the delay in completion is beyond the control of the program provider. In addition, the proposed rules establish documentation and notification requirements for a program provider so the applicant or legally authorized representative (LAR) and service coordinator are kept apprised of the progress toward completion or delivery of the services.

The proposed rules also include qualifications for a service provider of TAS, which are consistent with the HCS waiver

application, and require, if a program provider contracts with a person to provide TAS (as opposed to employing the person), that the contractor has a contract to provide TAS in accordance with Texas Administrative Code, Title 40, Chapter 49, Contracting for Community Services. These requirements help ensure that service providers of TAS have sufficient expertise to provide this service.

The proposed rules also include a requirement consistent with current policy that respite, if included on an IPC, must be within the service limit for respite described in the rules. The proposed rules describe DADS current policy that the MHMs available are limited to certain categories.

The proposed rules amend the definition of "ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions," to clarify that this term includes a facility that is licensed in accordance with Texas Health and Safety Code, Chapter 252, or a facility certified by DADS.

To ensure performance of the requirement at §9.174(a)(27)(B) regarding cognitive rehabilitation therapy, the proposed rules require a service coordinator, in coordination with the program provider, to assist an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional.

The proposed rules clarify that a service coordinator must ensure that the initial proposed IPC includes a sufficient number of nursing units for an HCS program provider's registered nurse to perform an initial nursing assessment if an applicant or LAR chooses a program provider to deliver nursing, host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation.

The proposed rules delete program provider requirements regarding providing a service in accordance with an authorized IPC and retaining certain documentation in the individual's record because these requirements are currently located in or have been added to other sections of the HCS Program rules.

The proposed rules replace "local authority" with "service coordinator" to clarify that the service coordinator must be the person from the local authority who initiates development of a proposed initial IPC with an applicant or LAR. The proposed rules replace "dental services" with "dental treatment" to correct the name of this service as used in the waiver application and in other sections of the HCS Program rules.

The proposed rules clarify that an HCS or TxHmL program provider may mail or fax the required DADS form needed to submit a request to DADS for an informal review of any of the findings in a preliminary review report.

The proposed rules permit, rather than require, DADS to take certain actions if a corrective action plan is not submitted as required or is not approved by DADS, or if DADS determines that an HCS or TxHmL program provider falsified documentation to demonstrate compliance with the certification principles. These changes are proposed to address the potential situation that none of the described actions are appropriate to the particular circumstances presented. In addition, the proposed rules add to the actions DADS may take if a corrective action plan is not submitted or approved, that DADS may request the program provider to submit a revised corrective action plan within a time period determined by DADS. This change expands DADS options in resolving non-compliance by a provider. The proposed

rules also delete the use of "condition of a pervasive nature" as a factor in determining DADS actions from a review. This change was made because DADS evaluates compliance based on whether or not the provider's failure to comply with a principle results in a condition of a serious nature, as defined in the rules. Therefore, a separate category regarding conditions of a pervasive nature is not necessary.

The proposed rules make minor editorial changes for clarity.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.153 reformats the section and adds definitions of "GRO," "pre-enrollment minor home modifications," "pre-enrollment minor home modifications assessment," "nursing facility," "relative," and "TAS." The proposed amendment clarifies the definition of "ICF/IID" and amends the definition of "ID/RC Assessment." The proposed amendment deletes the definition of "condition of a pervasive nature."

The proposed amendment to §9.154, in the list of services available under the HCS Program, reformats the section and adds TAS; pre-enrollment MHMs, as listed in Appendix X of the *HCS Program Billing Guidelines*; and pre-enrollment MHMs assessments as services delivered before enrollment.

The proposed amendment to §9.158 changes "local authority" to "service coordinator" in the requirement to develop a proposed initial IPC with the applicant or LAR. The proposed amendment reformats the section and requires the service coordinator, after an applicant chooses a program provider during enrollment, to determine whether the applicant meets the specified criteria to receive TAS; complete, with the applicant or LAR, the required DADS form to identify the TAS needed; estimate the monetary amount for TAS; submit the completed form to DADS for authorization; send the form authorized by DADS to the selected program provider; and include the TAS and the monetary amount authorized by DADS on the applicant's proposed initial IPC. The proposed amendment also requires the service coordinator to determine whether an applicant meets the specified criteria to receive pre-enrollment MHMs and pre-enrollment MHMs assessments; if an applicant meets the criteria, complete, with the applicant or LAR and selected program provider, the required DADS form to identify the pre-enrollment MHMs the applicant needs, the pre-enrollment MHMs assessments conducted, the cost of the pre-enrollment MHMs to be completed, and the cost of the MHMs assessments conducted; submit the completed form to DADS for authorization; send the form authorized by DADS to the selected program provider; and include the identified services and the monetary amount authorized by DADS on the applicant's proposed initial IPC. The proposed amendment clarifies that a service coordinator must ensure that the initial proposed IPC includes a sufficient number of nursing units for a program provider's RN to perform an initial nursing assessment if an applicant or LAR chooses a program provider to deliver nursing, host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation. For the provision of pre-enrollment MHMs and pre-enrollment MHMs assessments, the proposed amendment provides an exception to the requirement that a selected program provider not to initiate services until notified of DADS approval of the applicant's enrollment. The proposed amendment states that the referenced forms are available at DADS website instead of contacting DADS by mail and adds the titles of the required DADS forms used to authorize TAS and pre-enrollment MHMs and pre-enrollment MHMs assessments to the list of forms available.

The proposed amendment to §9.159 replaces "local authority" with "service coordinator" in the requirement to initiate development of a proposed initial IPC for an applicant. The proposed amendment replaces "dental services" with "dental treatment." The proposed amendment reformats the section and requires, if the IPC includes (1) TAS, that the TAS to be supported by the form DADS uses to authorize TAS and within the specified service limit for TAS; (2) pre-enrollment MHMs, that the MHMs be supported by a written assessment from a licensed professional as specified by DADS in the HCS Program Billing Guidelines, supported by the form DADS uses to authorize the MHMs, and within the specified service limit for pre-enrollment MHMs; (3) pre-enrollment MHMs assessments, that the assessments be supported by the form DADS uses to authorize the assessments; and (4) respite, that the service to be within the specified service limit for respite. The proposed amendment deletes the requirement for a program provider to provide an HCS Program service in accordance with an individual's authorized IPC and to retain in an individual's record, results and recommendations of individualized assessments that support the individual's current need for each service included in the IPC and deletes the exception to this requirement for an HCS Program service provided through the CDS option.

The proposed amendment to §9.170 reformats the section and describes the basis for DADS to pay a program provider for TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments. Payment for TAS is based on the DADS form used to authorize the TAS and the actual cost of the TAS, as evidenced by purchase receipts required by the HCS Program Billing Guidelines. Payment for pre-enrollment MHMs and pre-enrollment MHMs assessments is based on the DADS form used to authorize these services and the actual cost of these services, as evidenced by documentation required by the HCS Program Billing Guidelines. The proposed amendment allows DADS to pay for pre-enrollment MHMs, and pre-enrollment MHMs assessments, subject to the requirements in the HCS Program Billing Guidelines and regardless of whether the applicant enrolls with the program provider. The proposed amendment provides an exception for an individual receiving TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments, and exceptions for a program provider who provides TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments, to certain circumstances under which DADS does not pay the program provider for a service or recoups any payments made to the program provider. The proposed amendment allows DADS not to pay a program provider or recoup any payments made to the program provider for TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments if these services are not provided in accordance with the DADS form used to authorize these services.

The proposed amendment to §9.171 requires the program provider, in order to request an informal review of any of the findings in the preliminary review report, to complete DADS Form 3610 "Informal Review Request" as instructed on the form and to mail or fax the completed DADS Form 3610 to the address or fax number listed on the form. The proposed amendment capitalizes the word "Form" when referring to DADS Form 3610.

The proposed amendment to §9.174 establishes that MHMs are limited to the categories listed in the rule and lists repair and maintenance not covered by a warranty as one of the five categories. The proposed amendment requires a program provider to maintain in an individual's record, results and recommendations from individualized assessments that support the individual's current need for each service included in the



IPC, and to maintain documentation related to TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments. The proposed amendment reformats the section and requires the program provider to provide TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments, to an applicant for whom the program provider receives from the service coordinator the completed DADS form used by DADS to authorize the services. The proposed amendment requires the program provider to provide TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments as identified on the form and within the monetary amount identified on the form. The proposed amendment requires the program provider to provide TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments in accordance with the individual's PDP and with Appendix C of the HCS Program waiver application. The proposed amendment requires the program provider to complete TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider. If the program provider does not complete these services at least two days before the date of the applicant's discharge, the proposed amendment requires the program provider to document a description of the pending services, the reason for the delay, the date the program provider anticipates it will complete the pending services or specific reasons why the program provider cannot anticipate a completion date, and a description of the program provider's ongoing efforts to complete the pending services, and to provide this information to the applicant or LAR and the service coordinator at least two days before the date of the applicant's discharge. The proposed amendment requires a program provider to maintain this documentation in an individual's record. The proposed amendment requires a program provider, within one business day after completion of the TAS or pre-enrollment MHMs, to notify the service coordinator and the individual or LAR that the TAS or MHMs have been completed.

The proposed amendment to §9.177 requires, if a program provider contracts with a person or entity to provide TAS, that the person or entity must have a contract to provide TAS in accordance with Texas Administrative Code, Title 40, Chapter 49. The proposed amendment requires a program provider to ensure that a service provider of TAS is at least 18 years of age; has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; is not the applicant's relative or LAR; does not live with the applicant; and is capable of providing TAS and complying with the TAS documentation requirements.

The proposed amendment to §9.185 states that, if a program provider does not submit a corrective action plan as required, or DADS notifies the program provider that the plan is not approved, DADS may (1) request that the program provider submit a revised corrective action plan within a time period determined by DADS; (2) impose a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or (3) deny or terminate certification of the program provider. The proposed amendment deletes the use of the term "pervasive" regarding DADS determination of a program provider's failure to comply with a certification principle at the end of a review. The proposed amendment states that DADS may (1) impose a vendor hold against the program provider; or (2) deny or terminate certification of the program provider if DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance.

The proposed amendment to §9.190 requires the service coordinator, in coordination with the program provider, to assist an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as described in the requirements for providing cognitive rehabilitation therapy.

The proposed amendment to §9.192 establishes that the limit for MHMs and pre-enrollment MHMs combined is \$7,500 during the time an individual is enrolled in the HCS Program. The proposed amendment establishes that for TAS, the maximum cost is \$2,500 if the applicant's proposed initial IPC does not include residential support, supervised living, or host home/companion care, or \$1,000 if the applicant's proposed initial IPC includes residential support, supervised living, or host home/companion care. The proposed amendment limits the provision of TAS to an individual to only once in the individual's lifetime.

The proposed amendment to §9.553, relating to definitions in the TxHmL Program, deletes the definition of "condition of a pervasive nature."

The proposed amendment to §9.576 requires a TxHmL program provider, in order to request an informal review of any of the findings in the preliminary review report, to complete DADS Form 3610 "Informal Review Request" as instructed on the form and to mail or fax the completed DADS Form 3610 to the address or fax number listed on the form. The proposed amendment capitalizes the word "Form" when referring to DADS Form 3610.

The proposed amendment to §9.577 states that, if a TxHmL program provider does not submit a corrective action plan as required, or DADS notifies the program provider that the plan is not approved, DADS may (1) request that the program provider submit a revised corrective action plan within a time period determined by DADS; (2) impose a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or (3) deny or terminate certification of the program provider. The proposed amendment deletes the use of the term "pervasive" regarding DADS determination of a program provider's failure to comply with a certification principle at the end of a review. The proposed amendment states that DADS may (1) impose a vendor hold against the program provider; or (2) deny or terminate certification of the program provider if DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments related to TAS will result in additional costs in the HCS Program for reimbursing HCS program providers up to \$1,000 or up to \$2,500 for TAS. DADS anticipates that 264 individuals per year being discharged from a nursing facility, ICF/IID, or GRO, and enrolling in the HCS Program, will need TAS. DADS estimates the additional cost in state and federal funds in each of the next five years to be \$700,874. Enforcing or administering the amendments related to DADS compliance reviews do not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because although program providers will be re-

quired to deliver pre-enrollment minor home modifications and pre-enrollment minor home modification assessments, they will be reimbursed for those services.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is the availability of TAS, a new HCS Program service that will assist an applicant who is moving out of an institution to set up a household in the community, and the availability of pre-enrollment MHMs to help ensure that, at the time an applicant moves to a community setting, the setting protects the individual's health, welfare, and safety. Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this 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

Questions about the content of this proposal may be directed to Amanda Woodall at (512) 438-3693 in DADS CPI/LTSS Policy division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-14R05, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 14R05" in the subject line.

#### SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

**40 TAC §§9.153, 9.154, 9.158, 9.159, 9.170, 9.171, 9.174, 9.177, 9.185, 9.190, 9.192**

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall

adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

#### §9.153. Definitions.

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

(1) **Actively involved--**Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(2) **Applicant--**A Texas resident seeking services in the HCS Program.

(3) **Behavioral emergency--**A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavior support plan; and

(D) does not occur during a medical or dental procedure.

(4) **Business day--**Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).

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

(6) **CDS option--**Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(7) **Cognitive rehabilitation therapy--**A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(8) **Competitive employment--**Employment that pays an individual at least minimum wage if the individual is not self-employed.

~~[(9) Condition of a pervasive nature--A condition in which a program provider is out of compliance with a certification principle as evidenced by one of the following:]~~

~~[(A) the following two conditions are met:]~~

~~[(i)] at least 50 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance; and]~~

~~[(ii)] at least one item from an additional sample, at least the same size as the initial sample, shows non-compliance; or]~~

~~[(B)] if DADS is not able to obtain an additional sample as described in subparagraph (A)(ii) of this paragraph, at least 51 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance.]~~

~~(9) [(40)] Condition of a serious nature--Except as provided in paragraph (23) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.~~

~~(10) [(41)] Contract--A provisional contract or a standard contract.~~

~~(11) [(42)] CRCG--Community resource coordination group. A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website at [www.hhsc.state.tx.us](http://www.hhsc.state.tx.us).~~

~~(12) [(43)] Critical incident--An event listed in the HCS Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/t-raining/WaiverGuide.html>.~~

~~(13) [(44)] DADS--The Department of Aging and Disability Services.~~

~~(14) [(45)] DARS--The Department of Assistive and Rehabilitative Services.~~

~~(15) [(46)] DFPS--The Department of Family and Protective Services.~~

~~(16) [(47)] Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.~~

~~(17) [(48)] Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:~~

~~(A) an individual needing emergency medical care;~~

~~(B) an individual being removed from his residence by law enforcement;~~

~~(C) an individual leaving his residence without notifying a staff member or service provider and not being located; and~~

~~(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).~~

~~(18) [(49)] Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.~~

~~(19) [(20)] FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.~~

~~(20) [(21)] FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.~~

~~(21) [(22)] Four-person residence--A residence:~~

~~(A) that a program provider leases or owns;~~

~~(B) in which at least one person but no more than four persons receive:~~

~~(i) residential support;~~

~~(ii) supervised living;~~

~~(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or~~

~~(iv) respite;~~

~~(C) that, if it is the residence of four persons, at least one of those persons receives residential support;~~

~~(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and~~

~~(E) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).~~

~~(22) GRO--General Residential Operation. As defined in Texas Human Resources Code, §42.002, a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.~~

~~(23) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.~~

~~(24) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.~~

~~(25) HHSC--The Texas Health and Human Services Commission.~~

~~(26) ICAP--Inventory for Client and Agency Planning.~~

~~(27) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a [A] facility in which ICF/IID Program services are provided and that is: [-]~~

~~(A) licensed in accordance with Texas Health and Safety Code, Chapter 252; or~~

~~(B) certified by DADS.~~

~~(28) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.~~

~~(29) ICF/MR--ICF/IID.~~

~~(30) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by DADS for LOC determination and LON assignment.~~

(31) Implementation Plan--A written document developed by the program provider for an individual that, for each HCS Program service on the individual's IPC not provided through the CDS option, includes:

(A) a list of outcomes identified in the PDP that will be addressed using HCS Program services;

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

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

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

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

(D) the number of HCS Program units of service needed to complete each objective;

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

(F) the signature and date of the individual, LAR, and the program provider.

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

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

(34) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period; referred to in some sections as mental retardation.

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

(A) states:

(i) the type and amount of each HCS Program service to be provided to the individual during an IPC year; and

(ii) the services and supports to be provided to the individual through non-HCS Program resources, including natural supports, medical services, and educational services; and

(B) is authorized by DADS.

(36) IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(37) IPC year--A 12-month period of time starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(38) Large ICF/IID--A non-state operated ICF/IID with a Medicaid certified capacity of 14 or more.

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

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

(41) Local authority--An entity to which the Health and Human Services Commission's authority and responsibility, as described in Texas Health and Safety Code, §531.002(11), has been delegated.

(42) LON--Level of need. An assignment given by DADS to an individual upon which reimbursement for host home/companion care, supervised living, residential support, and day habilitation is based.

(43) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(44) Microboard--A program provider:

(A) that is a non-profit corporation:

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of HCS Program services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of HCS Program services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(45) MRA--Local authority.

(46) MR/RC Assessment--An ID/RC Assessment.

(47) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(48) Non-routine circumstances--An event that occurs unexpectedly or does not occur on a regular basis, such as a night off, a vacation, an illness, an injury, a hospitalization, or a funeral.

(49) Nursing facility--A facility licensed in accordance with Texas Health and Safety Code, Chapter 242.

(50) [(49)] PDP (person-directed plan)--A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HCS Person-Directed Plan form and discovery tool found at [www.dads.state.tx.us](http://www.dads.state.tx.us), that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

(51) [(50)] Person-directed planning--An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

(A) identifies supports and services necessary to achieve the applicant's or individual's outcomes;

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the applicant or individual (and the LAR on the applicant's or individual's behalf); and

(D) accommodates the applicant's or individual's style of interaction and preferences.

(52) [(51)] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent

living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(53) [(52)] Permanency Planning Review Screen--A screen in the DADS data system, completed by a local authority, that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(54) Pre-enrollment minor home modifications--Minor home modifications, as described in the *HCS Program Billing Guidelines*, completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(55) Pre-enrollment minor home modifications assessment--An assessment performed by a licensed professional as required by the *HCS Program Billing Guidelines* to determine the need for pre-enrollment minor home modifications.

(56) [(53)] Primary correspondent--A person who may request that a local authority place an applicant's name on the HCS Program interest list.

(57) [(54)] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide HCS program services, excluding an FMSA.

(58) [(55)] Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(59) [(56)] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(60) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *HCS Program Billing Guidelines*.

(61) [(57)] Renewal IPC--An IPC developed for an individual in accordance with §9.166(a) of this subchapter (relating to Renewal and Revision of an IPC).

(62) [(58)] Restraint--

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

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

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

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

(63) [(59)] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(64) [(60)] Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §9.166(b) or (d) of this subchapter or §9.168(h) of this subchapter (relating to CDS Option) to add a new HCS Program service or change the amount of an existing service.

(65) [(61)] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(66) [(62)] Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(67) [(63)] Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(68) [(64)] Service coordinator--An employee of a local authority who provides service coordination to an individual.

(69) [(65)] Service planning team--A planning team consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant or individual or LAR on behalf of the applicant or individual (for example, a program provider representative, family member, friend, or teacher).

(70) [(66)] Service provider--A person, who may be a staff member, who directly provides an HCS Program service to an individual.

(71) [(67)] SSI--Supplemental Security Income.

(72) [(68)] Staff member--An employee or contractor of an HCS Program provider.

(73) [(69)] Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(74) [(70)] State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

(75) [(71)] State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(76) [(72)] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(77) [(73)] TANF--Temporary Assistance for Needy Families.

(78) TAS--Transition assistance services. Services provided to assist an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program. TAS consists of:

(A) for an applicant whose proposed initial IPC does not include residential support, supervised living, or host home/companion care:

(i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;

(ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home;

(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial proposed IPC includes residential support, supervised living, or host home/companion care:

(i) purchasing bedroom furniture;

(ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(79) [(74)] Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter.

(80) [(75)] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

#### §9.154. Description of the HCS Program.

(a) The HCS Program is a Medicaid waiver program approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act. It provides community-based

services and supports to eligible individuals as an alternative to the ICF/IID Program. The HCS Program is operated by DADS under the authority of HHSC.

(b) Enrollment in the HCS Program is limited to the number of individuals in specified target groups and to the geographic areas approved by CMS.

(c) HCS Program services listed in this subsection are selected for inclusion in an individual's IPC to ensure the individual's health, safety, and welfare in the community, supplement rather than replace that individual's natural supports and other community services for which the individual may be eligible, and prevent the individual's admission to institutional services. The following services are defined in Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us). Services available under the HCS Program are:

(1) TAS;

(2) [(+)] professional therapies provided by appropriately licensed or certified professionals as follows:

(A) physical therapy, including a pre-enrollment minor home modifications assessment;

(B) occupational therapy, including a pre-enrollment minor home modifications assessment;

(C) speech and language pathology;

(D) audiology;

(E) social work;

(F) behavioral support, including a pre-enrollment minor home modifications assessment;

(G) dietary services; and

(H) cognitive rehabilitation therapy;

(3) [(2)] nursing provided by an RN or LVN;

(4) [(3)] residential assistance, excluding room and board, provided in one of the following three ways:

(A) host home/companion care;

(B) supervised living; or

(C) residential support;

(5) [(4)] supported home living, which is not a reimbursable service for individuals receiving host home/companion care, supervised living, or residential support;

(6) [(5)] respite, which includes room and board when provided in a setting other than the individual's home, but is not a reimbursable service for individuals receiving host home/companion care, supervised living, or residential support;

(7) [(6)] day habilitation, provided exclusive of any other separately funded service, including public school services, rehabilitative services for persons with mental illness, other programs funded by DADS, or programs funded by DARS;

(8) [(7)] employment assistance;

(9) [(8)] supported employment;

(10) [(9)] adaptive aids;

(11) [(10)] minor home modifications, including pre-enrollment minor home modifications;

(12) [(11)] dental treatment; and

(13) [(42)] if the individual is participating in the CDS option:

- (A) FMS; and
- (B) support consultation.

(d) DADS has grouped Texas counties [of the state of Texas] into geographical areas, referred to as "local service areas," each of which is served by a local authority. DADS has further grouped the local service areas into "waiver contract areas." A list of the counties included in each local service area and waiver contract area is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(1) A program provider may provide HCS Program services only to persons residing in the counties specified for the program provider in DADS automated enrollment and billing system.

(2) A program provider must have a separate contract for each waiver contract area served by the program provider.

(3) A program provider may have a contract to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the program provider agreement.

(4) A program provider may not have more than one contract per waiver contract area.

(e) A program provider must comply with:

(1) all applicable state and federal laws, rules, and regulations, including Chapter 49 of this title (relating to Contracting for Community Services); and

(2) DADS Information Letters regarding the HCS Program found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(f) The CDS option is a service delivery option, described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or LAR directs the services that may be provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option).

*§9.158. Process for Enrollment of Applicants.*

(a) DADS notifies a local authority, in writing, of an HCS Program vacancy in the local authority's local service area and directs the local authority to offer the program vacancy to an applicant:

(1) whose registration date, assigned in accordance with §9.157(a)(1) of this subchapter (relating to Maintenance of HCS Program Interest List), is earliest on the statewide interest list for the HCS Program as maintained by DADS;

(2) whose registration date, assigned in accordance with §9.157(a)(1) of this subchapter is earliest on the local service area interest list for the HCS Program as maintained by the local authority, in accordance with §9.157 of this subchapter; or

(3) who is a member of a target group identified in the approved HCS waiver application.

(b) Except as provided in subsection (c) of this section, the local authority must make the offer of program vacancy in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The local authority must make the offer of program vacancy to an applicant described in subsection (a)(3) of this section who is currently receiving services in a state supported living center or a state mental health facility as defined by §2.253 of this title (relating to Definitions) in accordance with DADS procedures.

(d) The local authority must include in a written offer that is made in accordance with subsection (a)(1), (2), or (3) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of the program vacancy within 30 calendar days after the local authority's written offer, the local authority withdraws the offer of the program vacancy, and:

(i) for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, the local authority removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter and places the applicant's name on the HCS Program interest list with a new registration date that is the date of the local authority's notification; or

(ii) for an applicant other than one described in clause (i) of this subparagraph, the local authority removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter; and

(B) if the applicant is currently receiving services from the local authority that are funded by general revenue and the applicant or LAR declines the offer of the program vacancy, the local authority terminates those services that are similar to services provided under the HCS Program; and

(2) information relating to the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(e) If an applicant or LAR responds to an offer of program vacancy, the local authority must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs under §1915(c) of the Social Security Act, and other community-based services and supports. The local authority must use the Explanation of Services and Supports document, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(2) give the applicant or LAR the Verification of Freedom of Choice Form, Waiver Program which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us), to document the applicant's choice regarding the HCS Program and ICF/IID Program.

(f) The local authority must withdraw an offer of a program vacancy made to an applicant or LAR and remove the applicant's name from the HCS Program interest list if:

(1) within 30 calendar days after the local authority's offer made to the applicant or LAR in accordance with subsection (a)(1), (2), or (3) of this section, the applicant or LAR does not respond to the offer of the program vacancy;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice, Waiver Program form from the local authority in accordance with subsection (e)(2) of this section, the applicant or LAR does not document the choice of HCS Program services over the ICF/IID Program using the Verification of Freedom of Choice, Waiver Program form; or

(3) within 30 calendar days after the applicant or LAR has received the contact information regarding all program providers in the local authority's local service area in accordance with subsection (l)(1)

of this section, the applicant or LAR does not document the choice of a program provider using the Documentation of Provider Choice form.

(g) If the local authority withdraws an offer of a program vacancy made to an applicant and removes the applicant's name from the HCS Program interest list, the local authority must notify the applicant or LAR of such actions, in writing, by certified United States mail and:

(1) for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, include a statement that the applicant's name will be placed on the HCS Program interest list with a new registration date that is the date of the local authority's notification; or

(2) for an applicant other than one described in paragraph (1) of this subsection, include a statement that the applicant or the applicant's primary correspondent may request, orally or in writing, to have the applicant's name placed on the HCS Program interest list with a new registration date that is the date the applicant or LAR makes the request.

(h) If the applicant is currently receiving services from the local authority that are funded by general revenue and the applicant declines the offer of the program vacancy, the local authority must terminate those services that are similar to services provided under the HCS Program.

(i) If the local authority terminates an applicant's services in accordance with subsection (h) of this section, the local authority must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(j) If the local authority notifies an applicant under 22 years of age or the applicant's LAR in accordance with subsection (g)(1) of this section, the local authority must coordinate with DADS to ensure the applicant's name is placed on the HCS Program interest list with a new registration date that is the date of the local authority's notification.

(k) If the applicant or LAR, on the applicant's behalf, chooses to enroll in the HCS Program the local authority must compile and maintain information necessary to process the request for enrollment in the HCS Program.

(1) If the applicant's financial eligibility for the HCS Program must be established, the local authority must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The local authority must complete an ID/RC Assessment if an LOC determination is necessary in accordance with §9.161 and §9.163 of this subchapter (relating to LOC Determination and LON Assignment, respectively).

(A) The local authority must:

(i) perform or endorse a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The local authority must administer the ICAP and recommend an LON assignment to DADS in accordance with §9.163 and §9.164 of this subchapter (relating to DADS' Review of LON).

(C) The local authority must electronically transmit the completed ID/RC Assessment to DADS for approval in accordance with §9.161(a) and §9.163(a) of this subchapter and, if applicable, submit supporting documentation as required by §9.164(c) of this subchapter.

(3) The local authority must assign a service coordinator who, together with the applicant and LAR, must develop a PDP.

(4) The service coordinator [local authority] must develop a proposed initial IPC with the applicant or LAR in accordance with §9.159(c) of this subchapter (relating to IPC).

(l) The service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding available program providers in the local authority's local service area (that is, program providers operating below their service capacity as identified in the DADS data system);

(2) arrange for meetings and visits with potential program providers as requested by the applicant or LAR;

(3) review the proposed initial IPC with potential program providers as requested by the applicant or LAR;

(4) ensure that the applicant's or LAR's choice of a program provider is documented on the Documentation of Provider Choice Form and signed by the applicant or LAR;

(5) negotiate and finalize the proposed initial IPC and the date services will begin with the selected program provider, consulting with DADS if necessary to reach agreement with the selected program provider on the content of the proposed initial IPC and the date services will begin;

(6) determine whether the applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;

(B) has not previously received TAS; and

(C) anticipates needing TAS;

(7) if the service coordinator determines that the applicant meets the criteria described in paragraph (6) of this subsection:

(A) complete, with the applicant or LAR and the selected program provider, a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form found at [www.dads.state.tx.us](http://www.dads.state.tx.us) in accordance with the form's instructions, which includes:

(i) identifying the TAS the applicant needs; and

(ii) estimating the monetary amount for each TAS identified, which must be within the service limit described in §9.192(a)(5) of this subchapter (relating to Service Limits);

(B) submit the completed form to DADS for authorization;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the TAS and the monetary amount authorized by DADS on the applicant's proposed initial IPC;

(8) determine whether an applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;



(B) has not met the maximum service limit for minor home modifications as described in §9.192(a)(3)(A) of this subchapter; and

(C) anticipates needing pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment;

(9) if the service coordinator determines that an applicant meets the criteria described in paragraph (8) of this subsection:

(A) complete, with the applicant or LAR and selected program provider, a Pre-enrollment Minor Home Modifications/Assessments Authorization form found at [www.dads.state.tx.us](http://www.dads.state.tx.us) in accordance with the form's instructions, which includes:

(i) identifying the pre-enrollment minor home modifications the applicant needs;

(ii) identifying the pre-enrollment minor home modifications assessments conducted by the program provider as required by §9.174(h)(1)(A) of this subchapter (relating to Certification Principles: Service Delivery);

(iii) based on documentation provided by the program provider as required by the *HCS Program Billing Guidelines*, stating the cost of:

(I) the pre-enrollment minor home modifications identified on the form, which must be within the service limit described in §9.192(a)(3)(A) of this subchapter; and

(II) the pre-enrollment minor home modifications assessments conducted;

(B) submit the completed form to DADS for authorization;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the pre-enrollment minor home modifications, pre-enrollment minor home modifications assessments, and the monetary amount for these services authorized by DADS on the applicant's proposed initial IPC;

(10) [(6)] if an applicant or LAR chooses a program provider to deliver nursing, host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation, [a service,] ensure that the initial proposed IPC includes a sufficient number of RN nursing units for a program provider nurse to perform an initial nursing assessment unless, as described in §9.174(c) of this subchapter (relating to Certification Principles: Service Delivery):

(A) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that an unlicensed service provider will not perform a nursing task as documented on DADS form "Nursing Task Screening Tool"; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(11) [(7)] if an applicant or LAR refuses to include on the initial proposed IPC a sufficient number of RN nursing units to perform an initial nursing assessment as required by paragraph (10) [(6)] of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation from the program provider, will result in the individual not receiving that service unless, as described in §9.174(d)(2) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record;

(12) [(8)] ensure that the applicant or LAR signs and dates the proposed initial IPC;

(13) [(9)] ensure that the selected program provider signs and dates the proposed IPC, demonstrating agreement that the services will be provided to the applicant;

(14) [(10)] sign and date the proposed initial IPC, which indicates that the service coordinator agrees that the requirements described in §9.159(c) of this subchapter have been met; and

(15) [(11)] inform the applicant or LAR, orally and in writing, of the following reasons HCS Program services may be terminated:

(A) the individual no longer meets the eligibility criteria described in §9.155 of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services); or

(B) the individual or LAR requests termination of HCS Program services.

(m) The local authority must:

(1) conduct permanency planning in accordance with §9.167(a) of this subchapter (relating to Permanency Planning); and

(2) discuss the CDS option with the applicant or LAR in accordance with §9.168(a) and (b) of this subchapter (relating to CDS Option).

(n) After the proposed initial IPC is finalized and signed in accordance with subsection (l) of this section, the local authority must:

(1) electronically transmit the proposed initial IPC to DADS and:

(A) keep the original proposed initial IPC in the individual's record; and

(B) ensure the electronically transmitted proposed initial IPC contains information identical to that on the original proposed initial IPC; and

(2) submit other required enrollment information to DADS.

(o) DADS notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the local authority of its approval or denial of the applicant's enrollment. When the enrollment is approved, DADS authorizes the applicant's enrollment in the HCS Program through the DADS data system and issues an enrollment let-

ter that includes the effective date of the applicant's enrollment in the HCS Program.

(p) Prior to the applicant's service begin date, the local authority must provide to the selected program provider and FMSA, if applicable, copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations, the completed ID/RC Assessment, the proposed initial IPC, and the applicant's PDP.

(q) Except for the provision of TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment, as required by §9.174(g) and (h) of this subchapter (relating to Certification Principles: Service Delivery), the [The] selected program provider must not initiate services until notified of DADS approval of the applicant's enrollment.

(r) The selected program provider must develop an implementation plan for HCS Program services that is based on the individual's PDP and authorized IPC.

(s) The local authority must retain in the applicant's record:

(1) the Verification of Freedom of Choice, Waiver Program form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of a program provider, if applicable;

(3) the Deadline Notification form; and

(4) any other correspondence related to the offer of a program vacancy.

(t) Copies of the following forms [~~and letters~~] referenced in this section are available at [www.dads.state.tx.us](http://www.dads.state.tx.us) [~~by contacting the Department of Aging and Disability Services, Provider Services Division, P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030~~]:

(1) Verification of Freedom of Choice, Waiver Program form;

(2) Documentation of Provider Choice form; [~~and~~]

(3) Deadline Notification form; [~~and~~]

(4) Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form; and

(5) Pre-enrollment Minor Home Modifications/Assessments Authorization form.

#### §9.159. IPC.

(a) A service coordinator [local authority] must initiate development of a proposed initial IPC for an applicant as required by §9.158(k)(4) of this subchapter (relating to Process for Enrollment of Applicants).

(b) A program provider must initiate development of a proposed renewal and proposed revised IPC for an individual as required by §9.166 of this subchapter (relating to Renewal and Revision of an IPC).

(c) An IPC must be based on the PDP and specify the type and amount of each service to be provided to an individual, as well as services and supports to be provided by other sources during the IPC year. Each HCS program service in the IPC:

(1) must be necessary to protect the individual's health and welfare in the community;

(2) must not be available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(3) must be the most appropriate type and amount to meet the individual's needs;

(4) must be cost effective;

(5) must be necessary to enable community integration and maximize independence;

(6) if an adaptive aid or minor home modification, must:

(A) be included on DADS approved list in the *HCS Program Billing Guidelines*; and

(B) be within the service limit described in §9.192 of this subchapter (relating to Service Limits);

(7) if an adaptive aid costing \$500 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines*;

(8) if a minor home modification costing \$1,000 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines*; [~~and~~]

(9) if dental treatment [services], must be within the service limit described in §9.192 of this subchapter; [~~and~~]

(10) if respite, must be within the service limit described in §9.192 of this subchapter;

(11) if TAS, must be:

(A) supported by a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS; and

(B) within the service limit described in §9.192(a)(5)(A) or (B) of this subchapter;

(12) if pre-enrollment minor home modifications, must be:

(A) supported by a written assessment from a licensed professional if required by the *HCS Program Billing Guidelines*;

(B) supported by a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS; and

(C) within the service limit described in §9.192(a)(3)(A) of this subchapter; and

(13) if a pre-enrollment minor home modifications assessment, must be supported by a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS.

~~(d) With the exception of an HCS program service provided through the CDS option, a program provider must:~~

~~(1) provide an HCS Program service in accordance with an individual's authorized IPC; and~~

~~(2) retain in an individual's record, results and recommendations of individualized assessments that support the individual's current need for each service included in the IPC.~~

#### §9.170. Reimbursement.

Program provider reimbursement.

(1) A program provider is paid for services as described in this paragraph.

(A) DADS pays for supported home living, professional therapies, nursing, respite, employment assistance, and supported employment in accordance with the reimbursement rate for the specific service.

(B) DADS pays for host home/companion care, residential support, supervised living, and day habilitation in accordance with the individual's LON and the reimbursement rate for the specific service.

(C) DADS pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item and, if requested, a requisition fee in accordance with the *HCS Program Billing Guidelines*, which are available at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(D) DADS pays for TAS based on a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS and the actual cost of the TAS as evidenced by purchase receipts required by the *HCS Program Billing Guidelines*.

(E) DADS pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment based on a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS and the actual cost of the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment as evidenced by documentation required by the *HCS Program Billing Guidelines*.

(F) Subject to the requirements in the *HCS Program Billing Guidelines*, DADS pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment regardless of whether the applicant enrolls with the program provider.

(2) If an individual's HCS Program services are suspended or terminated the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination for the following services:

- (A) day habilitation;
- (B) supported home living;
- (C) respite;
- (D) employment assistance;
- (E) supported employment;
- (F) professional therapies; and
- (G) nursing.

(3) If the program provider submits a claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines* and other documentation as required by the *HCS Program Billing Guidelines*.

(4) DADS does not pay the program provider for a service or recoups any payments made to the program provider for a service if:

(A) except for an individual receiving TAS, pre-enrollment minor home modifications, or a pre-enrollment minor home modifications assessment, the individual receiving the service is, at the time the service was provided, ineligible for the HCS program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) except for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment:

(i) ~~[(B)]~~ the service is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

~~(ii) the service is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;~~

~~(iii) the service is provided during a period of time for which the individual did not have an LOC determination;~~

~~(iv) the service is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(c) of this subchapter (relating to IPC);~~

~~(v) the service is not provided in accordance with the individual's PDP or implementation plan;~~

~~(vi) the service is provided before the individual's enrollment date into the HCS Program; or~~

~~(vii) ~~[(C)]~~ the service is not included on the signed, dated, and authorized IPC of the individual in effect at the time the service was provided, except as permitted by §9.166(d) of this subchapter (relating to Renewal and Revision of an IPC);~~

~~(C) ~~[(D)]~~ the service provided does not meet the service definition or is not provided in accordance with the *HCS Program Billing Guidelines*;~~

~~(D) ~~[(E)]~~ the program provider provides the supervised living or residential support service in a residence in which four individuals or other person receiving similar services live without DADS approval as required in §9.188 of this subchapter (relating to DADS Approval of Residences);~~

~~(E) ~~[(F)]~~ the service is not documented in accordance with the *HCS Program Billing Guidelines*;~~

~~(F) ~~[(G)]~~ the claim for the service does not meet the requirements in §49.311 of this title (relating to Claims Payment) or the *HCS Program Billing Guidelines*;~~

~~(G) ~~[(H)]~~ the program provider does not have the documentation described in paragraph (3) of this section;~~

~~(H) ~~[(I)]~~ DADS determines that the service would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service;~~

~~(I) ~~[(J)]~~ before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);~~

~~(J) ~~[(K)]~~ before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);~~

~~~~[(L) the service is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;]~~~~

~~~~[(M) the service is provided during a period of time for which the individual did not have an LOC determination;]~~~~

~~(K) ~~[(N)]~~ the service is provided by a service provider who does not meet the qualifications to provide the service as delineated in the *HCS Program Billing Guidelines*;~~

~~[(O) the service is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(e) of this subchapter (relating to IPC);]~~

~~[(P) the service is not provided in accordance with the individual's PDP or implementation plan;]~~

~~[(L) [(Q)] the service of host home/companion care, residential support, or supervised living is provided on the day of the individual's suspension or termination of HCS Program services;~~

~~[(R) the service is provided before the individual's enrollment date into the HCS Program; or]~~

~~[(M) [(S)] the service was paid at an incorrect LON because the ID/RC Assessment electronically transmitted to DADS does not contain information identical to information on the signed and dated ID/RC Assessment;[-]~~

~~[(N) for TAS, the service is not provided in accordance with a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS; or]~~

~~[(O) for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, the service is not provided in accordance with a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS.]~~

(5) The program provider must refund to DADS any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(6) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the *HCS Program Billing Guidelines*. DADS conducts such reviews in accordance with the Billing and Payment Review Protocol set forth in the *HCS Program Billing Guidelines*. As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(7) A corrective action plan required by DADS in accordance with paragraph (6)(B) of this section must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(8) Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if a corrective action plan is approved or if changes to the plan are required.

(9) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (6)(B) of this section and the program provider requests an administrative hearing for the recoupment in accordance with §9.186 of this subchapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(10) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (7) of this section, DADS may impose a vendor hold on payments due to the program provider under the contract until the program provider takes the corrective action.

(11) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (10) of this section, DADS may terminate the contract.

*§9.171. DADS Review of a Program Provider and Residential Visit.*

(a) The program provider must be in continuous compliance with the HCS Program certification principles contained in §§9.172 - 9.174 and §§9.177 - 9.180 of this subchapter (relating to Certification Principles: Mission, Development, and Philosophy of Program Operations; Certification Principles: Rights of Individuals; Certification Principles: Service Delivery; Certification Principles: Staff Member and Service Provider Requirements; Certification Principles: Quality Assurance; Certification Principles: Restraint; and Certification Principles: Prohibitions).

(b) DADS conducts on-site certification reviews of the program provider, at least annually, to evaluate evidence of the program provider's compliance with certification principles. Based on a review, DADS takes action as described in §9.185 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(c) After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive HCS Program services from the provider under the provisional contract.

(d) If DADS certifies a program provider after completion of an initial or annual certification review, the certification period is for no more than 365 calendar days.

(e) DADS may conduct reviews of the program provider at any time.

(f) During any review, DADS may review the HCS Program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) DADS conducts an exit conference at the end of all on-site reviews, at a time and location determined by DADS, and at the exit conference gives the program provider a written preliminary review report.

(h) If a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review of those findings.

(1) To request an informal review of any of the findings in the preliminary review report, the program provider must:

(A) complete ~~submit a completed~~ DADS Form ~~[form]~~ 3610 "Informal Review Request" ~~[to DADS]~~, as instructed on the form; and~~[-]~~

(B) mail or fax the completed DADS Form 3610 to the address or fax number listed on the form.

(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.

(3) If DADS receives a timely request for an informal review, DADS:

(A) notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request; and

(B) sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(j) In addition to the on-site certification reviews described in subsection (b) of this section, DADS conducts, at least annually, unannounced visits of each residence in which host home/companion care, residential support, or supervised living is provided to verify that the residence provides an environment that complies with DADS *Waiver Survey and Certification Residential Checklist*, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(k) Based on the information obtained from a visit described in subsection (j) of this section, DADS may:

(1) require the program provider to complete corrective action before the residential visit ends;

(2) require the program provider to submit evidence of corrective action within 14 calendar days after the date of the residential visit; or

(3) conduct a review of the program provider in accordance with this section.

*§9.174. Certification Principles: Service Delivery.*

(a) The program provider must:

(1) serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system;

(2) serve an eligible applicant without regard to age, sex, race, or level of disability;

(3) provide or obtain as needed and without delay all HCS Program services;

(4) ensure that each applicant or individual, or LAR on behalf of the applicant or individual, has chosen where the individual or applicant is to reside from available options consistent with the individual's needs;

(5) encourage involvement of the LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) request from and encourage the parent or LAR of an individual under 22 years of age receiving supervised living or residential support to provide the program provider with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the program provider of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(7) inform the parent or LAR that if the information described in paragraph (6) of this subsection is not provided or is not accurate and the service coordinator and DADS are unable to locate the parent or LAR as described in §9.190(e)(35) of this subchapter (relating to Local Authority Requirements for Providing Service Coordination in the HCS Program) and §9.189 of this subchapter (relating to Referral to DFPS), DADS refers the case to DFPS;

(8) for an individual under 22 years of age receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in meetings conducted by the program provider;

(B) take the following actions to assist a local authority in conducting permanency planning:

(i) cooperate with the local authority responsible for conducting permanency planning by:

(I) allowing access to an individual's records or providing other information in a timely manner as requested by the local authority or HHSC;

(II) participating in meetings to review the individual's permanency plan; and

(III) identifying, in coordination with the individual's local authority, activities, supports, and services that can be provided by the family, LAR, program provider, or the local authority to prepare the individual for an alternative living arrangement;

(ii) encourage regular contact between the individual and the LAR and, if desired by the individual and LAR, between the individual and advocates and friends in the community to continue supportive and nurturing relationships;

(iii) keep a copy of the individual's current permanency plan in the individual's record; and

(iv) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional setting or to a community setting;

(C) if an emergency situation occurs, attempt to notify the parent or LAR and service coordinator as soon as the emergency situation allows and request a response from the parent or LAR; and

(D) if the program provider determines it is unable to locate the parent or LAR, notify the service coordinator of such determination;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions unless exceptional conditions are justified by the individual's service planning team and documented in the PDP;

(10) notify the service coordinator if changes in an individual's age, skills, attitudes, likes, dislikes, or conditions necessitate a change in residential, educational, or work settings;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;

(12) ensure that the IPC for each individual is renewed, revised, and authorized by DADS in accordance with §9.166 of this subchapter (relating to Renewal and Revision of an IPC) and §9.160 of this subchapter (relating to DADS' Review of a Proposed IPC);

(13) ensure that HCS Program services identified in the individual's implementation plan are provided in an individualized manner and are based on the results of assessments of the individual's and the family's strengths, the individual's personal goals and the family's goals for the individual, and the individual's needs rather than which services are available;

(14) ensure that each individual's progress or lack of progress toward desired outcomes is documented in observable, measurable, or outcome-oriented terms;

(15) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support if the individual chooses to develop such relationships;

(16) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work, and that compensation is based on local, state, and federal regulations, including Department of Labor regulations, as applicable;

(17) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act, which include:

(A) accurate recordings of individual production or performance;

(B) valid and current time studies or monitoring as appropriate; and

(C) prevailing wage rates;

(18) ensure that individuals provide no training, supervision, or care to other individuals unless they are qualified and compensated in accordance with local, state, and federal regulations, including Department of Labor regulations;

(19) unless contraindications are documented with justification by the service planning team, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community;

(20) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(21) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(22) assist the individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(23) ensure that, for an individual receiving host home/companion care, residential support, or supervised living:

(A) the individual lives in a home that is a typical residence within the community;

(B) the residence, neighborhood, and community meet the needs and choices of the individual and provide an environment that ensures the health, safety, comfort, and welfare of the individual;

(C) unless contraindications are documented with justification by the service planning team, the individual lives near family and friends and needed or desired community resources consistent with the individual's choice, if possible;

(D) the individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency;

(E) unless contraindications are documented with justification by the service planning team, the individual has a door lock on the inside of the individual's bedroom door, if requested by the individual or LAR; and

(F) the door lock installed in accordance with subparagraph (E) of this paragraph:

(i) is a single-action lock;

(ii) can be unlocked with a key from the outside of the door by the program provider; and

(iii) is not purchased and installed at the individual's or LAR's expense;

(24) ensure that adaptive aids are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and include the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs;

(25) together with an individual's service coordinator, ensure the coordination and compatibility of HCS Program services with non-HCS Program services;

(26) ensure that an individual has a current implementation plan;

(27) ensure that:

(A) the following professional therapy services are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us):

- (i) audiology services;
- (ii) speech/language pathology services;
- (iii) occupational therapy services;
- (iv) physical therapy services;
- (v) dietary services;
- (vi) social work services;
- (vii) behavioral support; and
- (viii) cognitive rehabilitation therapy; and

(B) if the service planning team determines that an individual may need cognitive rehabilitation therapy, the program provider:

- (i) in coordination with the service coordinator, assists the individual in obtaining, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-HCS Program service; and
- (ii) has a qualified professional as described in §9.177(q) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements) provide and monitor the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care described in clause (i) of this subparagraph;

(28) ensure that day habilitation is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), including:

(A) assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

(B) providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;

(C) complementing any professional therapies listed in the IPC;

(D) reinforcing skills or lessons taught in school, therapy, or other settings;

(E) training and support activities that promote the individual's integration and participation in the community;

(F) providing assistance for the individual who cannot manage personal care needs during day habilitation activities; and

(G) providing transportation during day habilitation activities as necessary for the individual's participation in day habilitation activities;

(29) ensure that dental treatment is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), including:

- (A) emergency dental treatment;
- (B) preventive dental treatment;
- (C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia;

(30) ensure that minor home modifications are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), limited to the following categories [~~including~~]:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; [~~and~~]

(D) specialized accessibility and safety adaptations or additions; and [~~including repair and maintenance~~];

(E) repair and maintenance of minor home modifications not covered by a warranty;

(31) ensure that nursing is provided in accordance with the individual's PDP, IPC, implementation plan; Texas Occupations Code, Chapter 301 (Nursing Practice Act); 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice); 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); and Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and consists of performing health care activities and monitoring the individual's health conditions, including:

(A) administering medication;

(B) monitoring the individual's use of medications;

(C) monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment;

(D) assisting the individual to secure emergency medical services;

(E) making referrals for appropriate medical services;

(F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(G) delegating nursing tasks to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(H) teaching an unlicensed service provider about the specific health needs of an individual;

(I) performing an assessment of an individual's health condition;

(J) an RN doing the following:

(i) performing a nursing assessment for each individual:

(I) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(II) as determined necessary by an RN, including if the individual's health needs change;

(ii) documenting information from performance of a nursing assessment;

(iii) if an individual is receiving a service through the CDS option, providing a copy of the documentation described in clause (ii) of this subparagraph to the individual's service coordinator;

(iv) developing the nursing service portion of an individual's implementation plan, which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(v) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider; and

(K) in accordance with Texas Human Resources Code, Chapter 161:

(i) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(I) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(II) the medication is:

(-a-) an oral medication;

(-b-) a topical medication; or

(-c-) a metered dose inhaler;

(III) the medication is administered to the individual for a predictable or stable condition; and

(IV) the unlicensed service provider has been:

(-a-) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(-b-) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(ii) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition;

(32) ensure that supported home living is available to an individual living in his or her own home or the home of his or her natural or adoptive family members, or to an individual receiving foster care services from DFPS;

(33) ensure that supported home living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(34) ensure that HCS host home/companion care is provided:

(A) by a host home/companion care provider who lives in the residence in which no more than three individuals or other persons receiving similar services are living at any one time; and

(B) in a residence in which the program provider does not hold a property interest;

(35) ensure that host home/companion care is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(36) ensure that supervised living is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences) or a three-person residence;

(B) by a service provider who provides services and supports as needed by the individuals residing in the residence and is present in the residence and able to respond to the needs of the individuals during normal sleeping hours; and

(C) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(37) ensure that supervised living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;



- (D) assistance with housekeeping;
- (E) assistance with ambulation and mobility;
- (F) reinforcement of professional therapy activities;
- (G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(38) ensure that residential support is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter or a three-person residence;

(B) by a service provider who is present in the residence and awake whenever an individual is present in the residence;

(C) by service providers assigned on a daily shift schedule that includes at least one complete change of service providers each day; and

(D) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(39) ensure that residential support is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(40) if making a recommendation to the service planning team that the individual receive residential support, document the reasons for the recommendation, which may include:

(A) the individual's medical condition;

(B) a behavior displayed by the individual that poses a danger to the individual or to others; or

(C) the individual's need for assistance with activities of daily living during normal sleeping hours;

(41) ensure that respite is available on a 24-hour increment or any part of that increment to individuals living in their family homes;

(42) ensure that respite is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and:

(A) includes:

(i) training in self-help and independent living skills;

(ii) providing room and board when respite is provided in a setting other than the individual's normal residence;

(iii) assisting with:

(I) ongoing provision of needed waiver services, excluding supported home living; and

(II) securing and providing transportation; and

(B) is only provided to individuals who are:

(i) not receiving residential support, supervised living, or host home/companion care; and

(ii) in need of emergency or planned short-term care when the caregiver is temporarily unavailable to provide supports due to non-routine circumstances;

(43) provide respite in the residence of an individual or in other locations, including residences in which host home/companion care, supervised living, or residential support is provided or in a respite facility or camp, that meet HCS Program requirements and afford an environment that ensures the health, safety, comfort, and welfare of the individual.

(A) If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or LAR and ensure that the respite visit will cause no threat to the health, safety, or welfare of that individual.

(B) If respite is provided in the residence of another individual, the program provider must ensure that:

(i) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which host home/companion care is provided;

(ii) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which only supervised living is provided; and

(iii) no more than four individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which residential support is provided.

(C) If respite is provided in a respite facility, the program provider must:

(i) ensure that the facility is not a residence;

(ii) ensure that no more than six individuals receive services in the facility at any one time; and

(iii) obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility if more than three individuals receive services in the facility at any one time.

(D) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(E) The program provider must not provide respite in an institution such as an ICF/IID, skilled nursing facility, or hospital;

(44) ensure that employment assistance:

(A) is assistance provided to an individual to help the individual locate competitive employment in the community;

(B) consists of a service provider performing the following activities:

(i) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(iii) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(iv) transporting an individual to help the individual locate competitive employment in the community; and

(v) participating in service planning team meetings;

(C) is provided in accordance with an individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(D) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, or supported employment is provided; and

(E) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying an individual:

(I) as an incentive to participate in employment assistance activities; or

(II) for expenses associated with the start-up costs or operating expenses of the individual's business;

(45) ensure that supported employment:

(A) is assistance provided to an individual:

(i) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which persons without disabilities are employed;

(ii) in order for the individual to sustain competitive employment; and

(iii) in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(B) consists of a service provider performing the following activities:

(i) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(ii) transporting an individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(iii) participating in service planning team meetings;

(C) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, or employment assistance is provided; and

(D) does not include:

(i) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(ii) using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses such as:

(I) paying an employer:

(-a-) to encourage the employer to hire an individual; or

(-b-) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(II) paying an individual:

(-a-) as an incentive to participate in supported employment activities; or

(-b-) for expenses associated with the start-up costs or operating expenses of the individual's business;

(46) inform the service coordinator of changes related to an individual's residential setting that do not require a change to the individual's IPC;

(47) maintain a system of delivering HCS Program services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs as identified by the service planning team;

(48) ensure that appropriate staff members, service providers, and the service coordinator are informed of a circumstance or event that occurs in an individual's life or a change to an individual's condition that may affect the provision of services to the individual;

(49) maintain current information in the DADS data system about the individual and the individual's LAR, including:

(A) the individual's full name, address, location code, and phone number; and

(B) the LAR's full name, address, and phone number;

(50) maintain a single record related to HCS Program services provided to an individual for an IPC year that includes:

(A) the IPC;

(B) the PDP;

(C) the implementation plan;

(D) a behavior support plan, if one has been developed;

(E) documentation that describes the individual's progress or lack of progress on the implementation plan;

(F) documentation that describes any changes to an individual's personal goals, condition, abilities, or needs;

(G) the ID/RC Assessment;

(H) documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;

(I) results and recommendations from individualized assessments that support the individual's current need for each service included in the IPC;

(J) documentation concerning any use of restraint as described in §9.179(c)(2) and (3) of this subchapter (relating to Certification Principles: Restraint);

(K) documentation related to the individual's suspension from HCS Program services; [and]

(L) for an individual under 22 years of age, a copy of the permanency plan; and

(M) documentation required by subsections (g)(2)(A) and (h)(2)(A) of this section;

(51) upon request by the service coordinator:

(A) permit the service coordinator access to the record that is required by paragraph (50) of this subsection; and

(B) provide the service coordinator a legible copy of a document in the record at no charge to the service coordinator;

(52) provide a copy of the following documents to the service coordinator:

(A) an individual's IPC; and

(B) an individual's ID/RC Assessment;

(53) notify the service coordinator if the program provider has reason to believe that an individual is no longer eligible for HCS Program services or an individual or LAR has requested termination of all HCS Program services;

(54) if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual; and

(55) for an HCS Program service identified on the PDP as critical to meeting the individual's health and safety:

(A) develop a service backup plan that:

(i) contains the name of the critical service;

(ii) specifies the period of time in which an interruption to the critical service would result in an adverse effect to the individual's health or safety; and

(iii) in the event of a service interruption resulting in an adverse effect as described in clause (ii) of this subparagraph, describes the actions the program provider will take to ensure the individual's health and safety;

(B) ensure that:

(i) if the action in the service backup plan required by subparagraph (A) of this paragraph identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(ii) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter; and

(C) if the service backup plan required by subparagraph (A) of this paragraph is implemented:

(i) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(ii) document whether or not the plan was effective; and

(iii) revise the plan if the program provider determines the plan was ineffective.

(b) A program provider may suspend HCS Program services because an individual is temporarily admitted to a setting described in §9.155(d) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).

(1) If a program provider suspends HCS Program services, the program provider must:

(A) notify DADS of the suspension by entering data in the DADS data system in accordance with DADS instructions; and

(B) notify the service coordinator of the suspension within one business day after services are suspended.

(2) A program provider may not suspend HCS Program services for more than 270 calendar days without approval from DADS as described in §9.190(e)(20)(C) of this subchapter.

(c) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(d) If an individual or LAR refuses a nursing assessment described in subsection (a)(31)(J)(i) of this section, the program provider must not:

(1) provide nursing services to the individual; or

(2) provide host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(e) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (c) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(f) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.190(e)(21)(A) of this subchapter, the program provider must immediately send the written notification described in subsection (e) of this section to DADS.

(g) The program provider must provide TAS in accordance with this subsection.

(1) The program provider must:

(A) provide TAS to an applicant for whom the program provider receives from the service coordinator a completed Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS, as described in §9.158(l)(7)(C) of this subchapter (relating to Process for Enrollment of Applicants);

(B) purchase TAS for the applicant within the monetary amount identified on the form;

(C) deliver to the applicant the specific TAS identified on the form;

(D) ensure TAS is provided in accordance with the individual's PDP and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(E) complete the delivery of TAS at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not deliver TAS in accordance with paragraph (1) of this subsection, the program provider must:

(A) document the following:

(i) a description of the pending TAS;

(ii) the reason for the delay;

(iii) the date the program provider anticipates it will deliver the pending TAS or specific reasons why the program provider cannot anticipate a delivery date; and

(iv) a description of the program provider's ongoing efforts to deliver the TAS; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

(i) the applicant or LAR; and

(ii) the service coordinator.

(3) Within one business day after the TAS has been delivered, the program provider must notify the service coordinator and the applicant or LAR that the TAS has been delivered.

(h) The program provider must provide pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment in accordance with this subsection.

(1) The program provider must:

(A) complete a pre-enrollment minor home modifications assessment in accordance with the *HCS Program Billing Guidelines*;

(B) provide pre-enrollment minor home modifications to an applicant for whom the program provider receives from the service coordinator a completed Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS, as described in §9.158(l)(9)(C) of this subchapter;

(C) provide to the applicant the specific pre-enrollment minor home modifications identified on the form;

(D) provide the pre-enrollment minor home modifications for the applicant within the monetary amount identified on the form;

(E) ensure pre-enrollment minor home modifications and pre-enrollment minor home modifications assessments are provided in accordance with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(F) complete the pre-enrollment minor home modifications at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not complete pre-enrollment minor home modifications in accordance with paragraph (1) of this subsection, the program provider must:

(A) document the following:

(i) a description of the pending modifications;

(ii) the reason for the delay;

(iii) the date the program provider anticipates it will complete the pending modifications or specific reasons why the program provider cannot anticipate a completion date; and

(iv) a description of the program provider's ongoing efforts to complete the modifications; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

(i) the applicant or LAR; and

(ii) the service coordinator.

(3) Within one business day after completion of the pre-enrollment minor home modifications, the program provider must notify the service coordinator and the applicant or LAR that the modifications have been completed.

*§9.177. Certification Principles: Staff Member and Service Provider Requirements.*

(a) The program provider must ensure the continuous availability of trained and qualified service providers to deliver the required services as determined by the individual's needs.

(b) The program provider must employ or contract with a person or entity of the individual's or LAR's choice in accordance with this subsection.

(1) Except as provided by paragraph (2) of this subsection, the program provider must employ or contract with a person or entity of the individual's or LAR's choice to provide an HCS Program service to the individual if that person or entity:

(A) is qualified to provide the service;

(B) provides the service at or below the direct services portion of the applicable HCS Program rate; and

(C) is willing to contract with or be employed by the program provider to provide the service in accordance with this subchapter.

(2) The program provider may choose not to employ or contract with a person or entity of the individual's or LAR's choice in accordance with paragraph (1) of this subsection for good cause. The program provider must document the good cause.

(3) The requirement in paragraph (1)(B) of this subsection does not prohibit the program provider and the person or entity from agreeing to payment for the service in an amount that is more than the direct services portion of the applicable HCS Program rate.

(4) If a program provider contracts with a person or entity to provide TAS, the person or entity must have a contract to provide TAS in accordance with Chapter 49 of this title (relating to Contracting for Community Services).

(c) The program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and staff members and service providers meet state certification, licensure, or regulation for any tasks performed or services delivered in part or in entirety for the HCS Program.

(d) The program provider must conduct initial and periodic training that ensures:

(1) staff members and service providers are qualified to deliver services as required by the current needs and characteristics of the individuals to whom they deliver services, including the use of restraint in accordance with §9.179 of this subchapter (relating to Certification Principles: Restraint); and

(2) staff members, service providers, and volunteers comply with §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations).

(e) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases.

(f) The program provider's operations must prevent:

(1) conflicts of interest between the program provider, a staff member, or a service provider and an individual, such as the acceptance of payment for goods or services from which the program provider, staff member, or service provider could financially benefit, except payment for room and board;

(2) financial impropriety toward an individual including:

(A) unauthorized disclosure of information related to an individual's finances; and

(B) the purchase of goods that an individual cannot use with the individual's funds;

(3) abuse, neglect, or exploitation of an individual;

(4) damage to or prevention of an individual's access to the individual's possessions; and

(5) threats of the actions described in paragraphs (2) - (4) of this subsection.

(g) The program provider must employ or contract with a person who oversees the provision of HCS program services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing HCS Program services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to HCS Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard as verified, in writing, by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of day habilitation, supported home living, host home/companion care, supervised living, residential support, and respite services is at least 18 years of age and:

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

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

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

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

(i) The program provider must ensure that each service provider of professional therapies is currently qualified by being licensed by the State of Texas or certified in the specific area for which services are delivered or be providing services in accordance with state law.

(j) The program provider must ensure that a service provider of behavioral support services:

(1) is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(2) is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(3) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(4) is certified by DADS as described in §5.161 of this title (relating to TDMHMR-Certified Psychologist);

(5) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;

(6) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or

(7) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.

(k) The program provider must ensure that a service provider who provides transportation:

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

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

(l) The program provider must ensure that dental treatment is provided by a dentist licensed by the Texas State Board of Dental Examiners in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing services are provided by a nurse who is currently qualified by being licensed by the Texas Board of Nursing as an RN or LVN.

(n) The program provider must comply with §49.304 of this title (relating to Background Checks).

(o) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(p) If the service provider of supported home living is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (o) of this section as if the contractor were the program provider.

(q) The program provider must ensure that a service provider of cognitive rehabilitation therapy is:

(1) a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(2) a speech-language pathologist licensed in accordance with Texas Occupations Code, Chapter 401; or

(3) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454.

(r) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment is at least 18 years of age, is not the LAR of the individual receiving employment assistance or supported employment from the service provider, and has:

(1) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(2) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(s) A program provider must ensure that the experience required by subsection (r) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(t) The program provider must ensure that a service provider of TAS:

(1) is at least 18 years of age;

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

(3) is not a relative of the applicant;

(4) is not the LAR of the applicant;

(5) does not live with the applicant; and

(6) is capable of providing TAS and complying with the documentation requirements described in §9.174(g)(2)(A) of this subchapter (relating to Certification Principles: Service Delivery).

§9.185. *Program Provider Compliance and Corrective Action.*

(a) DADS takes action against a program provider as a result of a review as described in this section.

(b) If DADS determines after a certification review described in §9.171(b) of this subchapter (relating to DADS Review of a Program Provider and Residential Visit), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.171(d) of this subchapter and no action by the program provider is required.

(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.171(c) of this subchapter, that:

(1) at the time of the certification review, the program provider is not providing HCS Program services to any individuals; and

(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide HCS Program services for at least 60 consecutive calendar days.

(d) Except as provided in subsections (j) - (l) of this section, if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious [~~or pervasive~~] nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.

(e) The corrective action plan required by subsection (d) of this section must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference.

(f) Within 14 calendar days after the date DADS receives the corrective action plan required by subsection (d) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:

(1) DADS certifies the program provider; and

(2) the program provider must complete corrective action in accordance with the corrective action plan.

(g) If the program provider does not submit a corrective action plan as required by subsection (d) of this section, or DADS notifies the program provider that the plan is not approved [~~does not approve the plan~~], DADS may:

(1) request that the program provider submit a revised corrective action plan within a time period determined by DADS;

(2) [(+) ~~impose~~] imposes a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or

(3) [(2) ~~deny or terminate~~] denies or terminates certification of the program provider.

(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.

(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious [~~or pervasive~~] nature, DADS:

(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and

(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.

(j) If DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:

(1) denies or terminates certification of the program provider; and

(2) coordinates with the local authorities the immediate provision of alternative services for the individuals.

(k) If DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with this subchapter, DADS may:

(1) impose [~~imposes~~] a vendor hold against the program provider; or

(2) deny or terminate [~~denies or terminates~~] certification of the program provider.

(l) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:

(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;

(2) imposes or continues a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(m) If DADS imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or

(2) for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and

(A) if the program provider completed the corrective action, DADS releases the vendor hold; or

(B) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.

(n) If DADS determines that a program provider is out of compliance with §9.177(o) or (p) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of supported home living who was not paid the wages required by §9.177(o) of this subchapter, the difference between the amount required and the amount paid to the service provider.

*§9.190. Local Authority Requirements for Providing Service Coordination in the HCS Program.*

(a) In addition to the requirements described in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability), a local authority must, in the provision of service coordination in the HCS Program, ensure compliance with the requirements in this subchapter.

(b) The local authority must employ service coordinators who:

(1) meet the minimum qualifications and local authority staff training requirements specified in Chapter 2, Subchapter L of this title; and

(2) have received training about the HCS Program, including the requirements of this subchapter and the HCS Program services specified in §9.154 of this subchapter (relating to Description of the HCS Program).

(c) A local authority must have a process for receiving and resolving complaints from a program provider related to the local authority's provision of service coordination or the local authority's process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the local authority must ensure that the concern is communicated to the program provider and attempts made to resolve the concern. The local authority may refer an unresolved concern to DADS Consumer Rights and Services.

(e) A service coordinator must:

(1) assist an individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) provide an applicant or individual, LAR, or family member with a written copy of the rights of the individual as described in §9.173(b) of this subchapter (relating to Certification Principles: Rights of Individuals) and the booklet titled *Your Rights In a Home and Community-Based Services Program* (which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us)) and an oral explanation of such rights:

(A) upon enrollment in the HCS program;

(B) upon revision of the booklet;

(C) upon request; and

(D) upon change in an individual's legal status (that is when the individual turns 18 years of age, is appointed a guardian, or loses a guardian);

(3) document the provision of the rights described in §9.173(b) of this subchapter and the booklet and oral explanation required by paragraph (2) of this subsection and ensure that the documentation is signed by:

(A) the individual or LAR; and

(B) the service coordinator;

(4) ensure that, at the time an applicant is enrolled, the applicant or LAR is informed orally and in writing of the following processes for filing complaints:

(A) processes for filing complaints with the local authority about the provision of service coordination; and

(B) processes for filing complaints about the provision of HCS Program services including:

(i) the telephone number of the local authority to file a complaint;

(ii) the toll-free telephone number of DADS to file a complaint; and

(iii) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation of abuse, neglect, or exploitation;

(5) maintain for an individual for an IPC year:

(A) a copy of the IPC;

(B) the PDP;

(C) a copy of the ID/RC Assessment;

(D) documentation of the activities performed by the service coordinator in providing service coordination; and

(E) any other pertinent information related to the individual;

(6) initiate, coordinate, and facilitate person-directed planning;

(7) develop for an individual a full range of services and resources using generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons to meet the needs of the individual as those needs are identified;

(8) ensure that the PDP for an applicant or individual:

(A) is developed, reviewed, and updated in accordance with:

(i) §9.158(k)(3) of this subchapter (relating to Process for Enrollment of Applicants);

(ii) §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and

(iii) §2.556 of this title (relating to MRA's Responsibilities);

(B) states, for each HCS program service, whether the service is critical to the individual's health and safety as determined by the service planning team;

(9) participate in the development, renewal, and revision of an individual's IPC in accordance with §9.158 and §9.166 of this subchapter;

(10) ensure that the service planning team participates in the renewal and revision of the IPC for an individual in accordance with §9.166 of this subchapter and ensure that the service planning team completes other responsibilities and activities as described in this subchapter;

(11) notify the service planning team of the information conveyed to the service coordinator pursuant to §9.178(v)(3)(C) and (4)(B) of this subchapter (relating to Certification Principle: Quality Assurance);

(12) if a change to an individual's PDP is needed, other than as required by §9.166 of this subchapter:

(A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons; and

(B) revise the PDP as necessary;

(13) provide an individual's program provider a copy of the individual's current PDP;

(14) monitor the delivery of HCS Program and non-HCS Program services to an individual;

(15) document whether an individual progresses toward desired outcomes identified on the individual's PDP;

(16) together with the program provider, ensure the coordination and compatibility of HCS Program services with non-HCS Program services, including, in coordination with the program provider, assisting an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as described in §9.174(a)(27)(B) of this subchapter (relating to Certification Principles: Service Delivery);

(17) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;

(18) for an individual who has not had a guardian appointed, make a referral of guardianship to a court, if appropriate;

(19) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

(20) if informed by the program provider that an individual's HCS Program services have been suspended:

(A) request the program provider enter necessary information in the DADS data system to inform DADS of the suspension;

(B) review the individual's status and document in the individual's record the reasons for continuing the suspension, at least every 90 calendar days after the effective date of the suspension; and

(C) to continue suspension of the services for more than 270 calendar days, submit to DADS written documentation of each review made in accordance with subparagraph (B) of this paragraph and a request for approval by DADS to continue the suspension;

(21) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.174(e) of this title (relating to Certification Principles: Service Delivery):

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation, if the individual needs one of those services and the program provider has determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(22) notify the program provider if the service coordinator becomes aware that an individual has been admitted to a setting described in §9.155(d) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services);



(23) if the service coordinator determines that HCS Program services provided to an individual should be terminated, including for a reason described in §9.158(l)(15) [~~§9.158(l)(14)~~] of this subchapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that services should be terminated;

(ii) the attempts by the service coordinator to resolve the situation; and

(B) send a written request to terminate the individual's HCS Program services to DADS and include the documentation required by subparagraph (A) of this paragraph;

(C) provide a copy of the written request and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services, the service coordinator must, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services; and

(iii) possible service resources upon termination; and

(B) submit documentation to DADS that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) manage the process to transfer an individual's HCS Program services from one program provider to another or one FMSA to another in accordance with DADS instructions, including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose to receive HCS Program services from any available program provider (that is, a program provider whose enrollment has not reached its service capacity in the DADS data system) or FMSA; and

(C) if the individual or LAR has not selected another program provider or FMSA, provide the individual or LAR a list of available HCS Program providers and FMSAs and contact information in the geographic locations preferred by the individual or LAR;

(26) be objective in assisting an individual or LAR in selecting a program provider or FMSA;

(27) at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(28) unless contraindications are documented with justification by the service planning team, ensure that a school-age individual

receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(29) unless contraindications are documented with justification by the service planning team, ensure that an adult individual under retirement age is participating in a day activity of the individual's choice that promotes achievement of PDP outcomes for at least six hours per day, five days per week;

(30) unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(31) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(32) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(33) assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(34) for an individual receiving host home/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(35) if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR in accordance with §9.174(a)(8)(D) of this subchapter (relating to Certification Principles: Service Delivery) or the local authority notifies the service coordinator that the local authority is unable to locate the parent or LAR in accordance with §9.167(b)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(A) - (B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(36) if the service coordinator determines that a parent's or LAR's contact information described in paragraph (37)(A) of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(37) request from and encourage the parent or LAR of an individual under the age of 22 years requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(38) within three business days after initiating supervised living or residential support to an individual under 22 years of age:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see [www.hhsc.state.tx.us](http://www.hhsc.state.tx.us) for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the three- or four-person residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the residence is located, if the individual is less than three years of age (see <http://www.dars.state.tx.us/ecis/searchprogram.asp> to search for an ECI program by zip code or by county); and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

(i) the individual's full name;

(ii) the individual's gender;

(iii) the individual's ethnicity;

(iv) the individual's birth date;

(v) the individual's social security number;

(vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information; and

(39) for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is 18-22 years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and

(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record.

#### §9.192. Service Limits.

(a) The following limits apply to an individual's HCS Program services:

(1) for adaptive aids, \$10,000 during an IPC year;

(2) for dental treatment, \$1,000 during an IPC year;

(3) for minor home modifications and pre-enrollment minor home modifications combined:

(A) \$7,500 during the time the individual is enrolled in the HCS Program, which may be paid in one or more IPC years; and

(B) after reaching the \$7,500 limit described in subparagraph (A) of this paragraph, a maximum of \$300 for repair and maintenance during the IPC year; ~~and~~

(4) for respite, 300 hours during an IPC year; and[-]

(5) for TAS:

(A) \$2,500 if the applicant's proposed initial IPC does not include residential support, supervised living, or host home/companion care; or

(B) \$1,000 if the applicant's proposed initial IPC includes residential support, supervised living, or host home/companion care.

(b) An individual may receive TAS only once in the individual's lifetime.

(c) [(b)] A program provider may request, in accordance with the *HCS Program Billing Guidelines*, authorization of a requisition fee:

(1) for dental treatment that is in addition to the \$1,000 service limit described in subsection (a)(2) of this section; or

(2) for a minor home modification that is in addition to the \$7,500 service limit described in subsection (a)(3)(A) of this section.

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406261

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466



## SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM

40 TAC §§9.553, 9.576, 9.577

### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

#### §9.553. Definitions.

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

(1) Applicant--A Texas resident seeking services in the TxHmL Program.

(2) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

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

(4) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(5) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers Medicaid programs.

(6) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

[(7) Condition of a pervasive nature--A condition in which a program provider is out of compliance with a certification principle as evidenced by one of the following:]

[(A) the following two conditions are met:]

[(i) at least 50 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance; and]

[(ii) at least one item from an additional sample, at least the same size as the initial sample, shows non-compliance; or]

[(B) if DADS is not able to obtain an additional sample as described in subparagraph (A)(ii) of this paragraph, at least 54 percent of items from an initial sample of records, interviews, or observations reviewed by DADS, show non-compliance.]

(7) [(8)] Condition of a serious nature--Except as provided in paragraph (14) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(8) [(9)] Contract--A provisional contract or a standard contract.

(9) [(10)] Critical incident--An event listed in the TxHmL Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/training/txhtmlGuide.html>.

(10) [(11)] DADS--The Department of Aging and Disability Services.

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

(12) [(13)] FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(13) [(14)] FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(14) [(15)] Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(15) [(46)] HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(16) [(47)] HHSC--The Texas Health and Human Services Commission.

(17) [(48)] ICAP--Inventory for Client and Agency Planning.

(18) [(49)] ICF/IID--A facility in which ICF/IID Program services are provided.

(19) [(20)] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(20) [(21)] ICF/MR Program--ICF/IID Program.

(21) [(22)] ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(22) [(23)] Implementation Plan--A written document developed by a program provider for an individual that, for each TxHmL Program service on the individual's IPC not provided through the CDS option, includes:

(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services;

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

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

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

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

(D) the number of TxHmL Program units of service needed to complete each objective;

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

(F) the signature and date of the individual, LAR, and the program provider.

(23) [(24)] Individual--A person enrolled in the TxHmL Program.

(24) [(25)] Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(25) [(26)] IPC--Individual plan of care. A document that describes the type and amount of each TxHmL Program service to be provided to an individual and medical and other services and supports to be provided through non-TxHmL Program resources.

(26) [(27)] IPC cost--Estimated annual cost of program services included on an IPC.

(27) [(28)] IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

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

(29) [(30)] LOC--Level of care. A determination made by DADS about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted on the ID/RC Assessment.

(30) [(31)] Local authority--An entity described in Texas Health and Safety Code, §531.002(11) to which the executive commissioner of HHSC has delegated authority and responsibility in accordance with Texas Health and Safety Code, §533.035(a).

(31) [(32)] LON--Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the ID/RC Assessment.

(32) [(33)] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(33) [(34)] Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(34) [(35)] Non-routine circumstances--An event that occurs unexpectedly or does not occur on a regular basis, such as a night off, a vacation, an illness, an injury, a hospitalization, or a funeral.

(35) [(36)] Own home or family home--A residence that is not:

(A) an ICF/IID licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(36) [(37)] Performance contract--A written agreement between DADS and a local authority for the provision of one or more functions as described in THSC, §533.035(b).

(37) [(38)] PDP--Person-directed plan. A plan developed for an applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or LAR on behalf of the applicant.

(38) [(39)] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide TxHmL Program services, excluding an FMSA.

(39) [(40)] Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(40) [(41)] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(41) [(42)] Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(42) [(43)] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(43) [(44)] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the indi-

vidual alone in an area from which the individual is prevented from leaving.

(44) [(45)] Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(45) [(46)] Service coordinator--An employee of a local authority who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services including TxHmL Program services.

(46) [(47)] Service planning team--A planning team constituted by a local authority consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant, individual, or LAR.

(47) [(48)] Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service to an individual.

(48) [(49)] Staff member--An employee or contractor of a TxHmL Program provider.

(49) [(50)] Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(50) [(51)] State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(51) [(52)] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

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

(53) [(54)] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(54) [(55)] TxHmL Program--The Texas Home Living Program, operated by DADS and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(55) [(56)] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

#### §9.576. DADS Review of a Program Provider.

(a) The program provider must be in continuous compliance with the certification principles contained in §§9.578 - 9.580 and §9.584 of this subchapter (relating to Program Provider Certification Principles: Service Delivery; Certification Principles: Qualified Personnel; Certification Principles: Quality Assurance; and Certification Principles: Prohibitions).

(b) DADS conducts an on-site certification review of the program provider, at least annually, to evaluate evidence of the program provider's compliance with certification principles. Based on its review, DADS takes action as described in §9.577 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(c) After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive TxHmL Program services from the provider under the provisional contract.

(d) If DADS certifies a program provider after completion of an initial or annual certification review, the certification period is for no more than 365 calendar days.

(e) DADS may conduct reviews of the program provider at any time.

(f) During any review, DADS may review the TxHmL Program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) DADS conducts an exit conference at the end of all on-site reviews, at a time and location determined by DADS, and at the conference gives the program provider a written preliminary review report.

(h) If a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review of those findings.

(1) To request an informal review of any of the findings in the preliminary review report, the program provider must:

(A) complete [submit a completed] DADS Form [form] 3610 "Informal Review Request" [to DADS,] as instructed on the form; and[-]

(B) mail or fax the completed DADS Form 3610 to the address or fax number listed on the form.

(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.

(3) If DADS receives a timely request for an informal review, DADS:

(A) notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request; and

(B) sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

#### §9.577. Program Provider Compliance and Corrective Action.

(a) DADS takes action against a program provider as a result of a review as described in this section.

(b) If DADS determines after a certification review described in §9.576(b) of this subchapter (relating to DADS Review of a Program Provider), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.576(d) of this subchapter and no action by the program provider is required.

(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.576(c) of this subchapter, that:

(1) at the time of the certification review, the program provider is not providing TxHmL Program services to any individuals; and

(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide TxHmL Program services for at least 60 consecutive calendar days.

(d) Except as provided in subsections (j) - (l) of this section, if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious [~~or pervasive~~] nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.

(e) The corrective action plan required by subsection (d) of this section must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference.

(f) Within 14 calendar days after the date DADS receives the corrective action plan required by subsection (d) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:

(1) DADS certifies the program provider; and

(2) the program provider must complete corrective action in accordance with the corrective action plan.

(g) If the program provider does not submit a corrective action plan as required by subsection (d) of this section, or DADS notifies the program provider that the plan is not approved [~~does not approve the plan~~], DADS may:

(1) request that the program provider submit a revised corrective action plan within a time period determined by DADS;

(2) ~~[(+)] impose [imposes]~~ a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or

(3) ~~[(2)] deny or terminate [denies or terminates]~~ certification of the program provider.

(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.

(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious [~~or pervasive~~] nature, DADS:

(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and

(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.

(j) If DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:

(1) denies or terminates certification of the program provider; and

(2) coordinates with the local authorities the immediate provision of alternative services for the individuals.

(k) If DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with this subchapter, DADS may:

(1) impose [~~imposes~~] a vendor hold against the program provider; or

(2) deny or terminate [~~denies or terminates~~] certification of the program provider.

(l) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:

(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;

(2) imposes or continues a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(m) If DADS imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or

(2) for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and

(A) if the program provider completed the corrective action, DADS releases the vendor hold; or

(B) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.

(n) If DADS determines that a program provider is out of compliance with §9.579(s) or (t) of this subchapter (relating to Certification Principles: Qualified Personnel), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of community support who was not paid the wages required by §9.579(s) of this subchapter, the difference between the amount required and the amount paid to the service provider.

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 December 23, 2014.

TRD-201406263

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466



## CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION SUBCHAPTER T. ADMINISTRATION

### 40 TAC §19.1935

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §19.1935, concerning automated external defibrillators, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

#### BACKGROUND AND PURPOSE

The purpose of proposed new §19.1935 is to implement Texas Health and Safety Code (THSC) §242.159. The proposed new rule requires a nursing facility to have an automated external defibrillator (AED) available for use at the facility and contains training, use, and notification requirements that are consistent with THSC Chapter 779, relating to AEDs.

#### SECTION-BY-SECTION SUMMARY

Proposed new §19.1935 defines AED and requires a nursing facility to: have at least one AED in a single story building, on each floor of a multiple story building, or in each small house of a multiple small house model; have at least one staff person who is trained in cardiopulmonary resuscitation and AED operation on-site at all times; have a licensed physician provide medical consultation or general oversight of the staff training; test and maintain an AED according to the manufacturer's guidelines; keep AED testing and maintenance records; ensure the use of an AED is consistent with a resident's advance directive; call 911 when an AED is being used; and notify the local emergency medical services of the location and type of AED in the facility immediately after an AED is acquired.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed new section is in effect, enforcing or administering the new section does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new section may have an adverse economic effect on small businesses because the estimated cost of an AED is \$1,500 - \$2,000. Additionally, nursing facilities with multiple story buildings will be required to have one AED per floor and facilities with a multiple small house model must have one AED per house.

DADS estimates that the number of small businesses or micro-businesses subject to the proposed new section is less than 1,006. This estimate is based on DADS records, which indicate that of the 1,224 licensed nursing facilities, approximately 1,006 of them are formed for the purpose of making a profit, one of the requirements for being a small business or micro-business. The projected economic impact for a small business or micro-business is a one-time cost of \$1,500 - \$16,000, based on the number of AEDs the provider must purchase. No alternatives to the new requirements were considered because a nursing facility is required by THSC §242.159 to have an AED available for use. DADS determined one AED per building story or small house is

necessary to protect the health and safety of the nursing facility residents and, therefore, no alternatives were considered based on the size of the nursing facility's business.

#### PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new section is in effect, the public benefit expected as a result of enforcing the new section is improved chances of survival of a person after a cardiac arrest has occurred in a nursing facility.

Ms. Henderson anticipates that there will be an economic cost to persons who are required to comply with the new section. The probable economic cost to persons required to comply with the new section for each year of the first five years the new section is in effect will be a one-time cost of \$1,500 - \$16,000, based on the number of AEDs the nursing facility must purchase. The new section will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this 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

Questions about the content of this proposal may be directed to Crystal Beard at (512) 438-2264 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R02, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R02" in the subject line.

#### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new section implements Texas Government Code, §531.0055; Texas Health and Safety Code, §242.159; and Texas Human Resources Code, §161.021.

§19.1935. Automated External Defibrillators.

(a) In this section:

(1) "automated external defibrillator" means a heart monitor and defibrillator that:

(A) has received approval from the United States Food and Drug Administration of its premarket notification filed under United States Code, Title 21, §360(k);

(B) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia;

(C) is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and

(D) after determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart; and

(2) "onsite" means:

(A) in a single story building;

(B) on each floor of a multiple story building; or

(C) in each small house of a multiple small house model.

(b) A facility must have at least one automated external defibrillator available for use onsite at all times.

(c) A facility must ensure at least one staff person who has completed and maintains training in cardiopulmonary resuscitation and automated external defibrillator operation in accordance with the guidelines established by the defibrillator's manufacturer and as approved by the American Heart Association, the American Red Cross, or other nationally recognized associations is onsite at all times.

(d) A facility must ensure that a licensed physician provides medical consultation or general oversight of the staff training to ensure the facility complies with subsection (c) of this section.

(e) A facility must maintain and test the automated external defibrillator according to the manufacturer's guidelines and keep records of the maintenance and testing.

(f) A facility must ensure the use of an automated external defibrillator is consistent with a resident's advance directive executed or issued under Texas Health and Safety Code, Chapter 166, Subchapter C.

(g) The facility must notify the local emergency medical services provider by calling 9-1-1, per standard CPR procedures, while using an automated external defibrillator on a resident.

(h) Within 24 hours after acquiring an automated external defibrillator, a facility must notify the local emergency medical services provider of:

(1) the existence of the automated external defibrillator;

(2) the location of the automated external defibrillator in the facility; and

(3) the type of automated external defibrillator.

(i) If a facility has an automated external defibrillator on the effective date of this rule, the facility must provide the notification described in subsection (h) of this section within seven days after the effective date.

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



Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406258

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4162



## CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §45.103, concerning definitions, §45.104, concerning description of the CLASS Program, §45.201, concerning eligibility criteria, §45.212, concerning process for enrollment of an individual, §45.213, concerning determination of diagnostic eligibility by DADS, §45.214, concerning development of enrollment IPC, §45.216, concerning DADS review of an enrollment IPC, §45.217, concerning CDS Option, §45.218, concerning service limits, §45.221, concerning annual review and reinstatement of diagnostic eligibility, §45.223, concerning renewal and revision of an IPC, §45.225, concerning utilization review of an IPC by DADS, §45.403 concerning denial of a CLASS program service, §45.404, concerning suspension of CLASS program services, §45.602 concerning authorization limits for adaptive aids and amount for repair and maintenance, §45.604, concerning requirements for authorization to purchase an adaptive aid costing \$500 or more, §45.612 concerning authorization limit for minor home modifications and amount for repair and maintenance, §45.701 concerning CMA compliance with rules, §45.702 concerning protection of individual, initial and annual explanations, and offering access to other services if termination presents a threat to health and safety, §45.705 concerning CMA service delivery, §45.706 concerning CMA recordkeeping, §45.803 concerning qualifications of DSA staff persons, §45.805 concerning DSA service delivery, §45.806 concerning respite and dental treatment, §45.807 concerning DSA: systems and recordkeeping; new §45.231, concerning service backup plans, §45.808, concerning employment assistance and supported employment, and §45.809, concerning prohibition of seclusion; and the repeal of §45.219, concerning exception to service limits, in Chapter 45, Community Living Assistance and Support Services.

### BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement assurances regarding employment services in the Community Living Assistance and Support Services (CLASS) Program waiver renewal application that is expected to be retroactively effective September 1, 2014. The proposed amendments also implement Texas Human Resources Code, §32.075, which requires DADS to provide employment assistance to individuals in the various Medicaid waiver programs, including the CLASS Program.

Specifically, the proposed rules add employment assistance, a service that helps an individual locate competitive employment, as an additional service in the CLASS Program. The proposed rules also require that the service providers of employment assistance and supported employment have (1) a bachelor's degree in specified fields and six months of paid or unpaid work

experience providing services to people with disabilities, (2) an associate's degree in specified fields and one year of paid or unpaid work experience providing services to people with disabilities, or (3) a high school diploma (or a state-recognized equivalent) and two years of paid or unpaid work experience providing services to people with disabilities. These qualifications help ensure that service providers of employment assistance and supported employment have sufficient expertise to provide these services. The proposed rules also include certain requirements a CLASS direct services agency (DSA) must comply with to receive payment for employment assistance and supported employment such as not using Medicaid funds paid by DADS to the DSA for incentive payments, subsidies, or unrelated vocational training and not providing employment assistance or supported employment to an individual with the individual present at the same time that certain other services are provided. The proposed rules also change the definition of supported employment to allow an individual to receive this service and be self-employed or work from home. This change provides a policy consistent with other waiver programs and enhances an individual's opportunities to have a desired job or career.

The proposed rules add cognitive rehabilitation therapy (CRT) to the list of CLASS Program services. The addition of this service implements assurances in the CLASS Program waiver renewal application and is based on an appropriation of funds by the 83rd Texas Legislature to DADS for the provision of CRT in certain waiver programs, including the CLASS Program. The proposed rules define CRT, specify the qualifications for a service provider of CRT, and add requirements for a case manager and DSA for provision of the service.

The proposed rules prohibit the seclusion of an individual, which is consistent with other DADS waiver programs, because seclusion offers no beneficial purpose and presents a significant health and safety risk to the individual.

The proposed rules implement a directive from CMS to more effectively address the assurance set forth in the CLASS Program waiver application about health and safety. To address this assurance, the proposed rules require a DSA to develop a service backup plan for nursing services and habilitation if the SPT determines that the service is critical to the individual's health and safety and the service is identified as critical on an individual plan of care (IPC). If a service backup plan is implemented, the proposed rules require a case manager, during required meetings with the individual or LAR, to discuss the implementation of the service backup plan to determine whether or not the plan was effective. If the case manager determines one of these services may now be critical to the individual's health and safety, or the service backup plan was ineffective, the proposed rules require a case manager to convene an SPT meeting to discuss revisions to the IPC and the service backup plan. The proposed rules also require the DSA to discuss the implementation of the service backup plan to determine whether or not the plan was effective and revise the plan with input from the SPT if the DSA determines the plan was ineffective. For clarification, the proposed rules also include a statement that requirements regarding service backup plans for individuals receiving services through the consumer directed services (CDS) option are described in Chapter 41 of this title.

The proposed rules require a case manager, during the enrollment process, to provide an oral and written explanation to the individual or LAR of the services a DSA may provide while the individual is temporarily staying at a location outside the catch-

ment area in which the individual resides and that the individual and LAR or person actively involved with the individual may request that the DSA provide these services. This requirement helps ensure that an individual or LAR understands the option to request that services be provided outside the catchment area. The proposed rules replace deleted requirements related to complaints in §45.212 with references to §49.309, Complaint Process, which applies to CMAs and DSAs.

Also, the proposed rules clarify the current process by which a case manager evaluates the need for and assists an individual enrolling in the CLASS Program to receive transition assistance services (TAS). Specifically, the case manager must determine if an individual meets the specified criteria for TAS and, if so, ensure the proper information is included on DADS "Transition Assistance Services (TAS) Assessment and Authorization" form. The proposed rules also require the case manager to send the completed form to DADS for authorization, send the authorized form to the TAS provider, and include the TAS and the monetary amount authorized by DADS on the individual's proposed enrollment IPC. For clarification, the proposed rules also state the limit of \$2,500 for TAS and that an individual may receive those services only once in the individual's lifetime.

The proposed rules require a DSA to ensure a registered nurse (RN) completes the initial and annual nursing assessment of an individual using DADS CLASS Nursing Assessment form. This requirement is included to standardize the type of information documented from a nursing assessment conducted by DSAs. The proposed rules describe current policy that a professional, other than an RN, may complete an adaptive behavior screening assessment if allowed by the assessment instructions. The proposed rules also require a DSA staff person to inform the individual and LAR or actively involved person of the process by which they may file a complaint regarding CLASS Program services during a face-to-face in-home visit to help ensure that this information is effectively conveyed to the individual and LAR.

The proposed rules require the DSA to complete the Related Conditions Eligibility Screening Instrument at enrollment for determination of an applicant's diagnostic eligibility and describe current policy that the DSA must complete and submit the instrument for annual determinations of an individual's diagnostic eligibility.

The proposed rules describe current DADS policy regarding requirements for a DSA to complete an adaptive behavior screening assessment and the documentation a DSA must complete and submit to DADS to determine an individual's diagnostic eligibility. The proposed rules also add definitions for terms associated with the assessment. The proposed rules also require the CMA to send a copy of the authorized enrollment IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA, to help ensure that the DSA and FMSA are readily informed of DADS authorization of services for the individual.

To be consistent with the CLASS Provider Manual, the proposed rules describe activities that the DSA may begin no more than 120 calendar days before expiration of an IPC and documentation the DSA must submit to DADS at least 60 calendar days before expiration of an IPC regarding DADS annual review of an individual's diagnostic eligibility.

The proposed rules require a case manager, in accordance with the schedule specified in the CLASS Provider Manual, to meet with the individual or LAR in the individual's home, or as requested by the individual or LAR, in another location where the

individual receives CLASS Program services to review the individual's satisfaction with the service and progress toward goals described in the Individual Program Plan (IPP) created for each service. This replaces the requirement for a case manager to conduct these service reviews at least every 90 calendar days in the individual's home. The reference to the CLASS Provider Manual is used because DADS created a detailed schedule, now included in the manual, stating when the DSA must provide service summaries to the CMA. The case manager uses these service summaries to review the individual's progress toward goals during the service review with the individual or LAR. The detailed schedule provides a time frame for when the meetings must be held, which is at approximately 90-day intervals. The schedule was created at the request of DSAs and CMAs to help ensure that the case manager has the service summaries needed to properly conduct the meetings. The requirement that the case manager conduct meetings in a location where the individual receives CLASS Program services is included because sometimes individuals receive services in locations other than in their homes.

The proposed rules describe a current requirement contained in the CLASS Provider Manual that a CMA must, when submitting the proposed enrollment IPC or a renewal IPC to DADS, also submit the completed DADS CLASS Nursing Assessment form provided by the DSA. The proposed rules also require the CMA, when submitting the proposed enrollment IPC or a renewal or revised IPC to DADS regarding an individual receiving a service through the CDS option, to send a copy of each IPP or revised IPP and the habilitation plan or revised habilitation plan to the FMSA so the FMSA will have these documents readily available.

The proposed rules clarify DADS current practice, which is consistent with the CLASS Program waiver application, that suspension of an individual's services is effective the date the individual was temporarily admitted to one of the facilities listed in §45.404(a)(1) or leaves the state and, therefore, the individual is not given advance notice of the suspension.

The proposed rules delete service limits that expired August 31, 2013, and delete the description of the process for obtaining an exception to those service limits. The proposed rules describe the current service limits for adaptive aids and dental treatment, minor home modifications, respite, and TAS.

The proposed rules clarify that an individual is eligible for CLASS Program services if the individual has an IPC with a cost for CLASS Program services at or below \$114,736.07, instead of describing the formula to reach that amount (i.e., 200 percent of the estimated annualized per capita cost of providing services in an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID)). The proposed rules also make consistent throughout the chapter the criteria that services on an IPC must meet for DADS to authorize the IPC.

The proposed rules identify the DADS forms that must be maintained in an individual's record in addition to the individual's IPC, IPP, and Intellectual Disability/Related Conditions "ID/RC" Assessment. The proposed rules also list specific information that a service provider must document in an individual's record to make these rules consistent with requirements in other DADS programs.

The proposed rules clarify when a service provider may be a relative or guardian of the individual to whom the service provider is providing the service. To be consistent with requirements in other DADS waiver programs, the proposed rules require a ser-

vice provider of habilitation or respite who is hired on or after May 1, 2015, to have (1) a high school diploma; (2) a certificate recognized by a state as the equivalent of a high school diploma; or (3) both a successfully completed written competency-based assessment and at least three written personal references as described in the proposed rules.

The proposed rules update the qualifications for a service provider of therapeutic horseback riding and hippotherapy by replacing the "North American Riding for the Handicapped Association" with the "Professional Association of Therapeutic Horsemanship International." The proposed rules allow a person certified as a therapeutic recreation specialist by the Consortium for Therapeutic Recreation/Activities Certification, Inc. to provide recreational therapy and aquatic therapy because DADS has determined that persons with this certification are qualified to provide recreational therapy and aquatic therapy.

The proposed rules update references to Chapter 41, Consumer Direct Services Option. For clarity, the proposed rules include Chapter 41 in the list of the rules with which a CMA must comply. The proposed rules delete the statement that a CMA is not required to be a home and community support services agency licensed by DADS because the qualification requirements for a CMA are addressed in Chapter 49, Contracting for Community Services. The proposed rules delete a requirement in §45.702 related to a CMA having policies and procedures regarding the prevention of abuse, neglect, and exploitation and informing an individual about the complaint process because these requirements are contained in Chapter 49. The proposed rules clarify the current requirement that the CMA must have written policies and procedures regarding acts of financial impropriety by a case manager.

To be consistent with rules for other DADS waiver programs, the proposed rules require a DSA to ensure that each CLASS Program service is provided to an individual in accordance with Appendix C of the CLASS waiver application approved by CMS.

The proposed rules describe current policy that out-of-home respite may be provided in an assisted living facility.

The proposed rules clarify the definitions of "behavioral support" and "behavior support plan." The proposed rules also add definitions for "functional behavior assessment" and "target behaviors," because those terms are used in the definition of "behavioral support" and "behavior support plan." The proposed rules update definitions and terms used in the chapter to be consistent with the terms used in Chapter 41, Consumer Direct Services Option; Chapter 49, Contracting for Community Services; the CLASS waiver renewal application; the CLASS Provider Manual; electronic billing system; and person-first respectful language. The proposed rules delete defined terms not used in Chapter 45. The proposed rules also make minor editorial and reorganizational changes for clarity and consistency.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §45.103 reformats the section and adds definitions for "adaptive behavior," "adaptive behavior level," "adaptive behavior screening assessment," "cognitive rehabilitation therapy," "contract," "dietary services," "employment assistance," "FMSA," "functional behavior assessment," "ICF/IID," "ICF/IID program," "ID/RC assessment," "intellectual disability," "licensed vocational nurse," "seclusion," and "target behavior;" amends the definitions for "behavior support plan," "behavioral support," "business day," "CDS option," "CDSA," "competitive employment," "DADS," "direct services," "DSA,"

"DFPS," "financial management services (FMS)," "habilitation," "ICF/MR," "institutional services," "occupational therapy," "own home or family home," "physician," "program provider," "related condition," "respite," "service provider," "supported employment," "therapeutic horseback riding," and "transition assistance services;" changes the term "speech therapy" to "speech and language pathology;" and deletes definitions for "HCSSA," "integrated employment," "mental retardation," "nutritional services," and "provider agreement."

The proposed amendment to §45.104 adds CRT and employment assistance to the list of services. The proposed amendment changes "ICF/MR Program" to "ICF/IID Program," "nutritional services" to "dietary services," "financial management services" to "FMS" and "speech therapy" to "speech and language pathology." The proposed amendment describes FMS and support consultation as services for an individual participating in the CDS option.

The proposed amendment to §45.201 clarifies that an individual is eligible for CLASS Program services if the individual has an IPC with a cost for CLASS Program services at or below \$114,736.07. The proposed amendment updates a cross-reference to the definition of "own home or family home" in §45.103.

The proposed amendment to §45.212 replaces "provider agreement" with "contract," adds references to proposed new §49.309 relating to complaints about case management services and services provided by a DSA, replaces "ICF/MR Program" with "ICF/IID Program," replaces "MR/RC Assessment" with "ID/RC Assessment," and makes minor editorial changes. The proposed amendment requires a case manager to provide an oral and written explanation to the individual and LAR or person actively involved with the individual during the initial face-to-face, in-home visit of the process by which the individual and LAR or person actively involved with the individual may file a complaint regarding case management as required by §49.309, Complaint Process, in Chapter 49, Contracting for Community Services, and of services the individual may request a DSA provide while the individual is temporarily staying at a location outside the catchment area in which the individual resides, but within the state of Texas, during a period of no more than 60 consecutive days. The proposed amendment requires a case manager to determine if an individual meets the specified criteria to receive TAS; if the individual meets the criteria, to assist the individual in selecting a TAS service provider and documenting the choice of provider; and to complete the form DADS uses to authorize TAS to identify the TAS needed and an estimate of the monetary amount for each TAS identified on the form. The proposed amendment requires a case manager to submit the completed form to DADS for authorization; send the selected TAS provider the form authorized by DADS; and include the TAS and the monetary amount authorized by DADS on the individual's proposed enrollment IPC. The proposed amendment requires a DSA, after being notified by DADS that an individual selected the DSA, to ensure specified functions are performed during a face-to-face in-home visit within 14 calendar days after the CMA provides required information to the DSA. The proposed amendment requires the DSA to ensure a DSA staff person informs the individual and LAR or person actively involved with the individual, orally and in writing, of the process by which they may file a complaint regarding DSA services as required by §49.309. The proposed amendment requires the DSA to ensure that an appropriate professional completes an adaptive behavior screening assessment and that an RN completes a nursing assessment using the DADS CLASS

Nursing Assessment form, the DADS Related Conditions Eligibility Screening Instrument, and the ID/RC Assessment. The proposed amendment requires a DSA to submit to DADS, for a DADS decision regarding the individual's diagnostic eligibility, the completed adaptive behavior screening assessment, the DADS Related Conditions Eligibility Screening Instrument, and the ID/RC Assessment. The proposed rules require a DSA to send the completed DADS CLASS Nursing Assessment form to the CMA. The proposed amendment replaces the completed ID/RC assessment with a reference to all of the documents DADS uses to determine diagnostic eligibility. The proposed amendment makes editorial changes to clarify the criteria DADS uses to review the CLASS Program services specified in the IPC, updates a cross-reference, and reformats the section.

The proposed amendment to §45.213 clarifies the documentation DADS reviews for a decision regarding an individual's diagnostic eligibility by replacing the ID/RC assessment with references to the documentation a DSA must submit for DADS review. The proposed amendment replaces "MR/RC Assessment" with "ID/RC Assessment."

The proposed amendment to §45.214 requires each service on an enrollment IPC to be within the service limit for that service and replaces references to the service limit for TAS with a reference to all service limits in §45.218. The proposed amendment requires a case manager, within 30 calendar days after notification by the DSA of DADS approval of diagnostic eligibility for an individual, to begin assisting the individual, if the individual may need CRT, to obtain, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-CLASS Program service. The proposed amendment requires an enrollment IPC, if it includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, to identify whether the service is critical to the individual's health and safety, as required in proposed new §45.231(a)(2). The proposed amendment requires the case manager to submit to DADS for its review the completed DADS CLASS Nursing Assessment form that the DSA provides to the CMA. The proposed amendment deletes a reference to expired service limits and the process for obtaining an exception to those service limits. The proposed amendment, if the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed enrollment IPC for an individual who will receive a service through the CDS option, requires the case manager to send a copy of the IPP for each service the individual will receive through the CDS option and the habilitation plan to the FMSA no later than 30 calendar days before the effective date of the proposed enrollment IPC as determined by the service planning team. The proposed amendment clarifies that the CMA has 10 calendar days after the date of DADS request to submit additional documentation to support the proposed enrollment IPC. The proposed amendment requires the CMA to send a copy of the authorized IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA. The proposed amendment updates rule cross-references, restructures sentences for clarity, corrects a grammatical error, and replaces "CDSA" with "FMSA."

The proposed amendment to §45.216 deletes a reference to expired service limits and the process for obtaining an exception to the service limits. The proposed amendment requires that CLASS Program services specified in the IPC meet the requirements in Subchapter F of the chapter regarding adaptive aids and minor home modifications and are within the service limits

described in §45.218. The proposed amendment reformats the section.

The proposed amendment to §45.217 updates references to case manager requirements in Chapter 41 and replaces a reference to the CLASS waiver with a reference to §41.108, which describes the CLASS services provided through the CDS option. The proposed amendment clarifies that the case manager uses the list of FMSAs found on DADS website to provide the name and contact information to the individual or LAR of each FMSA providing services in the catchment area in which the individual lives. The proposed amendment requires the case manager to ensure that the individual or LAR completes the required forms instead of requiring the case manager to complete the forms, and replaces "CDSA" with "FMSA."

The proposed amendment to §45.218 deletes service limits that expired on August 31, 2013, that were subject to an exception granted by DADS. The proposed amendment clarifies that the maximum combined cost of \$10,000 during an IPC period for adaptive aids and dental treatment includes the cost of the repair and maintenance of an adaptive aid. The proposed amendment clarifies that after the \$10,000 limit is reached for minor home modifications, the limit for modifications is a maximum of \$300 for repair and maintenance during an IPC period. The proposed amendment limits TAS to a maximum cost of \$2,500 and states that an individual may receive TAS only once in the individual's lifetime.

The proposed repeal of §45.219 deletes the process for requesting an exception to the service limits that expired on August 31, 2013.

The proposed amendment to §45.221 requires a DSA to (1) ensure that, no more than 120 calendar days before the expiration of an individual's IPC period, an RN completes the DADS Related Conditions Eligibility Screening Instrument, the ID/RC Assessment, and a nursing assessment; (2) submit to DADS, at least 60 calendar days before the expiration of an individual's IPC period, for a DADS decision regarding the individual's diagnostic eligibility, the results of a completed adaptive behavior screening assessment, the completed DADS Related Conditions Eligibility Screening Instrument, and the completed ID/RC Assessment; and (3) send the completed DADS CLASS Nursing Assessment form to the CMA. The proposed amendment replaces "MR/RC Assessment" with "ID/RC Assessment" or with a reference to the documents DADS reviews to determine an individual's diagnostic eligibility. The proposed amendment changes "evaluations and assessments" to "standardized evaluations and formal assessments" consistent with the use of these terms in another section. The proposed amendment requires a DSA to ensure an appropriate professional completes an adaptive behavior screening assessment in accordance with the assessment instructions at least every five years after completion of the most current assessment and if significant changes that may be permanent occur in the individual's functioning. The proposed amendment corrects a grammatical error, updates cross-references and section titles, and reformats the section.

The proposed amendment to §45.223 requires a case manager, beginning with the effective date of an individual's enrollment IPC, to meet with the individual or LAR in the individual's home, or in another location where the individual receives CLASS Program services, "in accordance with the CLASS Provider Manual," rather than "at least every 90 calendar days." The proposed amendment requires a case manager, during each of these meetings, to review the individual's progress towards

goals and objectives identified on the IPP; if the individual's IPC includes nursing or habilitation, discuss with the individual or LAR whether the service may now be critical to the individual's health and safety; if a service backup plan was implemented, discuss the effectiveness of the plan; and complete the DADS IPP Service Review form. The proposed amendment requires a case manager, if the proposed renewal or proposed revised IPC includes nursing or habilitation, to ensure that the IPC identifies whether the service is critical to the individual's health and safety, as required by proposed new §45.231(a)(2). In addition, the proposed amendment requires a case manager, within five business days after becoming aware that an individual's need for a CLASS Program service changes, to begin assisting the individual, if the individual may need CRT, to obtain, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-CLASS Program service. The proposed amendment requires a case manager, when submitting a proposed renewal IPC or proposed revised IPC to DADS, to also submit the completed DADS CLASS Nursing Assessment form provided by the DSA. If the individual receives a service through the CDS option, the proposed amendment requires the case manager to send a copy of the revised IPP for any service received through the CDS option and any revised habilitation plan to the FMSA. The proposed amendment replaces a reference to the service limit for TAS with a reference to the service limits described in the proposed amendment to §45.218. The proposed amendment deletes references to expired service limits and the process for obtaining an exception to the expired service limits. The proposed amendment clarifies that the CMA is required to submit certain documentation to DADS if required to send written notice of a proposal to reduce a CLASS Program service. The proposed amendment clarifies that the CMA must submit additional documentation requested by DADS to support the proposed IPC within 10 calendar days after the date of DADS request. The proposed amendment requires the CMA to send a copy of the authorized IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA. The proposed amendment replaces "CDSA" with "FMSA," reformats the section, and updates rule cross-references.

The proposed amendment to §45.225 replaces a reference to the service limit for TAS with a reference to the service limits described in the proposed amendment to §45.218 and deletes a statement regarding DADS denying a request for an exception to the service limit of a service.

Proposed new §45.231 requires, if an individual's IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, that a case manager ensure that (1) the service planning team determines whether the service is critical to the individual's health and safety; and (2) the IPC identifies whether the service is critical to the individual's health and safety, as determined by the service planning team. The proposed new section requires a DSA to (1) develop with input from the service planning team a service backup plan for each service identified as critical, using DADS Provider Agency Model Service Backup Plan form; and (2) ensure that if the action in the service backup plan identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety. The proposed new section requires that, if a service backup plan is implemented, the DSA (1) discuss the implementation of the service backup plan with the

individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective; (2) document whether or not the plan was effective; and (3) revise the plan with input from the service planning team if the DSA determines the plan was ineffective. The proposed new section also states that requirements regarding service backup plans for individuals receiving services through the CDS option are described in Chapter 41.

The proposed amendment to §45.403 clarifies the criteria used by DADS to review each CLASS Program service in the IPC, including replacing a reference to the service limit for TAS with a reference to the service limits described in the proposed amendment to §45.218. The proposed amendment deletes a statement regarding DADS denying a request for an exception to the service limit of a service. The proposed amendment replaces "CDSA" with "FMSA."

The proposed amendment to §45.404 changes the title from "Suspension of CLASS Program Services With Advance Notice" to "Suspension of CLASS Program Services," "ICF/MR" to "ICF/IID," and "CDSA" to "FMSA." The proposed amendment changes "proposed suspension of" and "proposal to suspend" to "suspension of."

The proposed amendment to §45.602 updates the maximum amount DADS authorizes as payment to a DSA for all adaptive aids and dental treatment combined, which as described in §45.218, changed from \$6,935 to \$10,000 per IPC period effective September 1, 2013. The proposed amendment, consistent with the proposed amendment to §45.218, specifies that the \$10,000 maximum per IPC period includes the cost of repair and maintenance of an adaptive aid. The proposed amendment deletes references to §45.219, which is proposed for repeal.

The proposed amendment to §45.604 replaces "speech therapy" with "speech and language pathology."

The proposed amendment to §45.612 states the maximum amount DADS authorizes as payment to a DSA for minor home modifications during the time period an individual is enrolled in the CLASS Program is \$10,000 and deletes the previous limit of \$7,515. The proposed amendment clarifies that DADS may authorize up to \$300 per IPC period for repair and maintenance of minor home modifications after reaching the \$10,000 limit, not "in addition to" the \$10,000 limit. The proposed amendment deletes references to §45.219, which is proposed for repeal. The proposed amendment deletes a cross-reference to the \$300 limit for repair and maintenance.

The proposed amendment to §45.701 states that the CMA must comply with Chapter 41 and deletes the statement that a CMA is not required to be a home and community support services agency licensed by DADS.

The proposed amendment to §45.702 deletes the requirement for a CMA to have and implement written policies and procedures that safeguard an individual against abuse, neglect, and exploitation and that the case manager explain to the individual or LAR about reporting an allegation of abuse, neglect, and exploitation or making a complaint because those requirements are addressed in Chapter 49, Contracting for Community Services. The proposed amendment also states that the CMA must have written policies and procedures regarding acts of financial impropriety by a case manager.

The proposed amendment to §45.705 updates a cross-reference to §45.223. The proposed amendment also requires a case

manager, if the individual may need CRT, to assist the individual in obtaining, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-CLASS Program service.

The proposed amendment to §45.706 replaces "MR/RC Assessment" with "ID/RC Assessment."

The proposed amendment to §45.803 updates the qualifications for a service provider of employment assistance and the qualifications for a service provider of supported employment. The proposed amendment allows a service provider of employment assistance and supported employment to be a relative or guardian but does not allow the service provider to be the parent of an individual under 18 years of age or the spouse of an individual. The proposed amendment requires documentation of specified evidence that a service provider of employment assistance and a service provider of supported employment meet the experience requirement. The proposed amendment requires a service provider of habilitation or respite who is hired on or after May 1, 2015, to have (1) a high school diploma; (2) a certificate recognized by a state as the equivalent of a high school diploma; or (3) both a successfully completed written competency-based assessment and at least three written personal references as described in the proposed amendment. The proposed amendment adds the qualifications for a service provider of CRT. The proposed amendment updates the qualifications for a service provider of therapeutic horseback riding and a service provider of hippotherapy by requiring the person to be certified by the Professional Association of Therapeutic Horsemanship International as a therapeutic riding instructor. The proposed amendment clarifies that hippotherapy must be provided by two persons—one person who is certified by the Professional Association of Therapeutic Horsemanship International as a therapeutic riding instructor, and another person who is a licensed therapist described in the rule. The proposed amendment adds that a service provider of recreational therapy and a service provider of aquatic therapy may be a person who is certified as a therapeutic recreation specialist by the Consortium for Therapeutic Recreation/Activities Certification, Inc., although a service provider of aquatic therapy must also complete a basic water rescue course. The proposed amendment replaces "speech therapy" with "speech and language pathology." The proposed amendment, in the qualifications for a service provider of behavioral support, changes "social worker" to "clinical social worker." The proposed amendment adds that a service provider of minor home modifications may be a relative or guardian of the individual. The proposed amendment updates a cross-reference, makes technical corrections by deleting unnecessary rule text, and makes a correction to the term "auditory integration training/auditory enhancement training."

The proposed amendment to §45.805 adds that a DSA must ensure that each CLASS Program service is provided to an individual in accordance with Appendix C of the CLASS waiver application approved by CMS and found on DADS website. The proposed amendment requires a DSA, if the individual obtains a plan of care for CRT through the Medicaid State Plan, to ensure that a person qualified to provide CRT provides and monitors the provision of CRT to the individual in accordance with the plan of care.

The proposed amendment to §45.806 states that 30 days is the maximum number of days an individual may receive in-home and out-of-home respite combined during an IPC period and

deletes the previous maximum number of 29 days. The proposed amendment replaces "ICF/MR" with "ICF/IID." The proposed amendment deletes references to §45.219, which is proposed for repeal. The proposed amendment adds an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247, to the list of settings in which out-of-home respite may be provided. The proposed amendment states the maximum amount DADS authorizes as payment to a DSA for all dental treatment and adaptive aids combined per IPC period is \$10,000 and deletes the previous limit of \$6,935.

The proposed amendment to §45.807 replaces "Mental Retardation/Related Conditions (MR/RC)" Assessment with "ID/RC" Assessment. The proposed amendment requires a DSA to maintain in the record of an individual, the current adaptive behavior screening assessment; a copy of the current DADS CLASS Nursing Assessment form and the current Related Conditions Eligibility Screening Instrument; documentation of the progress or lack of progress in achieving goals or outcomes; and any new or revised DADS Provider Agency Model Service Backup Plan form for the current IPC period. The proposed amendment also requires the DSA to document and maintain in the individual's record documentation by a service provider of the type of CLASS Program service provided, the date and time the service begins and ends, the type of contact (phone or face-to-face), the name of the person with whom the contact occurred, a description of the activities performed, unless the activity performed is a non-delegated task that is provided by an unlicensed service provider and documented on the IPP, and the signature and title of the service provider.

Proposed new §45.808 references the qualifications for a service provider of employment assistance and a service provider of supported employment in §45.803, Qualifications of DSA Staff Persons. The proposed new section requires a DSA, before including employment assistance on an individual's IPC, to ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.). The proposed new section sets forth requirements related to the provision of employment assistance, including activities that a service provider must perform. The proposed new section prohibits the provision of employment assistance at the same time that respite, habilitation, prevocational services, or supported employment is provided. The proposed new section requires a DSA, before including supported employment on an individual's IPC, to ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.). The proposed new section sets forth requirements related to the provision of supported employment, including activities that a service provider must perform. The proposed new section prohibits the provision of supported employment at the same time that respite, habilitation, prevocational services, or employment assistance is provided. The proposed new section prohibits supported employment from including sheltered work or other similar types of vocational services furnished in specialized facilities. The proposed new section sets limits on the use of Medicaid funds paid by DADS.

Proposed new §45.809 prohibits a DSA from using seclusion.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeal are in effect, there are foreseeable implications relating to costs or revenues of state government.

The effect on state government for each year of the first five years the proposed amendments, new sections, and repeal are in effect is an estimated additional cost to the state of \$916,312 in fiscal year (FY) 2015; \$916,312 in FY 2016; \$916,312 in FY 2017; \$916,312 in FY 2018; and \$916,312 in FY 2019. The estimated cost for adding the new CRT is \$436,380 per year and for adding the new service, employment assistance, is \$448,398 per year. The estimated cost for ensuring that all individuals receive an annual nursing assessment is \$31,534 per year.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new sections, and repeal will not have an adverse economic effect on small businesses or micro-businesses, because, regardless of size, DSAs will be reimbursed for costs associated with providing an annual nursing assessment, CRT, and employment assistance.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments, new sections and repeal are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeal is compliance with assurances in the CLASS Program waiver application; a new service to help expand opportunities for individuals to have a desired job or career; a new service to help individuals learn or relearn cognitive skills; and improved expertise and quality of CLASS service providers.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeal. The amendments, new sections, and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this 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

Questions about the content of this proposal may be directed to Bob Scott at (512) 438-3078 in DADS Waiver and State Plan Services Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R30, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R30" in the subject line.

### SUBCHAPTER A. GENERAL PROVISIONS

## 40 TAC §45.103, §45.104

### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §45.103. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Adaptive aid--An item or service that enables an individual to retain or increase the ability to perform ADLs or perceive, control, or communicate with the environment in which the individual lives, and:

(A) is included in the list of adaptive aids in the *CLASS Provider Manual*; or

(B) is the repair and maintenance of an adaptive aid on such list that is not covered by a warranty.

(3) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(4) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. Four levels are used ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(5) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

or  
(C) Scales of Independent Behavior--Revised (SIB-R);

(D) Vineland Adaptive Behavior Scales, Second Edition (Vineland-II).

(6) [(3)] ADL--Activity of daily living.

(7) [(4)] Aquatic therapy--A service that involves a low-risk exercise method done in water to improve an individual's range of motion, flexibility, muscular strengthening and toning, cardiovascular endurance, fitness, and mobility.

(8) [(5)] Auditory integration training/auditory enhancement training--Specialized training that assists an individual to cope with hearing dysfunction or over-sensitivity to certain frequency ranges of sound by facilitating auditory processing skills and exercising the middle ear and auditory nervous system.

(9) [(6)] Behavior support plan--A comprehensive, individualized written plan based on a current functional behavior assessment that includes specific objectives and behavioral techniques designed to teach or increase adaptive skills and decrease or eliminate target behaviors [An individualized written plan prescribing the systematic application of behavioral techniques and containing specific objectives to decrease or eliminate targeted behavior].

(10) [(7)] Behavioral support [Support]--Specialized interventions that assist an individual in increasing adaptive behaviors and replacing or modifying challenging [maladaptive] or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in the community and which consist of the following activities:

(A) conducting a functional behavior assessment [of the targeted behavior so that a behavior support plan may be developed];

(B) developing [development of] an individualized behavior support plan;

(C) training of and consultation with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluation of the effectiveness of the behavior support plan;

(E) modifying [modification], as necessary, [of] the behavior support plan based on monitoring and evaluation of the plan's effectiveness; and

(F) counseling with and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control challenging [maladaptive] or socially unacceptable behaviors.

(11) [(8)] Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b) [A day when DADS state office is open].

(12) [(9)] Case management--A service that assists an individual in the following:

(A) assessing the individual's needs;

(B) enrolling into the CLASS Program;

(C) developing the individual's IPC;

(D) coordinating the provision of CLASS Program services;

(E) monitoring the effectiveness of the CLASS Program services and the individual's progress toward achieving the outcomes identified for the individual;

(F) revising the individual's IPC, as appropriate;

(G) accessing non-CLASS Program services;

(H) resolving a crisis that occurs regarding the individual; and

(I) advocating for the individual's needs.

(13) [(10)] Catchment area--As determined by DADS, a geographic area composed of multiple Texas counties.

(14) [(11)] CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions) [in which an individual or LAR employs and retains service providers and directs the delivery of program services].

(15) [(12)] CDSA--FMSA [Consumer directed service agency. An entity, as defined in §41.103 of this title that provides financial management services].

(16) [(13)] CMA--Case management agency. A program provider that has a contract [contracts] with DADS to provide case management.

(17) [(14)] CLASS Program--The Community Living Assistance and Support Services Program.

(18) [(15)] CMS--The Centers for Medicare and Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers Medicare and Medicaid programs.

(19) Cognitive rehabilitation therapy--A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(20) [(16)] Competitive employment--Employment that pays an individual at least the minimum wage if the individual is not self-employed. [or above the greater of:]

[(A) the applicable minimum wage; or]

[(B) the prevailing wage paid to individuals without disabilities for performing the same or similar work.]

(21) [(17)] Continued family services--Services provided to an individual 18 years of age or older who resides with a support family, as described in §45.531 of this chapter (relating to Support Family Requirements), that allow the individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. The individual must be receiving support family services immediately before receiving continued family services. Continued family services consist of services described in §45.533 of this chapter (relating to Support Family Duties).

(22) Contract--A provisional contract that DADS enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date or a standard contract that DADS enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.



(23) [(18)] DADS--The [Texas] Department of Aging and Disability Services.

(24) [(19)] Denial--An action taken by DADS that:

(A) rejects an individual's request for enrollment into the CLASS Program;

(B) disallows a CLASS Program service requested on an IPC that was not authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a CLASS Program service requested on an IPC that was not authorized on the prior IPC.

(25) [(20)] Dental treatment--A service that:

(A) consists of the following:

(i) emergency dental treatment, which is procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatment, which is examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatment, which includes fillings, scaling, extractions, crowns, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatment, which is procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment; and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labio-lingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

(26) Dietary services--The provision of nutrition services, as defined in Texas Occupations Code, Chapter 701.

(27) [(24)] Direct services--CLASS Program services other than case management, FMS [financial management services], support consultation, support family services, continued family services, or transition assistance services.

(28) [(22)] DSA--Direct services agency. A program provider that has a contract [is a HCSSA that contracts] with DADS to provide direct services.

(29) [(23)] DFPS--The [Texas] Department of Family and Protective Services.

(30) Employment assistance--Assistance provided to an individual to help the individual locate competitive employment in the community.

(31) [(24)] Enrollment IPC--The first IPC developed for an individual upon enrollment into the CLASS Program.

(32) [(25)] FMS-- Financial management services.[--]A service, as defined in §41.103 of this title, that is provided to an individual participating [who chooses to participate] in the CDS option.

(33) FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS.

(34) Functional behavior assessment--An evaluation that is used to determine the underlying function or purpose of an individual's behavior, so an effective behavior support plan can be developed.

(35) [(26)] Habilitation--A service that allows an individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Habilitation services consist of the following:

(A) habilitation training, which is interacting face-to-face with an individual who is awake to train the individual in the following activities:

(i) self-care;

(ii) personal hygiene;

(iii) household tasks;

(iv) mobility;

(v) money management;

(vi) community integration;

(vii) use of adaptive equipment;

(viii) management of caregivers;

(ix) personal decision making;

(x) interpersonal communication;

(xi) reduction of challenging [maladaptive] behaviors;

(xii) socialization and the development of relationships;

(xiii) participating in leisure and recreational activities;

(xiv) use of natural supports and typical community services available to the public;

(xv) self-administration of medication; and

(xvi) strategies to restore or compensate for reduced cognitive skills;

(B) habilitation ADLs, which are:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that does not involve interacting face-to-face with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication; or

(V) arranging transportation for the individual;

and

(C) habilitation delegated, which is tasks delegated by a registered nurse to a service provider of habilitation in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks By Registered Professional Nurses to Unlicensed Personnel For Clients With Acute Conditions Or In Acute Care Environments) or Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegations In Independent Living Environments For Clients With Stable and Predictable Conditions).

~~[(27) HCSSA--A home and community support services agency licensed by DADS in accordance with Texas Health and Safety Code Chapter 142.]~~

~~(36) [(28)] HHSC--The Texas Health and Human Services Commission.~~

~~(37) [(29)] Hippotherapy--The provision of therapy that:~~

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by two service providers at the same time, as described in §45.803(d)(11) of this chapter (relating to Qualifications of DSA Staff Persons).

(38) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252; or

(B) certified by DADS.

(39) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

~~[(40) [(30)] ICF/MR--ICF/IID [Intermediate care facility for persons with mental retardation or related conditions.]~~

(41) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by DADS to determine the level of care for an individual.

~~(42) [(31)] Individual--A person seeking to enroll or who is enrolled in the CLASS Program.~~

~~(43) [(32)] Institutional services--Medicaid-funded services provided in a nursing facility licensed in accordance with Texas Health and Safety Code, Chapter 242, or in an ICF/IID [ICF/MR certified by DADS for a capacity of more than six persons].~~

~~[(33) Integrated employment--Employment at a work site that provides an individual with an opportunity for routine interaction with people without disabilities other than the individual's work site supervisor or service providers.]~~

(44) Intellectual disability--Consistent with Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period (0-18 years of age).

~~(45) [(34)] IPC--Individual plan of care. A written plan developed by an individual's service planning team that:~~

~~(A) describes:~~

~~(i) the type and amount of each CLASS Program service to be provided to the individual; and~~

~~(ii) services and supports to be provided to the individual through non-CLASS Program resources including natural supports, medical services, and educational services; and~~

~~(B) is authorized by DADS in accordance with Subchapter B of this chapter.~~

~~(46) [(35)] IPC cost--The estimated annual cost of CLASS Program services on an IPC.~~

~~(47) [(36)] IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:~~

~~(A) for an enrollment IPC, the period of time from the effective date of an enrollment IPC, as described in §45.214(h) of this chapter (relating to Development of Enrollment IPC), until the first calendar day of the same month of the effective date in the following year; and~~

~~(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in §45.222(b) of this chapter (relating to Renewal IPC and Requirement for Authorization to Continue Services).~~

~~(48) [(37)] IPP--Individual program plan. A written plan that describes the goals and objectives to be met by the provision of each CLASS Program service on an individual's IPC that:~~

~~(A) are supported by justifications;~~

~~(B) are measurable; and~~

~~(C) have timelines.~~

~~(49) [(38)] LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.~~

(50) Licensed vocational nurse--A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(51) [(39)] Licensed vocational nursing--The provision of vocational nursing, as defined in Texas Occupations Code, Chapter 301.

(52) [(40)] Massage therapy--The provision of massage therapy as defined in Texas Occupations Code, Chapter 455.

(53) [(41)] Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(54) [(42)] Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

[(43) ~~Mental retardation--Consistent with Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period (0-18 years of age).~~]

(55) [(44)] Minor home modification--A physical adaptation to an individual's residence that is necessary to address the individual's specific needs and that enables the individual to function with greater independence in the individual's residence or to control his or her environment and:

(A) is included on the list of minor home modifications in the *CLASS Provider Manual*; or

(B) except as provided by §45.618(c) of this chapter (relating to Repair or Replacement of Minor Home Modification), is the repair and maintenance of a minor home modification purchased through the CLASS Program that is needed after one year has elapsed from the date the minor home modification is complete and that is not covered by a warranty.

(56) [(45)] Music therapy--The use of musical or rhythmic interventions to restore, maintain, or improve an individual's social or emotional functioning, mental processing, or physical health.

(57) [(46)] Natural supports--Assistance from persons, including family members and friends, that helps an individual live in a community and that occurs naturally within the individual's environment.

[(47) ~~Nutritional services--The provision of nutrition services as defined in Texas Occupations Code, Chapter 701.~~]

(58) [(48)] Occupational therapy--The provision [practice] of occupational therapy, as described in Texas Occupations Code, Chapter 454.

(59) [(49)] Own home or family home--A residence that is not:

(A) an ICF/IID [~~ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by DADS~~];

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are individuals [persons] with an intellectual disability [~~mental retardation~~], a related condition, or a physical disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(60) [(50)] Physical therapy--The provision of physical therapy, as defined in Texas Occupations Code, Chapter 453.

(61) [(51)] Physician--Based on the definition in §97.2 of this title (relating to Definitions), a [A] person who: [~~is licensed as a physician by the Texas Medical Board in accordance with Chapter 155 of the Texas Occupations Code or is licensed as physician or osteopath in accordance with the laws of Oklahoma, New Mexico, Arkansas, or Louisiana.~~]

(A) is licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) is licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of an individual, and orders home health for the individual in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) is a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(62) [(52)] Prevocational services--Services that are not job-task oriented and are provided to an individual who the service planning team does not expect to be employed (without receiving supported employment) within one year after prevocational services are to begin, to prepare the individual for employment. Prevocational services consist of:

(A) assessment of vocational skills an individual needs to develop or improve upon;

(B) individual and group instruction regarding barriers to employment;

(C) training in skills:

(i) that are not job-task oriented;

(ii) that are related to goals identified in the individual's habilitation plan;

(iii) that are essential to obtaining and retaining employment, such as the effective use of community resources, transportation, and mobility training; and

(iv) for which an individual is not compensated more than 50 percent of the federal minimum wage or industry standard, whichever is greater;

(D) training in the use of adaptive equipment necessary to obtain and retain employment; and

(E) transportation between the individual's place of residence and prevocational services work site when other forms of transportation are unavailable or inaccessible.

~~(63) [(53)] Program provider--A DSA or a CMA. [An entity that delivers CLASS Program case management or direct services under a provider agreement].~~

~~[(54) Provider agreement--A written agreement between DADS and a program provider that obligates the program provider to provide CLASS Program services.]~~

~~(64) [(55)] Recreational therapy--Recreational or leisure activities that assist an individual to restore, remediate or habilitate the individual's level of functioning and independence in life activities, promote health and wellness, and reduce or eliminate the activity limitations caused by an illness or disabling condition.~~

~~(65) [(56)] Reduction--An action taken by DADS as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.~~

~~(66) [(57)] Registered nurse--A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301.~~

~~(67) [(58)] Registered nursing--The provision of professional nursing, as defined in Texas Occupations Code, Chapter 301.~~

~~(68) [(59)] Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:~~

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability ~~[mental retardation]~~ because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, ~~[mental retardation]~~ and requires treatment or services similar to those required for individuals with an intellectual disability ~~[mental retardation]~~;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

~~(69) [(60)] Relative--A person related to another person within the fourth degree of consanguinity or within the second degree~~

of affinity. A more detailed explanation of this term is included in the *CLASS Provider Manual*.

~~(70) [(61)] Renewal IPC--An IPC developed for an individual in accordance with §45.223 of this chapter (relating to Renewal and Revision of an IPC) because the IPC will expire within 90 calendar days.~~

~~(71) [(62)] Respite--The temporary assistance with an individual's ADLs if the individual has the same residence as a person who routinely provides such assistance and support to the individual, and the person is temporarily unavailable to provide such assistance and support.~~

(A) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of habilitation or an employee in the CDS option of habilitation, DADS does not authorize respite unless:

(i) the service provider or employee routinely provides unpaid assistance and support with activities of daily living to the individual;

(ii) the amount of respite does not exceed the amount of unpaid assistance and support routinely provided; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(B) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of support family services or continued family services, DADS does not authorize respite unless:

(i) for an individual receiving support family services, the individual does not receive respite on the same day the individual receives support family services;

(ii) for an individual receiving continued family services, the individual does not receive respite on the same day the individual receives continued family services; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(C) Respite services consist of the following:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety, and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that do ~~does~~ not involve interacting face-to-face with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication;

(V) arranging transportation for the individual;

or

(VI) protecting the individual's health, safety, and security while the individual is asleep.

(72) ~~[(63)]~~ Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §45.223 of this chapter to add a new CLASS Program service or change the amount of an existing service.

(73) Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(74) ~~[(64)]~~ Service planning team--A planning team convened and facilitated by a CLASS Program case manager consisting of the following persons:

(A) the individual;

(B) if applicable, the individual's LAR;

(C) the case manager;

(D) a representative of the DSA;

(E) other persons whose inclusion is requested by the individual or LAR and who agree to participate; and

(F) a person selected by the DSA, with the approval of the individual or LAR, who is:

(i) professionally qualified by certification or licensure and has special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(75) ~~[(65)]~~ Service provider--A person who is an employee or contractor of a ~~the~~ DSA who provides a direct service.

(76) ~~[(66)]~~ Specialized licensed vocational nursing--The provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(77) ~~[(67)]~~ Specialized registered nursing--The provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(78) ~~[(68)]~~ Speech and language pathology [Speech therapy]--The provision of speech-language pathology, as defined in Texas Occupations Code, Chapter 401.

(79) ~~[(69)]~~ Specialized therapies--Services to promote skills development, maintain skills, decrease inappropriate behaviors, facilitate emotional well-being, create opportunities for socialization, or improve physical and medical status that consist of the following:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) recreational therapy; and

(F) therapeutic horseback riding.

(80) ~~[(70)]~~ Staff person--A full-time or part-time employee of the program provider.

(81) ~~[(71)]~~ Support consultation--A service, as defined in §41.103 of this title, that may be provided to an individual who chooses to participate in the CDS option.

(82) ~~[(72)]~~ Supported employment--Assistance provided to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed. [A service that assists an individual to sustain competitive, integrated employment].

(83) ~~[(73)]~~ Support family services--Services provided to an individual under 18 years of age who resides with a support family, as described in §45.531 of this chapter, that allow the individual to reside successfully in a community setting by supporting the individual to acquire, maintain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Support family services consist of the services described in §45.533 of this chapter.

(84) Target behavior--A behavior identified in a behavior support plan for reduction or elimination.

(85) ~~[(74)]~~ Therapeutic horseback riding--The provision of therapy that:

(A) involves an individual interacting with and riding on horses; and

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual. [~~;~~ and]

~~[(C) is provided by only one service provider as described in §45.803(d)(10) of this chapter.]~~

(86) ~~[(75)]~~ Temporary admission--Being admitted for 180 consecutive calendar days or less.

(87) ~~[(76)]~~ Transition assistance services--In accordance with Chapter 62 of this title (relating to Transition Assistance Services), services provided to an individual [a person] who is receiving institutional services and is eligible for and enrolling into the CLASS Program. [A more detailed description of this CLASS Program service is contained in Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services).]

§45.104. *Description of the CLASS Program.*

(a) The CLASS Program is a Medicaid waiver program approved by CMS under §1915(c) of the Social Security Act. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID [ICF/MR] Program. CLASS Program services are intended to, as a whole, enhance the individual's integration into the community, maintain or improve the individual's independent functioning, and prevent the individual's admission to an institution.

(b) DADS operates the CLASS Program under the authority of HHSC.

(c) DADS limits the enrollment in the CLASS Program to the number of individuals approved by CMS or by available funding from the state.

(d) The CLASS program offers the following services:

- (1) adaptive aids;
- (2) auditory integration training/auditory enhancement training;
- (3) behavioral support;
- (4) case management;
- (5) cognitive rehabilitation therapy;
- (6) ~~[(5)] dental treatment~~;
- (7) ~~[(6)] FMS, for an individual participating [financial management services (only) in the CDS option[]]~~;
- (8) ~~[(7)] habilitation~~;
- (9) ~~[(8)] licensed vocational nursing~~;
- (10) ~~[(9)] minor home modifications~~;
- (11) ~~[(10)] dietary [nutritional] services~~;
- (12) ~~[(11)] occupational therapy~~;
- (13) ~~[(12)] physical therapy~~;
- (14) ~~[(13)] prevocational services~~;
- (15) ~~[(14)] registered nursing~~;
- (16) ~~[(15)] respite, which consists of:~~
  - (A) in-home respite; and
  - (B) out-of-home respite;
- (17) ~~[(16)] speech and language pathology [speech therapy]~~;
- (18) ~~[(17)] specialized licensed vocational nursing~~;
- (19) ~~[(18)] specialized registered nursing~~;
- (20) ~~[(19)] specialized therapies, which consist of:~~
  - (A) aquatic therapy;
  - (B) hippotherapy;
  - (C) massage therapy;
  - (D) music therapy;
  - (E) recreational therapy; and
  - (F) therapeutic horseback riding;
- (21) ~~[(20)] support consultation, for an individual participating [(only) in the CDS option[]]~~;
- (22) ~~[(21)] support family services~~;
- (23) ~~[(22)] continued family services~~;
- (24) employment assistance;
- (25) ~~[(23)] supported employment; and~~
- (26) ~~[(24)] transition assistance 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 December 23, 2014.

TRD-201406243

Lawrence Hornsby

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Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466

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## SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

### DIVISION 1. ELIGIBILITY AND MAINTENANCE OF INTEREST LIST

#### 40 TAC §45.201

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### *§45.201. Eligibility Criteria.*

(a) An individual is eligible for CLASS Program services if:

(1) the individual is financially eligible for Medicaid because the individual receives supplemental security income (SSI) cash benefits or is determined by HHSC to be financially eligible for Medicaid;

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria for the CLASS Program as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual has been diagnosed with a related condition that manifested before the individual was 22 years of age;

(4) the individual demonstrates a need for habilitation;

(5) the individual has an IPC cost for CLASS Program services at or below \$114,736.07 [200 percent of the estimated annualized per capita cost of providing services in an ICF/MR, as of August 31, 2010, to an individual who meets the diagnostic eligibility criteria described in §9.239 of this title considering all other resources, including resources described in §40.1 of this title (relating to Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program)];

(6) the individual is not enrolled in another Medicaid waiver program; and

(7) the individual resides in the individual's own home or family home.

(b) An individual is not considered to reside in the individual's own home or family home if the individual is admitted to one of the facilities listed in §45.103(59)(A) - (G) [~~§45.103(49)(A) - (G)~~] of this chapter (relating to Definitions) for more than 180 consecutive calendar days.

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 December 23, 2014.

TRD-201406267

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Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466



## DIVISION 2. ENROLLMENT PROCESS

### 40 TAC §§45.212 - 45.214, 45.216 - 45.218

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §45.212. *Process for Enrollment of an Individual.*

(a) After [~~Upon~~] notification by DADS that an individual selected a [~~the~~] CMA as a program provider, the [a] CMA must assign a case manager to perform the following functions within 14 calendar days of DADS notification to the CMA:

(1) verify that the individual resides in the catchment area for which the individual's selected CMA and DSA have a contract [CLASS Program provider agreement];

(2) conduct an initial face-to-face, in-home visit with the individual and LAR or person actively involved with the individual to

[~~and during the visit~~] provide an oral and written explanation of the following to the individual and LAR or person actively involved with the individual:

(A) CLASS Program services;

(B) the mandatory participation requirements of an individual as described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(C) the CDS option as described in §45.217 of this division (relating to CDS Option);

(D) the right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing);

(E) that the individual and LAR or person actively involved with the individual may report an allegation of abuse, neglect, or exploitation or make a complaint by calling DADS toll-free telephone number (1-800-458-9858);

(F) the process by which the individual and LAR or person actively involved with the individual may file a complaint regarding case management as required by §49.309 of this title (relating to Complaint Process) [~~§45.707(e)(1) of this chapter (relating to CMA: Quality Management and Complaint Process)];~~

(G) voter registration, if the individual is 18 years of age or older; [~~and~~]

(H) transition assistance services, if the individual is receiving institutional services; and

(I) that while the individual is temporarily staying at a location outside the catchment area in which the individual resides, but within the state of Texas during a period of no more than 60 consecutive days, the individual and LAR or person actively involved with the individual may request that the DSA provide:

(i) habilitation;

(ii) out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter (relating to Respite and Dental Treatment);

(iii) adaptive aids; or

(iv) nursing; and

(3) obtain the signature of the individual or LAR on a Verification of Freedom of Choice form designating the choice for the individual of CLASS Program services over enrollment in the ICF/IID [ICF/MR] Program.

(b) The CMA must:

(1) within two business days of the case manager's face-to-face, in-home visit required by subsection (a)(2) of this section:

(A) collect and maintain the information necessary for the CMA and DSA to process the individual's request for enrollment into the CLASS Program in accordance with the *CLASS Provider Manual*; and

(B) provide the individual's selected DSA with the collected information required by subparagraph (A) of this paragraph;

(2) assist the individual or LAR in completing and submitting an application for Medicaid financial eligibility as required by §45.302(1) of this chapter (relating to Mandatory Participation Requirements of an Individual); and

(3) ensure that the case manager documents in the individual's record the progress toward completing a Medicaid application and enrollment into CLASS Program services.

(c) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days of the case manager's initial face-to-face, in-home visit as required by §45.302(1) of this chapter, but is making good faith efforts to complete the application, the CMA may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (1) of this subsection.

(1) The CMA may not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial face-to-face, in-home visit.

(2) The CMA must ensure that the case manager documents each extension in the individual's record.

(d) If an individual or LAR does not submit a Medicaid application to HHSC as required by §45.302(1) of this chapter and is not making good faith efforts to complete the application, the CMA must request, in writing, that DADS withdraw the offer of a program vacancy made to the individual in accordance with §45.211(d)(3) of this subchapter (relating to Written Offer of a CLASS Program Vacancy).

(e) If DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services to an individual because they have determined that they cannot ensure the individual's health and safety, the CMA must provide to DADS, in writing, the specific reasons the DSAs have determined that they cannot ensure the individual's health and safety.

(f) The case manager must determine whether an individual meets the following criteria:

(1) the individual is being discharged from a nursing facility or an ICF/IID;

(2) the individual has not previously received transition assistance services as described in §62.5(e) of this title (relating to Service Description);

(3) the individual's proposed enrollment IPC does not include support family services or continued family services; and

(4) the individual anticipates needing transition assistance services as described in §62.5(e) of this title.

(g) If the case manager determines that an individual meets the criteria described in subsection (f) of this section, the case manager must:

(1) provide the individual or LAR with a list of transition assistance services providers in the catchment area in which the individual will reside;

(2) complete, with the individual or LAR, the Transition Assistance Services (TAS) Assessment and Authorization form found at [www.dads.state.tx.us](http://www.dads.state.tx.us) in accordance with the form's instructions, which includes:

(A) identifying the transition assistance services the individual needs as described in §62.5(e) of this title;

(B) estimating the monetary amount for each transition assistance service identified, which must be within the service limit described in §45.218(a)(4) of this division (relating to Service Limits); and

(C) documenting the individual's or LAR's choice of transition assistance services provider;

(3) submit the completed form to DADS for authorization;

(4) send the form authorized by DADS to the selected transition assistance services provider; and

(5) include the transition assistance services and the monetary amount authorized by DADS on the individual's proposed enrollment IPC.

[(f) If the individual is receiving institutional services and anticipates needing transition assistance services, the case manager must, before the effective date of the enrollment IPC:]

[(1) provide the individual or LAR with a list of provider agencies of transition assistance services; and]

[(2) using the Transition Assistance Services Assessment and Authorization form as described in the *CLASS Provider Manual*, assist the individual or LAR to:]

[(A) identify the individual's essential needs for transition assistance services; and]

[(B) provide estimated amount of transition assistance services needed by the individual.]

(h) [(g)] After notification by DADS [A DSA must, after receiving notice from DADS] that an individual selected the DSA as a program provider, the DSA must ensure that the following functions are performed during a face-to-face in-home visit within 14 calendar days after the CMA provides information to the DSA as required by subsection (b)(1)(B) of this section:

[(1)] [assign a registered nurse to perform the following functions within 14 calendar days after information is provided to the DSA by the CMA as required by subsection (b)(1)(B) of this section:]

(1) [(A)] a DSA staff person informs [conduct an initial face-to-face, in-home visit with] the individual and LAR or person actively involved with the individual, orally and in writing, of the process by which they may file a complaint regarding CLASS Program services provided by the DSA as required by §49.309 of this title (relating to Complaint Process);

[(B) perform nursing and adaptive behavior assessments of the individual; and]

[(C) complete the Mental Retardation/Related Conditions (MR/RC) Assessment in accordance with the *CLASS Provider Manual*; and]

(2) an appropriate professional completes an adaptive behavior screening assessment in accordance with the assessment instructions; and

(3) a registered nurse, in accordance with the CLASS Provider Manual, completes:

(A) a nursing assessment using the DADS CLASS Nursing Assessment form;

(B) the DADS Related Conditions Eligibility Screening Instrument; and

(C) the ID/RC Assessment.

[(2) within 14 calendar days after information is provided to the DSA by the CMA as required by subsection (b)(1)(B) of this section, inform the individual and LAR or person actively involved with the individual, orally and in writing, of the process by which they may file a complaint regarding CLASS Program services provided by the DSA as required by §45.808(1) of this chapter (relating to DSA: Complaint Process).]



(i) ~~[(h)]~~ A DSA must ~~[ensure that]:~~

(1) ~~ensure that the diagnosis of the individual's condition documented on the ID/RC ~~[MR/RC]~~ Assessment is authorized by a physician; ~~and]~~~~

(2) ~~submit [the completed MR/RC assessment is submitted] to DADS; for a DADS decision regarding the individual's diagnostic eligibility; [for a decision regarding the individual's diagnostic eligibility.]~~

~~(A) the completed adaptive behavior screening assessment;~~

~~(B) the completed DADS Related Conditions Eligibility Screening Instrument; and~~

~~(C) the completed ID/RC Assessment; and~~

~~(3) send the completed DADS CLASS Nursing Assessment form described in subsection (h)(3)(A) of this section to the CMA.~~

(j) ~~[(h)]~~ In accordance with §45.213 of this division (relating to Determination of Diagnostic Eligibility by DADS), DADS reviews the documentation described in subsection (i)(2) of this section ~~[completed MR/RC Assessment]~~.

(k) ~~[(j)]~~ If a DSA receives written notice from DADS that diagnostic eligibility is approved for an individual, as described in §45.213(d), the DSA must notify the individual's CMA of DADS decision within one business day after receiving the notice from DADS.

(l) ~~[(k)]~~ If DADS denies diagnostic eligibility, DADS sends written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program in accordance with §45.402(b) of this chapter (relating to Denial of a Request for Enrollment into the CLASS Program).

(m) ~~[(l)]~~ If the CMA receives notice from the DSA that DADS approves diagnostic eligibility, the CMA must ensure that a proposed enrollment IPC, habilitation plan, and IPPs for the individual are developed and submitted to DADS for review in accordance with §45.214 of this division (relating to Development of Enrollment IPC).

(n) ~~[(m)]~~ DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS review of an Enrollment IPC) to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria) and the requirements in §45.214(a)(1)(B) of this division; and

(2) the CLASS Program services specified in the IPC meet:

~~(A) the requirements described in §45.214(b) of this division;~~

~~(B) the requirements in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications);~~ and

~~(C) the service limits described in §45.218 of this division (relating to Service Limits).~~

(o) ~~[(n)]~~ If DADS notifies the individual's CMA, in accordance with §45.216(c) ~~[(d)]~~ of this division, that the individual's request for enrollment is approved:

(1) the CMA must, within one business day after DADS notification, notify the individual or LAR and the individual's DSA of DADS decision; and

(2) the CMA and DSA must initiate CLASS Program services for the individual in accordance with the individual's IPC within seven calendar days after DADS notification.

(p) ~~[(o)]~~ If DADS notifies the CMA that the individual's request for enrollment is approved but action is being taken as described in §45.216(e) of this division, including modifying the individual's proposed enrollment IPC, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service).

(q) ~~[(p)]~~ The CMA and DSA must not provide CLASS Program services to an individual until notified by DADS that the individual's request for enrollment into the CLASS Program has been approved.

#### *§45.213. Determination of Diagnostic Eligibility by DADS.*

(a) DADS reviews the documentation ~~[completed Mental Retardation/Related Conditions (MR/RC) Assessment]~~ submitted by an individual's DSA as required by §45.212(i)(2) ~~[(h)(2)]~~ of this division (relating to Process for Enrollment of an Individual) and §45.221(a)(2) ~~[(a)]~~ of this subchapter (relating to Annual Review and Reinstatement of Diagnostic Eligibility) to determine if the ~~[MR/RC Assessment evidences that an]~~ individual meets the eligibility criteria described in §45.201(a)(2) and (3) of this subchapter (relating to Eligibility Criteria).

(b) If requested by DADS, the DSA must submit current data obtained from standardized evaluations and formal assessments to support the related condition diagnosis required by §45.201(a)(3) of this subchapter.

(c) If DADS determines that the documentation submitted by the DSA in accordance with subsection (a) of this section ~~[completed MR/RC Assessment and supporting documentation]~~ evidences that the individual meets the eligibility criteria described in §45.201(a)(2) and (3) of this subchapter, DADS approves diagnostic eligibility for the individual.

(d) If DADS approves diagnostic eligibility for the individual, DADS notifies the individual's DSA of the approval, in writing. If DADS denies diagnostic eligibility for the individual, DADS notifies the individual's DSA and CMA of the denial, in writing.

(e) DADS approval of diagnostic eligibility is effective:

(1) the date DADS receives the completed ID/RC ~~[MR/RC]~~ Assessment; and

(2) through the last calendar day of the IPC period.

#### *§45.214. Development of Enrollment IPC.*

(a) A CMA must, within 30 calendar days after notification by the DSA of DADS approval of diagnostic eligibility for an individual as required by §45.212(k) ~~[(j)]~~ of this division (relating to Process for Enrollment of an Individual), ensure that an individual's case manager:

(1) convenes a service planning team meeting in which the service planning team develops:

(A) a habilitation plan, as described in the *CLASS Provider Manual*, based on information obtained from assessments conducted and observations made by the DSA as required by §45.212(h) ~~[(g)]~~ of this division; ~~and]~~

(B) a proposed enrollment IPC that:

(i) identifies the type of CLASS Program service to be provided to an individual;

(ii) specifies the number of units of each CLASS Program service to be provided to the individual, and for each service [transition assistance services], is within the service limit described in §45.218 [§45.218(e)] of this division (relating to Service Limits); and

(iii) describes any other service or support to be provided to the individual through sources other than the CLASS Program; and

(iv) if it includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, identifies whether the service is critical to the individual's health and safety, as required by §45.231(a)(2) of this subchapter (relating to Service Backup Plans); and

(C) [(2)] develops an IPP for each CLASS Program service listed on the proposed enrollment IPC; and[-]

(2) if the individual may need cognitive rehabilitation therapy, begin assisting the individual in obtaining an assessment as required by §45.705(h) of this chapter (relating to CMA Service Delivery).

(b) The case manager must ensure that each CLASS Program service on the proposed enrollment IPC:

(1) is necessary to protect the individual's health and welfare in the community;

(2) addresses the individual's related condition;

(3) is not available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(4) is the most appropriate type and amount of CLASS Program service to meet the individual's needs; and

(5) is cost effective.

(c) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed enrollment IPC, the case manager must:

(1) ensure that during the service planning team meeting required by subsection (a) of this section the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) no later than 30 calendar days before the effective date of the proposed enrollment IPC as determined by the service planning team:

(A) submit the following to DADS for its review:

(i) the proposed enrollment IPC;

(ii) the IPPs;

(iii) the habilitation plan; and

(iv) the completed DADS CLASS Nursing Assessment form provided by the DSA in accordance with §45.212(i)(3) of this division; and

~~(iv) if the IPC includes a service described in §45.218(b) of this division in an amount that exceeds the service limit for that service, a completed Request for an Exception to Service Limit~~

form as required by §45.219(b) of this division (relating to Exception to Service Limits); and]

(B) if the individual will receive a service through the CDS option, send a copy of the proposed enrollment IPC, the IPP for each service the individual will receive through the CDS option, and the habilitation plan to the FMSA [CDSA, if applicable].

(d) If the individual or LAR requests a CLASS Program service that the case manager or DSA has determined does not meet the criteria described in subsection (b) of this section, the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications), or[-; for transition assistance services,] exceeds a [the] service limit described in §45.218[(e)] of this division, the CMA must comply with this subsection.

(1) The CMA must, in accordance with *CLASS Provider Manual*, send the individual or LAR written notice of the denial of the requested CLASS Program service, copying the DSA and FMSA [CDSA], if the individual or LAR requests a CLASS Program service that the CMA or DSA has determined:

(A) does not meet the criteria described in subsection (b) of this section;

(B) does not meet the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications); or

(C) [if the service is transition assistance services,] exceeds a [the] service limit described in §45.218 [(e)] of this division.

(2) If the CMA is required to send written notice of denial of a CLASS Program service as described in paragraph (1) of this subsection, the CMA must also:

(A) no later than 30 calendar days before the effective date of the proposed IPC as determined by the service planning team, submit to DADS for its review:

(i) the proposed enrollment IPC that includes the type and amount of CLASS Program services in dispute and not in dispute and is signed and dated by:

(I) the individual or LAR;

(II) the case manager; and

(III) the DSA;

(ii) the IPPs; and

(iii) the habilitation plan; and

(B) if the individual will receive a service through the CDS option, send a copy of the proposed enrollment IPC to the FMSA [CDSA, if applicable].

~~{(3) If the individual or LAR requests a service described in §45.218(b) of this division in an amount that exceeds the service limit for that service, the CMA must:}~~

~~{(A) no later than 30 calendar days before the effective date of the proposed IPC as determined by the service planning team, submit to DADS for its review:}~~

~~{(i) the proposed enrollment IPC that includes the type and amount of CLASS Program services in dispute and not in dispute and is signed and dated by:}~~

~~{(I) the individual or LAR;}~~

~~{(II) the case manager; and}~~

~~{(III) the DSA;}~~

~~[(ii) the IPPs;]~~

~~[(iii) the habilitation plan; and]~~

~~[(iv) a completed Request for an Exception to Service Limit form as required by §45.219(b) of this division; and]~~

~~[(B) send a copy of the proposed enrollment IPC to the CDSA, if applicable.]~~

(e) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS Review of an Enrollment IPC). At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after the date of DADS request.

(f) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria) and the CLASS Program services specified in the IPC meet the requirements described in subsection (b) of this section: [;]

(1) DADS notifies the individual's CMA, in writing, that the IPC is authorized; and [;]

(2) the CMA must send a copy of the authorized IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA.

(g) The process by which an individual's request for enrollment or [is denied of] a CLASS Program service is denied, based on DADS review of a proposed enrollment IPC, is described in §45.216(d) - (f) of this division.

(h) The effective date of an enrollment IPC is one of the following, whichever is later:

(1) the effective date as determined by the service planning team; or

(2) the date DADS notifies the CMA that the individual's request for enrollment is approved and the IPC is authorized in accordance with §45.216(c) or (e)(2)(C) [e] of this division.

(i) An enrollment IPC is effective for an IPC period.

(j) An individual's enrollment IPC must be reviewed and updated in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

#### §45.216. DADS Review of an Enrollment IPC.

(a) DADS reviews a proposed enrollment IPC, habilitation plan, and IPPs; and if the individual or LAR requests a service described in §45.218(b) of this division (relating to Service Limits) in an amount that exceeds the service limit for that service, a completed Request for an Exception to Service Limit form submitted by a CMA in accordance with §45.214(d) of this division (relating to Development of Enrollment IPC) to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria) and the requirements in §45.214(a)(1)(B) of this division (relating to Development of Enrollment IPC); and

(2) the CLASS Program services specified in the IPC:

(A) meet the requirements described in §45.214(b) of this division; [and]

(B) meet the requirements in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications); and

(C) are within the service limits described in §45.218 of this division (relating to Service Limits).

~~[(3) for a completed Request for an Exception to Service Limit form, whether providing the service in excess of the service limit is necessary to meet the criteria described in §45.214(b) of this division.]~~

(b) At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after DADS request.

(c) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter and the requirements in §45.214(a)(1)(B) of this division and the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this division, Subchapter F of this chapter [(relating to Adaptive Aids and Minor Home Modifications)], and §45.218 of this division, DADS notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved.

(d) If DADS determines that the proposed enrollment IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter, DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's request for enrollment is denied and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this subchapter (relating to Individual's Right to a Fair Hearing).

(e) DADS denies a CLASS Program service and modifies an IPC in accordance with this subsection.

(1) DADS denies a CLASS Program service if DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter but [;]

~~[(A)] one or more of the CLASS Program services specified in the IPC:~~

(A) [(i)] does not meet the requirements described in §45.214(b) of this division;

(B) [(ii)] does not meet the requirements described in Subchapter F of this chapter; or

(C) [(iii)] [if the service is transition assistance services;] exceeds a [the] service limit described in §45.218 [§45.218(e)] of this division. [; or]

~~[(B) DADS denies a request for an exception to the service limit of a service described in §45.218(b) of this division.]~~

(2) If DADS denies a service as described in paragraph (1) of this subsection, DADS:

(A) modifies and authorizes the IPC;

(B) approves the individual's request for enrollment with the modified IPC; and

(C) notifies the individual's CMA, in writing, of the action taken.

(f) If DADS notifies the CMA of the denial of the CLASS Program service and of the enrollment IPC modified in accordance with subsection (e) of this section, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service).

#### §45.217. CDS Option.

(a) During the initial face-to-face, in-home visit with the individual and LAR, as described in §45.212(a)(2) of this division (related to Process for Enrollment of an Individual), and annually thereafter, the CMA must ensure that an individual's case manager informs the individual and LAR or person actively involved with the individual of:

(1) the CDS option in accordance with Chapter 41, Subchapter D [§41.109(a)] of this title (relating to Enrollment, Transfer, Suspension, and Termination [Enrollment in the CDS Option]); and

(2) the [specifie] CLASS Program services provided through [for which] the CDS option, [is available] as described in §41.108 of this title (relating to Services Available Through the CDS Option) [set forth in Appendix C of the CLASS Program waiver application approved by CMS, which is available at DADS website].

(b) If the individual or LAR chooses to participate in the CDS option, the case manager must:

(1) use the list of FMSAs found at [www.dads.state.tx.us](http://www.dads.state.tx.us) to provide the name and contact information to the individual or LAR of each FMSA [CDSA] providing services in the catchment area in which the individual lives;

(2) document the individual's or LAR's choice of FMSA [CDSA] in accordance with DADS instructions;

(3) document each service to be provided through the CDS option on the IPC; and

(4) ensure the individual or LAR completes [complete] the required forms as described in Chapter 41, Subchapter D [§41.109(a)] of this title.

#### §45.218. Service Limits.

~~[(a) The service limits listed in subsection (b) of this section are in effect through August 31, 2013.]~~

~~[(b) Subject to an exception granted by DADS in accordance with §45.219 of this division (relating to Exception to Service Limits), the following limits apply to an individual's services:]~~

~~[(1) An individual may receive, during an IPC period, adaptive aids and dental treatment having a maximum combined cost of \$6,935.]~~

~~[(2) An individual may receive a maximum of 3,312 hours of habilitation during an IPC period.]~~

~~[(3) During the time period an individual is enrolled in the CLASS Program, an individual may receive minor home modifications that have a maximum cost of \$7,515, which may be paid in one or more IPC periods. After reaching the maximum cost of \$7,515, an individual may receive, during an IPC period, a maximum of \$300 for repair and maintenance of a minor home modification purchased through the CLASS Program needed after one year has elapsed from the date the minor home modification is complete.]~~

~~[(4) An individual may receive a maximum of 83 hours of occupational therapy during an IPC period.]~~

~~[(5) An individual may receive a maximum of 91 hours of physical therapy during an IPC period.]~~

~~[(6) An individual may receive prevocational services having a maximum cost of \$13,965 during an IPC period.]~~

~~[(7) An individual may receive a maximum of 29 days of in-home respite and out-of-home respite, combined, during an IPC period.]~~

~~[(8) An individual may receive a maximum of 56 hours of speech therapy during an IPC period.]~~

~~[(9) An individual may receive, during an IPC period, aquatic therapy, hippotherapy, massage therapy, music therapy, recreational therapy, and therapeutic horseback riding having a maximum combined cost of \$10,118.]~~

~~[(e) In accordance with §62.5(e) and (d) of this title (relating to Service Description), an individual may receive transition assistance services having a maximum cost of \$2,500. This service limit is not subject to an exception granted by DADS in accordance with §45.219 of this division.]~~

~~(a) [(d)] The [Effective September 1, 2013, the] following limits apply to an individual's services:~~

~~(1) for adaptive aids and dental treatment, a maximum combined cost of \$10,000 during an IPC period, which includes the cost of repair and maintenance of an adaptive aid;~~

~~(2) for minor home modifications: [; \$10,000 during the time period an individual is enrolled in the CLASS Program, which may be paid in one or more IPC periods;]~~

~~(A) \$10,000 during the time an individual is enrolled in the CLASS Program, which may be paid in one or more IPC periods; and~~

~~(B) after reaching the \$10,000 limit described in subparagraph (A) of this paragraph, a maximum of \$300 for repair and maintenance during an IPC period;~~

~~(3) for respite, 30 days of in-home respite and out-of-home respite, combined, during an IPC period; and~~

~~(4) [the service limit] for transition assistance services, a maximum cost of \$2,500 [subsection (e) of this section].~~

~~(b) An individual may receive transition assistance services only once in the individual's lifetime.~~

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406247

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466

#### 40 TAC §45.219

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive

commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§45.219. Exception to Service Limits.*

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406250

Lawrence Hornsby  
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Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466



## DIVISION 3. REVIEWS

### 40 TAC §§45.221, 45.223, 45.225

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§45.221. Annual Review and Reinstatement of Diagnostic Eligibility.*

(a) A [~~To establish that an individual continues to meet the diagnostic eligibility criteria described in §45.201(a)(2) and (3) of this subchapter (relating to Eligibility Criteria); A]~~ DSA must: [~~submit a newly completed Mental Retardation/Related Conditions (MR/RC) Assessment to DADS for review at least 60 calendar days before the expiration of the individual's IPC period.~~]

(1) ensure that, no more than 120 calendar days before the expiration of an individual's IPC period, a registered nurse in accordance with the *CLASS Provider Manual*, completes:

(A) the DADS Related Conditions Eligibility Screening Instrument;

(B) the ID/RC Assessment in accordance with the *CLASS Provider Manual*; and

(C) a nursing assessment of the individual utilizing the DADS CLASS Nursing Assessment form; and

(2) submit to DADS at least 60 calendar days before the expiration of an individual's IPC period for a DADS decision regarding the individual's diagnostic eligibility:

(A) the results of a completed adaptive behavior screening assessment;

(B) the completed DADS Related Conditions Eligibility Screening Instrument; and

(C) the completed ID/RC Assessment; and

(3) send the completed DADS CLASS Nursing Assessment form to the CMA.

(b) Information on the ID/RC [~~MR/RC~~] Assessment must be supported by current data obtained from standardized evaluations and formal assessments conducted of the individual.

(c) DADS reviews the documentation submitted by the DSA in accordance with subsection (a)(2) of this section [~~completed MR/RC Assessment~~] and notifies the DSA of its determination in accordance with §45.213 of this subchapter (relating to Determination of Diagnostic Eligibility by DADS).

(d) A DSA must ensure an appropriate professional completes an adaptive behavior screening assessment in accordance with the assessment instructions:

(1) at least every five years after completion of the most current assessment; and

(2) if significant changes that may be permanent occur in the individual's functioning.

(e) [~~(d)~~] DADS does not pay a CMA or DSA for CLASS Program services provided during a period of time in which DADS has not approved an individual's diagnostic eligibility unless the DSA requests and is granted a reinstatement of such approval.

(f) [~~(e)~~] To request reinstatement of approval of diagnostic eligibility, the DSA must submit to DADS the documentation described in subsection (a)(2) of this section [~~a current MR/RC Assessment completed in accordance with the *CLASS Provider Manual*].~~

(g) [~~(f)~~] DADS does not grant reinstatement of approval of diagnostic eligibility:

(1) if the DSA does not submit the documentation described in subsection (a)(2) of this section [~~a current MR/RC Assessment for the individual];~~

(2) [~~to obtain approval of diagnostic eligibility~~] for a period of time for which DADS denied diagnostic eligibility; or

(3) for a period of time during which the individual is not financially eligible for Medicaid as required by §45.201(a)(1) of this subchapter (relating to Eligibility Criteria).

(h) [~~(g)~~] If DADS grants a reinstatement of approval of diagnostic eligibility, the reinstatement will be for a period of not more than

180 calendar days before the date DADS receives the documentation submitted by [completed MR/RC Assessment] the DSA in accordance with subsection (f) [(d)] of this section.

§45.223. Renewal and Revision of an IPC.

(a) Beginning the effective date of an individual's IPC, as determined by §45.214(h) of this subchapter (relating to Development of Enrollment IPC) or §45.222(b) of this division (relating to Renewal IPC and Requirement for Authorization to Continue Services), a case manager must, in accordance with the *CLASS Provider Manual*, [at least every 90 calendar days,] meet with the individual or LAR in the individual's home, or as requested by the individual or LAR, in another location where the individual receives CLASS Program services. [to review the individual's progress toward achieving the goals and objectives as described on the IPP for each CLASS Program service listed on the individual's IPC. The case manager must document the results of the review in the individual's record.]

(b) During each meeting described in subsection (a) of this section, the case manager must:

(1) review the individual's progress toward achieving the goals and objectives as described on the IPP for each CLASS Program service listed on the individual's IPC;

(2) if an individual's IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, and any of those services are not identified as critical to meeting the individual's health and safety, discuss with the individual or LAR whether the service may now be critical to the individual's health and safety;

(3) if a service backup plan has been implemented, discuss the implementation of the service backup plan with the individual or LAR to determine whether or not the plan was effective;

(4) if the case manager determines a service may now be critical to the individual's health and safety, as described in paragraph (2) of this subsection, or that the service backup plan was ineffective as described in paragraph (3) of this subsection, convene a service planning team meeting to discuss revisions to the IPC and the service backup plan; and

(5) complete the DADS IPP Service Review form in accordance with the *CLASS Provider Manual*.

(c) [(b)] An individual's case manager must:

(1) convene a service planning team meeting to develop [that develops] a proposed renewal IPC, new IPPs and a new habilitation plan at least annually, but no more than 90 calendar days before the end of the IPC period of the IPC being renewed; [and]

(2) within five business days after becoming [if the case manager becomes] aware that the individual's need for a CLASS Program service changes; [, develop, within five business days after becoming aware, a proposed revised IPC and revised IPP(s) and, if necessary, a revised habilitation plan.]

(A) develop a proposed revised IPC and revised IPP(s) and, if necessary, a revised habilitation plan; and

(B) if the individual may need cognitive rehabilitation therapy, begin assisting the individual to obtain an assessment as required by §45.705(h) of this chapter (relating to CMA Service Delivery); and

(3) if the proposed renewal or proposed revised IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, ensure that the IPC identifies whether the service is critical to the indi-

vidual's health and safety, as required by §45.231(a)(2) of this division (relating to Service Backup Plans).

(d) [(e)] The case manager must [ensure that]:

(1) ensure that a proposed renewal IPC and proposed revised IPC, developed in accordance with subsection (c)(1) [(b)(1)] or (2) of this section, meet the criteria described in §45.214(a)(1)(B) and (b) of this subchapter; and

(2) ensure that new or revised IPPs developed in accordance with subsection (c)(1) [(b)(1)] or (2) of this section are reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA.

(e) [(d)] If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed renewal IPC, developed in accordance with subsection (c)(1) of this section, or a proposed revised IPC, developed in accordance with subsection (c)(2) [(b)] of this section, the case manager must:

(1) ensure that the proposed renewal IPC or proposed revised IPC is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) submit to DADS for its review [the proposed IPC, IPPs, habilitation plan, and if the individual or LAR requests a service described in §45.218(b) of this subchapter (relating to Service Limits) in an amount that exceeds the service limit for that service, a completed Request for an Exception to Service Limit form as required by §45.219(b) of this subchapter (relating to Exception to Service Limits) in accordance with the following]:

(A) the signed [for a] proposed renewal IPC [developed in accordance with subsection (b)(1) of this section, the proposed renewal IPC], new IPPs, new habilitation plan, and the completed DADS CLASS Nursing Assessment form provided by the DSA in accordance with §45.221(a)(3) of this division (relating to Annual Review and Reinstatement of Diagnostic Eligibility) [any completed Request for an Exception to Service Limit Form must be submitted to DADS] at least 30 calendar days before the end of the IPC period; or [and]

(B) the signed [for a] proposed revised IPC [developed in accordance with subsection (b)(1) of this section, the proposed revised IPC], any revised IPPs, any revised habilitation plan, and the completed DADS CLASS Nursing Assessment form [any completed Request for an Exception to Service Limit form must be submitted to DADS] at least 30 calendar days before the effective date proposed by the service planning team; and

(3) if the individual receives a service through the CDS option, send a copy of the signed proposed renewal or signed proposed revised IPC, revised IPP for a service received through the CDS option, and any revised habilitation plan to the FMSA [CDSA, if applicable].

(f) [(e)] If the individual or LAR requests a CLASS Program service that the case manager or DSA has determined does not meet the criteria described in §45.214(b) of this subchapter or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications), or [that] exceeds a service limit described in §45.218 of this subchapter, the CMA must comply with this subsection.

(1) The CMA must, in accordance with the *CLASS Provider Manual*, send the individual or LAR written notice of the denial of, or proposal to reduce, as appropriate, the requested CLASS Program service, copying the DSA and, if applicable, the FMSA [CDSA], if the individual or LAR requests a CLASS Program service that the CMA or DSA has determined:

(A) does not meet the criteria described in §45.214(b) of this subchapter;

(B) does not meet the requirements described in Subchapter F of this chapter; or

(C) [if the service is transition assistance services,] exceeds a [the] service limit described in §45.218 [§45.218(e)] of this subchapter.

(2) If the CMA is required to send a written notice of the denial of, or proposal to reduce, a CLASS Program service as described in paragraph (1) of this subsection, the CMA must:

(A) in accordance with the time frames described in subsection (e)(2) [(d)(2)] of this section, submit to DADS for its review:

(i) the proposed renewal IPC or proposed revised IPC, which includes the type and amount of CLASS Program services in dispute and not in dispute, and is signed and dated by:

(I) the individual or LAR;

(II) the case manager; and

(III) the DSA;

(ii) the IPPs; and

(iii) the new habilitation plan or any revised habilitation plan; and

(B) if the individual receives a service through the CDS option, send a copy of the proposed renewal or proposed revised IPC, the revised IPP for a service received through the CDS option, and any revised habilitation plan to the FMSA [CDSA, if applicable].

[(3) If the individual or LAR requests a service described in §45.218(b) of this subchapter in an amount that exceeds the service limit for that service, the CMA must:]

[(A) in accordance with the time frames described in subsection (d)(2) of this section, submit to DADS for its review:]

[(i) the proposed renewal IPC or proposed revised IPC that includes the type and amount of CLASS Program services in dispute and not in dispute and is signed and dated by:]

[(I) the individual or LAR;]

[(II) the case manager; and]

[(III) the DSA;]

[(ii) the IPPs; and]

[(iii) the new habilitation plan or any revised habilitation plan; and]

[(iv) a completed Request for an Exception to Service Limit form as required by §45.219(b) of this subchapter; and]

[(B) send a copy of the proposed enrollment IPC to the CDSA, if applicable.]

(g) [(f)] At DADS request, the CMA must submit additional documentation supporting the proposed IPC to DADS within 10 calendar days after the date of DADS request.

(h) [(g)] If DADS determines that the proposed renewal IPC or the proposed revised IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter and the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this subchapter;:]

(1) DADS notifies the individual's CMA, in writing, that the IPC is authorized; and[:]

(2) the CMA must send a copy of the authorized IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA.

(i) [(h)] The process by which an individual's CLASS program services are terminated or a CLASS Program service is denied, based on DADS review of a proposed renewal IPC or proposed revised IPC, is described in §45.225(c) - (e) of this division (relating to Utilization Review of an IPC by DADS).

(j) [(i)] The IPC period of a revised IPC is the same IPC period as the enrollment IPC or renewal IPC being revised.

§45.225. *Utilization Review of an IPC by DADS.*

(a) At DADS discretion, DADS conducts a utilization review of an IPC to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria); and

(2) the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this subchapter (relating to Development of Enrollment IPC), Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications), and §45.218 of this subchapter (relating to Service Limits).

(b) If requested by DADS, a CLASS Program provider must submit documentation supporting the IPC to DADS within 10 calendar days after DADS request.

(c) If DADS determines that the IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter, DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's CLASS Program services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) DADS denies or proposes reduction of a CLASS Program service and modifies an IPC in accordance with this subsection.

(1) DADS denies or proposes reduction of a CLASS Program service if DADS determines that the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter but[:]

[(A)] one or more of the CLASS Program services specified in the IPC:

(A) [(i)] does not meet the requirements described in §45.214(b) of this subchapter;

(B) [(ii)] does not meet the requirements described in Subchapter F of this chapter; or

(C) [(iii)] [if the service is transition assistance services,] exceeds a [the] service limit described in §45.218 [§45.218(e)] of this subchapter.[: ø]

[(B) DADS denies a request for an exception to the service limit of a service described in §45.218(b) of this subchapter.]

(2) If DADS denies or proposes reduction of a CLASS Program service as described in paragraph (1) of this subsection, DADS:

- (A) modifies and authorizes the IPC; and
- (B) notifies the individual's CMA, in writing, of the action taken.

(e) If DADS notifies the CMA of the denial or proposed reduction of the individual's CLASS Program services and of the IPC modified in accordance with subsection (d) of this section:

(1) for a denial of a CLASS Program service, the CMA must:

(A) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service); and

(B) coordinate the implementation of the modified IPC; or

(2) for a proposed reduction of a CLASS Program service:

(A) the CMA must send the individual or LAR written notice of the proposal to reduce the CLASS Program service in accordance with §45.405(c) of this chapter (relating to Reduction of a CLASS Program Service); and

(B) the modified IPC is handled as follows:

(i) in accordance with §45.405(d) of this chapter, if the individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program service, as specified in the written notice, the modified IPC may not be implemented; or

(ii) if the individual or LAR does not request a fair hearing before the effective date of the reduction of a CLASS Program service, as specified in the written notice, the CMA must coordinate the implementation of the modified IPC.

(f) The IPC period of an enrollment IPC or a renewal IPC modified by DADS in accordance with subsection (d) of this section does not change as a result of DADS modification.

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406252  
 Lawrence Hornsby  
 General Counsel  
 Department of Aging and Disability Services  
 Earliest possible date of adoption: February 8, 2015  
 For further information, please call: (512) 438-4466



**40 TAC §45.231**

**STATUTORY AUTHORITY**

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or

regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.231. Service Backup Plans.

(a) If an individual's IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, the case manager must ensure that:

(1) the service planning team determines whether the service is critical to the individual's health and safety; and

(2) the IPC identifies whether the service is critical to the individual's health and safety, as determined by the service planning team.

(b) If an individual's IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, and identifies any of those services as critical to meeting the individual's health and safety, the DSA must:

(1) develop with input from the service planning team a service backup plan for each service identified as critical using DADS Provider Agency Model Service Backup Plan form; and

(2) ensure that if the action in the service backup plan identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety.

(c) If the service backup plan is implemented, the DSA must:

(1) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(2) document whether or not the plan was effective; and

(3) revise the plan with input from the service planning team if the DSA determines the plan was ineffective.

(d) Requirements regarding service backup plans for individuals receiving services through the CDS option are described in Chapter 41 of this title (relating to Consumer Directed Services Option).

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 December 23, 2014.

TRD-201406253  
 Lawrence Hornsby  
 General Counsel  
 Department of Aging and Disability Services  
 Earliest possible date of adoption: February 8, 2015  
 For further information, please call: (512) 438-4466





SUBCHAPTER D. TRANSFER, DENIAL,  
SUSPENSION, REDUCTION, AND  
TERMINATION OF SERVICES

40 TAC §45.403, §45.404

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.403. Denial of a CLASS Program Service.

(a) DADS denies a CLASS Program service in on an individual's IPC, based on a review described in §45.216 of this chapter (relating to DADS Review of an Enrollment IPC), §45.223 of this chapter (relating to Renewal and Revision of an IPC), or §45.225 of this chapter (relating to Utilization Review of an IPC by DADS), if[:]

~~[(4)]~~ DADS determines that the CLASS Program service ~~[IPC does not meet]~~:

(1) ~~[(A)]~~ does not meet the requirements described in §45.214(b) of this chapter (relating to Development of Enrollment IPC); ~~[or]~~

(2) ~~[(B)]~~ does not meet the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications); or

(3) ~~[(2)]~~ exceeds a ~~[the service is transition assistance services and the]~~ service limit described in §45.218 ~~[§45.218(e)]~~ of this chapter (relating to Service Limits). ~~[is exceeded; or]~~

~~[(3)]~~ DADS denies a request for an exception to the service limit of a service described in §45.218(b) of this chapter submitted in accordance with §45.219(e) of this chapter (relating to Exception to Service Limits).]

(b) DADS notifies the CMA selected by the individual, in writing, if DADS denies a CLASS Program service on the individual's IPC. DADS sends a copy of the modified IPC to the CMA.

(c) Upon receipt of DADS written notice of denial of a CLASS Program service, the CMA must:

(1) in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the denial of the service, copying the individual's DSA and, if selected, FMSA ~~[CDSA]~~;

(2) include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing); and

(3) coordinate the implementation of the modified IPC described in subsection (b) of this section.

§45.404. Suspension of CLASS Program Services ~~[With Advance Notice]~~.

(a) DADS suspends an individual's CLASS Program services if the individual:

(1) is under a temporary admission to one of the following facilities:

(A) an ICF/IID ~~[ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS]~~, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter (relating to Respite);

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS, unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services; or

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(2) leaves the state for 180 consecutive calendar days or less.

(b) The period of suspension is the length of the admission to the facility or the time spent in another state.

(c) During a temporary admission to one of the facilities listed in subsection (a)(1) of this section or during an extension of the individual's suspension granted in accordance with subsection (d) of this section, an individual is not considered to be residing in the facility.

(d) DADS may extend an individual's suspension for 30 calendar days if the individual demonstrates that:

(1) the individual will likely be released from a facility listed in subsection (a)(1) of this section within 30 calendar days after:

(A) the temporary admission expires; or

(B) the end of a 30 calendar-day extension previously granted by DADS; or

(2) the individual will likely return to Texas and be available to receive CLASS Program services within 30 calendar days after:

(A) the end of the 180 calendar-day time period described in subsection (a)(2) of this section; or

(B) the end of a 30 calendar-day extension previously granted by DADS.

(e) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS suspend CLASS Program services for the individual. Within

two business days after the CMA becomes aware of the situation, the CMA must send the written request with written supporting documentation to DADS.

(f) DADS notifies the individual's CMA, in writing, of whether it authorizes a [proposed] suspension of CLASS program services.

(g) Upon receipt of a written notice from DADS authorizing the [proposed] suspension of CLASS Program services, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the suspension of [proposal to suspend the] services, copying the individual's DSA and, if selected, FMSA [CDSA]. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

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 December 23, 2014.

TRD-201406254

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466



## SUBCHAPTER F. ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS DIVISION 1. ADAPTIVE AIDS

### 40 TAC §45.602, §45.604

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§45.602. Authorization Limit for Adaptive Aids and Amount for Repair and Maintenance.*

(a) The [Except as provided in subsection (b) of this section, the] maximum amount DADS authorizes as payment to a DSA for all adaptive aids and dental treatment combined for an individual is

\$10,000 [\$6,935] per IPC period, which includes the cost of repair and maintenance of an adaptive aid [unless an exception is granted by DADS in accordance with §45.219(e) of this chapter (relating to Exception to Service Limits), in which case the maximum amount is \$10,000 per IPC period in accordance with §45.219(d)(1)(A) of this chapter].

(b) To request authorization for repair and maintenance of an adaptive aid up to \$300 per IPC period, a DSA is not required to follow the process described in §45.603 of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing Less Than \$500) but must include the amount requested on an individual's IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(c) A DSA must follow the process for requesting authorization to purchase an adaptive aid as described in §45.603 of this division if:

(1) requesting authorization for repair and maintenance of an adaptive aid in an amount that exceeds the \$300 limit described in subsection (b) of this section; or

(2) requesting authorization for repair and maintenance of an adaptive aid that is not purchased through the CLASS Program but is identical to an item or service that a DSA may purchase as an adaptive aid listed in the *CLASS Provider Manual*.

*§45.604. Requirements For Authorization to Purchase an Adaptive Aid Costing \$500 or More.*

(a) To purchase an adaptive aid costing \$500 or more for an individual, a CMA must:

(1) ensure that the individual or LAR initiates a request for the adaptive aid by completing Part A of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual*;

(2) send the partially completed form to the DSA;

(3) ensure that the individual's service planning team includes the cost of the specifications for the adaptive aid, as described in §45.605 of this division (relating to Requirements for Specifications for an Adaptive Aid) in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(4) within 14 calendar days after completing the requirement described in paragraph (3) of this subsection, submit to DADS:

(A) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (3)(A) of this subsection, as applicable; and

(B) the individual's IPP as described in paragraph (3)(B) of this subsection.

(b) The cost of the specifications included on an IPC and IPP as required by subsection (a)(3) of this section may not exceed an amount equal to three units of service of behavioral support, occupational therapy, physical therapy, or speech and language pathology [speech therapy], as applicable.

(c) DADS reviews the documentation described in subsection (a)(4) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter (relating to DADS Review of an Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(d) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

(e) If DADS authorizes the proposed IPC for payment of the specifications, the DSA must:

(1) within 30 calendar days after the date DADS authorizes the IPC, obtain the specifications regarding the adaptive aid in accordance with §45.605 of this division and ensure that Part B of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form is completed; and

(2) within 60 calendar days after obtaining the specifications:

(A) obtain bids from vendors in accordance with §45.606 of this division (relating to Requirements for Bids of an Adaptive Aid);

(B) select a vendor from which to purchase the adaptive aid; and

(C) complete Part C of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form and send the form to the CMA.

(f) A CMA must, within 14 calendar days after receipt of the form described in subsection (e)(2)(C) of this section:

(1) complete Part D of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form, evidencing that the criteria described in §45.214(b) of this chapter (relating to Development of Enrollment IPC) are met;

(2) ensure that, in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review), the individual's service planning team includes the cost of the adaptive aid in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(3) within 14 calendar days after completing the requirement described in paragraph (2) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (2) (A) of this subsection, as applicable;

(C) the individual's IPP as described in paragraph (2) (B) of this subsection; and

(D) documentation regarding bids as required by §45.606 of this division.

(g) DADS reviews the documentation described in subsection (f)(3) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 or §45.223 of this chapter.

(h) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

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 December 23, 2014.

TRD-201406255

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466



## DIVISION 2. MINOR HOME MODIFICATIONS

### 40 TAC §45.612

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§45.612. Authorization Limit for Minor Home Modifications and Amount for Repair and Maintenance.*

(a) Except as provided in subsection (b) of this section, the maximum amount DADS authorizes as payment to a DSA for all minor home modifications provided to an individual is \$10,000 [~~\$7,515~~] during the time period the individual is enrolled in the CLASS Program; ~~unless an exception is granted by DADS in accordance with §45.219(e) of this chapter (relating to Exception to Service Limits); in which case the maximum amount is \$10,000 for the same time period in accordance with §45.219(d)(1)(A) of this chapter.~~

(b) ~~After reaching [In addition to] the \$10,000 [~~\$7,515~~]~~ authorization limit described in subsection (a) of this section, DADS may authorize up to \$300 per IPC period for repair and maintenance of minor home modifications purchased through the CLASS Program needed after one year has elapsed from the date the minor home modification is complete.

(c) To request authorization for repair and maintenance of a minor home modification as described in subsection (b) of this section, a DSA is not required to follow the process set forth in §45.613 of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification) but must include the amount requested on an individual's IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(d) A DSA must follow the process for requesting authorization to purchase a minor home modification as described in §45.613 of this division if:

(1) requesting authorization for repair and maintenance of a minor home modification in an amount that exceeds ~~the~~ \$300 ~~limit described in subsection (b) of this section~~; or

(2) requesting authorization for repair and maintenance of a minor home modification that is not purchased through the CLASS Program but is identical to an item or service that a DSA may purchase as a minor home modification listed in the *CLASS Provider Manual*.

(e) A request described under subsection (d) of this section and authorized by DADS is counted toward the authorization limit described in subsection (a) of this section.

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406256

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466



## SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

### 40 TAC §§45.701, 45.702, 45.705, 45.706

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §45.701. CMA Compliance with Rules.

~~(a)~~ A CMA must comply with:

(1) this chapter; ~~and~~

(2) Chapter 49 of this title (relating to Contracting for Community Services); ~~and~~[-]

(3) Chapter 41 of this title (relating to Consumer Directed Services Option).

~~[(b) A CMA is not required to be a HCSSA.]~~

§45.702. *Protection of Individual, Initial and Annual Explanations, and Offering Access to Other Services if Termination Presents a Threat to Health and Safety.*

(a) A CMA must have and implement written policies and procedures that safeguard an individual against:

(1) infectious and communicable diseases;

(2) conflicts of interest with CMA staff persons;

(3) acts of financial impropriety ~~by a case manager; and~~[-];

~~[(4) abuse, neglect, and exploitation; and]~~

~~(4) [(5)] deliberate damage of personal possessions.~~

(b) A case manager must explain the following to the individual and LAR or person actively involved with the individual, orally and in writing, upon notification by DADS that an individual selected the CMA as a program provider as required by §45.212(a)(2)(B), (D), (E), and (F) of this chapter (relating to Process for Enrollment of an Individual) and annually thereafter:

(1) the mandatory participation requirements of an individual as described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual); and

(2) the right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).~~[-]~~

~~[(3) that the individual and LAR or person actively involved with the individual may report an allegation of abuse, neglect, or exploitation or make a complaint by calling DADS toll-free telephone number (1-800-458-9858); and]~~

~~[(4) the process by which the individual and LAR or person actively involved with the individual may file a complaint regarding case management as required by §45.707(e)(1) of this chapter (relating to CMA: Quality Management and Complaint Process).]~~

(c) After an individual is enrolled in the CLASS Program, a CMA must:

(1) do the following regarding transfers:

(A) at least annually, provide an oral explanation to the individual and LAR or person actively involved with the individual that the individual may transfer to a different CMA or DSA; and

(B) if the individual or LAR expresses a desire for the individual to transfer to a different CMA or DSA:

(i) give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(ii) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual*; and

(iii) coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers), if the individual or LAR selects a different DSA or CMA on the Selection Determination form; and

(2) at least annually:

(A) give the individual or LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual resides; and

(B) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual*; and

(3) at least annually, provide an oral explanation to the individual or LAR that they may request:

(A) that the DSA provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter (relating to Respite and Dental Treatment), adaptive aids, or nursing while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas during a period of no more than 60 consecutive days;

(B) that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing as described in subparagraph (A) of this paragraph more than once during an IPC period.

(d) If the CMA is notified by the DSA that the individual is receiving habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter, adaptive aids, or nursing outside the catchment area in which the individual resides in accordance with §45.805(g)(1) of this chapter (relating to DSA: Service Delivery), the CMA must:

(1) if the individual receives habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area, provide an oral explanation to the individual or LAR, on or before the 35th day of the period services have been provided outside the catchment area, that:

(A) to ensure the continued provision of habilitation, out-of-home respite in a camp, adaptive aids, or nursing, the individual must do one of the following before the 61st day:

(i) transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing; or

(ii) return to the catchment area in which the individual resides; and

(B) if the individual receives habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area during a period of 60 consecutive days, the individual must return to the catchment area in which the individual resides and receive services in that catchment area before the DSA may accept another request from the individual or LAR that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area; and

(2) if the individual or LAR expresses a desire for the individual to transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing:

(A) give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing;

(B) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual*; and

(C) coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers).

(e) If an individual requests that the case manager convene a meeting of the service planning team to discuss the DSA's reasons for declining a request to allow services to be provided outside the catchment area as described in §45.805(h)(1)(B) of this chapter, the case manager must:

(1) convene the meeting to review the reasons the DSA declined the request that was submitted by the DSA; and

(2) facilitate a discussion between the individual or LAR and DSA during the meeting regarding the reasons the DSA declined the request.

(f) If the termination of an individual's CLASS Program services in accordance with Subchapter D of this chapter (relating to Transfer, Denial, Suspension, Reduction, and Termination of Services) presents a threat to the individual's health and safety, the CMA must ensure that the case manager offers the individual access to:

(1) alternative long-term services and supports in the community; or

(2) institutional services.

(g) A CMA must have documentation that it provided the oral explanation and information as required under subsections (b), (c)(1)(A), (c)(2) and (3), and (d)(1) of this section and convened a meeting as required under subsection (e) of this section.

§45.705. *CMA Service Delivery.*

(a) A CMA must ensure that:

(1) a full-time case manager is assigned to provide case management to no more than 50 individuals at one time; and

(2) a part-time case manager is assigned to provide case management to no more than 25 individuals at one time.

(b) In determining the number of individuals to which a case manager will be assigned, the CMA must take into consideration the intensity of an individual's needs, the frequency and duration of contacts the case manager will need to make with the individual, and the amount of travel time involved in making such contacts.

(c) A CMA must have:

(1) an adequate number of case managers available to ensure the provision of case management to an individual at all times; and

(2) a written process that ensures that case managers are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide case management.

(d) A CMA must ensure that a case manager participates as a member of an individual's service planning team in accordance with this chapter and the *CLASS Provider Manual*.

(e) A CMA must ensure that case management is provided to an individual in accordance with the individual's IPC.

(f) A CMA must submit an IPC to DADS within the time periods required by §45.214 of this chapter (relating to Development of Enrollment IPC) and §45.223(e)(2) [~~§45.223(d)(2)~~] of this chapter (relating to Renewal and Revision of an IPC) to ensure that a DSA receives reimbursement for the provision of CLASS Program services.

(g) A CMA must follow the process for requesting authorization to purchase dental treatment as described in the *CLASS Provider Manual*.

(h) If an individual may need cognitive rehabilitation therapy, a case manager must assist the individual in obtaining, in accordance

with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-CLASS Program service.

§45.706. *CMA Recordkeeping.*

(a) A CMA must maintain a separate record for each individual receiving case management from the CMA. The individual's record must include:

- (1) the individual's current IPC;
- (2) the individual's current IPP;
- (3) the individual's current ID/RC [~~Mental Retardation/Related Conditions (MR/RC)~~] Assessment; and
- (4) any other relevant documentation concerning the individual.

(b) A CMA must ensure that case management activities are documented in the individual's record, including:

- (1) the date of contact;
- (2) the description of the case management provided;
- (3) the progress or lack of progress in achieving goals or outcomes in observable, measurable terms that directly relate to the specific goal or objective addressed;
- (4) the person with whom the contact occurred; and
- (5) the case manager who provided the contact.

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 December 23, 2014.

TRD-201406257

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466



## SUBCHAPTER H. ADDITIONAL DSA REQUIREMENTS

### 40 TAC §§45.803, 45.805 - 45.809

#### STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and

Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments and new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.803. *Qualifications of DSA Staff Persons.*

(a) A DSA must ensure that a staff person meets the requirements of this section.

(b) A service provider for a direct service must meet the qualifications in this subsection and in subsection (d) of this section.

(1) A service provider for a direct service:

(A) must be at least 18 years of age; and

(B) except as provided by paragraphs [paragraph] (2) and (3) of this subsection, may not be a relative or guardian of the individual to whom the service provider is providing the direct service.

(2) A service provider of habilitation, prevocational services, respite, employment assistance, or supported employment may be a relative or guardian of the individual unless prohibited by subsection (d)(21) [~~(d)(17)~~] of this section.

(3) A service provider of minor home modifications may be a relative or guardian of the individual.

(c) A DSA must have a full-time or part-time program director who:

(1) manages and oversees the DSA's operations including the provision of CLASS Program services to individuals enrolled with the DSA and has:

(A) a bachelor's degree in a health and human services field and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities;

(2) is at least 18 years of age;

(3) is an employee of the DSA; and

(4) is not a relative of an individual being served by the DSA.

(d) A DSA must ensure that CLASS Program services are provided by qualified service providers in accordance with this subsection.

(1) A [qualified] service provider of registered nursing and of specialized registered nursing must be a registered nurse.

(2) A [qualified] service provider of licensed vocational nursing and of specialized licensed vocational nursing must be a licensed [person licensed to practice] vocational nurse [nursing in accordance with Texas Occupations Code, Chapter 301].

(3) A [qualified] service provider of occupational therapy must be an occupational therapist or an occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454.

(4) A qualified service provider of physical therapy must be a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453.

(5) A [qualified] service provider of speech and language pathology [~~speech therapy~~] must be a speech-language pathologist or a licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401.

(6) A [qualified] service provider of auditory integration training/auditory [~~integration/auditory~~] enhancement training must be an audiologist or a licensed assistant in audiology licensed in accordance with Texas Occupations Code, Chapter 401.

(7) A [qualified] service provider of dental treatment must be a person licensed to practice dentistry, dental surgery, or dental hygiene in accordance with Texas Occupations Code, Chapter 256.

(8) A [qualified] service provider of dietary [~~nutritional~~] services must be a [licensed] dietician licensed in accordance with Texas Occupations Code, Chapter 701.

(9) A [qualified] service provider of massage therapy must be a massage therapist licensed in accordance with Texas Occupations Code, Chapter 455.

(10) A [qualified] service provider of therapeutic horseback riding must be a person certified by the Professional Association of Therapeutic Horsemanship International [~~North American Riding for the Handicapped Association~~] as a therapeutic riding instructor.

(11) Hippotherapy must be provided by the following two service providers [A qualified service provider of hippotherapy must be]:

(A) a service provider who is [a person] certified by the Professional Association of Therapeutic Horsemanship International [~~North American Riding for the Handicapped Association~~] as a therapeutic riding instructor; and

(B) a service provider who is [one of the following]:

(i) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454;

(ii) an occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(iii) a physical therapist licensed in accordance with Texas Occupations Code, Chapter 453; or

(iv) a physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453.

(12) A [qualified] service provider of recreational therapy must be a person:

(A) who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification; or [-]

(B) who is certified as a therapeutic recreation specialist by the Consortium for Therapeutic Recreation/Activities Certification, Inc.

(13) A [qualified] service provider of music therapy is a person who holds a credential as a board certified music therapist awarded by the Certification Board for Music Therapists.

(14) A [qualified] service provider of aquatic therapy must:

(A) be [one of the following]:

(i) a massage therapist licensed in accordance with Texas Occupations Code, Chapter 455; [or]

(ii) a person who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification; or [and]

(iii) a person who is certified as a therapeutic recreation specialist by the Consortium for Therapeutic Recreation/Activities Certification, Inc.; and

(B) hold a certificate of completion of the "Basic Water Rescue" course from the American Red Cross or be certified by the American Red Cross as a lifeguard.

(15) A [qualified] service provider of behavioral support must:

(A) be one of the following:

(i) a psychologist licensed in accordance with the Texas Occupations Code, Chapter 501;

(ii) a provisional license holder licensed in accordance with the Texas Occupations Code, Chapter 501;

(iii) a psychological associate licensed in accordance the Texas Occupations Code, Chapter 501;

(iv) a clinical social worker licensed in accordance with the Texas Occupations Code, Chapter 505;

(v) a licensed professional counselor licensed in accordance with the Texas Occupations Code, Chapter 503; or

(vi) a behavior analyst certified by the Behavior Analyst Certification Board, Inc.; and

(B) have received training in behavioral support or have experience in providing behavioral support.

(16) A service provider of cognitive rehabilitation therapy must be:

(A) a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(B) a speech-language pathologist licensed in accordance with Texas Occupations Code, Chapter 401; or

(C) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454.

(17) [(+6)] A [qualified] service provider of prevocational services must have:

(A) a bachelor's degree in a health and human services field, and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities.

(18) A service provider of employment assistance and a service provider of supported employment must have:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field with six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field with one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, with two years of paid or unpaid experience providing services to people with disabilities.

(19) Documentation of the experience required by paragraph (18) of this subsection must include:

(A) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(B) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(20) A service provider of habilitation or respite who is hired on or after May 1, 2015 must have:

(A) a high school diploma;

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

(C) both of the following:

(i) a successfully completed written competency-based assessment demonstrating the service provider's ability to perform habilitation, including an ability to perform habilitation tasks required for the individual to whom the service provider will provide habilitation; and

(ii) at least three written personal references from persons who are not relatives of the service provider that evidence the service provider's ability to provide a safe and healthy environment for the individual.

(21) [(17)] A [qualified] service provider of habilitation, prevocational services, respite, employment assistance, or supported employment may not be:

(A) the parent of the individual [to whom the service provider is providing habilitation, respite, or supported employment] if the individual is under 18 years of age; or

(B) the spouse of the individual [to whom the service provider is providing habilitation, respite, or supported employment].

[(18) A qualified service provider of transition assistance services must meet the requirements described in §62.21 of this title (relating to Staff Requirements).]

(22) [(19)] A [qualified] service provider of support family services or continued family services must meet the requirements described in §45.531(a) of this chapter (relating to Support Family Requirements).

(e) A DSA may not contract with or employ a service provider who is employed by or contracting with a CMA to provide case management to an individual served by the DSA.

(f) A DSA must ensure that a staff person who transports an individual in a vehicle has:

(1) a current Texas driver's license; and

(2) vehicle liability insurance in accordance with state law.

§45.805. DSA: Service Delivery.

(a) A DSA must ensure that:

(1) each CLASS Program service is provided to an individual in accordance with:

(A) the individual's IPC; ~~and~~

(B) the individual's IPP for that service; and

(C) Appendix C of the CLASS waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(2) an adaptive aid or ~~and~~ minor home modification ~~[also]~~ meets the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications); ~~and[-]~~

(3) if the individual obtains a plan of care as described in §45.705(h) of this chapter (relating to CMA Service Delivery), a qualified professional as described in §45.803(d)(16) of this chapter (relating to Qualifications of DSA Staff Persons) provides and monitors the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care.

(b) A DSA must provide licensed vocational nursing, specialized licensed vocational nursing, registered nursing, specialized registered nursing, habilitation, respite, an adaptive aid, or dental treatment to an individual, even if not included on the individual's IPC, if a registered nurse determines that the service is necessary to prevent the individual's health and safety from being placed in immediate jeopardy. If a DSA provides a service under this subsection, the DSA must submit documentation to the CMA as required by §45.224(a) of this chapter (relating to Revised IPC and IPP for Services Provided to Prevent Immediate Jeopardy).

(c) A DSA must have a written process that ensures that staff persons are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide a CLASS Program service.

(d) A DSA must ensure that a DSA staff person participates as a member of an individual's service planning team in accordance with this chapter and the *CLASS Provider Manual*.

(e) A DSA must inform the individual's case manager of changes needed to the individual's IPC or IPPs.

(f) Except as provided in subsection (i) of this section, a DSA may accept or decline the request of an individual or LAR for the DSA to provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter (relating to Respite and Dental Treatment), adaptive aids, or nursing to the individual while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas.

(g) If the DSA accepts the request of an individual or LAR as described in subsection (f) of this section, the DSA:

(1) may provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter, adaptive aids, or nursing to the individual outside the catchment area during a period of no more than 60 consecutive days;

(2) must, within three business days after the DSA begins providing services outside the catchment area, notify the individual's case manager in writing of the following:

(A) that the individual is receiving services outside the catchment area in which the individual resides;

(B) the location where the individual is receiving the services;



(C) the estimated length of time the individual is expected to be outside the catchment area; and

(D) contact information for the individual or LAR; and

(3) must notify the individual's case manager in writing that the individual has returned to the catchment area in which the individual resides within three business days after becoming aware of the individual's return.

(h) If the DSA declines the request of an individual or LAR as described in subsection (f) of this section, the DSA must:

(1) inform the individual or LAR:

(A) of the reasons for declining the request; and

(B) that the individual or LAR may request that the case manager convene a meeting of the service planning team to discuss the reasons for declining the request; and

(2) within three business days after declining the request, inform the individual's case manager, in writing, that the request was declined and the reasons for declining the request.

(i) If a DSA has provided habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter, adaptive aids, or nursing to an individual during a period of 60 consecutive days while the individual is temporarily staying at a location outside the catchment area in which the individual resides, the DSA may accept another request from the individual or LAR that the DSA provide services outside the catchment area only if the individual has returned to the catchment area in which the individual resides and received services in that catchment area.

#### §45.806. Respite and Dental Treatment.

(a) An individual may receive a maximum of 30 [29] days of in-home and out-of-home respite combined, [during an IPC period, unless an exception is granted by DADS in accordance with §45.219(e) of this chapter (relating to Exception to Service Limits), in which case the individual may receive no more than 30 days of in-home and out-of-home respite, combined,] during an IPC period [in accordance with §45.219(d)(1)(C) of this chapter].

(b) A DSA must ensure that:

(1) in-home respite is provided in the individual's residence or the residence of a relative or friend that is not one of the settings listed in paragraph (2) of this subsection;

(2) out-of-home respite is provided in one of the following settings:

(A) an adult foster care home licensed by DADS in accordance with Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care);

(B) a nursing facility licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an ICF/IID [ICF/MR licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by DADS];

(D) an approved outdoor camp accredited by the American Camping Association; [or]

(E) the residence of another person receiving a Medicaid waiver service; or

(F) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247; and

(3) the setting in which out-of-home respite is provided is:

(A) acceptable to the individual or LAR; and

(B) an accessible, safe, and comfortable environment for the individual and promotes the individual's health and welfare.

(c) If a DSA provides out-of-home respite in a residence described in subsection (b)(2)(E) of this section, the DSA must:

(1) obtain written approval from each person residing in the residence who is receiving a Medicaid waiver service, or LAR, for the provision of respite in the residence; and

(2) ensure that no more than four persons receiving a Medicaid waiver service are residing in the residence.

(d) The maximum amount DADS authorizes as payment to a DSA for all dental treatment and adaptive aids combined for an individual is \$10,000 [\$6,935] per IPC period[; unless an exception is granted by DADS in accordance with §45.219(e) of this chapter, in which case the maximum amount is \$10,000 per IPC period in accordance with §45.219(d)(1)(A) of this chapter].

(e) A DSA must follow the process for requesting authorization to purchase dental treatment as described in the *CLASS Provider Manual*.

#### §45.807. DSA: Systems and Recordkeeping.

(a) A DSA must maintain a separate record for each individual receiving CLASS Program services from the DSA. The individual's record must include:

(1) a copy of the individual's current IPC;

(2) a copy of the individual's current IPP;

(3) a copy of the individual's current ID/RC [Mental Retardation/Related Conditions (MR/RC)] Assessment; [and]

(4) a copy of the current adaptive behavior screening assessment;

(5) a copy of the current DADS CLASS Nursing Assessment form;

(6) a copy of the current Related Conditions Eligibility Screening Instrument;

(7) documentation of the progress or lack of progress in achieving goals or outcomes in observable, measurable terms that directly relate to the specific goal or objective addressed;

(8) any new or revised DADS Provider Agency Model Service Backup Plan form for the current IPC period;

(9) the documentation required by subsection (b) of this section; and

(10) [(4)] any other relevant documentation concerning the individual.

(b) A DSA must ensure a service provider documents in the individual's record [that CLASS Program services are documented in the individual's record], including: [the progress or lack of progress in achieving goals or outcomes in observable, measurable terms that directly relate to the specific goal or objective addressed.]

(1) the type of CLASS Program service provided;

(2) the date and the time the service begins and ends;

(3) the type of contact (phone or face-to-face);

(4) the name of the person with whom the contact occurred;

(5) a description of the activities performed, unless the activity performed is a non-delegated task that is provided by an unlicensed service provider and is documented on the IPP; and

(6) the signature and title of the service provider.

§45.808. Employment Assistance and Supported Employment.

(a) A DSA must ensure that a service provider of employment assistance or a service provider of supported employment meet the qualifications described in §45.803(d) of this subchapter (relating to Qualifications of DSA Staff Persons).

(b) Before including employment assistance on an individual's IPC, a DSA must ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(c) A DSA must ensure that employment assistance:

(1) consists of an employment assistance service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(2) is not provided to an individual with the individual present at the same time that respite, habilitation, prevocational services, or supported employment is provided; and

(3) does not include using Medicaid funds paid by DADS to the DSA for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business.

(d) Before including supported employment on an individual's IPC, a DSA must ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(e) A DSA must ensure that supported employment:

(1) consists of a supported employment service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(2) is not provided to an individual with the individual present at the same time that respite, habilitation, prevocational services, or employment assistance is provided; and

(3) does not include:

(A) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(B) using Medicaid funds paid by DADS to the DSA for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying the individual:

(I) as an incentive to participate in supported employment activities; or

(II) for expenses associated with the start-up costs or operating expenses of an individual's business.

§45.809. Prohibition of Seclusion.

A DSA must not use seclusion.

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 December 23, 2014.

TRD-201406259

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4466



CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

SUBCHAPTER D. PROVIDER REQUIREMENTS

DIVISION 6. SERVICE DELIVERY REQUIREMENTS FOR TRANSITION ASSISTANCE SERVICES

40 TAC §51.451

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §51.451, concerning transition assistance services, in Chapter 51, Medically Dependent Children Program.

#### BACKGROUND AND PURPOSE

The purpose of the repeal is to remove rules regarding provider requirements for delivery of Transition Assistance Services (TAS). TAS provider requirements are being proposed in an amendment to Chapter 62, published elsewhere in this issue of the *Texas Register*.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §51.451 deletes rules for a TAS provider that will be replaced by proposed new §62.33.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses, because there is no increase in the cost for compliance to any TAS provider, regardless of size.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the repeal is in effect, the public benefit expected as a result of enforcing the repeals is the removal of outdated rules from the DADS rule base.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the repeal. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this 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

Questions about the content of this proposal may be directed to Debra Campbell at (512) 438-5645 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R19, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of

the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R19" in the subject line.

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §51.451. Transition Assistance 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 December 23, 2014.

TRD-201406239

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4162



## CHAPTER 62. TRANSITION ASSISTANCE SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §62.1, concerning purpose, §62.3, concerning definitions, §62.11, concerning contracting requirements, §62.21, concerning staff requirements, §62.33, concerning service delivery, and §62.41, concerning record keeping; new §62.5, concerning service description, and §62.7, concerning TAS in the HCS program; and the repeal of §62.5, concerning service description, and §62.31, concerning referrals, in Chapter 62, Contracting to Provide Transition Assistance Services.

#### BACKGROUND AND PURPOSE

The purpose of the proposed amendments, new rules, and repeals in Chapter 62, is to clarify and update the rules related to transition assistance services (TAS), which are services that assist an applicant for a waiver program who is moving out of an institution in setting up a household in the community. The purpose of the proposed amendments is also to make TAS available to

an applicant enrolling in the Deaf Blind with Multiple Disabilities (DBMD) Program or the Community Living Assistance and Support Services (CLASS) Program and being discharged from an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID). This change implements assurances in the CLASS and DBMD waiver applications and is consistent with the CLASS and DBMD program rules. TAS is already available for applicants enrolling in the Medically Dependent Children Program (MDCP), the DBMD Program, or the CLASS Program and being discharged from a nursing facility.

The proposed rules delete the Consolidated Waiver Program (CWP) and the Community Based Alternatives (CBA) Program as programs into which an individual may be enrolling to receive TAS because CWP no longer exists and because, effective September 1, 2014, the CBA Program was terminated to allow for the provision of CBA-like services through STAR+Plus managed care.

The proposed rules clarify that, in addition to the current items that may be paid for as TAS, the purchase of essential supplies for the home is also included as TAS. The proposed rules state that an employee or contractor who delivers TAS may not be the individual's relative, LAR, or in MDCP, may not be the individual's primary caregiver. This change is made to be consistent with the CLASS, DBMD, and MDCP waiver applications. The proposed rules change the title of Chapter 62 from "Contracting to Provide Transition Assistance Services" to "Transition Assistance Services" because effective September 1, 2014, the contracting rules for a TAS provider are in Chapter 49, Contracting for Community Services.

To be consistent with the DBMD and CLASS waiver applications, the proposed rules clarify the list of DBMD and CLASS Program services that prevent DADS from authorizing TAS for an individual whose individual plan of care in the CLASS or DBMD Program includes one of these services. The proposed rules state, for clarification, that an individual being discharged from a nursing facility, an ICF/IID, or a general residential operation and enrolling in the Home and Community-based Services (HCS) Program may receive TAS from an HCS program provider in accordance with Chapter 9, Subchapter D, Home and Community-based Services Program. Amendments to Chapter 9, Subchapter D regarding TAS are proposed elsewhere in this issue of the *Texas Register*. The proposed rules state that an HCS program provider may contract with a TAS provider to provide TAS in accordance with Chapter 9, Subchapter D.

The proposed rules require a TAS provider to notify, in addition to the case manager, the individual or LAR, or in MDCP, the individual's primary caregiver, of specific information related to a TAS provider's failure to deliver TAS at least two days before the individual's facility discharge date. This requirement helps ensure that the individual, LAR, or primary caregiver receives this information and can make alternative arrangements, if necessary. The proposed rules also require a TAS provider, within one working day after TAS has been delivered, to notify the individual or LAR, or in MDCP, the individual's primary caregiver, and the case manager that TAS has been delivered. This requirement helps ensure that the individual, LAR, and primary caregiver are properly informed about the provision of TAS.

The proposed rules require a TAS provider to maintain, in the individual's record, documentation related to a failure to deliver TAS to the individual at least two days before the individual's facility discharge date to help ensure that the record contains a complete history of the provision of TAS.

The proposed rules update definitions and terms used in the chapter to be consistent with other waiver program rules. The proposed rules also delete defined terms not used in Chapter 62 and make minor editorial and reorganizational changes for clarity and consistency.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §62.1 describes the purpose of the chapter, updates the list of DADS programs through which TAS is available, updates the agency's name and other terms used in the chapter, and states that the chapter provides information regarding TAS in the HSC Program. The proposed amendment to §62.3 amends definitions for "case manager," "CLASS program," "day," "DBMD program," "MDCP," "nursing facility," and "working day." The proposed amendment adds definitions for "facility," "GRO," "HCS program," "HCS program provider," "ICF/IID," "individual," "IPC," "LAR," "relative," "TAS," and "TAS provider." The proposed amendment deletes the definitions for "client," "Community Based Alternatives (CBA)," "Consolidated Waiver Program (CWP)," "contract," "contract manager," "provider agency," and "waiver program." The proposed amendment changes the agency's name from "DHS" to "DADS."

The proposed repeal of §62.5 is replaced by proposed new §62.5, which updates the service description for TAS.

Proposed new §62.5 describes TAS as assisting an individual in setting up a household in the community before being discharged from a nursing facility and enrolling in MDCP or from a nursing facility or an ICF/IID and enrolling in the DBMD Program or CLASS Program. The proposed new rule updates the list of DBMD Program and CLASS Program services that, if included in an individual's enrollment IPC, would prevent DADS from authorizing TAS. The proposed new rule clarifies that an individual may receive TAS only once in the individual's lifetime for a maximum of \$2,500. The proposed new rule establishes that TAS consists of (1) payment of security deposits required to lease a home or to establish utility services for the home; (2) purchase of essential furnishings for the home; (3) payment of expenses required to move the individual's items into the home; (4) payment for services to ensure the health and safety of the individual in the home; and (5) purchase of essential supplies for the home and provide examples for each of these five categories.

Proposed new §62.7 establishes that an individual being discharged from a nursing facility, an ICF/IID, or a GRO and enrolling in the HCS Program may receive TAS from an HCS program provider in accordance with Chapter 9, Subchapter D, Home and Community-based Services Program. The proposed new rule states that an HCS program provider may contract with a TAS provider to provide TAS in accordance with Chapter 9, Subchapter D.

The proposed amendment to §62.11 replaces "provider agency" with "TAS provider."

The proposed amendment to §62.21 requires a TAS provider to ensure that an employee or contractor who delivers TAS is at least 18 years old; has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; is not the individual's relative or LAR, or in MDCP, the individual's primary caregiver; does not live with the individual; and is capable of delivering TAS and complying with the documentation requirements in Chapter 62.

The proposed repeal of §62.31 removes requirements for TAS providers that receive a referral from DADS. This topic is addressed in the proposed amendment to §62.33.

The proposed amendment to §62.33 requires a TAS provider to deliver TAS to an individual for whom the TAS provider receives a completed TAS Assessment and Authorization form; deliver the specific TAS authorized on the form; purchase TAS for the individual within the monetary amount authorized on the form; and submit a service claim to DADS only after all of the authorized TAS is delivered to the individual. The proposed amendment requires a TAS provider to complete the delivery of TAS at least two days before the individual's facility discharge date, unless the delay in delivery is beyond the TAS provider's control. If the TAS provider does not deliver the authorized TAS at least two days before the individual's facility discharge date, the TAS provider must document a description of the pending TAS; the reason for the delay; either the date the TAS provider anticipates it will deliver the pending TAS or specific reasons why the TAS provider cannot anticipate a delivery date; and a description of the TAS provider's ongoing efforts to deliver services. The proposed amendment requires the TAS provider to provide the documented information to the individual or LAR, or in MDCP, the individual's primary caregiver, and the case manager at least two days before the facility discharge date. The proposed amendment requires a TAS provider, within one working day after TAS is delivered, to notify the individual or LAR, or in MDCP, the individual's primary caregiver, and the case manager, that TAS was delivered.

The proposed amendment to §62.41 updates terms used in the record keeping requirements for a TAS provider and requires a TAS provider to maintain the information listed in the rule in an individual's record. The proposed amendment requires a TAS provider to maintain, in an individual's record, the original purchase receipts and the documentation required if a TAS provider does not complete the delivery of TAS at least two days before the individual's facility discharge date.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for each year of the first five years the proposed amendments, new sections, and repeals are in effect, there are foreseeable implications relating to costs or revenues of state government.

The effect on state government for each year of the first five years the proposed amendments, new sections, and repeals is in effect is an estimated additional cost of \$833.00 in fiscal year (FY) 2015; \$2500 in FY 2016; \$2500 in FY 2017; \$2500 in FY 2018; and \$2500 in FY 2019. The fiscal estimates are based on a possible one-time cost to the State of up to \$2,500 for each individual discharged from an ICF/IID who enrolls in CLASS or DBMD, needs TAS, and meets the requirements for DADS to authorize TAS.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new rules, and repeals will not have an adverse economic effect on small businesses or micro-businesses, because there is no increase in the cost for compliance to any TAS provider, regardless of size.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments, new

sections, and repeals are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeals is the increased availability of TAS to individuals leaving institutions.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeals. The amendments, new sections, and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this 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

Questions about the content of this proposal may be directed to Debra Campbell at (512) 438-5645 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R19, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R19" in the subject line.

## SUBCHAPTER A. INTRODUCTION

### 40 TAC §§62.1, 62.3, 62.5, 62.7

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

#### §62.1. Purpose.

This chapter:

(1) establishes the requirements for TAS provided [agencies contracting to provide transition assistance services to

eligible clients] through the following DADS [Texas Department of Human Services waiver] programs:

~~(1) Community Based Alternatives;~~

~~(A) ~~(2)~~ the CLASS Program [Community Living Assistance and Support Services];~~

~~(B) ~~(3)~~ the MDCP; and [Medically Dependent Children];~~

~~(C) ~~(4)~~ the DBMD Program [Deaf Blind with Multiple Disabilities]; and~~

~~(2) provides information regarding TAS in the HCS Program.~~

~~(5) Consolidated Waiver.]~~

### §62.3. Definitions.

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

~~(1) Case manager--The person [A Texas Department of Human Services (DHS) employee or case management agency employee] who is responsible for case management activities in the CLASS, MDCP, and DBMD Programs. [Activities include eligibility determination, client registration, assessment and reassessment of a client's need, service plan development, and intercession on a client's behalf.]~~

~~(2) Client--An individual who is eligible to receive DHS Medicaid waiver services. References in this chapter to "client" include the client's representative, unless the context indicates otherwise.]~~

~~(3) Community Based Alternatives (CBA)--A Medicaid program that provides services to eligible adults who are aged and/or disabled as an alternative to institutional care in a nursing facility. CBA services are provided in accordance with the waiver provisions of §1915(e) of the Social Security Act (42 U.S.C. §1396n(e)).]~~

~~(2) ~~(4)~~ CLASS Program--Community Living Assistance and Support Services Program. [~~(CLASS)~~]A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by DADS under Chapter 45 of this title (relating to Community Living Assistance and Support Services) [that provides home and community-based services to eligible people with related conditions (developmental disabilities other than mental retardation); as a cost-effective alternative to placement in an Intermediate Care Facility for Persons with Mental Retardation or Related Conditions (ICF-MR/RC). CLASS services are provided in accordance with the waiver provisions of §1915(e) of the Social Security Act (42 U.S.C. §1396n(e)).]~~

~~(5) Consolidated Waiver Program (CWP)--A Medicaid program that provides home and community-based services to people who are eligible for care in a nursing facility or ICF-MR/RC as an alternative to institutional placement. CWP services are provided in accordance with the waiver provisions of §1915(e) of the Social Security Act (42 U.S.C. 1396n(e)).]~~

~~(6) Contract--The formal, written agreement between DHS and a provider agency to provide services to DHS clients eligible under this chapter in exchange for reimbursement.]~~

~~(7) Contract manager--A DHS employee who is responsible for the overall management of the contract with the provider agency.]~~

~~(3) ~~(8)~~ DADS [DHS]--The [Texas] Department of Aging and Disability [Human] Services.~~

~~(4) ~~(9)~~ Day [Days]--A calendar day [Any reference to days means calendar days], unless otherwise specified in the text. A calendar day includes Saturday, Sunday, [Calendar days include weekends] and a national or state holiday listed in Texas Government Code §662.003(a) or (b) [holidays].~~

~~(5) ~~(10)~~ DBMD Program--Deaf Blind with Multiple Disabilities Program. [~~(DBMD)~~]--A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by DADS under Chapter 42 of this title (relating to Deaf Blind with Multiple Disabilities (DBMD) Program) [that provides home and community-based support services to persons age 18 or older who are deaf-blind and have at least one other disability, and who are eligible for institutional care, as a cost-effective alternative to institutional care. DBMD services are provided in accordance with the waiver provisions of §1915(e) of the Social Security Act (42 U.S.C. 1396n(e))].~~

~~(6) Facility--Means:~~

~~(A) for an individual enrolling in MDCP, a nursing facility; or~~

~~(B) for an individual enrolling in the DBMD Program or CLASS Program, a nursing facility or an ICF/IID.~~

~~(7) GRO--General Residential Operation. As defined in Texas Human Resources Code, §42.002, a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.~~

~~(8) HCS Program--Home and Community-based Services Program. A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by DADS under Chapter 9, Subchapter D of this title (relating to Home and Community-based Services (HCS) Program).~~

~~(9) HCS program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide HCS program services, excluding a financial management services agency.~~

~~(10) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by DADS.~~

~~(11) Individual--A person for whom DADS authorizes the delivery of TAS.~~

~~(12) IPC--Individual plan of care.~~

~~(13) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a particular matter. The term may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.~~

~~(14) ~~(11)~~ MDCP--Medically Dependent Children Program. [~~(MDCP)~~] A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by DADS under Chapter 51 of this title (relating to Medically Dependent Children Program) [that provides home and community-based support services to persons under 21 years of age who are medically dependent and eligible for institutional care, as a cost-effective alternative to institutional care. MDCP services are provided in accordance with the waiver provisions of §1915(e) of the Social Security Act (42 U.S.C. 1396n(e))].~~

(15) [(12)] Nursing facility--A facility licensed in accordance with Texas [under the] Health and Safety Code, Chapter 242[, that provides organized and structured nursing care and services].

(16) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the Transition Assistance Services Orientation Handbook available on DADS website at <http://www.dads.state.tx.us/handbooks/tas/appendix/index.htm>.

(17) TAS--Transition assistance services.

(18) TAS provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide TAS in accordance with Chapter 49 of this title (relating to Contracting for Community Services).

[(13) Provider agency--An agency that contracts with DHS to provide transition assistance services to clients in exchange for reimbursement.]

[(14) Waiver program--A DHS Medicaid program operated under the waiver provisions of §1915(e) of the Social Security Act (42 U.S.C. §1396n(e)), including: CBA, CLASS, MDCP, DBMD, and CWP.]

(19) [(15)] Working day [days]--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b) [Days DHS is open for business].

#### §62.5. Service Description.

(a) TAS assists an individual in setting up a household in the community before being discharged from:

(1) a nursing facility and enrolling in MDCP; or

(2) a nursing facility or an ICF/IID and enrolling in the DBMD Program or CLASS Program.

(b) DADS does not authorize TAS if an individual's enrollment IPC includes any of the following services:

(1) support family services in the CLASS Program;

(2) continued family services in the CLASS Program;

(3) licensed assisted living in the DBMD Program; or

(4) licensed home health assisted living in the DBMD Program.

(c) An individual may receive TAS only once in the individual's lifetime.

(d) An individual may receive a maximum of \$2,500 for TAS.

(e) TAS consists of:

(1) payment of security deposits required to lease a home, including an apartment, or to establish utility services for a home;

(2) purchase of essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(3) payment of expenses required to move personal items, including furniture and clothing, into a home;

(4) payment for services to ensure the health and safety of the individual in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(5) purchase of essential supplies for a home, including toilet paper, towels, and bed linens.

#### §62.7. TAS in the HCS Program.

(a) An individual being discharged from a nursing facility, an ICF/IID, or a GRO and enrolling in the HCS Program may receive TAS from an HCS program provider in accordance with Chapter 9, Subchapter D, of this title (relating to Home and Community-based Services Program).

(b) An HCS program provider may contract with a TAS provider to provide TAS in accordance with Chapter 9, Subchapter D, 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 December 23, 2014.

TRD-201406245

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4162



#### **40 TAC §62.5**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### **STATUTORY AUTHORITY**

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §62.5. Service Description.

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406246

Lawrence Hornsby  
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Earliest possible date of adoption: February 8, 2015  
For further information, please call: (512) 438-4162



## SUBCHAPTER B. PROVIDER AGENCY REQUIREMENTS

### 40 TAC §62.11

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §62.11. Contracting Requirements.

A TAS provider [~~agency~~] must comply with this chapter and Chapter 49 of this title (relating to Contracting for Community 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 December 23, 2014.

TRD-201406248  
Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: February 8, 2015  
For further information, please call: (512) 438-4162



## SUBCHAPTER C. STAFF REQUIREMENTS

### 40 TAC §62.21

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall

study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §62.21. Staff Requirements.

A TAS provider must ensure that an employee or contractor [The provider agency employees] who delivers TAS [deliver services] under this chapter [~~must~~]:

(1) is at least [~~be~~] 18 years old;

(2) has [~~have~~] a high school diploma or a certificate recognized by a state as the [~~its~~] equivalent of a high school diploma;

(3) is not the individual's:

(A) relative; [~~be the client's spouse, the parent of a minor child~~];

(B) LAR; or

(C) in MDCP, the primary caregiver [~~have legal conservatorship of the client, or live in the client's household~~]; [~~and~~]

(4) does not live with the individual; and

(5) [~~(4)~~] is [~~be~~] capable of delivering TAS and complying with the documentation requirements under this chapter [~~providing the required 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 December 23, 2014.

TRD-201406249  
Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: February 8, 2015  
For further information, please call: (512) 438-4162



## SUBCHAPTER D. SERVICE DELIVERY REQUIREMENTS

### 40 TAC §62.31

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive com-



missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§62.31. Referrals.*

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 December 23, 2014.

TRD-201406251

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4162



**40 TAC §62.33**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§62.33. Service Delivery.*

(a) A TAS provider [The provider agency] must:

(1) deliver TAS to an individual for whom the TAS provider receives, from the individual's case manager, a completed Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS;

(2) [(4)] deliver to the individual [client] the specific TAS authorized on the form [transition assistance service that the case manager authorized in writing];

(3) [(2)] purchase TAS [services] for the individual [client] within the monetary [dollar] amount authorized on the form [that the case manager authorizes]; and

(4) [(3)] submit a service claim [for reimbursement] to DADS [the Texas Department of Human Services] only after all of the authorized TAS has [purchased services have] been delivered to the individual [client].

(b) A TAS [The] provider [agency] must complete the delivery of TAS [services] to the individual [client] at least two days before the individual's [client's nursing] facility discharge date unless the delay in delivery is beyond the control of the TAS provider.

(c) If a TAS [The] provider does not [agency may fail to] deliver the authorized TAS in accordance with [services to the client by the applicable due date described in] subsection (b) of this section, the TAS provider must [only if the reason for the delay is beyond the control of the provider agency, and only if the provider agency makes an ongoing effort to deliver the services. The provider agency must document any failure to deliver the authorized services by the applicable due date, including]:

(1) document the following:

(A) a description of the pending TAS;

(B) the reason for the delay;

(C) the date the TAS provider anticipates it will deliver the pending TAS or specific reasons why the TAS provider cannot anticipate a delivery date; and

(D) a description of the TAS provider's ongoing efforts to deliver the TAS; and

(2) at least two days before the facility discharge date, provide the information described in paragraph (1) of this subsection to:

(A) the individual or LAR, or in MDCP, the individual's primary caregiver; and

(B) the case manager.

[(1) a description of the pending services;]

[(2) the reason for the delay;]

[(3) either the date the provider agency anticipates it will deliver the pending services or specific reasons why the provider agency cannot anticipate a delivery date; and]

[(4) a description of the provider agency's ongoing efforts to deliver the services.]

(d) A TAS provider must, within one working day after TAS has been delivered, notify the following persons that TAS has been delivered:

(1) the individual or LAR, or in MDCP, the individual's primary caregiver; and

(2) the case manager.

[(d) The provider agency must orally notify the case manager of any failure to deliver any of the authorized services before the applicable due date described in subsection (b) of this section. Oral notice means directly speaking with the case manager and does not include a message left by voice mail.]

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 December 29, 2014.

TRD-201406313

Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4162



## SUBCHAPTER E. CLAIM PAYMENTS AND DOCUMENTATION

### 40 TAC §62.41

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; 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; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§62.41. *Record Keeping.*

(a) A TAS [The] provider [agency] must maintain service delivery documentation in the individual's record, including [client file that includes the]:

(1) the individual's name and Medicaid number [of the client];

(2) the TAS provider's name and contract [client Medicaid] number;

~~[(3) month of service delivery;]~~

~~[(4) provider agency name and contract number;]~~

(3) ~~[(5)]~~ a [service] description of the TAS delivered;

(4) ~~[(6)]~~ the date the TAS was [services were] purchased;

(5) ~~[(7)]~~ the date the TAS was [services were] delivered;

(6) ~~[(8)]~~ the total monetary [~~doHar~~] amount of the TAS purchased [~~purchase~~], including taxes and delivery fees;

(7) ~~[(9)]~~ the original purchase receipts; and

(8) ~~[(10)]~~ the dated signature of the employee or contractor [employee(s)] who delivered the TAS [~~provided services~~].

(b) If a TAS provider does not complete the delivery of TAS to the individual by the due date described in §62.33(b) of this chapter (relating to Service Delivery), the TAS provider must maintain the documentation required in §62.33(c)(1) of this chapter in the individual's record.

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 December 29, 2014.

TRD-201406308

Lawrence Hornsby  
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Department of Aging and Disability Services

Earliest possible date of adoption: February 8, 2015

For further information, please call: (512) 438-4162



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

##### 22 TAC §108.6

Proposed amended §108.6, published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4591), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on December 29, 2014.

TRD-201406307



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

### CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER H. MISCELLANEOUS VEHICLE INSPECTION PROVISIONS

#### 37 TAC §23.81

The Texas Department of Public Safety withdraws proposed new §23.81 which appeared in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8562).

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406260

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: December 23, 2014

For further information, please call: (512) 424-5848





*Rachel Lassila*  
4th Grade

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

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

##### SUBCHAPTER A. STATE BOARD OF EDUCATION RULES

###### 19 TAC §33.65

The State Board of Education (SBOE) adopts an amendment to §33.65, concerning the guarantee program for school district bonds. The amendment is adopted with changes to the proposed text as published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8124). The section establishes provisions for the administration of the bond guarantee program. The adopted amendment adds a definition of *bond* to the rule to define more precisely the types of debt that are eligible for guarantee. The adopted amendment also modifies the rule to require that *each issuance* of bonds approved for the guarantee be approved by the attorney general. In addition, the adopted amendment adds a definition of *nationally recognized investment rating firm* to provide consistency with the charter school bond guarantee rules.

The Texas Education Code (TEC), §7.102(c)(33), authorizes the SBOE to adopt rules for the implementation of the Permanent School Fund (PSF) Bond Guarantee Program as authorized in the TEC, Chapter 45, School District Funds, Subchapter C, Guaranteed Bonds. The TEC, §45.063, authorizes the SBOE to adopt rules necessary for the administration of the program. Section 33.65 is the rule the SBOE adopted to implement the program.

Section 33.65 sets out the statutory provisions for the Bond Guarantee Program, provides definitions, specifies bond eligibility requirements, and explains the requirements of and policies related to the program's application process. The rule also describes how PSF capacity to guarantee bonds is determined, provides limitations on access to the program, and allows for the commissioner to allocate specific holdings of the PSF under certain conditions. In addition, the rule provides requirements specific to districts that have declared financial exigency, explains what effect defeasance has on guaranteed bonds, and sets out specific program conditions for bonds issued or guaranteed on certain specified dates. The rule also explains program payment conditions and guarantee restrictions.

At the April 2014 meeting of the Committee on School Finance/PSF, committee members discussed a fellow board member's proposal to amend the rule to allow commercial

paper notes to be eligible for the Bond Guarantee Program and agency legal counsel's recommendation to not make that change. Committee members also discussed a recommendation from agency legal counsel and staff members to instead address any ambiguity about which debt instruments are eligible for the program by amending the rule to define these debt instruments more precisely. At the July 2014 meeting of the committee, during discussion of the report of the PSF executive administrator and chief investment officer, committee members directed agency staff members to present, for first reading and filing authorization at the September 2014 meeting, a proposed amendment to the rule to define eligible debt instruments more precisely, as described by agency legal counsel.

The adopted amendment to 19 TAC §33.65 defines eligible debt more precisely by adding a definition of the term *bond* in subsection (b) that specifies, in part, that a bond is a debt instrument with a term of at least three years that has approval from the attorney general and by modifying subsection (g)(4)(A) to require that *each issuance* of bonds be approved by the attorney general for the bonds to be guaranteed.

The adopted amendment also adds a definition of *nationally recognized investment rating firm* in subsection (b) that specifies that the term means an investment rating firm that is, or is part of, Standard & Poor's, Moody's, or Fitch and is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization. For consistency with other SBOE rules governing the PSF, the definition references the three firms already specified in SBOE rule, 19 TAC §33.25(b)(13), relating to permissible and restricted investments of the PSF. The agency has had extensive experience with the three named firms. Additionally, the agency's review indicated that no other investment rating firms had a comparable amount of experience in charter bond ratings, making this definition appropriate at the current time. In response to public comment, however, the SBOE took action at second reading and final adoption to add an expiration date of September 1, 2015, to §33.65(b)(9) and §33.67(b)(16) to provide enough time for the agency to develop a more precise definition for *nationally recognized investment rating firm* for SBOE consideration at a future meeting. The definition for *nationally recognized investment rating firm* in subsection (b) is cross referenced in subsection (f)(2)(D) for clarification.

Corresponding technical edits are made throughout the rule to update cross references as necessary.

The adopted amendment has no new procedural and reporting implications. The adopted amendment has no locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusi-

nesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE took action to approve the proposed amendment for second reading and final adoption during its November 21, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2015-2016 in order to implement the latest policy in a timely manner. The effective date for the amendment is 20 days after filing as adopted.

Following is a summary of the public comments and corresponding responses regarding the proposed amendment.

Comment: A legal counsel for HR Ratings de México, S.A. de C.V. commented that the proposed definition of *nationally recognized investment rating firm* in §33.65, Bond Guarantee Program for School Districts, and §33.67, Bond Guarantee Program for Charter Schools, would effectively restrict the number of Nationally Recognized Statistical Rating Organizations (NRSROs) to only one, since two of the three NRSROs specified in the proposed definition have stopped issuing ratings. The commenter urged the SBOE to include other firms in addition to the three named in the proposal to increase competition. In addition, the commenter urged the SBOE to consider firms based on the firms' record on quality of ratings. The commenter also offered reasons why the proposed definition would violate provisions of the North American Free Trade Agreement (NAFTA) and was deficient under the Texas Administrative Procedure Act (APA). The commenter requested that the proposal be withdrawn and offered to help craft rule language that would use registration with the Securities and Exchange Commission and reasonable market-based experience as criteria for acceptable NRSROs to preserve the security of the Permanent School Fund.

Response: The SBOE disagrees. The purpose of adding the definition for *nationally recognized investment rating firm* was to clarify standards and protect the Bond Guarantee Program. In addition, for consistency with other SBOE rules governing the PSF, the definition references the three firms already specified in SBOE rule, 19 TAC §33.25(b)(13), relating to permissible and restricted investments of the PSF. The agency has had extensive experience with the three named firms. Additionally, the agency's review indicated that no other investment rating firms had a comparable amount of experience in charter bond ratings, making this definition appropriate at the current time. Furthermore, this definition was provided and deliberated publicly during meetings of the SBOE Committee on School Finance/Permanent School Fund. In response to public comment, however, the SBOE took action at second reading and final adoption to add an expiration date of September 1, 2015, to §33.65(b)(9) and §33.67(b)(16) to provide enough time for the agency to develop a more precise definition for *nationally recognized investment rating firm* for SBOE consideration at a future meeting.

The SBOE also disagrees that the proposal was deficient under the APA. The commenter cited Texas Government Code, §2001.033, and stated that the *Texas Register* notice for the rule action lacked factual basis. Referencing Texas Government Code, §2001.033, which is the statutory requirement for adopting a rule, was premature. The proposed amendments to §33.65 and §33.67 were filed in compliance with Texas Government Code, §2001.024, the statutory requirement for filing a proposal and seeking public comment. The SBOE disagrees that it has failed to state a reasoned justification for the rule definition of *nationally recognized investment rating firm*. The SBOE has

explained above why the rule's definition is appropriate at the time of adoption.

The amendment is adopted under the Texas Education Code (TEC), §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under the TEC, Chapter 45, Subchapter C, and §45.063, which authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program; and the Texas Constitution, Article VII, Section 5, which authorizes the bond guarantee program.

The amendment implements the Texas Education Code, §7.102(c)(33) and §45.063, and the Texas Constitution, Article VII, Section 5.

§33.65. *Bond Guarantee Program for School Districts.*

(a) Statutory provision. The commissioner of education must administer the guarantee program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for school district bonds.

(1) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the guarantee is sought as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the district has outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) The annual debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the Texas Education Agency (TEA) has sufficient evidence of the discharge or defeasance of such debt.

(C) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement, or if there is no official statement, debt service amounts based on the maximum rate permitted by the bond order or other bond proceeding that establishes a maximum interest rate for the bonds.

(2) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be submitted electronically through the website of the MAC of Texas or its successor by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.

(3) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.

(4) Bond--A debt security issuance approved by the attorney general, issued under the TEC, §45.003 or §45.004, to provide long-term financing with a maturity schedule of at least three years.

(5) Bond Guarantee Program (BGP)--The guarantee program that is described by this section and established under the TEC, Chapter 45, Subchapter C.

(6) Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds and the pricing

certificate, if any, establishing the terms of the bonds executed pursuant to such order.

(7) **Combination issue**--An issuance of bonds for which an application for a guarantee is filed that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(8) **Enrollment growth**--Growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.

(9) **Nationally recognized investment rating firm**--An investment rating firm that is, or is part of, Standard & Poor's, Moody's, or Fitch and is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization. This paragraph expires September 1, 2015.

(10) **New money issue**--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the guarantee for new money issues is limited to the issuance of bonds authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

(A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or

(B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.

(11) **Notes issued to provide interim financing**--An issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the guarantee under this section, the notes must be:

(A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;

(B) approved by the attorney general or issued in accordance with proceedings that have been approved by the attorney general; and

(C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.

(12) **Refunding issue**--An issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing, that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the guarantee for refunding issues is limited to refunding issues that refund bonds, including notes issued to provide interim financing, that were authorized by a bond election under the TEC, §45.003.

(13) **Total debt service**--Total outstanding principal and interest on bonded debt.

(A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline, if the district has outstanding bonded indebtedness.

(B) The total debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.

(C) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement, or if there is no official statement, debt service amounts based on the maximum rate permitted by the bond order or other bond proceeding that establishes a maximum interest rate for the bonds.

(c) **Data sources.**

(1) The following data sources will be used for purposes of prioritization:

(A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;

(B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;

(C) debt service information reported by the MAC of Texas or its successor as of the date of the application deadline; and

(D) enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.

(2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.

(d) **Bond eligibility.**

(1) Only those combination, new money, and refunding issues as defined in subsection (b)(7), (10), and (12), respectively, of this section are eligible to receive the guarantee.

(2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds, except that subparagraph (C) of this paragraph does not apply to a refunding issue that provides long-term financing for notes issued to provide interim financing.

(A) As with any district applying for approval for the guarantee, the district issuing the refunding bonds must meet the requirements for initial approval specified in subsection (g)(2)(A) of this section.

(B) The bonds to be refunded must have been:

(i) previously guaranteed by the Permanent School Fund (PSF) or approved for credit enhancement under §61.1038 of this title (relating to School District Bond Enhancement Program);

(ii) issued on or after November 1, 2008, and before January 1, 2010; or

(iii) issued as notes to provide interim financing as defined in subsection (b)(11) of this section.

(C) The district must demonstrate that issuing the refunding bond(s) will result in a present value savings to the district and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds. If the commissioner approves refunding bonds for the guarantee based on evidence of present value savings but at the time of the sale of the refunding bonds a present value savings is not realized, the commissioner may revoke the approval of the bonds for the guarantee.

(D) The refunding transaction must comply with the provisions of subsection (g)(4)(A) - (C) of this section.

(3) If a district files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this section. As part of its application, the applicant district must present data that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.

(e) Determination of PSF capacity to guarantee bonds.

(1) Each month the commissioner will estimate the available capacity of the PSF. If necessary, the commissioner will confirm that the PSF has sufficient capacity to guarantee the bonds before the issuance of the final approval for the guarantee in accordance with subsection (g)(3) of this section. The calculation of capacity will be based on a multiplier of three times the cost value of the PSF. The commissioner may reduce the multiplier to maintain the AAA credit rating of the PSF. Changes to the multiplier made by the commissioner are to be ratified or rejected by the State Board of Education (SBOE) at the next meeting for which the item can be posted.

(2) The SBOE will establish an amount of capacity to be held in reserve of no less than 5.0% of the fund's capacity. The reserved capacity can be used to award guarantees for districts that experience unforeseen catastrophes or emergencies that require the renovation or replacement of school facilities as described in the TEC, §44.031(h). The amount to be held in reserve may be increased by a majority vote of the SBOE based on changes in the asset allocation and risk in the portfolio and unrealized gains in the portfolio, or by the commissioner as necessary to prudently manage fund capacity. Changes to the amount held in reserve made by the commissioner are to be ratified or rejected by the SBOE at the next meeting for which the item can be posted.

(3) The net capacity of the PSF to guarantee bonds is determined by subtracting the amount to be held in reserve, as determined under paragraph (2) of this subsection, from the total available capacity, as described in paragraph (1) of this subsection.

(f) Application process and application processing.

(1) Application submission and fee. A district must apply to the commissioner for the guarantee of eligible bonds or the credit enhancement of eligible bonds as authorized under §61.1038 of this title by submitting an application electronically through the website of the MAC of Texas or its successor. The district must submit the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

(A) The application fee is \$1,500.

(B) The fee is due at the time the application for the guarantee or the credit enhancement is submitted. An application will not be processed until the fee has been remitted according to the directions provided on the website of the MAC of Texas or its successor and received by the TEA.

(C) The fee will not be refunded to a district that:

(i) is not approved for the guarantee or the credit enhancement; or

(ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.

(D) The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee or the credit enhancement.

(2) Application prioritization and processing. Applications will be prioritized based on districts' property wealth per ADA, with the application of a district with a lower property wealth per ADA prioritized before that of a district with a higher property wealth per ADA. All applications received during a calendar month will be held until up to the 15th business day of the subsequent month. On or before the 15th business day of each month, the commissioner will announce the results of the prioritization and process applications for initial approval for the guarantee, up to the available net capacity as of the application deadline, subject to the requirements of this section.

(A) Approval for guarantees will be awarded each month beginning with the districts with the lowest property wealth per ADA until the PSF reaches its net capacity to guarantee bonds.

(B) Approval for guarantees will be awarded based on the fund's capacity to fully guarantee the bond issue for which the guarantee is sought. Applications for bond issues that cannot be fully guaranteed will not receive an award. The amount of bond issue for which the guarantee was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee during the award process. If PSF net capacity has been exhausted, the commissioner will process the application for approval of the credit enhancement as specified in §61.1038 of this title.

(C) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (g) of this section.

(D) An applicant school district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(9) of this section is the same as or higher than that of the PSF.

(3) Late application. An application received after the application deadline will be considered a valid application for the sub-



sequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(4) Notice of application status. Each district that submits a valid application will be notified of the application status within 15 business days of the application deadline.

(5) Reapplication. If a district does not receive approval for the guarantee or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (g)(4) of this section, the district may reapply in a subsequent month. Applications that were denied approval for the guarantee will not be retained for consideration in subsequent months.

(g) Approval for the guarantee; district responsibilities on receipt of approval.

(1) Initial and final approval provisions.

(A) If, during the monthly estimation of PSF capacity described in subsection (e)(1) of this section, the commissioner determines that the available capacity of the PSF is 10% or less, the commissioner may require an applicant school district to obtain final approval for the guarantee as described in paragraph (3) of this subsection.

(B) If the commissioner has not made such a determination:

(i) the commissioner will consider the initial approval described in paragraph (2) of this subsection as both the initial and final approval; and

(ii) an applicant school district that has received notification of initial approval for the guarantee, as described in paragraph (2) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.

(2) Initial approval.

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new money, refunding, or combination issue. Under the TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for initial approval by the commissioner. The commissioner's review will include the following:

(i) the purpose of the bond issue;

(ii) the district's accreditation status as defined by §97.1055 of this title (relating to Accreditation Status) in accordance with the following:

(I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the guarantee;

(II) if the district's accreditation status is Accredited-Warning or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the guarantee; or

(III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the guarantee;

(iii) the district's compliance with statutes and rules of the TEA; and

(iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the attorney general under the provisions of the TEC, §45.0031 and §45.005.

(B) The following limitation applies to applications for new money issues of bonds for which the election authorizing the issuance of the bonds was called after July 15, 2004. The commissioner will limit approval for the guarantee to a district that has, at the time of the application for the guarantee, less than 90% of the annual debt service of the district with the highest annual debt service per ADA, as determined by the commissioner annually, or less than 90% of the total debt service of the district with the highest total debt service per ADA, as determined by the commissioner annually. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(8) of this section, of at least 25%, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by subsection (b)(1) of this section. The total debt service amount is the amount defined by subsection (b)(13) of this section.

(C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant district whose application has received initial approval for the guarantee written notice of initial approval.

(3) Final approval. The provisions of this paragraph apply only as described in paragraph (1) of this subsection. A district must receive final approval before completing the sale of the bonds for which the district has received notification of initial approval.

(A) A district that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A district that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the school board of trustees no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the board to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the school board of trustees or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the district expects to complete the sale by official action of the board or of a pricing officer or committee.

(C) The TEA will process requests for final approval from districts that have received initial approval on a first come, first

served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) A district may provide written notification as required by this paragraph by facsimile transmission or by email in a manner prescribed by the commissioner.

(4) District responsibilities on receipt of approval.

(A) Once a district is awarded initial approval for the guarantee, each issuance of the bonds must be approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee. The initial approval for the guarantee will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the district or the attorney general before the expiration of the 180-day period.

(B) If the bonds are not approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee, the commissioner will consider the application withdrawn, and the district must reapply for a guarantee.

(C) If applicable, the district must comply with the provisions for final approval described in paragraph (3) of this subsection to maintain approval for the guarantee.

(D) A district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee.

(h) Financial exigency. The following provisions describe how a declaration of financial exigency under §109.2001 of this title (relating to Financial Exigency) affects a district's application for guarantee approval or a district's previously granted approval.

(1) Application for guarantee of new money issue. The commissioner will deny approval of an application for the guarantee of a new money issue if the applicant school district has declared a state of financial exigency for the district's current fiscal year. The denial of approval will be in effect for the duration of the applicable fiscal year unless the district can demonstrate financial stability.

(2) Approval granted before declaration. If in a given district's fiscal year the commissioner grants approval for the guarantee of a new money issue and the school district subsequently declares a state of financial exigency for that same fiscal year, the district must immediately notify the commissioner and may not offer the bonds for sale unless the commissioner determines that the district may proceed.

(3) Application for guarantee of refunding issue. The commissioner will consider an application for the guarantee of a refunding issue that meets all applicable requirements specified in this section even if the applicant school district has declared a state of financial exigency for the district's current fiscal year. In addition to fulfilling all applicable requirements specified in this section, the applicant school district must also describe, in its application, the reason financial exigency was declared and how the refunding issue will support the district's financial recovery plan.

(i) Allocation of specific holdings. If necessary to successfully operate the BGP, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will not prejudice the right of the SBOE to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

(j) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond order. If bonds guaranteed by the BGP are defeased, the district must notify the commissioner in writing within ten calendar days of the action.

(k) Bonds issued before August 15, 1993. For bonds issued before August 15, 1993, a school district seeking the guarantee of eligible bonds must certify that, on the date of issuance of any bond, no funds received by the district from the Available School Fund (ASF) are reasonably expected to be used directly or indirectly to pay the principal or interest on, or the tender or retirement price of, any bond of the political subdivision or to fund a reserve or placement fund for any such bond.

(l) Bonds guaranteed before December 1, 1993. For bonds guaranteed before December 1, 1993, if a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent solely from the PSF and not from the ASF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, excluding payments from the ASF.

(m) Bonds issued after August 15, 1993, and guaranteed on or after December 1, 1993. If a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent from the PSF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, regardless of source, including the ASF.

(n) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with the terms of the bond order. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(o) Guarantee restrictions. The guarantee provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee applies to all matured interest on eligible bonds, whether the bonds were issued with a fixed or variable interest rate and whether the interest rate changes as a result of an interest reset provision or other bond order provision requiring an interest rate change. The guarantee does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(p) Notice of default. A school district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the fifth business day before maturity date, notify the commissioner.

(q) Payment from PSF.

(1) Immediately after the commissioner receives the notice described in subsection (p) of this section, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(2) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the PSF.

(3) Following full reimbursement to the PSF with interest, the comptroller will further cancel the bond or coupon and forward it to the school district for which payment was made. Interest will be charged at the rate determined under the Texas Government Code, §2251.025(b). Interest will accrue as specified in the Texas Government Code, §2251.025(a) and (c).

(r) Bonds not accelerated on default. If a school district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the school district's default.

(s) Reimbursement of PSF. If payment from the PSF is made on behalf of a school district, the school district must reimburse the amount of the payment, plus interest, in accordance with the requirements of the TEC, §45.061.

(t) Repeated failure to pay. If a total of two or more payments are made under the BGP or the credit enhancement program authorized under §61.1038 of this title on the bonds of a school district, the commissioner will take action in accordance with the provisions of the TEC, §45.062.

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 December 19, 2014.

TRD-201406224

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Effective date: January 8, 2015

Proposal publication date: October 17, 2014

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



## 19 TAC §33.67

The State Board of Education (SBOE) adopts an amendment to §33.67, concerning the guarantee program for charter school bonds. The amendment is adopted with changes to the proposed text as published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8130). The section establishes provisions for the administration of the bond guarantee program. The adopted amendment adds a definition of *bond* to the rule to define more precisely the types of debt that are eligible for guarantee. The adopted amendment also adds a definition of *nationally recognized investment rating firm*. In addition, the adopted amendment modifies the rule to require that *each issuance* of bonds approved for the guarantee be approved by the attorney general. Finally, the adopted amendment clarifies language regarding the treatment of charter schools that apply for the guar-

antee within 12 months of the date that their charter is due to expire.

The Texas Education Code (TEC), §7.102(c)(33), authorizes the SBOE to adopt rules for the implementation of the Permanent School Fund (PSF) Bond Guarantee Program as authorized in the TEC, Chapter 45, School District Funds, Subchapter C, Guaranteed Bonds. The TEC, §45.063, authorizes the SBOE to adopt rules necessary for the administration of the program.

Senate Bill (SB) 1, Article 59, 82nd Texas Legislature, First Called Session, 2011, added statutory provisions to the TEC, Chapter 12, Subchapter D, and Chapter 45, Subchapter C, that expanded the PSF Bond Guarantee Program to allow for the guarantee of bonds issued for the benefit of open-enrollment charter schools under the TEC, Chapter 53. House Bill (HB) 885, 83rd Texas Legislature, Regular Session, 2013, amended those statutory provisions to explicitly allow for the guarantee of refunding and refinanced bonds issued for the benefit of open-enrollment charter schools, up to an amount equal to one-half of the total amount available for the guarantee of charter school bonds.

Section 33.65 is the rule the SBOE adopted to implement the Bond Guarantee Program for school districts. Section 33.67 is the rule the SBOE adopted to implement the provisions of SB 1, 82nd Texas Legislature, First Called Session, 2011, and HB 885, 83rd Texas Legislature, Regular Session, 2013, to extend the program's guarantee to bonds for open-enrollment charter schools.

Section 33.67 sets out the statutory provisions for the Bond Guarantee Program for charter schools, provides definitions, and explains bond eligibility requirements and how the capacity of the PSF to guarantee charter school bonds is determined. The rule also establishes the requirements of and policies related to the program's application and approval process. In addition, the rule allows for the commissioner to allocate specific holdings of the PSF under certain conditions, explains what effect defeasance has on guaranteed bonds, and sets out program payment conditions and guarantee restrictions.

At the April 2014 meeting of the Committee on School Finance/PSF, committee members discussed a fellow board member's proposal to amend §33.65 to allow commercial paper notes to be eligible for the Bond Guarantee Program and agency legal counsel's recommendation to not make that change. Committee members also discussed a recommendation from agency legal counsel and staff members to instead address any ambiguity about which debt instruments are eligible for the school district Bond Guarantee Program by amending the rule to define these debt instruments more precisely.

At the July 2014 meeting of the committee, during discussion of the report of the PSF executive administrator and chief investment officer, committee members directed agency staff members to present, for first reading and filing authorization at the September 2014 meeting, a proposed amendment to both §33.65 and §33.67 to define eligible debt instruments more precisely, as described by agency legal counsel. During the same discussion at the July 2014 committee meeting, agency legal counsel explained to committee members that a charter school with a rating from an investment rating firm that was not one of the "Big Three" firms of Standard & Poor's, Moody's, and Fitch had recently applied for the guarantee under §33.67. Agency legal counsel explained that this application represented the first time the agency had dealt with a charter school

credit rating issued by a firm other than one of the "Big Three." Counsel stated that the SBOE might wish to amend §33.67 to define *nationally recognized investment rating firm*. Committee members directed agency staff members to include a definition of this term in the amendment brought for first reading and filing authorization in September 2014. The SBOE approved the proposed amendment for second reading and final adoption at its November 2014 meeting, as amended by the Committee on School Finance/Permanent School Fund, as follows.

The adopted amendment to §33.67 defines eligible debt more precisely by adding a definition of the term *bond* in subsection (b) that specifies, in part, that a bond is a debt instrument with a term of at least three years and by modifying subsection (f)(5)(A) to require that *each issuance* of bonds be approved by the attorney general for the bonds to be guaranteed.

The adopted amendment also adds a definition of *nationally recognized investment rating firm* in subsection (b) that specifies that the term means an investment rating firm that is, or is part of, Standard & Poor's, Moody's, or Fitch and is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization. For consistency with other SBOE rules governing the PSF, the definition references the three firms already specified in SBOE rule, 19 TAC §33.25(b)(13), relating to permissible and restricted investments of the PSF. The agency has had extensive experience with the three named firms. Additionally, the agency's review indicated that no other investment rating firms had a comparable amount of experience in charter bond ratings, making this definition appropriate at the current time. In response to public comment, however, the SBOE took action at second reading and final adoption to add an expiration date of September 1, 2015, to §33.65(b)(9) and §33.67(b)(16) to provide enough time for the agency to develop a more precise definition for *nationally recognized investment rating firm* for SBOE consideration at a future meeting.

In September 2014, references to *nationally recognized investment rating firm* were added in subsection (e)(2)(A)(vi) and (e)(3)(C), relating to applicant eligibility. The SBOE also included a clarification in subsection (e)(3)(C) to cross reference the definition of a *nationally recognized investment rating firm* in subsection (b)(16). For consistency, the SBOE added this same clarification in subsection (e)(2)(A)(vi) at second reading and final adoption at the November 2014 meeting.

Finally, the adopted amendment clarifies language in subsection (f)(1)(A) regarding the treatment of charter schools that apply for the guarantee within 12 months of the date that their charter is due to expire.

Corresponding technical edits are made throughout the rule to update cross references as necessary.

The adopted amendment has no new procedural and reporting implications. The adopted amendment has no locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE took action to approve the proposed amendment for second reading and final adoption during its November 21, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment for final adop-

tion by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2015 -2016 in order to implement the latest policy in a timely manner. The effective date for the amendment is 20 days after filing as adopted.

Following is a summary of the public comments and corresponding responses regarding the proposed amendment.

Comment: A legal counsel for HR Ratings de México, S.A. de C.V. commented that the proposed definition of *nationally recognized investment rating firm* in §33.65, Bond Guarantee Program for School Districts, and §33.67, Bond Guarantee Program for Charter Schools, would effectively restrict the number of Nationally Recognized Statistical Rating Organizations (NRSROs) to only one, since two of the three NRSROs specified in the proposed definition have stopped issuing ratings. The commenter urged the SBOE to include other firms in addition to the three named in the proposal to increase competition. In addition, the commenter urged the SBOE to consider firms based on the firms' record on quality of ratings. The commenter also offered reasons why the proposed definition would violate provisions of the North American Free Trade Agreement (NAFTA) and was deficient under the Texas Administrative Procedure Act (APA). The commenter requested that the proposal be withdrawn and offered to help craft rule language that would use registration with the Securities and Exchange Commission and reasonable market-based experience as criteria for acceptable NRSROs to preserve the security of the Permanent School Fund.

Response: The SBOE disagrees. The purpose of adding the definition for *nationally recognized investment rating firm* was to clarify standards and protect the Bond Guarantee Program. In addition, for consistency with other SBOE rules governing the PSF, the definition references the three firms already specified in SBOE rule, 19 TAC §33.25(b)(13), relating to permissible and restricted investments of the PSF. The agency has had extensive experience with the three named firms. Additionally, the agency's review indicated that no other investment rating firms had a comparable amount of experience in charter bond ratings, making this definition appropriate at the current time. Furthermore, this definition was provided and deliberated publicly during meetings of the SBOE Committee on School Finance/Permanent School Fund. In response to public comment, however, the SBOE took action at second reading and final adoption to add an expiration date of September 1, 2015, to §33.65(b)(9) and §33.67(b)(16) to provide enough time for the agency to develop a more precise definition for *nationally recognized investment rating firm* for SBOE consideration at a future meeting.

The SBOE also disagrees that the proposal was deficient under the APA. The commenter cited Texas Government Code, §2001.033, and stated that the *Texas Register* notice for the rule action lacked factual basis. Referencing Texas Government Code, §2001.033, which is the statutory requirement for adopting a rule, was premature. The proposed amendments to §33.65 and §33.67 were filed in compliance with Texas Government Code, §2001.024, the statutory requirement for filing a proposal and seeking public comment. The SBOE disagrees that it has failed to state a reasoned justification for the rule definition of *nationally recognized investment rating firm*. The SBOE has explained above why the rule's definition is appropriate at the time of adoption.

Comment: The Texas Charter Schools Association (TCSA) commented that the bond guarantee program has been very helpful to the charter schools and expressed support for the program to continue. A bond counsel for the TCSA commented that the

bond guarantee program had saved a charter school \$10.8 million in a recent bond issue.

Response: The SBOE agrees.

Comment: A bond counsel for the TCSA commented that the definition of *nationally recognized investment rating firm* in proposed §33.67(b)(16) should be revised to exclude the names of three specific firms, leaving *designated by the United States Securities and Exchange Commission* as the qualifying criterion. The bond counsel addressed the need to increase competition for rating firms.

Response: The SBOE disagrees with excluding the names of the specific firms from the definition until further study of the issues raised by public comment. However, the SBOE took action at second reading and final adoption to add an expiration date of September 1, 2015, to §33.65(b)(9) and §33.67(b)(16) to provide enough time for the agency to develop a more precise definition for *nationally recognized investment rating firm* for SBOE consideration at a future meeting.

Comment: A bond counsel for the TCSA recommended that the reference to the definition of *nationally recognized investment rating firm* in §33.67(e)(2)(A)(vi) should be replaced with the requirement that a charter school must have received an investment grade credit rating from Standard & Poors or from another nationally recognized investment rating firm so long as the Standard & Poors rating is not lower than BB+.

Response: The SBOE disagrees with replacing the reference to the definition of *nationally recognized investment rating firm* in §33.67(b)(16) until further study of issues raised by public comment. The SBOE took action at second reading and final adoption to add an expiration date of September 1, 2015, to §33.65(b)(9) and §33.67(b)(16) to provide enough time for the agency to develop a more precise definition for *nationally recognized investment rating firm* for SBOE consideration at a future meeting.

The amendment is adopted under the Texas Education Code (TEC), §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under the TEC, Chapter 45, Subchapter C, and §45.063, which authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program; and the Texas Constitution, Article VII, Section 5, which authorizes the bond guarantee program.

The amendment implements the Texas Education Code, §7.102(c)(33) and §45.063, and the Texas Constitution, Article VII, Section 5.

§33.67. *Bond Guarantee Program for Charter Schools.*

(a) Statutory provision. The commissioner of education must administer the guarantee program for open-enrollment charter school bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for open-enrollment charter school bonds.

(1) Amortization expense--The annual expense of any debt and/or loan obligations.

(2) Annual debt service--Payments of principal and non-capitalized interest on outstanding bonded debt scheduled to occur during a charter district's fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the charter district is responsible for outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the charter district as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement or, if there is no official statement, debt service amounts based on the maximum rate permitted by the bond resolution or other bond proceeding that establishes a maximum interest rate for the bonds.

(C) Annual debt service includes required payments into a sinking fund as authorized under 26 United States Code (USC) §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter district.

(3) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be submitted electronically through the website of the MAC of Texas or its successor by 5:00 p.m. on the last business day of the month to be considered in that month's application processing. This application deadline does not apply to applications for issues to refund bonds previously guaranteed by the Bond Guarantee Program.

(4) Board resolution--The resolution adopted by the governing body of an open-enrollment charter holder that:

(A) requests guarantee of bonds through the Bond Guarantee Program; and

(B) authorizes the charter holder's administration to pursue bond financing.

(5) Bond--A debt security issuance approved by the attorney general, issued under the TEC, Chapter 53, to provide long-term financing with a maturity schedule of at least three years.

(6) Bond Guarantee Program (BGP)--The guarantee program that is described by this section and established under the TEC, Chapter 45, Subchapter C.

(7) Bond resolution--The resolution, indenture, or other instrument adopted by the governing body of an issuer of bonds authorizing the issuance of bonds for the benefit of a charter district.

(8) Charter district--An open-enrollment charter holder designated as a charter district under subsection (e) of this section, as authorized by the TEC, §12.135.

(9) Combination issue--An issuance of bonds for which an application for a guarantee is filed that includes both a new money portion and a refunding portion, as permitted by the TEC, Chapter 53. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(10) Debt service coverage ratio--A measure of a charter district's ability to pay interest and principal with cash generated from current operations. The debt service coverage ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses plus interest expense plus depreciation expense plus amortization expense, all divided by annual debt service. The calculation can be expressed as: (Excess of revenues over expenses + interest expense + depreciation expense + amortization expense) / annual debt service.

(11) Depreciation expense--The audited amount of depreciation that was expensed during the fiscal period.

(12) Educational facility--A classroom building, laboratory, science building, faculty or administrative office building, or other facility used exclusively for the conduct of the educational and administrative functions of a charter school.

(13) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state appropriated funding for school districts in the state of Texas.

(14) Long-term debt--Any debt of the charter district that has a term of greater than three years and is secured on a parity basis with the bonds to be guaranteed.

(15) Maximum annual debt service--As of any date of calculation, the highest annual debt service requirements with respect to all outstanding long-term debt for any succeeding fiscal year.

(16) Nationally recognized investment rating firm--An investment rating firm that is, or is part of, Standard & Poor's, Moody's, or Fitch and is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization. This paragraph expires September 1, 2015.

(17) New money issue--An issuance of revenue bonds under the TEC, Chapter 53, for the purposes of:

(A) the acquisition, construction, repair, or renovation of an educational facility of an open-enrollment charter school and equipping real property of an open-enrollment charter school; or

(B) the refinancing of one or more promissory notes executed by an open-enrollment charter school, each in an amount in excess of \$500,000, that evidence one or more loans from a national or regional bank, nonprofit corporation, or foundation that customarily makes loans to charter schools, the proceeds of which loans were used for a purpose described in subparagraph (A) of this paragraph; or

(C) both.

(18) Open-enrollment charter--This term has the meaning assigned in §100.1001 of this title (relating to Definitions).

(19) Open-enrollment charter holder--This term has the meaning assigned to the term "charter holder" in the TEC, §12.1012.

(20) Open-enrollment charter school--This term has the meaning assigned to the term "charter school" in §100.1001 of this title.

(21) Open-enrollment charter school campus--This term has the meaning assigned to the term "charter school campus" in §100.1001 of this title.

(22) Refunding issue--An issuance of bonds under the TEC, Chapter 53, for the purpose of refunding:

(A) bonds that have previously been issued under that chapter and have previously been approved by the attorney general; or

(B) bonds that have previously been issued for the benefit of an open-enrollment charter school under Vernon's Civil Statutes, Article 1528m, and have previously been approved by the attorney general.

(c) Bond eligibility.

(1) Only those combination, new money, and refunding issues as defined in subsection (b)(9), (17), and (22), respectively, of this section are eligible to receive the guarantee. The bonds must, without the guarantee, be rated as investment grade by a nationally recognized investment rating firm and must be issued on or after September 28, 2011.

(2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds.

(A) As with any open-enrollment charter holder applying for approval for the guarantee, the charter holder for which the refunding bonds are being issued must meet the requirements for charter district designation specified in subsection (e)(2) of this section and the requirements for initial approval specified in subsection (f)(3)(A) of this section.

(B) The charter holder must demonstrate that issuing the refunding bond(s) will result in a present value savings to the charter holder. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds. If the commissioner approves refunding bonds for the guarantee based on evidence of present value savings but at the time of the sale of the refunding bonds a present value savings is not realized, the commissioner may revoke the approval of the bonds for the guarantee.

(C) For issues that refund bonds previously guaranteed by the BGP, the charter holder must demonstrate that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded.

(D) The refunding transaction must comply with the provisions of subsection (f)(5)(A) - (C) and (E) of this section.

(3) If an open-enrollment charter holder files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this section. As part of its application, the charter holder making the application must present data that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.

(d) Determination of Permanent School Fund (PSF) capacity to guarantee bonds for charter districts.

(1) Each month the commissioner will estimate the available capacity of the PSF to guarantee bonds for charter districts. This capacity is determined by taking the net capacity determined under §33.65 of this title (relating to Bond Guarantee Program for School Districts), subtracting the total amount of outstanding guaranteed bonds, and then determining the percentage of the difference that is equal to the percentage of the number of students enrolled in open-enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner. The commissioner's determination of the number of students enrolled in open-enrollment charter schools in this state and the number of students enrolled in all public schools in this state is based on the enrollment data submitted by school districts and charter schools to the Public Education Information Management System (PEIMS) during the most recent fall PEIMS submission. Annually, the commissioner will post the applicable student enrollment numbers and the percentage of students enrolled in open-enrollment charter schools on the Texas Education Agency (TEA) web page related to the BGP.

(2) Up to half of the total capacity of the PSF to guarantee bonds for charter districts may be used to guarantee charter district refunding bonds.

(e) Application process and application processing. An open-enrollment charter holder must apply to the commissioner for the guarantee of eligible bonds by submitting an application electronically through the website of the MAC of Texas or its successor. Before an application for the guarantee will be considered, a charter holder must first be determined by the commissioner to meet criteria for designation as a charter district for purposes of this section. The application submitted through the website of the MAC of Texas or its successor will serve as both a charter holder's application for designation as a charter district and its application for the guarantee.

(1) Application submission and fee. As part of its application, an open-enrollment charter holder must submit the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The open-enrollment charter holder may not submit an application for a guarantee before the governing body of the charter holder adopts a board resolution as defined in subsection (b)(4) of this section.

(A) The amount of the application fee is the amount specified in §33.65 of this title.

(B) The fee is due at the time the application for charter district designation and the guarantee is submitted. An application will not be processed until the fee has been remitted according to the directions provided on the website of the MAC of Texas or its successor and received by the TEA.

(C) The fee will not be refunded to an applicant that:

(i) is designated a charter district but is not approved for the guarantee; or

(ii) receives approval for the guarantee but does not sell its bonds before the expiration of its approval for the guarantee.

(D) The fee may be transferred to a subsequent application for the guarantee by a charter district that has been approved for the guarantee if the charter district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee.

(2) Eligibility to be designated a charter district.

(A) To be designated a charter district and have its application for the guarantee considered by the commissioner, an open-enrollment charter holder must:

(i) have operated at least one open-enrollment charter school in the state of Texas for at least three years and have had students enrolled in the school for those three years;

(ii) identify in its application for which open-enrollment charter school and, if applicable, for which open-enrollment charter school campus the bond funds will be used;

(iii) in its application, agree that the bonded indebtedness for which the guarantee is sought will be undertaken as an obligation of all entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness, provided that an entity that does not operate a charter school in Texas is subject to this subparagraph only to the extent that it has received state funds from the open-enrollment charter holder;

(iv) not have an unresolved corrective action that is more than one year old, unless the open-enrollment charter holder has taken appropriate steps, as determined by the commissioner, to begin resolving the action;

(v) have had, for the past three years, an audit as required by §100.1047 of this title (relating to Accounting for State and Federal Funds) that was completed with unqualified or unmodified opinions; and

(vi) have received an investment grade credit rating from a nationally recognized investment rating firm as defined in subsection (b)(16) of this section as specified by the TEC, §45.0541, within the last year.

(B) For an open-enrollment charter holder to be designated a charter district and have its application for the guarantee considered by the commissioner, each open-enrollment charter school operated under the charter must not have an accreditation rating of Not Accredited-Revoked and must have a rating of met standard or met alternative standard as its most recent state academic accountability rating. However, if an open-enrollment charter school operated under the charter is not yet rated because the school is in its first year of operation, that fact will not impact the charter holder's eligibility to be designated a charter district and apply for the guarantee.

(3) Application processing. All applications received during a calendar month that were submitted by open-enrollment charter holders determined to meet the criteria in paragraph (2) of this subsection will be held until the 15th business day of the subsequent month. On the 15th business day of each month, the commissioner will announce the results of the pro rata allocation of available capacity, if pro rata allocation is necessary, and process applications for initial approval for the guarantee, up to the available capacity as of the application deadline, subject to the requirements of this section.

(A) If the available capacity is insufficient to guarantee the total value of the bonds for all applicant charter districts, the commissioner will allocate the available capacity on a pro rata basis to each applicant charter district. For each applicant, the commissioner will determine the percentage of the total amount of all applicants' proposed bonds that the applicant's proposed bonds represent. The commissioner will then allocate to that applicant the same percentage of the available capacity, but in no event will an allocation be equal to an amount less than \$500,000.

(B) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (f) of this section.

(C) An applicant charter district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(16) of this section is the same as or higher than that of the PSF.

(4) Late application. An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting open-enrollment charter holder before the end of the subsequent month.

(5) Notice of application status. Each open-enrollment charter holder that submits a valid application will be notified of the application status within 15 business days of the application deadline.

(6) Reapplication. If an open-enrollment charter holder does not receive designation as a charter district, does not receive approval for the guarantee, or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (f)(5) of this section, the charter holder may reapply in a subsequent month. An application that was denied approval

for the guarantee or that was submitted by a charter holder that the commissioner determined did not meet the criteria for charter district designation will not be retained for consideration in subsequent months. A reapplication fee will be required unless the conditions described in subsection (e)(1)(D) of this section apply to the charter holder.

(f) Approval for the guarantee; charter district responsibilities on receipt of approval.

(1) Approval for the guarantee and charter renewal or amendment.

(A) If an open-enrollment charter holder applies for the guarantee within the 12 months before the charter holder's charter is due to expire, application approval will be contingent on successful renewal of the charter, and the bonds for which the open-enrollment charter holder is applying for the guarantee may not be issued before the successful renewal of the charter.

(B) If an open-enrollment charter holder proposes to use the proceeds of the bonds for which it is applying for the guarantee for an expansion that requires a charter amendment, application approval will be contingent on approval of the amendment, and the bonds may not be issued before approval of the amendment.

(2) Initial and final approval provisions.

(A) The commissioner may require an applicant charter district to obtain final approval for the guarantee as described in paragraph (4) of this subsection if:

(i) during the monthly estimation of PSF capacity described in §33.65 of this title, the commissioner determines that the available capacity of the PSF as described in §33.65 of this title is 10% or less; or

(ii) during the monthly estimation of the available capacity of the PSF to guarantee bonds for charter districts described in subsection (d) of this section, the commissioner determines that the available capacity of the PSF to guarantee bonds for charter districts is 10% or less.

(B) If the commissioner has not made such a determination:

(i) the commissioner will consider the initial approval described in paragraph (3) of this subsection as both the initial and final approval; and

(ii) an applicant charter district that has received notification of initial approval for the guarantee, as described in paragraph (3) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.

(3) Initial approval.

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new money, refunding, or combination issue. Under the TEC, §45.056, the commissioner will investigate the financial status of the applicant charter district and the accreditation status of all open-enrollment charter schools operated under the charter. For the charter district's application to be eligible for initial approval by the commissioner, each open-enrollment charter school operated under the charter must be accredited, and the charter district must be financially sound. The commissioner's review will include review of the following:

(i) the purpose of the bond issue;

(ii) the accreditation status, as defined by §97.1055 of this title (relating to Accreditation Status), of all open-enrollment charter schools operated under the charter in accordance with the following, except that, if an open-enrollment charter school operated under the charter has not yet received an accreditation rating because it is in its first year of operation, that fact will not impact the charter district's eligibility for consideration for the guarantee:

(I) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the charter district will be eligible for consideration for the guarantee;

(II) if the accreditation status of any open-enrollment charter school operated under the charter is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the charter district will not be eligible for consideration for the guarantee; or

(III) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited-Revoked, the charter district will not be eligible for consideration for the guarantee;

(iii) the charter district's financial status and stability, regardless of each open-enrollment charter school's accreditation rating, including approval of the bonds by the attorney general under the provisions of the TEC, §53.40;

(iv) whether the TEA has required the charter district to submit a financial plan under §109.1101 of this title (relating to Financial Solvency Review) in the last three years;

(v) the audit history of the charter district and of all open-enrollment charter schools operated under the charter;

(vi) the charter district's compliance with statutes and rules of the TEA and with applicable state and federal program requirements and the compliance of all open-enrollment charter schools operated under the charter with these statutes, rules, and requirements;

(vii) any interventions and sanctions to which the charter district has been subject; to which any of the open-enrollment charter schools operated under the charter has been subject; and, if applicable, to which any of the open-enrollment charter school campuses operated under the charter has been subject;

(viii) formal complaints received by the TEA that have been made against the charter district, against any of the open-enrollment charter schools operated under the charter, or against any of the open-enrollment charter school campuses operated under the charter;

(ix) the state academic accountability rating of all open-enrollment charter schools operated under the charter and the campus ratings of all open-enrollment charter school campuses operated under the charter;

(x) any unresolved corrective actions that are less than one year old; and

(xi) whether the charter district is considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation.

(B) The commissioner will limit approval for the guarantee to a charter district with a historical debt service coverage ratio, based on annual debt service, of at least 1.1 for the most recently completed fiscal year and a projected debt service coverage ratio, based on



projected revenues and expenses and maximum annual debt service, of at least 1.2. If the bond issuance for which an application has been submitted is the charter district's first bond issuance, the commissioner will evaluate only projected debt service coverage. Projections of revenues and expenses are subject to approval by the commissioner.

(C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant charter district whose application has received initial approval for the guarantee written notice of initial approval.

(4) Final approval. The provisions of this paragraph apply only as described in paragraph (2) of this subsection. A charter district must receive final approval before completing the sale of the bonds for which the charter district has received notification of initial approval.

(A) A charter district that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The charter district must receive written confirmation from the TEA that the capacity continues to be available and must continue to meet the requirements of subsection (e)(2) of this section before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A charter district that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the bond issuer's board of directors no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the issuer to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The charter district must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the bond issuer or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the bond issuer expects to complete the sale by official action of the bond issuer or of a pricing officer or committee.

(C) The TEA will process requests for final approval from charter districts that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) A charter district may provide written notification as required by this paragraph by facsimile transmission, by email, or in another manner prescribed by the commissioner.

(5) Charter district responsibilities on receipt of approval.

(A) Once a charter district is awarded initial approval for the guarantee, each issuance of the bonds must be approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee. The initial approval for the guarantee will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving

a written request from the charter district or the attorney general before the expiration of the 180-day period.

(B) If applicable, the charter district must comply with the provisions for final approval described in paragraph (4) of this subsection to maintain approval for the guarantee.

(C) If the bonds are not approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee, the commissioner will consider the application withdrawn, and the charter district must reapply for a guarantee.

(D) A charter district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee.

(E) The charter district must provide evidence of the final investment grade rating of the bonds to the TEA after receiving initial approval but before the distribution of the preliminary official statement for the bonds or, if the bonds are offered in a private placement, before approval of the bond sale by the governing body of the charter district.

(F) A charter district must identify by legal description any educational facility purchased or improved with bond proceeds no later than 30 days after entering into a binding commitment to expend bond proceeds for that purpose. The charter district must identify at that time whether and to what extent debt service will be paid with any source of revenue other than state funds.

(g) Allocation of specific holdings. If necessary to successfully operate the BGP, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will not prejudice the right of the State Board of Education (SBOE) to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

(h) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond resolution. If bonds guaranteed by the BGP are defeased, the charter district must notify the commissioner in writing within ten calendar days of the action.

(i) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(j) Guarantee restrictions. The guarantee provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee applies to all matured interest on eligible bonds, whether the bonds were issued with a fixed or variable interest rate and whether the interest rate changes as a result of an interest reset provision or other bond resolution provision requiring an interest rate change. The guarantee does not extend to any obligation of a charter district under any agreement with a third party relating to bonds that is defined or described in state law

as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(k) Notice of default. A charter district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the fifth business day before the maturing or matured principal or interest becomes due, notify the commissioner.

(l) Payment from Charter District Bond Guarantee Reserve Fund and PSF.

(1) Immediately after the commissioner receives the notice described in subsection (k) of this section, the commissioner will notify the TEA division responsible for administering the PSF of the notice of default and instruct the comptroller to transfer from the Charter District Bond Guarantee Reserve Fund established under the TEC, §45.0571, to the charter district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(2) If money in the reserve fund is insufficient to pay the amount due on a bond under paragraph (1) of this subsection, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the charter district's paying agent the amount necessary to pay the balance of the unpaid maturing or matured principal or interest.

(3) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the fund or funds from which payment was made.

(4) To ensure that the charter district reimburses the reserve fund and the PSF, if applicable, the commissioner will withhold from state funds otherwise payable to the charter district the amount that the charter district owes in reimbursement.

(5) Funds intercepted for reimbursement under paragraph (4) of this subsection will be used to fully reimburse the PSF before any funds reimburse the reserve fund. If the funds intercepted under paragraph (4) of this subsection are insufficient to fully reimburse the PSF with interest, subsequent payments into the reserve fund will first be applied to any outstanding obligation to the PSF.

(6) Following full reimbursement to the reserve fund and the PSF, if applicable, with interest, the comptroller will further cancel the bond or coupon and forward it to the charter district for which payment was made. Interest will be charged at the rate determined under the Texas Government Code (TGC), §2251.025(b). Interest will accrue as specified in the TGC, §2251.025(a) and (c). For purposes of this section, the "date the payment becomes overdue" that is referred to in the TGC, §2251.025(a), is the date that the comptroller makes the payment to the charter district's paying agent.

(m) Bonds not accelerated on default. If a charter district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the charter district's default.

(n) Reimbursement of Charter District Bond Guarantee Reserve Fund or PSF. If payment from the Charter District Bond Guarantee Reserve Fund or the PSF is made on behalf of a charter district, the charter district must reimburse the amount of the payment, plus interest, in accordance with the requirements of the TEC, §45.061.

(o) Repeated failure to pay. If a total of two or more payments are made under the BGP on the bonds of a charter district, the commis-

sioner may take action in accordance with the provisions of the TEC, §45.062.

(p) Report on the use of funds and confirmation of use of funds by independent auditor. A charter district that issues bonds approved for the guarantee must report to the TEA annually in a form prescribed by the commissioner on the use of the bond funds until all bond proceeds have been spent. The charter district's independent auditor must confirm in the charter district's annual financial report that bond funds have been used in accordance with the purpose specified in the application for the guarantee.

(q) Failure to comply with statute or this section. An open-enrollment charter holder's failure to comply with the requirements of the TEC, Chapter 45, Subchapter C, or with the requirements of this section, including by making any material misrepresentations in the charter holder's application for charter district designation and the guarantee, constitutes a material violation of the open-enrollment charter holder's charter.

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

Filed with the Office of the Secretary of State on December 19, 2014.

TRD-201406225  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Effective date: January 8, 2015  
Proposal publication date: October 17, 2014  
For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 11. TEXAS BOARD OF NURSING

#### CHAPTER 223. FEES

##### 22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to §223.1, concerning Fees. The amendments are adopted without changes to the proposed text published in the November 21, 2014, issue of the *Texas Register* (39 TexReg 9148) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.155 and §301.151 and eliminate unnecessary and obsolete provisions from the rule text. Although the Board continues to print replacement "wall" certificates, the Board no longer issues duplicate or substitute licenses, as licensees are now able to print licensure verification and copies directly from the Board's website. Further, the Board no longer utilizes docketing fees in non-disciplinary matters. As such, the adopted amendments remove these provisions from the rule text and re-number the remaining provisions accordingly.

How the Sections Will Function. The adopted amendments eliminate the fees for duplicate or substitute licenses and docketing fees in non-disciplinary matters from the rule. The remaining adopted amendments re-number the paragraphs of the section appropriately.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.155 and §301.151.

Section 301.155(a) provides that, the Board, by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering Chapter 301. The Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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 December 22, 2014.

TRD-201406229

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Effective date: January 11, 2015

Proposal publication date: November 21, 2014

For further information, please call: (512) 305-6822



## PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

### CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board) adopts amendments to §§681.2, 681.31, 681.41, 681.52, 681.92, 681.93, 681.114, 681.161, and 681.171, concerning the licensing and regulation of professional counselors. Sections 681.2, 681.41, and 681.114 are adopted with changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5280). Sections 681.31, 681.52, 681.92, 681.93, 681.161, and 681.171 are adopted without changes, and the sections will not be republished.

#### BACKGROUND AND PURPOSE

The amendments are adopted to specify new methods of counseling, requirements associated with the new counseling methods, limitations on Licensed Professional Counselor (LPC) Interns and the acceptance of post graduate supervised experience hours. The amendments specify responsibilities of a board approved supervisor; the amendments also set forth licensing procedures required under Occupations Code, Chapter 55 for licensing military service members, military veterans and military spouses. The amendments specify the procedure for processing a complaint filed against and LPC. Finally, the amendments

ensure that the rules are updated to reflect current legal, policy, and operational considerations; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

#### SECTION-BY-SECTION SUMMARY

The following amendment is adopted concerning Subchapter A (relating to The Board).

The definition of "distance counseling" is revised in §681.2 to define how counseling can be conducted if the counselor and client are not in the same location when the counseling is provided.

The following amendment is adopted concerning Subchapter B (relating to Authorized Counseling Methods and Practices).

Section 681.31 adds the term marriage/couples counseling to the approved modalities used by a licensed counselor.

The following amendments are adopted concerning Subchapter C (relating to Code of Ethics).

Section 681.41 is amended to allow technological means of communication as a permitted type of counseling, provided certain conditions are met in most cases.

Amendments to §681.52(e) preclude an LPC Intern from holding oneself out as being in independent practice; this limitation applies but is not limited to websites, advertisements, or intake documents.

The following amendment is adopted concerning Subchapter F (relating to Experience Requirements for Licensure).

Amendments to §681.92 prohibit the acceptance of post graduate supervised experience hours earned with a previous temporary license if those hours were earned over 5 years ago.

Section 681.93 is amended to specify the responsibility of the board approved supervisor to ensure the supervised hours of the LPC Intern are earned in accordance with board rules.

The following amendments are adopted concerning Subchapter H (relating to Licensing).

Section 681.114 is amended to reflect the implementation of Senate Bill 1733, 82nd Legislature, 2011, Regular Session, Senate Bill 162 and House Bill 2254 of the 83rd Legislature, Regular Session, 2013, which amended Occupations Code, Chapter 55, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses.

The following amendments are adopted concerning Subchapter K (relating to Complaints and Violations).

Amendments to §681.161 expand the complaint procedure and resulting process of handling the complaint.

Section 681.171 is amended to remove the reference to the Act (Texas Occupations Code), Chapter 503, Subchapter K, in order to provide the board with more flexibility regarding administrative penalties.

#### COMMENTS

The board received many comments to the proposed rules and prepared responses to the comments received. There were 28 commenters included multiple individuals and the following associations, organizations and universities including the Texas Counseling Association, and the Texas Association for Counselor Education and Supervision. Commenters were generally in favor of the rules; however, some commenters suggested rec-

ommendations for change as discussed in the summary of comments.

COMMENT: There were 28 commenters, including the Texas Counseling Association, Texas Association for Counselor Education and Supervision and multiple individuals, opposing the definition of distance counseling which requires that the counselor and client be within the State of Texas.

RESPONSE: The board agrees and amended §681.2(10) to require that the client be a resident of or within the State of Texas and the counselor be licensed in the State of Texas.

COMMENT: There were 28 commenters, including the Texas Counseling Association, Texas Association for Counselor Education and Supervision and multiple individuals, opposing the recommendation that an LPC have a face to face session with a client before beginning a distance counseling relationship; these commenters also opposed the requirement that the counselor and client be within the borders of Texas at the time the counseling session is conducted.

RESPONSE: The board agrees in part, and §681.41(g) was revised and now allows technological means of communication as long as all rules of the board are followed.

COMMENT: A commenter stated that §681.114(f) needs to be revised to correct a grammatical statement.

RESPONSE: The rule was revised to state that "The board shall issue a license..." instead of "The license issue a license..."

COMMENT: There were 3 commenters opposing the requirement that the Executive Director request the entire client file when a complaint is filed against a licensee.

RESPONSE: The board disagrees. The board feels that in order to determine if a rule or statutory violation occurred, the complaints committee members need all documentation in the client file for review by the committee. No changes were made to §681.161 as a result of these comments.

## SUBCHAPTER A. THE BOARD

### 22 TAC §681.2

#### STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

#### §681.2. Definitions.

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

(1) Accredited universities--Universities as reported by the American Association of Collegiate Registrars and Admission Officers.

(2) Act--The Licensed Professional Counselor Act, Texas Occupations Code, Chapter 503.

(3) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(4) Art therapy--A human service profession in which clients, facilitated by the art therapist, use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.

(5) Board--The Texas State Board of Examiners of Professional Counselors.

(6) Client--A person who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.

(7) Counseling-related field--A mental health discipline utilizing human development, psychotherapeutic, and mental health principles including, but not limited to, clinical or counseling psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.

(8) Department--Department of State Health Services.

(9) Direct client contact--Time spent counseling with clients.

(10) Distance counseling--Where the client is a resident of or within the State of Texas and the counselor is licensed by the State of Texas.

(11) Health care professional--Any person licensed, certified, or registered by the state in a health related profession.

(12) Indirect hours--Time spent in management, administration or other aspects of counseling service ancillary to direct client contact.

(13) License--A regular license, regular license with art therapy specialty designation, provisional license, or temporary license issued by the board.

(14) Licensee--A person who holds a regular license, regular license with art therapy specialty designation, provisional license, or temporary license.

(15) LPC--A person holding a regular license as a professional counselor with authority to practice in independent practice.

(16) LPC Intern--A person who holds a temporary license to practice counseling.

(17) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, 26 U.S.C. §501(c)(3) and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2(g)(i) (2012);

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

(C) the person does not use the title of or hold himself or herself out as a professional counselor.

(18) Supervisor--A person approved by the board as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements), to supervise an LPC Intern.

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 December 23, 2014.

TRD-201406236

Glynda Corley  
Chair

Texas State Board of Examiners of Professional Counselors

Effective date: January 12, 2015

Proposal publication date: July 11, 2014

For further information, please call: (512) 776-6972



## SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES

### 22 TAC §681.31

#### STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

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 December 23, 2014.

TRD-201406238

Glynda Corley  
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Texas State Board of Examiners of Professional Counselors

Effective date: January 12, 2015

Proposal publication date: July 11, 2014

For further information, please call: (512) 776-6972



## SUBCHAPTER C. CODE OF ETHICS

### 22 TAC §681.41, §681.52

#### STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

#### §681.41. General Ethical Requirements.

(a) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:

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

(b) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.

(c) A licensee shall discourage a client from holding exaggerated or false ideas about the licensee's professional services, including, but not limited to, the effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee shall take immediate and reasonable action to correct the ideas held.

(d) A licensee shall make reasonable efforts to discourage others whom the licensee does not control, from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee shall take immediate and reasonable action to correct the statement.

(e) Regardless of setting, a licensee shall provide counseling only in the context of a professional relationship. Prior to providing services a licensee shall inform an individual in writing of the following:

- (1) fees and arrangements for payment;
- (2) counseling purposes, goals, and techniques;
- (3) any restrictions placed on the license by the board;
- (4) the limits on confidentiality;
- (5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client; and
- (6) supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;
- (7) the name, address and telephone number of the board for the purpose of reporting violations of the Act or this chapter; and
- (8) the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

(f) A licensee shall inform the client in writing of any changes to the items in subsection (e) of this section prior to initiating the change.

(g) Technological means of communication may be used to facilitate the therapeutic counseling process. Counselors engaging in interactive distance counseling must adhere to each provision of the rules and statutes of the board.

(h) In accordance with the provisions of the Act, §503.401(a)(4), a licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional.

(i) A licensee employed or under contract with a chemical dependency facility or a mental health facility shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law relating to illegal remuneration.

(j) A licensee shall not engage in activities for the licensee's personal gain at the expense of a client.

(k) A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee shall first inform the client of the licensee's personal and/or business interest therein. A licensee shall not exert undue influence in promoting such activities, services or products.

(l) A licensee shall set and maintain professional boundaries.

(m) Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.

(1) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.

(2) A licensee may engage in a non-therapeutic relationship with a client if the relationship begins more than two years after the end of the counseling relationship and the non-therapeutic relationship is consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(3) A licensee may engage in sexual contact with a client if the contact begins more than five years after the end of the counseling relationship and the non-therapeutic relationship is consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(4) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate that there has been no exploitation and that the non-therapeutic relationship is not detrimental to the client in light of all relevant factors, including but not limited to the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).

(5) The licensee shall not provide counseling services to previous or current:

- (A) family members;
- (B) personal friends;
- (C) educational associates; or
- (D) business associates.

(6) The licensee shall not give or accept a gift from a client or a relative of a client valued at more than \$50, or borrow or lend money or items of value to clients or relatives of clients or accept payment in the form of goods or services rendered by a client or relative of a client.

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

(n) The licensee shall not knowingly offer or provide counseling to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee shall request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.

(o) A licensee may take reasonable action to inform medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(p) In individual and group counseling settings, the licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within a group or from individual counseling.

(q) For each client, a licensee shall keep accurate records of the intake assessment, the dates of counseling treatment intervention, principal treatment methods, progress notes, treatment plan, and billing information.

(r) Records held by a licensee shall be kept for a minimum of five years from the date of the last contact with the client.

(s) Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local governmental agencies; or their political subdivisions or programs are not required to comply with subsections (q) and (r) of this section.

(t) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(1) Relationships between a licensee and any other person used by the licensee to provide services to a client shall be so reflected on billing documents.

(2) Pursuant to Texas Health and Safety Code, Chapter 611, on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee shall provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(3) A licensee may not knowingly overcharge a client.

(4) With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention that the licensee knows was not provided or knows was improper, unreasonable, or unnecessary.

(5) A licensee shall comply with requirements of Texas Health and Safety Code, Chapters 611 and 181, concerning the release of mental health records and confidential information.

(6) Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee shall obtain and review a current copy of the custody agreement or court order, as well as any applicable part of the divorce decree. A licensee shall maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee shall follow the protocol set forth in such federal or state statutes.

(u) A licensee shall terminate a professional counseling relationship when it is reasonably clear that the client is not benefiting from the relationship.

(v) Upon termination of a relationship if professional counseling is still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.

(w) A licensee shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual.

(x) A licensee shall not knowingly over treat a client.

(y) A licensee shall not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the

Act. A licensee shall report to the board knowledge of any unlicensed practice of counseling.

(z) A licensee or an applicant for licensure shall not participate in any way in the falsification of applications for licensure or renewal of license.

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406237

Glynda Corley  
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Texas State Board of Examiners of Professional Counselors

Effective date: January 12, 2015

Proposal publication date: July 11, 2014

For further information, please call: (512) 776-6972



## SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

### 22 TAC §681.92, §681.93

#### STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

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 December 23, 2014.

TRD-201406240

Glynda Corley  
Chair

Texas State Board of Examiners of Professional Counselors

Effective date: January 12, 2015

Proposal publication date: July 11, 2014

For further information, please call: (512) 776-6972



## SUBCHAPTER H. LICENSING

### 22 TAC §681.114

#### STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

*§681.114. Licensing of Military Service Members, Military Veterans, and Military Spouses.*

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Ser-

vice Members, Military Veterans, and Military Spouses). For purposes of this section:

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

(2) "Military spouse" means a person who is married to a military service member who is currently on active duty.

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

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The board shall issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

(i) If the board issues an initial license to an applicant who is a military spouse in accordance with subsection (f) of this section, the board shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The board shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A

license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

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 December 23, 2014.

TRD-201406242

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: January 12, 2015

Proposal publication date: July 11, 2014

For further information, please call: (512) 776-6972



## SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

### 22 TAC §681.161, §681.171

#### STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

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 December 23, 2014.

TRD-201406244

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: January 12, 2015

Proposal publication date: July 11, 2014

For further information, please call: (512) 776-6972



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

##### SUBCHAPTER G. SPINAL SCREENING PROGRAM

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §37.141 and §37.142, new §§37.143 - 37.148, and the repeal of §§37.143 - 37.152, concerning the Spinal Screening Program (program). The amendment to §37.142 and new §§37.143, 37.145, 37.146,

and 37.148 are adopted with changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5295). The amendment to §37.141, new §37.144 and §37.147, and the repeal of §§37.143 - 37.152 are adopted without changes and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

The department administers the state program which is designed to identify abnormal spinal curvature in certain school-age children attending public and private schools. The schools ensure that enrolled children comply with the screening requirements of this subchapter. The rules implement Health and Safety Code, Chapter 37, Abnormal Spinal Curvature in Children, and outline the appropriate standards for the screenings at issue. The program trains and certifies individuals to conduct spinal screenings. The program also trains instructors who themselves then conduct screening training sessions all over the state and issues certificates for individuals to conduct screenings.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.141 - 37.152 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to effectively administer the program. Needed revisions to the rules are detailed herein.

The amendments were necessary to: (1) update, clarify, and provide consistent terminology; (2) restructure sections in order to make them current and improve their readability and user-friendliness; and (3) incorporate national screening standards. As part of the improvement and reorganization related to the four-year review of these rules, the department placed the content of the repealed sections in a more logical organization in the amended and new sections.

A small number of changes, both substantive and clerical, have been made from the proposed version of the rules, and those changes are identified accordingly in the Section-By-Section Summary and Comments Section, as follows.

#### SECTION-BY-SECTION SUMMARY

The amendments to §37.141 provide the complete name of the statute governing the rules.

The amendments to §37.142 provide an update to the subchapter's definitions section, and introduce new terminology used in the rules in this rulemaking action. Renumbering throughout is consistent with the changes to the section. The terms in existing paragraphs (2), (3), (6), (7), (8), (10), (11), (12), (14), and (15) were deleted because they are no longer necessary given other changes in this rulemaking action. A new term and definition at paragraph (2) define the American Academy of Orthopaedic Surgeons (AAOS), an organization that issues recommendations which act as national standards, which states may reference in their state regulations. New paragraph (3) defines the new term "certification," since that term is used in the rules in this subchapter. Amendments to paragraph (5) deleted the unnecessary language "approved by the department" because the rules explain that spinal screening must be conducted following the national standards set by the AAOS. New paragraph (6) introduces a new term, "licensed professional" and was revised in response to comments received during the official 30-day comment period (see discussion in "Comments"). Revisions to new paragraph (7) update the definition of the term "professional examination" and



were revised since this definition was originally proposed in response to comments received (see discussion in "Comments"). Paragraph (8) was amended by adding the text "public or private." In paragraph (9), the term proposed, "scolimeter," was replaced with the term "scoliosis inclinometer" in response to a comment received (see discussion in "Comments"). A revision was also made to the definition to clarify that the term "Scolimeter" is sometimes used interchangeably. The amendment to paragraph (10) clarifies the definition of the term "screening."

Section 37.143 was repealed because the language is no longer necessary given other changes in this rulemaking. New §37.143 is titled "Spinal Screening Procedures." The new language in subsection (a) explains that spinal screening conducted by a person who is not a licensed professional must be conducted following the national standards set by AAOS as they apply to allowable method of screening and age of screening (with a web link given to those standards), with limited exceptions. A revision was made since the proposal version in response to a comment received (see discussion in "Comments"). The words "and referral" were deleted in order to better align these rules with the Health and Safety Code, §37.003(a) and (b). In (a)(1) - (4), the word "scolimeter" was replaced with the term "scoliosis inclinometer" (see discussion in "Comments") in the exceptions to AAOS standards. One of the exceptions to AAOS standards is for the optional use of a scoliosis inclinometer when conducting spinal screenings. One other exception regarding rescreens when using a scoliosis inclinometer was made following comments received from the Texas Orthopaedic Association (TOA) during the stakeholder comment period. The department believes TOA provides appropriate guidelines to follow when abnormal spinal curvatures are identified. A third exception, also introduced following comments received from the TOA during the stakeholder comment period, was revised since the proposal version in response to a comment received. (See "Comments" for discussion.) Another exception pertains to rescreens when a scoliosis inclinometer is not used for screening. Revisions were also made to this exception in response to comments received during the 30-day official comment period. An additional exception aligns rule language pertaining to the grades in which children are to be screened with the statutory authority at Health and Safety Code, §37.001(b).

Other language in §37.143(b) clarifies that persons who are not licensed professionals and who conduct spinal screening must be trained and certified as described in this subchapter. The language in subsection (c) was deleted since the proposal version in response to a comment received (see "Comments" for discussion). Language in subsection (c), renumbered from proposed subsection (d), provides that the requirements of this section would not apply to an individual who is actively under the medical care of an appropriate licensed professional for one or more of the spinal curvature problems for which the screening is done. This language is based on the presumption that appropriately licensed professionals will administer appropriate medical care, as required by their licensure, to such patients.

Section 37.144, "Certification Training for Non-health Practitioners," was repealed as part of the reorganization described previously in this preamble. The new language, under the title "School Requirements; Department Activities," is better aligned with the underlying statutory authority, and is better organized and thus improves clarity, readability and user-friendliness. New language at subsection (a) clarifies that it is the responsibility of the school to keep a copy of the screening results of each individual screened and to mail a copy of the report to the indi-

vidual's parent, managing conservator, or guardian if the spinal screening results suspect an abnormal spinal curvature. New language at subsection (b) clarifies that it is the responsibility of each school to ensure that each individual admitted to the school complies with the screening requirements, with the specific reference to the school "chief administrator" to reflect Health and Safety Code, §37.002(c). Schedules and other requirements for specific groups of children are listed at subsection (b)(1) - (4), and were derived by department subject matter experts, in compliance with the requirements of Health and Safety Code, Chapter 37. Language at new paragraph (1) specifies when children enrolled in school must be screened. New paragraph (2) specifies that the spinal screening requirements for children may be met if the child was screened during the year previous to the scheduled year. The language at new paragraph (3) prevents placing a burden on parents at the closing of a facility each summer and specifies time requirements for screenings at the beginning of the following school year (e.g., semester or quarter). The language at new paragraph (4) allows schools to offer spinal screening to students in grades higher than those in which spinal screening is scheduled if they do not have a record of having been previously screened.

New language at §37.144(c) is better matched to the underlying statutory authority at Health and Safety Code, §37.002(a), and gives facilities a certain amount of flexibility regarding the issue of provisional enrollment. The new language also provides a specific timeframe for the "up to 60 days" time period. Since most of the school-based screening takes place between September and November, the timeframe will give the schools ample time to obtain screening results (by January 30) of each year for reporting and the individual, or the individual's parent, managing conservator, or guardian, ample time to provide the results to the school.

New language at §37.144(d) provides clarification to language in the existing rules regarding exemptions from screening when screening conflicts with the tenets and practices of a church or religious denomination, in order to better align with Health and Safety Code, §37.002(b). New language at subsection (e) clarifies that volunteer assistants in screenings must have completed high school. This ensures that peers of high school students being screened will not participate in the screenings.

Section 37.145, "Approval of Certification Courses and Trainers," was repealed as part of the reorganization described previously in this preamble. The new language consolidates recordkeeping and reporting requirements into one rule, under the title "Recordkeeping and Reporting." The new section provides clearer organization pertaining to the documentation, recordkeeping, and reporting requirements and is better aligned with the underlying statutory authority. New subsection (a) states the requirements specific to individuals conducting screenings. New language at subsection (a)(1) clarifies the documentation requirements of individuals conducting screenings at schools, and those individuals other than professionals who conduct screenings outside of a school, and indicates the specific information that must be recorded in each child's screening record. The department added language in response to a comment received to clarify that electronic signatures and dates are also acceptable. (See discussion in "Comments"). Certified screeners may conduct screenings at a school or outside of a school. The documentation of such screenings, in either circumstance, must be submitted to the school at the time of the screening as stated in §37.145(a)(2). The requirements are designed to help ensure that screenings are conducted

correctly and are documented in an accurate manner. New language at subsection (a)(3) provides a cross-reference to §37.146 regarding requirements for certifications and refresher courses. New language at subsection (b) provides the record-keeping and reporting requirements for schools. Language at paragraph (1) requires a facility to maintain the specified spinal screening records for a minimum of two years, which is consistent with requirements found at Health and Safety Code, §37.003(b). New language at paragraph (2) relates to facility recordkeeping for documents associated with claiming exemptions to screening under Health and Safety Code, §37.002(b). A rule cross-reference in §37.145(b)(2) was revised to reflect revisions made to the proposed rules since the official 30-day comment period (see discussion in "Comments"). New paragraph (3) relates to the transferring of records between facilities, consistent with Health and Safety Code, §37.001(e) and (f) since the transfer of records is intended to make screenings complimentary and not duplicative. Written consent of the individual or the individual's parent, managing conservator, or legal guardian must be obtained. New language at paragraph (4) was derived from existing §37.150, (the department may enter a school and inspect records), revised to better reflect the requirements of Health and Safety Code, §37.001(f). New language at paragraph (5) relates to the annual report that a facility must submit to the department. The rules provide a web link to the department's instructions on submitting the report. The subsection also provides the specific categories on which a facility would be required to report. The department revised category names in subsection (b)(5)(E) - (I) as part of revisions made in response to a comment. (See "Comments" for discussion.). The revisions reflect the deletion of the term "referral" made to §37.143. New language at subsection (c) provides the department address for submissions under this section.

Section 37.146, "Termination of Screener or Trainer Participation," was repealed as part of the reorganization described previously in this preamble. The new language, under the title "Standards and Requirements for Screening Certification and Instructor Training," consolidates and clarifies rule language pertaining to the training and certification of screeners by the department and by department-trained and certified instructors. This new language covers the related matter of training and certification of these instructors, as well as covering issues surrounding the refresher courses that screeners must take. Subsection (a) reiterates that spinal screeners must be properly trained and certified unless they are a licensed professional (as the term is defined in this subchapter). The section also clarifies that there are two options for obtaining screening certification: one being a certificate issued directly by the department following successful completion of a training course given by department staff; and the other being a certificate issued by an instructor trained and authorized by the department to issue such screening certificates. Language at subsection (b) provides details about screening courses, and requires that a person be a high school graduate in order to be eligible to take the course. The department believes this eligibility requirement is appropriate because a certain level of education, coupled with the maturity of someone the age of a high school graduate, is important for comprehending the material a screener must learn and for conducting the screenings. Language at subsection (c) gives details about instructor issuance of screening certificates, as well as covering instructor training. Language at §37.146(d) provides the requirements applicable to screening certificates issued under this subsection. Paragraph (1) requires screeners to follow the requirements of this subchapter, and provides that failure to do so may lead to

the modification, suspension and/or revocation of the screening certificate. Paragraph (2) specifies that a screening certificate is good for five years (unless an adverse action is taken against it by the department), and that renewals are handled as described in paragraph (3). Paragraph (3) provides the requirements for renewal of screening certificates and for refresher training courses, including associated deadlines and the consequences of not renewing the certification within the required time period. The language at paragraph (4) provides clarification about when the department may modify, suspend, or revoke a screening certificate, and requires the department to send a notice of the action to the individual holding the certification. The language at paragraphs (5) and (6) provide information regarding the due process rights of an individual subject to an action under paragraph (6), including a cross-reference to existing department hearing rules found in §§1.51 through 1.55 of this title (relating to Fair Hearing Procedures).

Language at §37.146(e) provides all the details regarding the process by which an instructor, trained and certified as an instructor by the department, may conduct screener trainings around the State of Texas and issue screening certificates at the conclusion of the training sessions. The department deleted language since the proposal version regarding associated testing to remove unnecessary requirements that could be barriers to instructor training and certification. Language at paragraphs (1) through (2) lists the qualifications an individual must meet prior to taking an instructor course. To be eligible, individuals must: have experience conducting trainings to groups of adults; and be physicians, chiropractors, physical therapists, or registered nurses with the applicable Texas license that is current and in good standing under Texas law. This second requirement is included because these professionals will have already had a type of training for their profession that (in conjunction with the training given by the department) is needed to effectively train others in spinal screening. Since the proposal version, the department deleted the qualification that individuals wishing to take the instructor course must have a current, valid department screening certification, and have experience performing screenings under that certificate. The department did this because licensed professionals are not required to be certified screeners to conduct spinal screenings. Language at subsection (f) was revised since the proposal version in response to a comment received (See discussion in "Comments.") The revised language details the application process that instructors must follow to update their instructor status with the department on the fifth year from the date certification was issued. The language also states that failure to comply with the requirements by the deadline given, would require the individual to attend the initial instructor training course in order to obtain a new instructor certification. These deadlines are designed to prevent unqualified instructors from giving screening courses and issuing certificates. Language in subsections (g) and (h) require instructors to use training materials obtained from the department, and to get prior approval from the department (by the listed deadline), before each training course begins and to respond to any questions that the department might have. Language at subsection (i) allows instructors who are in good standing with the department under this section to conduct the screening refresher courses. Language at subsection (j) requires the instructor to submit certain documentation to the department (by the listed deadline) when the instructor issues certificates of screening following the training courses. Language at subsection (k) provides clarification about when the department may modify, suspend, or revoke an instructor certification, and requires the department to send

a notice of the action to the individual holding that certification. The language at subsections (l) and (m) provides information regarding the due process rights of an individual subject to an action under subsection (m), including a cross-reference to existing department hearing rules found in §§1.51 through 1.55 of this title (relating to Fair Hearing Procedures).

Section 37.149 was repealed as part of the reorganization previously described in this preamble. The new language in §37.147 replaced the term "health practitioner" with "licensed professional" given other changes in this rulemaking action.

Section 37.152 was repealed as part of the reorganization related to this rulemaking and is the new language at §37.148. The term "Department of State Health Services" was replaced with the term "department" as defined in §37.142, Definitions. Additional revisions to update outdated terms were made since the proposal version in response to comments received during the 30-day official comment period (see discussion in "Comments").

#### COMMENTS

The proposed rules were published in the July 11, 2014 issue of the *Texas Register*.

The department received comments from individuals, professional associations, and the commission's Civil Rights Office during the 30-day comment period. The comments addressed were from the Texas Medical Association (TMA) and the Texas Pediatric Society (TPS); the commission's Civil Rights Office; and several registered nurses (RNs) and an audiologist representing schools and school districts. In response to the comments, the department has revised portions of the rule language but has declined to make other changes that are stated in the responses as follows. The commenters were not against the rules in their entirety; however, the commenters' suggested recommendations for changes are discussed in the summary of comments.

COMMENT: The TMA and TPS commented that the definition of the term "certification," in §37.142(3), is unclear regarding whether the term applies to department-certified individuals authorized to perform professional examinations. The commenter also stated that it is not clear why the definition is needed and how it contributes to clarity and user-friendliness.

RESPONSE: The department disagrees with the comments. The intent of replacing the existing terms, "screener certification" and "trainer certification" with a single term, "certification" was to improve organization of the rules. A single section focused on certification with sub-categories for screeners and instructors was developed to be consistent with changes made recently to the Vision and Hearing Screening Program rules, which reside in the same administrative unit as the Spinal Screening Program. The programs are similar in scope and population served and the target audience of both sets of rules is school health professionals; therefore, the department decided to be consistent in terminology used in both programs' rules. No changes were made as a result of these comments.

COMMENT: The TMA and TPS commented that the rules were unclear about the deletion of the term "health practitioner" and the addition of the term "licensed professional" in its place in §37.142(6). A commenter from Richardson Independent School District (ISD), asked whether a RN is considered a licensed professional as defined in the proposed rules. In a separate comment, the commenter asked for clarification regarding the definition of the term "licensed professional" and whether the definition

includes RNs. The commenter asked for clarity in order to know if RNs must be recertified every five years.

RESPONSE: Upon further consideration, the level of expertise reflected in the existing definition was found to be sufficient. The department has decided that the proposed definition for "licensed professional" in §37.142(6) was overly narrow and may have excluded otherwise qualified practitioners. The department revised the proposed definition to state that "An individual who is appropriately licensed under state law, including physicians, chiropractors, physical therapists, and registered nurses, and has completed a course of study in physical assessment" to improve clarity. The term "licensed professional" was not changed in order to be consistent with changes made recently to the Vision and Hearing Screening Program rules, as previously discussed in this preamble.

COMMENT: The TMA and TPS commented that the proposed definition for the term "professional examination," in §37.142(7), is inconsistent with statutory language in the Health and Safety Code, §37.004, which states that "a person who provides a professional examination... for abnormal spinal curvature must be appropriately licensed or certified as a health practitioner" and that the proposed definition appears to allow that a professional examination be performed by a licensed professional or an individual who is certified by the department.

RESPONSE: The department agrees and has deleted the statement "or by a department-certified individual" to clarify the definition and align the language to the statute.

COMMENT: Commenters from the Richardson ISD, commented that the use of the word "diagnostic" in the definition of "professional examination" excludes RNs because RNs do not conduct diagnostic evaluations.

RESPONSE: The department disagrees with making revisions to address these comments. Spinal screening, as defined in this subchapter, is a test that determines the need for a professional examination and, when a screening indicates a possible abnormal spinal curvature, a qualified licensed professional may be consulted by the individual's parent, managing conservator, or guardian for a professional examination to diagnose the problem. No changes were made as a result of these comments.

COMMENT: The TMA and TPS commented that the use of the term "scoliometer" is incorrect in that it is a brand name and the actual name of the instrument is "scoliosis inclinometer."

RESPONSE: The department agrees and the appropriate revisions have been made in §37.142(9) and §37.143(a)(1) - (4), and the term "scoliometer" has been replaced with the term "scoliosis inclinometer."

COMMENT: The TMA and TPS commented that the use of the word "referral" in

§37.143(c) is unclear.

RESPONSE: The department agrees and removed references to the language "referral" and revised the proposed language at §37.143(a), §37.143(a)(3) and (4), and §37.145(b)(5)(E) - (I) to include the language "abnormal findings." Also, a statement was added to §37.143(a)(4) to state that "The school's chief administrator shall inform the child's parent, managing conservator, or guardian, as specified in §37.144(a) of this title (relating to School Requirements; Department Activities)." In addition, proposed §37.143(c) was deleted to be consistent with statutory language at Health and Safety Code, §37.003, which provides that

the screener shall fill out a report on a form when a screened individual may have abnormal spinal curvature and the school's chief administrator shall mail a copy of the report to the individual's parent, managing conservator, or guardian.

COMMENT: The following commenters commented regarding the requirement that individuals be screened in grades six and nine: TMA and TPS; Leander ISD; Richardson ISD; Lake Highlands High School, Richardson ISD; and Northwood Hills Elementary, Richardson ISD. The TMA and TPS recommended that the department work with the Texas Education Agency to align the requirements for screening grades with the recommendations of the AAOS, which differ for male and female students. Other commenters were against the requirement that individuals be screened in grades six and nine. Commenters pointed to scheduling and logistical challenges and disruption to students' classes when screening high school-level students.

RESPONSE: The department declines to revise the proposed rules because this is based on statutory requirements in the Health and Safety Code, §37.001(b). No changes were made as a result of these comments.

COMMENT: A commenter from the San Antonio ISD, inquired whether an electronic signature would be included in the language at §37.145(a)(1).

RESPONSE: This is a valid suggestion and the department has added the language that includes "...electronic signatures and dates are also acceptable" as the last sentence in §37.145(a)(1).

COMMENT: A commenter from the Office of Catholic Schools Diocese of Fort Worth commented regarding spinal screening instructor recertification. The commenter expressed concern that those who have been instructors would now be required to take a refresher course.

RESPONSE: The department decided that an instructor refresher course is not necessary and that an application process is sufficient. Revisions were made to §37.146(f) to more accurately and clearly reflect the application process and to eliminate barriers to instructor recertification.

COMMENT: The commission's Civil Rights Office commented that the proposed language at §37.148 contained outdated terms for protected classes.

RESPONSE: The department agrees and revised the proposed language to include the terms "religion" and "disability" instead of the terms "creed" and "handicap" to be consistent with civil rights requirements and the commission's policy.

#### DEPARTMENT CHANGES

The department added the word "screener" in §37.146(c) to clarify that the subsection pertains to screening certification courses and not instructor training courses.

The department deleted the phrase "including all associated testing" in §37.146(e) pertaining to instructors' training requirements to remove unnecessary requirements which could pose as barriers to training.

The department deleted language at §37.146(e)(1) regarding qualifications for taking an instructor course, and then renumbered proposed paragraphs (2) and (3) as paragraphs (1) and (2). As stated in §37.146(a), individuals who conduct spinal screening must be certified unless they are a licensed professional, and being a physician, chiropractor, physical therapist, or registered nurse is a qualification for taking an instructor course.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### 25 TAC §§37.141 - 37.148

#### STATUTORY AUTHORITY

The amendments and new rules are authorized by Health and Safety Code, Chapter 37, which mandates adoption of rules necessary to carry out the program; Government Code, §531.0055, and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code §2001.039.

#### §37.142. Definitions.

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

(1) Abnormal spinal curvature--An anatomic, structural deviation from the normal spinal curve, such as scoliosis or kyphosis.

(2) American Academy of Orthopaedic Surgeons (AAOS)--A nationally-recognized professional body which develops musculoskeletal health guidelines as part of the organization's research and quality goals.

(3) Certification--The process by which the Department of State Health Services (department) trains individuals to conduct spinal screening as well as to then provide training screening procedures.

(4) Department--The Department of State Health Services.

(5) Forward-bend test--A screening procedure to determine whether a child may have an abnormal spinal curvature.

(6) Licensed professional--An individual who is appropriately licensed under state law, including physicians, chiropractors, physical therapists, and registered nurses, and has completed a course of study in physical assessment.

(7) Professional examination--A diagnostic evaluation performed by an appropriately licensed professional whose expertise addresses the diagnostic needs of the individual identified as having a possible abnormal spinal curvature. A professional examination is one that is performed according to the requirements of this subchapter and of Texas Health and Safety Code, Chapter 37.

(8) School--An educational institution, public or private, that admits children who are five through twenty-one years of age, which includes an individual school campus.

(9) Scoliosis inclinometer--An instrument for measuring the clinical deformity of patients with scoliosis. The brand name "Scolimeter" is sometimes used interchangeably.

(10) Screening--A test or battery of tests for rapidly determining the need for a professional examination.

#### §37.143. Spinal Screening Procedures.

(a) Spinal screening is required, for all children in grades six and nine who attend public and private schools, to detect abnormal spinal curvature. Spinal screening, conducted under this

subchapter by a person who is not a licensed professional, as the term is defined in this subchapter, must be conducted following the national standards for screening set by the AAOS currently found at <http://www.aaos.org/news/bulletin/nov07/clinical5.asp>, as they apply to allowable method of screening and age of screening, with the following exceptions.

(1) The use of a scoliosis inclinometer is optional for spinal screening.

(2) If a scoliosis inclinometer is used for spinal screening, a rescreen should be conducted for reading results of 5 to 7 degrees. The rescreen should be conducted within two weeks of the initial screening. A follow-up rescreen should be conducted in six months to one year to determine if the abnormal curvature is increasing.

(3) When using a scoliosis inclinometer, results of 7 degrees or more shall be documented as "abnormal findings."

(4) If a scoliosis inclinometer is not used for spinal screening, a rescreen should be conducted for abnormal findings. The rescreen should be conducted within two weeks of the initial screening. Abnormal findings detected during the rescreen shall be documented in the child's spinal screening record. The school's chief administrator shall inform the child's parent, managing conservator, or guardian, as specified in §37.144(a) of this title (relating to School Requirements; Department Activities).

(5) In accordance with Health and Safety Code, Chapter 37 requirements, children will be screened in grades six and nine instead of the AAOS guidelines.

(b) A person who is not a licensed professional, as that term is defined in this subchapter, who conducts spinal screening must be trained and certified as described in §37.146(a) of this title (relating to Standards and Requirements for Screening Certification and Instructor Training).

(c) The requirements of this section do not apply when the individual is already actively under medical care by an appropriate licensed professional for one or more of the spinal problems for which screening is performed under this section. In order to claim this exception, the individual under the scenarios described in Texas Family Code, §32.003 or, if the individual is a minor, the individual's parent, managing conservator or legal guardian, must submit documentation from the licensed professional to the school. The documentation must be signed and dated by the licensed professional, and must affirmatively state that the individual is under active, ongoing medical care from the licensed professional for specific spinal problems as referenced in this subsection.

*§37.145. Recordkeeping and Reporting.*

(a) Individuals conducting screenings under this subchapter must comply with the following recordkeeping and reporting requirements:

(1) Individuals conducting screenings at the school (and those other than licensed professionals conducting screenings outside of the school) shall document in each child's screening record the specific screening conducted, the date the screening was conducted, observations made during the screening, and the final results of the screening. The individual shall also ensure that the following are included in the documentation: the name of the child and age or birthdate of the child. The documentation required under this subsection must also be signed and dated by the person who conducted the screening. For the purposes of this subchapter, electronic signatures and dates are also acceptable.

(2) Individuals conducting screenings at a school (and those other than licensed professionals conducting screening outside

of the school) shall submit the documentation referenced in this subsection to the school at the time of that screening.

(3) Individuals must submit documentation to the department related to certifications and refresher courses, as specified in §37.146 of this title (relating to Standards and Requirements for Screening Certification and Instructor Training).

(b) Schools must comply with the following recordkeeping and reporting requirements:

(1) Each school shall maintain spinal screening records under this section onsite for at least two years.

(2) A school must maintain screening records regarding any individual claiming the exemptions found in §37.143(c) of this title (relating to Spinal Screening Procedures).

(3) Spinal screening records are transferrable between schools if written consent of the individual or, if the individual is a minor, their parent, managing conservator, or legal guardian is obtained.

(4) The recordkeeping required in this section must be made available to the department in a timely manner upon request. The department may, directly or through its authorized representative, enter a school and inspect records maintained relating to spinal screening.

(5) On or before June 30 of each year, each school shall submit to the department a complete and accurate annual report on the spinal screening status of its aggregate population screened during the reporting year. Schools shall report in the manner specified by the department (currently found at <http://chrstx.dshs.state.tx.us>). Schools are required to report on the following categories:

- (A) grade screened;
- (B) number screened under prior treatment;
- (C) total number screened;
- (D) total number rescreened;
- (E) total number abnormal findings;
- (F) number abnormal findings diagnosed by a physician as "normal;"
- (G) number abnormal findings diagnosed with scoliosis by a physician;
- (H) number abnormal findings diagnosed with kyphosis by a physician;
- (I) number abnormal findings diagnosed with another type of abnormal curvature by a physician;
- (J) number receiving a physician's treatment plan of observation;
- (K) number receiving a physician's treatment plan of orthosis bracing;
- (L) number receiving a physician's treatment plan of surgery;
- (M) number receiving a physician's treatment plan not indicated in subparagraphs (J) - (L) of this paragraph; and
- (N) number for whom a physician's treatment plan was unavailable.

(c) All correspondence shall be submitted to the department under this subchapter, with the following contact information (unless otherwise specified): Vision, Hearing and Spinal Screening Program,

Mail Code 1978, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347.

§37.146. *Standards and Requirements for Screening Certification and Instructor Training.*

(a) Individuals who conduct spinal screening must be certified under this section unless the screening is conducted by a licensed professional. There are two options for obtaining this certification:

(1) a certificate issued directly by the department; or

(2) a certificate issued by an instructor who has been trained and authorized by the department to issue certificates.

(b) The department offers certification courses, and issues certificates to those who successfully complete them. To be eligible to take the department's certification course, you must be a high school graduate and sign a written statement to that effect at the beginning of the course. Individuals who successfully complete the course, including passing the associated tests, will be issued a certificate by the department.

(c) The department trains instructors who themselves give screener certification courses, as described in this section. The eligibility requirement to attend such a course is the same as is described in subsection (b) of this section. Individuals who successfully complete the course, including passing the associated tests, will be issued a certificate signed by the authorized instructor. It will have the same validity, and is subject to the same restrictions, as a certificate issued under subsection (b) of this section.

(d) Screening certificates issued under this section are subject to the following requirements.

(1) Individuals who receive a certificate are authorized to conduct spinal screening (as applicable to the course taken, and as listed on the certificate) in accordance with this subchapter. Certified screeners are required to comply with this subchapter, and failure to do so is grounds for the modification, suspension and/or revocation of the certification as provided in this section.

(2) Screening certification under this section allows the individual to screen children for abnormal spinal curvature (as applicable to the course taken, and as listed on the certificate) under this subchapter for a period of five years, with renewals processed as described in paragraph (3) of this subsection.

(3) Screening certification may be renewed by attending a department-approved refresher training course (either offered directly by the department or by an instructor authorized under this section). The refresher training course must be completed during the fifth year of certification from the date the preceding certificate was issued. Once a refresher training course is successfully completed, the five-year cycle begins again. If certification is not renewed within the required time period, the individual must attend the basic certification training course (i.e., a refresher course will not be sufficient).

(4) When the department receives information from any source that indicates a screener has not been following the requirements of this subchapter, the department may modify, suspend, or revoke the certification. The department will send a notice to the affected individual as part of any such action being taken.

(5) The affected individual has 20 days after receiving the notice, referenced in paragraph (4) of this subsection, to request a hearing on the proposed action. It is a rebuttable presumption that a notice is received five days after the date of the notice. Unless the notice letter specifies an alternative method, a request for a hearing shall be made in writing, and mailed or hand-delivered to the program at the address specified in §37.145(c) of this title (relating to Recordkeeping and Re-

porting). If an individual who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the individual is deemed to have waived the hearing and the action may be taken.

(6) Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules in §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(e) Individuals who successfully complete a department instructor training course are authorized to conduct screening trainings and issue screening certificates to individuals who successfully complete the screening training (including all associated testing), subject to the requirements of this section. Individuals wishing to take the instructor course must first meet the following qualifications:

(1) have experience conducting trainings to groups of adults; and

(2) be physicians, chiropractors, physical therapists, or registered nurses, and must have the applicable Texas license, current and in good standing under Texas law.

(f) Department authorization for instructors to conduct trainings is valid until December 31st of the fifth year from the date certification was issued. The individual must successfully update their instructor status with the department by submitting an updated instructor application within 30 days of December 31st of the fifth year from the date the preceding certificate was issued. It is the responsibility of the individual to request an instructor application from the department. The department will issue a renewed certification following the receipt of a complete instructor application. Failure to comply with these requirements, by the deadline given, means that the individual must then attend the initial instructor training course. The department will notify spinal screening instructors of new or updated education required by the department and where it is available.

(g) Once authorized by the department to conduct trainings, instructors must do so using training materials obtained from the department.

(h) All proposed screening training sessions must be approved by the department at least 15 working days prior to the training session. The instructor must provide all information sought by the department, by the deadlines given.

(i) Instructors in good standing under this section may teach screening refresher courses as described in subsection (d)(3) of this section. Such refresher courses are subject to the same requirements under this section as those pertaining to initial screening courses.

(j) When a department-authorized instructor issues a certificate of spinal screening, the instructor has 14 days to submit the participant rosters and evaluations to the department. These original documents should be submitted to the program at the address found in §37.145(c) of this title. The instructor should maintain a copy.

(k) When the department receives information from any source that indicates a screening instructor has not been following the requirements of this subchapter, the department may modify, suspend, or revoke the certification. The department will send a notice to the affected individual as part of any such action being taken.

(l) The affected individual has 20 days after receiving the notice, referenced in subsection (k) of this section, to request a hearing on the proposed action. It is a rebuttable presumption that a notice is received five days after the date of the notice. Unless the notice letter specifies an alternative method, a request for a hearing shall be made in writing, and mailed or hand delivered to the program at the address specified in §37.145(c) of this title. If an individual who is offered the

opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the individual is deemed to have waived the hearing and the action may be taken.

(m) Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules in §§1.51 - 1.55 of this title.

§37.148. *Nondiscrimination Statement.*

No person shall be excluded from participation, be denied benefits, or be otherwise subjected to discrimination in the department's Spinal Screening Program on the grounds of race, color, national origin, sex, religion, disability, or age.

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 December 23, 2014.

TRD-201406288

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: January 12, 2015

Proposal publication date: July 11, 2014

For further information, please call: (512) 776-6972



**25 TAC §§37.143 - 37.152**

**STATUTORY AUTHORITY**

The repeals are authorized by Health and Safety Code, Chapter 37, which mandates adoption of rules necessary to carry out the program; Government Code, §531.0055, and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code §2001.039.

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 200. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS**

**SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES**

**25 TAC §§200.1 - 200.4, 200.6 - 200.8**

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§200.1 - 200.4 and §§200.6 - 200.8, concerning the reporting of preventable adverse events. Section 200.7 is adopted with changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7869). Sections 200.1 - 200.4, 200.6, and 200.8 are adopted without changes and the sections will not be republished.

**BACKGROUND AND PURPOSE**

The amendments are necessary to comply with the Senate Bill (SB) 203, 81st Legislature, Regular Session, 2009, that requires facilities to report preventable adverse events.

SB 203 amended the Health and Safety Code, Chapter 98, Reporting of Health Care-Associated Infections and Preventable Adverse Events, §98.106, Departmental Summary, that the department will compile and make available to the public a summary of health care facilities that reported preventable adverse events by placing this information on the department's website. The department is required to make available to the public a report that includes types of preventable adverse events by facility including the number of deaths or severe harm that resulted while being cared for in a health care facility.

**SECTION BY SECTION SUMMARY**

An amendment to §200.1 adds definitions to clarify reporting of preventable adverse events.

An amendment to §200.2 clarifies that facilities shall submit preventable adverse event data as specified in §§200.2 - 200.8.

An amendment to §200.3 describes how facilities shall report certain facility specific and preventable adverse event data.

An amendment to §200.4 will clarify how to report NHSN-reported preventable adverse events and designated preventable adverse events.

An amendment to §200.6 defines when to initiate reporting of preventable adverse event data.

An amendment to §200.7 includes the scheduled list of preventable adverse events to be reported by the facilities.

An amendment to §200.8 lists that preventable adverse event data submitted may be corrected during the corrections time schedule.

**COMMENTS**

The department received comments from a patient safety professional during the public comment period. The commenter was for and not entirely against the rules in their entirety; however, the commenter's suggested recommendations are stated as follows.

COMMENT: The commenter asked that the preventable adverse event "Vascular Catheter-Associated Infection" be removed from the list in §200.7(d) to avoid confusion and duplication as this is being reported through the National Healthcare Safety Network.

RESPONSE: The commission agrees and has deleted the preventable adverse event "Vascular Catheter-Associated Infection" in §200.7(d)(1)(N).

COMMENT: Additionally, this commenter asked that the language be revised for the Preventable Adverse Events of Poor Glycemic Control by removing the words "resulting in" and replacing with a colon to make them consistent with Centers for Medicare and Medicaid Services' Hospital Acquired Condition language.

RESPONSE: The commission agrees and has deleted the words "resulting in" and replaced with a colon in §200.7(d)(3)(B) - (F).

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §98.101, which authorizes the Executive Commissioner of the Health and Human Services Commission to implement Chapter 98 by adopting rules; §98.105, which authorizes the Executive Commissioner to modify which procedures are reportable; §98.108, which authorizes the Executive Commissioner to establish the frequency of reporting by rule; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commission of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

#### §200.7. Schedule for HAI and PAE Reporting.

(a) Facilities shall submit HAI and designated PAE data according to the following schedule in Table 1.  
Figure: 25 TAC §200.7(a) (No change.)

(1) HAI and designated PAE data for device days and procedures occurring between January 1 and March 31 shall be submitted no later than May 31 of the same calendar year.

(2) HAI and designated PAE data for device days and procedures occurring between April 1 and June 30 shall be submitted no later than August 31, of the same calendar year.

(3) HAI and designated PAE data for device days and procedures occurring between July 1 and September 30 shall be submitted no later than November 30 of the same calendar year.

(4) HAI and designated PAE data for device days and procedures occurring between October 1 and December 31 shall be submitted no later than February 28 of the following calendar year.

(b) If any of the dates in subsection (a) of this section fall on a weekend or holiday, facilities shall submit on the following business day.

(c) Reporting of deaths shall follow the same reporting time line as HAI and PAE reporting in this section.

(d) Health care facilities shall begin reporting TxHSN-reported PAEs data as outlined starting on January 1, 2015.

(1) Facilities will report the following PAEs effective January 1, 2015.

(A) Surgeries or invasive procedures involving a surgery on the wrong site, wrong patient, wrong procedure or a foreign object retained after surgery.

(B) Patient death or severe harm associated with unsafe administration of blood or blood products.

(C) Patient death or severe harm associated with a fall in a health care facility resulting in a fracture, dislocation, intracranial injury, crushing injury, burn or other injury.

(D) Post-operative death of an ASA Class 1 Patient.

(E) Discharge or release of a patient of any age, who is unable to make decisions, to someone other than an authorized person.

(F) Perinatal death or severe harm (maternal or neonatal) associated with labor or deliver in a low-risk pregnancy while being cared for in a health care facility.

(G) Patient death or severe harm resulting from failure to follow up or communicate laboratory, pathology or radiology test results.

(H) Any incident in which systems designated for oxygen or other gas to be delivered to a patient contains no gas, wrong gas, or are contaminated by toxic substances.

(I) Patient death or severe harm associated with use of physical restraints or bedrails while being cared for in a health care facility.

(J) Abduction of a patient of any age.

(K) Sexual abuse or assault of a patient within or on the grounds of a health care facility.

(L) Patient death or severe harm of a patient resulting from a physical assault that occurs within or on the grounds of a health care facility.

(M) Patient death or severe harm resulting from the ir-retrievable loss of an irreplaceable biological specimen.

(2) Facilities will report the following PAEs effective January 1, 2016.

(A) Stage III, Stage IV or Unstageable pressure ulcer acquired after admission/presentation to a health care facility.

(B) Patient death or severe harm associated with patient elopement.

(C) Patient suicide, attempted suicide or self-harm that results in severe harm, while being cared for in a health care facility.

(D) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist or other licensed health care provider.

(E) Deep Vein Thrombosis (DVT) or Pulmonary Embolism (PE) after total knee replacement or after hip replacement.

(F) Patient death or severe harm associated with an electric shock while being cared for in a health care facility.

(G) Patient death or severe harm associated with a burn incurred from any source while being cared for in a health care facility.

(H) Iatrogenic Pneumothorax with venous catheterization.

(I) Patient death or severe harm associated with the introduction of a metallic object into the MRI area.



(3) Facilities will report the following PAEs effective January 1, 2017.

(A) Patient death or severe harm associated with intravascular air embolism that occurs while being cared for in a health care facility.

(B) Poor glycemic control: diabetic ketoacidosis.

(C) Poor glycemic controls: nonketonic hyperosmolar coma.

(D) Poor glycemic control: hypoglycemic coma.

(E) Poor glycemic control: secondary diabetes with ketoacidosis.

(F) Poor glycemic control: secondary diabetes with hyperosmolarity.

(G) Artificial insemination with the wrong donor sperm or wrong egg.

(H) Patient death or severe harm associated with the use of contaminated drugs/devices or biologics provided by the health care facility.

(I) Patient death or severe harm associated with the use or function of a device in patient care, in which the device is used or functions other than as intended.

(J) Patient death or severe harm associated with a medication error.

(K) Surgical site infections following a spinal procedure, shoulder procedure, elbow procedure, laparoscopic gastric bypass, gastroenterostomy, laparoscopic gastric restrictive surgery or cardiac implantable electronic device.

(4) Amendments to this list of PAEs may be adopted at the discretion of the executive commissioner as recommended by CMS and NQF.

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 December 29, 2014.

TRD-201406312

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: January 18, 2015

Proposal publication date: October 3, 2014

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 3. TEXAS HIGHWAY PATROL

## SUBCHAPTER E. REQUIREMENTS FOR DISPLAYING VEHICLE INSPECTION CERTIFICATE

### 37 TAC §§3.71 - 3.73, 3.76

The Texas Department of Public Safety (the department) adopts the repeal of §§3.71 - 3.73, and 3.76, concerning Requirements for Displaying Vehicle Inspection Certificate. These repeals are adopted without changes to the proposal as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8531) and will not be republished.

The repeals of §3.71 and §3.76 are necessary to eliminate language that is duplicative of language already contained in statute. Additionally, the repeals of §3.72 and §3.73 are filed simultaneously with proposed new §23.81 and §23.82 to implement the provisions of House Bill 2305, enacted by the 83rd Texas Legislature, and consolidate existing rules pertaining to vehicle inspection.

No comments were received regarding these proposed repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 December 23, 2014.

TRD-201406264

D. Phillip Adkins

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Texas Department of Public Safety

Effective date: January 12, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER F. TEXAS REGISTERED VEHICLES NOT REQUIRING INSPECTION

### 37 TAC §3.91

The Texas Department of Public Safety (the department) adopts the repeal of §3.91, concerning NATO Agreement Vehicle Inspection Exemptions. This repeal is adopted without changes to the proposal as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8531) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this subchapter and determined the repeal of this section is necessitated by House Bill 2305, enacted by the 83rd Texas Legislature, which renders the language of this rule unnecessary.

No comments were received regarding this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to

adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 December 23, 2014.

TRD-201406265

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Texas Department of Public Safety

Effective date: January 12, 2015

Proposal publication date: October 31, 2014

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## SUBCHAPTER J. PROTECTION OF STATE BUILDINGS AND GROUNDS

### 37 TAC §§3.141 - 3.145, 3.147 - 3.150

The Texas Department of Public Safety (the department) adopts the repeal of §§3.141 - 3.145 and 3.147 - 3.150, concerning Protection of State Buildings and Grounds. These repeals are adopted without changes to the proposal as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8532) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this subchapter and determined the reasons for initially adopting this subchapter continue to exist. The repeal of this subchapter was filed simultaneously with proposed new §§8.1 - 8.6 and 8.8 - 8.11. These sections are being repealed and proposed as new to more clearly identify the purpose of the sections. In addition, the sections have been amended in form, style, wording, and organization to improve clarity and readability.

No comments were received regarding these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.062(d), which authorizes the department to adopt rules relating to security of persons and access to and protection of the grounds, public buildings, and property of the state within the Capitol Complex; and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406266

D. Phillip Adkins

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Effective date: January 12, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## CHAPTER 8. CAPITOL COMPLEX SUBCHAPTER A. PROTECTION OF STATE BUILDINGS AND GROUNDS

### 37 TAC §§8.1 - 8.6, 8.8 - 8.11

The Texas Department of Public Safety (the department) adopts new §§8.1 - 8.6 and 8.8 - 8.11, concerning Protection of State Buildings and Grounds. These sections are adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8533) and will not be republished.

These sections were reviewed pursuant to Government Code, §2001.039. During this review, the department determined the reasons for initially adopting these sections continue to exist. These sections were proposed as new to more clearly identify the purpose of the sections. In addition, the sections have been amended in form, style, wording, and organization to improve clarity and readability.

No comments were received regarding the adoption of this proposal.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.062(d), which authorizes the department to adopt rules relating to security of persons and access to and protection of the grounds, public buildings, and property of the state within the Capitol Complex; and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406305

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Effective date: January 12, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER A. LICENSING REQUIREMENTS

### 37 TAC §15.6

The Texas Department of Public Safety (the department) adopts amendments to §15.6, concerning Motorcycle License. The amended section is adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8536) and will not be republished.

The amendments provide clarification regarding requirements for Class M (motorcycle) licenses, including licenses restricted to motor-driven cycles and mopeds. Requirements for a Class M license restricted to three-wheeled motorcycles are added to assist with implementation of the 83rd Texas Legislature's amendments to Chapter 521 of the Transportation Code through Senate Bill 763 and House Bill 3838. In addition, obsolete language is revised or removed.

No comments were received regarding the adoption of this proposal.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules to administer Chapter 521 of the Transportation Code; and §521.148.

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 December 23, 2014.

TRD-201406286

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Effective date: January 12, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

### 37 TAC §15.23

The Texas Department of Public Safety (the department) adopts amendments to §15.23, concerning Names. The amended section is adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8537) and will not be republished.

These amendments are intended to clarify options available to applicants when documenting a name to be used on the driver license and identification cards. The proposed amendments clarify that a court order from a court of record is necessary to document a name change not related to marriage, divorce, annulment, or death of a spouse. In addition, the amendments make changes to modernize the language.

The department accepted comments on the proposed rules through December 1, 2014. Written comments were submitted by Karen Phillips representing the Texas Automobile Dealers Association (TADA). No changes were made to proposed

§15.23 based on the comments received by the department. Substantive comments received, as well as the department's responses, thereto, are summarized below:

COMMENT: Regarding §15.23, Karen Phillips commented on the way the suffix of a name appeared on the face of the driver license. Karen Phillips expressed the Texas Automobile Dealers Association's desire to have the suffix of the name be placed after the surname on the face of the license in order to more easily facilitate the interpretation of the legal name, which must be transcribed onto the Form 130-U (application for title) completed by the dealership.

RESPONSE: The department instituted the current layout of the name on the face of the driver license when the Driver License System (DLS) was first created. The Texas Department of Motor Vehicles has been in contact with the Texas Department of Public Safety regarding this issue, and is also aware of the comment stated by the Texas Automobile Dealers Association regarding names. The Texas Department of Motor Vehicles has advocated the use of sound judgment by the Texas Automobile Dealers Association members in determining a driver's legal name order, i.e., first, middle, surname and suffix, regardless of the order that they appear on the face of the driver license.

Additionally, the naming conventions utilized on Texas driver licenses and identification cards are standardized for law enforcement, state and federal agencies and other states using the American Administrators of Motor Vehicle Association (AAMVA) standards and guidelines.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §§521.121, 521.141, and 521.142.

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 December 23, 2014.

TRD-201406281

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 12, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER C. EXAMINATION REQUIREMENTS

### 37 TAC §15.55

The Texas Department of Public Safety (the department) adopts amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. The amended section is adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8538) and will not be republished.

These amendments are intended to assist with implementation of the 81st Texas Legislature's amendments to Chapter 521 of the Transportation Code through Senate Bill 1967 and House Bill

339. These amendments are intended to clarify conditions under which exam requirements will and will not be waived for licensed nonresidents. In addition, the language has been revised for easier understanding and clarity.

No comments were received regarding the adoption of this proposal.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; §521.164, which authorizes the department to adopt rules for the waiver of certain examination requirements for licensed nonresidents; and §521.161.

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 December 23, 2014.

TRD-201406282

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Texas Department of Public Safety

Effective date: January 12, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

### 37 TAC §§15.161, 15.162, 15.164 - 15.166

The Texas Department of Public Safety (the department) adopts amendments to §§15.161, 15.162, and 15.164 - 15.166, concerning Driver Responsibility Program. The amended sections are adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8540) and will not be republished.

These amendments are intended to assist with implementation of the 81st Texas Legislature's amendments to Chapter 708 of the Transportation Code through House Bill 2730 and the 82nd Texas Legislature's amendments to Chapter 708 of the Transportation Code through House Bill 588.

The adoption amends §15.161 to provide clarification for the process the department follows to deduct points from an individual's record.

The adoption amends §15.162 to include an advance payment option for a single up-front payment of surcharges and to clarify the manner in which payments are posted to surcharge accounts.

The adoption amends §15.164 to add a Low Balance Amnesty Program which will waive active surcharge balances that meet the balance requirements set by the department. In addition, the existing amnesty program is renamed the Reduction Amnesty Program and a clarification is added to specify actions the de-

partment will take if the reduced amount is not received by the end of the amnesty period.

The adoption amends §15.165 to update the language so that it is consistent with language for §15.166, Indigency Program, to create equity between the two programs. In addition, the adoption removes the requirement that applications for the incentive program be notarized.

The adoption amends §15.166 to provide for a waiver of surcharges for indigent individuals and remove the requirement that applications for the indigency program be notarized. In addition, text has been revised for clarity.

No comments were received regarding the adoption of this proposal.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §708.002, which authorizes the department to adopt rules to implement the Driver Responsibility Program; Texas Transportation Code, §708.056, which authorizes the department to establish a procedure for the deduction of points; Texas Transportation Code, §708.153, which authorizes the department to develop rules to provide for the payment of a surcharge in installments; and Texas Transportation Code, §708.157, which authorizes the department to adopt rules to implement an amnesty program.

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406283

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Effective date: January 12, 2015

Proposal publication date: October 31, 2014

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## CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

### SUBCHAPTER A. BREATH ALCOHOL TESTING REGULATIONS

#### 37 TAC §§19.1 - 19.7

The Texas Department of Public Safety (the department) adopts amendments to §19.1 and §19.2 and new §§19.3 - 19.7, concerning Breath Alcohol Testing Regulations. These sections are adopted with changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6780) and will be republished. Non-substantive changes have been made to ensure consistent use of terms throughout the subchapter and to track the language of the authorizing statute.

The adopted amendments and new sections are necessary to reorganize, update, and clarify rules governing the Breath Alcohol Testing Regulations.

The department accepted comment on the proposed rules through September 20, 2014. Written comments were submitted by Patricia J. Cummings representing Texas Criminal Defense Lawyers Association (TCDLA). Substantive comments received and the department's responses thereto are summarized below:

COMMENT: TCDLA opposed eliminating the requirement for "essentially alveolar or deep lung air in composition" and the proposed elimination of the definition of "system blank analysis".

RESPONSE: The proposed changes will not affect the manner in which evidential breath alcohol testing is conducted in Texas. The terms were removed as part of a general clean-up of the Regulations. The department will therefore make no changes to the text as proposed in response to these comments.

A public hearing was requested by TDCLA and a public hearing was conducted before the Public Safety Commission on December 18, 2014. A recording of comments and deliberation will be available on the department's website at <http://www.dps.texas.gov/>. The hearing recording will be placed under the Public Safety Calendar Events which may be directly viewed at <http://www.dps.texas.gov/calendar/index.htm>.

These amendments and new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §724.016, which authorizes the department to establish rules approving satisfactory analytical methods and §724.003, which authorizes the department to adopt rules to administer Chapter 724.

#### *§19.1. Definitions.*

The following words and phrases, when used in this chapter, shall have the meanings as detailed in this section, unless the context shall clearly indicate otherwise.

- (1) Alcohol--Ethyl alcohol, sometimes referred to as grain alcohol or ethanol.
- (2) Approval--Meeting and maintaining the requirements set forth in this subchapter for approval.
- (3) Approved course of instruction--A school, college, agency, institution, or laboratory meeting the requirements stated in §19.6 of this title (relating to Approval of Courses of Instruction).
- (4) Breath alcohol test (breath alcohol analysis)--The analysis of a subject's breath specimen(s) to determine the alcohol concentration(s) thereof.
- (5) Certification--Meeting and maintaining the requirements set forth in this subchapter for certification.
- (6) Certified operator--An individual meeting and maintaining the requirements stated in §19.4 of this title (relating to Operator Certification).
- (7) Conviction--An adjudicated verdict of guilty or an order of deferred adjudication by a court of competent jurisdiction.
- (8) Department--The unmodified word "department" in this subchapter refers to the Texas Department of Public Safety.
- (9) Inactivation--The voluntary or temporary discontinuance of certification.
- (10) Instrument(s)--The device(s) which measure or quantify the breath alcohol concentration pursuant to §19.2 of this title (relating to Instrument Certification).

(11) Office of the Scientific Director (OSD)--The scientific director and his staff.

(12) Proficiency test--A method of evaluation at the direction of a technical supervisor or designated representative of the scientific director by which the knowledge, skills, and abilities of an operator to operate breath alcohol testing equipment can be assessed.

(13) Public information and demonstration--The public display and exhibition of certified evidential breath testing equipment.

(14) Recertification--A process to make certification current.

(15) Reference system--The equipment designed to input any combination of reference material(s) or standard(s) with a known quantity into an instrument for analysis as a measurement standard.

(16) Renewal of current certification--The continuance of active certification by meeting the requirements stated in §19.4(b) of this title (relating to Operator Certification).

(17) Reports and records--The data and documents pertinent to this subchapter.

(18) Scientific director--The individual or his designee responsible for the implementation, administration and enforcement of the Texas breath alcohol testing regulations.

(19) Security--The safeguard of certified instruments at testing locations.

(20) Site location--The physical site of the breath alcohol testing instrument and associated equipment.

(21) Suspension--The termination or revocation of certification.

(22) Technical supervisor and technical supervision--An individual meeting the minimum requirements set forth in §19.5 of this title (relating to Technical Supervisor Certification) and the responsibilities of such.

#### *§19.2. Instrument Certification.*

(a) The Office of the Scientific Director, Breath Alcohol Testing Program, Texas Department of Public Safety (hereinafter referred to as the scientific director) shall approve and certify all breath alcohol testing instruments to be used for evidential purposes.

(1) The scientific director will establish and maintain a list of approved instruments by manufacturer brand or model designation for use in the state.

(2) A manufacturer or designated representative desiring approval of an instrument not on the approved list may submit an instrument to the scientific director. Examination and evaluation of the instrument to determine if it meets the criteria for approval or certification as an evidential instrument will be done at the discretion of the scientific director. Costs associated with such a submission will be done at the expense of the submitting entity.

(b) In order to be approved each instrument must meet the criteria as detailed in this subsection:

- (1) Expired breath specimens shall be analyzed.
- (2) The instrument shall incorporate a reference system, the result of which must agree within plus or minus 0.01g/210L of the nominal value or such limits as set by the scientific director.
- (3) The specificity of the procedure shall be adequate and appropriate for the analyses of breath specimens for the determination of alcohol concentration for law enforcement.

(4) Any other tests deemed necessary by the scientific director to correctly and adequately evaluate the instrument to give correct results in routine breath alcohol testing and be practical and reliable for law enforcement purposes.

(c) Upon proof of compliance with subsection (b) of this section the instrument will be placed on the list of approved instruments.

(1) Inclusion on the scientific director's list of approved instruments will verify that the instrument by manufacturer brand or model designation meets the criteria of subsection (b) of this section.

(2) The scientific director may, for cause, rescind approval of and remove an instrument by manufacturer brand or model designation from the approved list.

(d) The technical supervisor shall determine if a specific instrument by serial number is of the same manufacturer brand or model designation as is shown on the scientific director's approved list and meets the criteria for certification as stated in subsection (b)(2) of this section and when required, shall provide direct testimony or affidavit of this information.

(e) The scientific director, or a designated representative or technical supervisor, may, for cause, remove a specific instrument by serial number from evidential testing and withdraw certification thereof.

(f) Certified evidential instruments should not ordinarily be used for public information programs. Individuals with appropriate breath alcohol testing technical expertise, such as a certified technical supervisor, should disseminate this type of public information.

#### §19.3. *Techniques and Methods.*

(a) All breath alcohol testing techniques and methods shall meet, but not be limited to, the requirements as detailed in this subsection:

(1) a period during which an operator is required to remain in the presence of the subject. An operator shall remain in the continuous presence of the subject at least 15 minutes immediately before the test and should exercise reasonable care to ensure that the subject does not place any substances in the mouth. Direct observation is not necessary to ensure the accuracy of the test result;

(2) the breath alcohol testing instrument must be operated by a certified operator or technical supervisor and only certified personnel will have access to the instrument;

(3) a reference system used in conjunction with subject analysis, the results of which must agree with the nominal value within plus or minus 0.01g/210 L, or such limits as set by the scientific director;

(4) all analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210 L);

(5) maintenance of any specified records designated by the scientific director;

(6) supervision of certified operators and testing techniques by a technical supervisor meeting the qualifications set forth in §19.5 of this title (relating to Technical Supervisor Certification);

(7) designation that the instrumentation will be used only:

(A) for testing subjects suspected of violating any statute or codified rule that defines intoxication in terms of alcohol concentration; and

(B) in compliance with §19.4(b), (c), and (e) of this title (relating to Operator Certification).

(b) The scientific director or a designated representative may at any time make an inspection of an evidential breath alcohol testing facility or technical supervisor laboratory to ensure compliance with this subchapter.

(c) Technical supervisors, when required, shall provide expert testimony by direct testimony or by affidavit concerning the approval of techniques and methods under their supervision.

#### §19.4. *Operator Certification.*

(a) Certification.

(1) Prior to certification an applicant must establish proof of association, or pending association with: a law enforcement agency, or a laboratory, actively engaged in evidential breath alcohol testing, or a certified school of instruction in Texas or proof of pending association upon receipt of certification.

(2) Conviction history:

(A) persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified operator;

(B) persons convicted of a Class B misdemeanor within the last 10 years shall not be eligible to be a certified operator;

(C) persons receiving a driver license suspension or a denial to issue a driver license for refusal to submit to the taking of a specimen per the provisions of Texas Transportation Code, Chapter 724 or Chapter 522 within the last 5 years shall not be eligible to be a certified operator.

(3) Prior to initial certification as a breath test operator, an applicant must successfully complete a course of instruction meeting the criteria set forth in §19.6 of this title (relating to Approval of Courses of Instruction).

(4) Prior to certification as an operator of a breath alcohol testing instrument, an applicant must satisfactorily meet the criteria, set forth by the scientific director or a designated representative, as detailed in this paragraph:

(A) a written examination;

(B) establish competency in the operation of the instrument on which the operator is to be certified and the proper completion of all required reports and records;

(C) failure of the written examination and/or failure to establish competency in the operation of the instrument will cause the applicant to be ineligible for reexamination for a period of 30 days. A subsequent failure of either criteria will require that the candidate attend and satisfactorily complete the initial course of instruction for certification of a breath test operator.

(5) Upon successful completion of the requirements for certification, the scientific director will issue the individual an operator certificate for a period of time designated by the scientific director or until the next examination for renewal unless inactivated or suspended.

(6) If an operator is certified to operate a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the scientific director may waive portions of this section and only require instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(b) Renewal of current certification. In order to maintain current certification, the operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will be:

(1) The proper completion of any combination of five subject and/or practice tests as defined in the Texas Breath Alcohol Testing Program Operator Manual since the last issuance of an operator certificate per the provisions of subsection (a)(5) or (b)(5) of this section.

(2) The satisfactory biennial completion of a course of instruction, the contents of which should include, but not be limited to, topics such as:

(A) a brief review of the theory and operation of the breath alcohol test equipment;

(B) a detailed review of the breath alcohol analysis and reporting procedures;

(C) a review of procedural updates resulting from recent court decisions and legislation;

(D) a review of current issues in the field of breath alcohol testing;

(E) a written examination

(3) Renewal of certification will be denied and current certification will be inactivated in accordance with subsection (d) of this section when the operator:

(A) fails to properly complete a minimum of five tests in accordance with subsection (b)(1) of this section; or

(B) fails the written examination.

(4) An operator who fails renewal will be given the reason for failure and is not eligible to be reexamined for a period of 30 days. Reexamination will be pursuant to subsection (a)(4) of this section. A resulting failure will require that the operator attend and satisfactorily complete the initial course of instruction for certification of a breath test operator in order to regain current certification.

(5) Upon successful completion of the requirements for renewal of certification, the scientific director will issue the individual an operator certificate for a period of time designated by the scientific director or until next examination for renewal unless inactivated or suspended.

(c) Proficiency requirements.

(1) The scientific director, or a designated representative, or the operator's technical supervisor may at any time require an operator to demonstrate proficiency in the proper operation of the instrument and analysis reporting procedures.

(2) It is the responsibility of the operator to maintain proficiency.

(3) Failure to pass a proficiency test will result in the suspension of the operator's certification for 30 days.

(d) Certification inactivation and suspension.

(1) Inactivation may be initiated by the certified operator in case of voluntary surrender of certification or by anyone with the authority to suspend. The technical supervisor or operator shall, without delay, notify the office of the scientific director of any such inactivation. Challenges to involuntary inactivation will be resolved at the discretion of the scientific director. Inactivation will be utilized, but is not limited to, as provided in this paragraph:

(A) an operator transfers to a position where certification as a breath test operator is no longer desired;

(B) an operator fails to renew certification prior to its expiration;

(C) an operator terminates employment under which certification was acquired; or

(D) administrative program control to safeguard the scientific integrity of the breath alcohol testing program.

(2) Suspension of certification will be utilized when the scientific director and/or a technical supervisor determines an operator intentionally or purposefully disregards or violates these regulations, or commits a violation of law relating to breath testing, or falsely or deceitfully obtains certification, or for malfeasance or noncompliance with any provision of these regulations, or when in the technical supervisor's judgment the operator's performance is unreliable or the operator is incompetent.

(A) The technical supervisor shall, without delay, notify the scientific director in writing of any such suspension and furnish a copy of such notice to the suspended operator and the operator's appropriate supervisor or department head. The suspended operator shall not be permitted to operate the instrument until such time as certification has been restored pursuant to subsection (e) of this section.

(B) Upon receipt of the notification of suspension, the scientific director shall initiate, if not previously completed, an inquiry culminating in sustaining the suspension or setting aside the suspension.

(C) The minimum period of suspension as determined by the scientific director will be for a period of time not less than 30 days. The technical supervisor or a designated representative of the scientific director may recommend a specific period of suspension to the scientific director.

(D) Due to the immediate nature and the procedure for appeal, the individual initiating the suspension shall not be required to confer, consult, or obtain permission or approval from anyone prior to the initiation of the suspension. However, all suspensions must be consistent with procedures outlined in this subchapter.

(3) An operator whose certification has been suspended may appeal such action in writing to the assistant director of the major division responsible for crime laboratory activities, Texas Department of Public Safety, who will determine if the action of the scientific director will be affirmed or set aside. The assistant director may reinstate the certification under such conditions as deemed necessary and notify the scientific director in writing.

(e) Recertification. Certification that has been inactivated or suspended must be regained before evidential analyses may be administered. Recertification shall take place as detailed in this subsection:

(1) recertification after inactivation for the failure to complete the renewal process prior to the expiration of current certification will be pursuant to subsection (a)(4) of this section;

(2) recertification after inactivation or suspension will be pursuant to subsection (a)(4) of this section;

(3) recertification after a change in instrumentation or testing methodologies will be at the discretion of the scientific director, will be pursuant to subsection (a)(6) of this section.

(f) Certificate. The issuance of a certificate to the breath test operator shall be evidence that the operator has met the requirements for initial certification and/or renewal of certification.

(g) Verification. The technical supervisor, when required, shall verify all aspects of operator certification, by direct testimony or by affidavit.

§19.5. *Technical Supervisor Certification.*

(a) The primary function of the technical supervisor is to provide the technical, administrative and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program and to ensure the breath alcohol testing program's acceptability for evidential purposes. The technical supervisor, in matters pertaining to breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:

(1) supervision of certified operators in performance of breath alcohol test operations, including the proper completion of forms and records, and operator's compliance with the provisions stated in these regulations;

(2) supervision of certified instrumentation and affiliated equipment;

(3) supervision of data gathered for initial certification and/or approval of individual instruments;

(4) supervision of techniques and methods, maintaining scientific integrity and upholding these regulations;

(5) selection and supervision of a site location as it applies to security and technical suitability for testing;

(6) supervision of compliance with the policy of public information and/or demonstrations of breath alcohol testing instruments and equipment;

(7) all technical, administrative and regulatory aspects of breath alcohol testing; and

(8) expert testimony by direct testimony or by affidavit concerning all aspects of breath alcohol testing.

(b) The minimum qualifications for certification as a technical supervisor are:

(1) a baccalaureate degree from an accredited college or university with a major in chemistry, or as an alternative, a major in another scientific field with sufficient semester hours in chemistry or other qualifications as determined by the scientific director (for the purposes of these regulations, sufficient hours in chemistry shall be defined as successful completion of the equivalent of a minimum of 18 semester hours of chemistry, no more than 8 of which may be freshman level.);

(2) satisfactory completion of a course of instruction as set forth in §19.4(a)(3) of this title (relating to Operator Certification);

(3) satisfactory completion of technical supervisor training approved by the scientific director, including, but not limited to:

(A) advanced survey of current information concerning alcohol and its effects on the human body;

(B) operational principles and theories applicable to the program;

(C) instrument operations, maintenance, repair and calibration;

(D) legal aspects of breath alcohol analysis;

(E) principles of instruction;

(4) knowledge and understanding of the scientific theory and principles as to the operation of the instrument and associated equipment;

(5) prior to certification, a technical supervisor candidate must establish proof of association or pending association with an agency of laboratory actively engaged in evidential breath alcohol

testing or with a course of instruction as set forth in §19.6 of this title (relating to Approval of Course of Instruction) upon receipt of certification. If the technical supervisor candidate or certified technical supervisor cannot establish such proof of association, certification will, at the discretion of the scientific director, be denied or inactivated;

(6) Conviction history:

(A) persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified technical supervisor;

(B) persons convicted of a Class B misdemeanor within the last 10 years shall not be eligible to be a certified technical supervisor;

(C) persons receiving a driver license suspension or a denial to issue a driver license for refusal to submit to the taking of a specimen per the provisions of Texas Transportation Code, Chapter 724 or Chapter 522 within the last 5 years shall not be eligible to be a certified technical supervisor.

(c) Certification.

(1) Upon satisfactory proof to the scientific director by the applicant that the minimum qualifications set forth in subsection (b) of this section have been met, the scientific director will issue certification for a period of time designated by the scientific director unless inactivated or suspended.

(2) A certified technical supervisor is fully authorized to conduct evidential subject tests and is not required to maintain a separate certification as a breath test operator as set forth in §19.4 of this title (relating to Operator Certification).

(3) Technical supervisor certification may be voluntarily inactivated when it is no longer needed or inactivated at the discretion of the scientific director if the technical supervisor is no longer associated with an agency or laboratory actively engaged in evidential breath alcohol testing and/or with a course of instruction as set forth in §19.6 of this title (relating to Approval of Course of Instruction).

(4) Technical supervisor certification may be suspended only by the scientific director for malfeasance, incompetence, falsely or deceitfully obtaining certification, or failure to carry out the responsibilities set forth in this subchapter.

(5) A technical supervisor whose certification has been suspended may appeal such action in writing to the assistant director of the major division responsible for crime laboratory activities, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The assistant director may reinstate certification of the technical supervisor making such appeal under such conditions deemed necessary and notify the scientific director in writing.

(d) Certificate. The issuance of a certificate to the technical supervisor shall be evidence that the technical supervisor has met the requirements for certification.

(e) Renewal of current certification and recertification. In order to maintain current certification, the technical supervisor is required to renew certification prior to its expiration. The scientific director shall determine the minimum requirement for renewal of technical supervisor certification and for recertification after inactivation or suspension.

#### §19.6. *Approval of Courses of Instruction.*

(a) Any agency, laboratory, institution, school or college intending to offer a course of instruction for certified operators of evidential breath alcohol testing instruments, must have the course curriculum approved by the scientific director.



(b) The operator course must utilize the most current revision of the Texas Breath Alcohol Testing Program Operator Manual as the primary instructional text and contain, as a minimum, these areas of instruction:

- (1) the effects of alcohol on the human body;
- (2) the operational principles of the breath alcohol testing instrument to be used, including:
  - (A) a functional description of the testing method; and
  - (B) a detailed operational description of the method with demonstrations.
- (3) legal aspects of breath alcohol testing;
- (4) supplemental information which is to include nomenclature appropriate to the field of breath alcohol testing;
- (5) participation in a laboratory setting operating the breath testing equipment. Laboratory practice will include the analysis of reference samples, as well as the analysis of breath samples from actual drinking subjects and completion of all required records and reports needed for documentation.

(c) Each course of instruction shall be coordinated by, or under the general direction or supervision of, a certified technical supervisor.

(d) All courses of instruction will be open to the scientific director or designated representative for inspection thereof.

(e) Upon satisfactory proof of compliance of subsections (a) - (d) of this section to the scientific director, the scientific director will approve the course of instruction and its participants will be eligible to apply for operator certification.

(f) Prior to commencing the course, it will be the responsibility of the teaching agency to make arrangements with the office of the scientific director for the administration of examinations.

(g) Prior to the administration of the examination by the scientific director, it shall be the responsibility of the course of instruction coordinator(s) to provide proof that all students attending the course of instruction have been authorized and approved by the technical supervisor responsible for the technical supervision of the operator upon certification. Failure to provide this authorization will delay the administration of the examination and/or certification until such time as proof of authorization can be documented.

(h) Examinations for operator certification after completion of a course will be in accordance with §19.4(a)(4) of this title (relating to Operator Certification).

(i) Failure to maintain the provisions stated in this section will be cause for the scientific director to rescind approval of a course of instruction.

#### §19.7. Revisions.

The changes which are adopted with the revision of these regulations apply only to breath tests that are done after the date of this revision. Previous revisions of these regulations are not nullified and nothing herein should be construed as limiting or canceling the effect of old regulations on tests done under these previous regulations.

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 December 23, 2014.

TRD-201406302

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: January 12, 2015

Proposal publication date: August 29, 2014

For further information, please call: (512) 424-5848

### 37 TAC §§19.3 - 19.8

The Texas Department of Public Safety (the department) adopts the repeal of §§19.3 - 19.8, concerning Breath Alcohol Testing Regulations. These repeals are adopted without changes to the proposal as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6785) and will not be republished.

The repeal of these sections is filed simultaneously with adopted new §§19.3 - 19.7 for the purpose of reorganizing, updating, and clarifying the rules governing the Breath Alcohol Testing Regulations.

The department accepted comment on the proposed rules through September 20, 2014. Written comments were submitted by Patricia J. Cummings representing Texas Criminal Defense Lawyers Association (TCDLA). Substantive comments received and the department's responses thereto are summarized below:

COMMENT: TCDLA opposed eliminating the requirement for "essentially alveolar or deep lung air in composition" and the proposed elimination of the definition of "system blank analysis".

RESPONSE: The proposed changes will not affect the manner in which evidential breath alcohol testing is conducted in Texas. The terms were removed as part of a general clean-up of the Regulations. The department will therefore make no changes to the text as proposed in response to these comments.

A public hearing was requested by TDCLA and a public hearing was conducted before the Public Safety Commission on December 18, 2014. A recording of comments and deliberation will be available on the department's website at <http://www.dps.texas.gov/>. The hearing recording will be placed under the Public Safety Calendar Events which may be directly viewed at <http://www.dps.texas.gov/calendar/index.htm>.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §724.016, which authorizes the department to establish rules approving satisfactory analytical methods and §724.003, which authorizes the department to adopt rules to administer Chapter 724.

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 December 23, 2014.

TRD-201406303

D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 12, 2015  
Proposal publication date: August 29, 2014  
For further information, please call: (512) 424-5848



## CHAPTER 21. EQUIPMENT AND VEHICLE SAFETY STANDARDS

### 37 TAC §21.1

The Texas Department of Public Safety (the department) adopts the repeal of §21.1, concerning Standards for Vehicle Safety. This repeal is adopted without changes to the proposal as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8543) and will not be republished.

The repeal of §21.1 is necessary to update the rules governing vehicle equipment safety standards and to generally improve the clarity of the related rules.

No comments were received regarding this proposed repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §547.101, which authorizes the department to adopt safety standards for vehicle equipment.

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 December 23, 2014.

TRD-201406287  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 12, 2015  
Proposal publication date: October 31, 2014  
For further information, please call: (512) 424-5848



### 37 TAC §21.2, §21.3

The Texas Department of Public Safety (the department) adopts amendments to §21.2 and §21.3, concerning Equipment and Vehicle Safety Standards. These amendments are adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8544) and will not be republished.

The amendments are intended to update the rules governing vehicle equipment safety standards and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of this proposal.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the

department's work, and Texas Transportation Code, §547.101, which authorizes the department to adopt safety standards for vehicle equipment.

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 December 23, 2014.

TRD-201406284  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 12, 2015  
Proposal publication date: October 31, 2014  
For further information, please call: (512) 424-5848



## CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

### 37 TAC §§23.1 - 23.3, 23.5, 23.6

The Texas Department of Public Safety (the department) adopts amendments to §§23.1 - 23.3, 23.5, and 23.6, concerning Vehicle Inspection Station and Vehicle Inspector Certification. These sections are adopted without changes to the proposed text as published in the October 31, 2014 issue of the *Texas Register* (39 TexReg 8546) and will not be republished.

The adopted amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The adopted amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

The department accepted comment on the proposed rules through December 1, 2014. Identical written comments were submitted by Mr. Bill Bandy, with Lube Center Management, Ltd; Mr. Josh Edwards, with Forney Kwik Kar; Mr. Brent A. Stone, with Kwik Kar of Coffeyville; Mr. Kelly Privett, with Kwik Kar on Inwood (Dallas); Mr. Bill Flynt, Kwik Kar Auto Service Center, Richardson, Texas; and Mr. Michael Nowels, Executive Director of the Texas State Inspection Association.

The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Proposed amendments to §§23.1(h)(4), 23.3(h)(4), and 23.6(e) appear to eliminate the program by which inspection station operators provide approved training of inspectors in lieu of department provided training. This program should be continued.

RESPONSE: Based on a lack of statutory authority and funding, the program authorizing third party vendors (including inspection station operators) to provide training of inspectors was discontinued December 31, 2013, and the majority of the rules addressing this program were repealed effective March 13, 2013. Some references remained in the rules in order to allow for the transition to department provided training but those references are now ob-

solely and are being repealed. The department disagrees with the comment and will not be modifying the proposal.

Additional comments were received which relate exclusively to the implementation of House Bill 2305 and specifically to the proposed policy of a first year "grace period," i.e., the policy of not implementing the bill's requirement of a passing vehicle inspection within 90 days of the vehicle registration's expiration until March 1, 2016. The proposed grace period for the initial year of implementation is not addressed in and is unrelated to the department's rule proposals.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 December 23, 2014.

TRD-201406290

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Texas Department of Public Safety

Effective date: March 1, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER B. GENERAL VEHICLE INSPECTION STATION REQUIREMENTS

### 37 TAC §23.11, §23.12

The Texas Department of Public Safety (the department) adopts amendments to §23.11 and §23.12, concerning General Vehicle Inspection Station Requirements. These sections are adopted with changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8547) and will be republished. These non-substantive changes, found during a department review of the proposal, correct a typographical error and emphasize the need for a signed vehicle inspection report being issued to the owner or operator.

The adopted amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The adopted amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

The department accepted comment on the proposed rules through December 1, 2014. Identical written comments were submitted by Mr. Bill Bandy, with Lube Center Management, Ltd; Mr. Josh Edwards, with Forney Kwik Kar; Mr. Brent A. Stone, with Kwik Kar of Coffeyville; Mr. Kelly Privett, with Kwik Kar on Inwood (Dallas); Mr. Bill Flynt, Kwik Kar Auto Service Center, Richardson, Texas; and Mr. Michael Nowels, Executive Director of the Texas State Inspection Association.

The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Proposed amendments to §23.11 require existing stations change their inspection areas previously approved by the department. Existing station locations and inspection areas should be grandfathered.

RESPONSE: The proposed amendments to §23.11 are non-substantive. The existing rules relating to facility requirements have been in place since March 13, 2013. Since the comments received do not pertain to proposed changes to the rule text, the department will make no changes in response to these comments.

Additional comments were received which relate exclusively to the implementation of House Bill 2305 and specifically to the proposed policy of a first year "grace period," i.e., the policy of not implementing the bill's requirement of a passing vehicle inspection within 90 days of the vehicle registration's expiration until March 1, 2016. The proposed grace period for the initial year of implementation is not addressed in and is unrelated to the department's rule proposals.

The department also received comment from Karen Phillips, General Counsel, Texas Automobile Dealers Association (TADA). The substantive comments received from Ms. Phillips, as well as the department's response thereto, are summarized below:

COMMENT: The department's proposal requires a vehicle inspection station to have a display area located in the customer waiting area in which official notices, charts and other documents are displayed. The TADA requests clarification regarding which documents must be posted, and proposes alternatives to posting in a specifically designated area. Alternatively, the TADA recommends deletion of this requirement.

RESPONSE: The display area requirements referenced in the comment are reflected in current rule language effective since March 13, 2013. These requirements are not being changed and are not affected by the proposal. The suggestions provided may be considered for future rule amendments, but there will be no change to the current proposed rule.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

#### *§23.11. General Vehicle Inspection Station Requirements.*

(a) To be certified as a vehicle inspection station, the station's facilities must meet the standards listed in paragraphs (1) - (8) of this subsection:

(1) be of a permanent type;

(2) have a permanent roof;

(3) have a minimum of two permanent walls constructed of substantial material such as steel, masonry or wood that is effective at protecting the building and equipment from the elements;

(4) have a hard surfaced floor;

(5) have an entrance to the approved inspection area of sufficient size to allow entry of any vehicle the station is endorsed to inspect (other than oversized vehicles as provided in subsection (d) of this section);

(6) have a display area located in the customer waiting area approved by the department. Only official notices, licenses, letters from the department, procedure charts, or other documents authorized by the department may be exhibited in the display area;

(7) have a secured area for storage of records and necessary supplies; and

(8) have a designated customer waiting area protected from the elements.

(b) To be certified as a vehicle inspection station, the designated space approved for inspection purposes must meet the standards detailed in this subsection:

(1) be an area of at least 12 feet wide by 24 feet long and made of a hard surface such as asphalt or concrete (unless subject to subsection (c) of this section);

(2) be clear of obstacles and debris that would interfere with the safe operation of a vehicle and inspection of required items;

(3) have lighting sufficient to afford good visibility for performing all inspection procedures; and

(4) be contained entirely within a building and protected from the elements.

(c) The inspection area for a motorcycle only station must be at least 8 feet wide by 10 feet long, level and hard surfaced.

(d) A vehicle inspection station may have an additional area approved by the department for the inspection of oversized vehicles, such as motor homes and trailers. This area may be located outside the building.

§23.12. *Standards of Conduct.*

(a) All vehicle inspection stations must record the inspection of all vehicles, whether the vehicle passed, failed, or was repaired, into the appropriate state vehicle inspection database using a department provided device at the time of that inspection.

(b) The DPS Training and Operations Manual for official vehicle inspection stations and certified vehicle inspectors must be the instruction and training guide for the operation of all vehicle inspection stations and certified vehicle inspectors. It will serve as procedure for all vehicle inspection station operations and inspections performed.

(c) Fleet and government vehicle inspection stations must not inspect vehicles owned by officers, employees, or the general public.

(d) A vehicle inspection station must have a certified and properly endorsed vehicle inspector to perform inspections in a prompt manner during posted business hours.

(e) No vehicle inspection station shall refuse to inspect a vehicle for which it is endorsed that is presented for inspection during the posted business hours.

(f) A certified vehicle inspector must conduct a complete and thorough inspection of every vehicle presented for an official inspection in accordance with this chapter and Texas Transportation Code, Chapter 548 (the Act), as authorized by the vehicle inspector's certification and by the vehicle inspection station's endorsement.

(g) A certified vehicle inspector must not use, nor be under the influence of, alcohol or drugs while on duty. Prescription drugs may be used when prescribed by a licensed physician, provided the inspector is not impaired while on duty.

(h) A certified vehicle inspector must inspect a vehicle presented for inspection within a reasonable time.

(i) A certified vehicle inspector must notify the department representative supervising the vehicle inspection station immediately if his driver license is suspended or revoked.

(j) A certified vehicle inspector must conduct each inspection in the approved inspection area of the vehicle inspection station location designated on the certificate of appointment. The road test may be conducted outside this area.

(k) The certified vehicle inspector must consult the vehicle owner or operator prior to making a repair or adjustment.

(l) Inspections may be performed by more than one certified vehicle inspector, but the inspector of record is responsible for ensuring that the inspection is completed in accordance with the Act and this chapter.

(m) The certified vehicle inspector must not require a vehicle owner whose vehicle has been rejected to have repairs made at a specific garage.

(n) The certified vehicle inspector must maintain a clean and orderly appearance and be courteous in his contact with the public.

(o) Any services offered in conjunction with the vehicle inspection must be separately described and itemized on the invoice or receipt.

(p) At the conclusion of the inspection, the vehicle inspector must issue a signed vehicle inspection report to the owner or operator of the vehicle indicating whether the vehicle passed or failed.

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 December 23, 2014.

TRD-201406292

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 1, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



**37 TAC §23.13**

The Texas Department of Public Safety (the department) adopts amendments to §23.13, concerning Equipment Requirements for All Classes of Vehicle Inspection Stations. This section is adopted with non-substantive changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8549) and will be republished. The reference in subsection (c) to the enumeration of subsections (1) through (8) was corrected to refer to (1) through (7).

The adopted amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The adopted amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

Comments were received from Mr. Chris Klaus, Senior Program Manager, North Central Texas Council of Governments (NCTCOG) regarding the adoption of this proposal. The sub-

stantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: On behalf of NCTCOG, Mr. Klaus recommends the department establish requirements for the use of security paper in the vehicle inspection stations' printers, and that the department create a unique paper and be the sole provider of such paper to the stations.

RESPONSE: HB 2305's elimination of the inspection certificate was in part intended to eliminate the state's expenditures associated with the production of a secure document. The recommendation would require the commitment of similar resources and would effectively eliminate one of the bill's primary purposes. It is also unnecessary, as the accuracy of the data reflected on the report can be verified through the department's electronic database. The department will make no change to this amendment in response to NCTCOG's comment.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

*§23.13. Equipment Requirements for All Classes of Vehicle Inspection Stations.*

(a) All testing equipment must be approved by the department. All testing equipment must be installed and used in accordance with the manufacturer's and department's instructions. Equipment must be arranged and located at or near the approved inspection area and readily available for use.

(b) When equipment adjustments and calibrations are needed, the manufacturer's specifications and department's instructions must be followed. Defective equipment must not be used and the vehicle inspector or station must cease performing inspections until such equipment is replaced, recalibrated or repaired and returned to an operational status.

(c) To be certified as a vehicle inspection station, the station is required to possess and maintain, at a minimum, the equipment listed in paragraphs (1) - (7) of this subsection:

(1) a measured and marked brake test area which has been approved by the department, or an approved brake testing device;

(2) a measuring device clearly indicating measurements of 12 inches, 15 inches, 20 inches, 24 inches, 54 inches, 60 inches, 72 inches and 80 inches to measure reflector height, clearance lamps, side marker lamps and turn signal lamps on all vehicles, with the exception that the 80 inch measuring device requirement does not apply to motorcycle-only vehicle inspection stations;

(3) a gauge for measuring tire tread depth;

(4) a 1/4 inch round hole punch;

(5) a measuring device for checking brake pedal reserve clearance. This requirement does not apply to vehicle inspection stations with only a motorcycle endorsement;

(6) a department approved device for measuring the light transmission of sunscreening devices. This requirement does not apply to government inspection stations, or fleet inspection stations that have provided the department biennial written certification that the station has no vehicles equipped with a suncreening device. This requirement does not apply to vehicle inspection stations with only a motorcycle and/or trailer endorsement; and

(7) a department approved device with required adapters for checking fuel cap pressure. The department requires vehicle inspection stations to obtain updated adapters as they become available from the manufacturer. A vehicle inspection station may not inspect a vehicle for which it does not have an approved adapter for that vehicle. This device is not required of government inspection stations or fleet inspection stations which have provided the department biennial written certification that the station has no vehicles meeting the criteria for checking gas cap pressure or that these vehicles will be inspected by a public inspection station capable of checking gas caps. This device is also not required of motorcycle-only or trailer-only inspection stations and certain commercial inspection stations that only inspect vehicles powered by a fuel other than gasoline.

(d) To be certified as a non-emissions vehicle inspection station, the station must have:

(1) an approved and operational electronic station interface device;

(2) a printer and supplies necessary for printing a vehicle inspection report on 8 1/2 x 11 paper; and

(3) a telephone line, or internet connection for the electronic station interface device to be used during vehicle inspections either dedicated solely for use with the electronic device, or shared with other devices in a manner approved by the department.

(e) For vehicle emissions inspection station requirements, see Subchapter E of this chapter (relating to Vehicle Emissions Inspection and Maintenance Program).

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406293

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 1, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER C. VEHICLE INSPECTION STATION OPERATION

### 37 TAC §§23.21 - 23.27

The Texas Department of Public Safety (the department) adopts amendments to §§23.21 and §23.22 and new §§23.23 - 23.27, concerning Vehicle Inspection Station Operation. These sections are adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8550) and will not be republished.

The adopted amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The adopted amendments reflect such changes as well as minor changes adopted for the purposes of clarification.

The department accepted comment on the proposed rules through December 1, 2014. Comments were received from Karen Phillips, General Counsel, Texas Automobile Dealers Association (TADA). The substantive comments received from Ms. Phillips, as well as the department's response thereto, are summarized below:

COMMENT: Proposed §23.22(b)(2) requires the printing of the vehicle inspection report but does not address whether the copy must be signed by the inspector.

RESPONSE: The referenced proposal expressly requires the report be signed by the inspector. The department will make no changes to the proposal in response to this comment.

COMMENT: The proposed rule 23.22(b)(2) does not address the customer's need for a copy, or whether the station may charge for the copy.

RESPONSE: Proposed §23.12(p) requires the provision of a copy of the report to the customer. Proposed §23.25 provides that no additional fees may be charged without express authorization. There is no express authorization for a station to charge for a copy of the inspection report. The department will make no changes to the proposal in response to this comment.

The amendments and new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 December 23, 2014.

TRD-201406294  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: March 1, 2015  
Proposal publication date: October 31, 2014  
For further information, please call: (512) 424-5848



### 37 TAC §§23.23 - 23.30

The Texas Department of Public Safety (the department) adopts the repeal of §§23.23 - 23.30, concerning Vehicle Inspection Station Operation. These repeals are adopted without changes to the proposal as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8552) and will not be republished.

The repeals of §§23.23 - 23.25 are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. These repeals reflect the elimination of rules specific to the inspection certificate. The repeal of §§23.26 - 23.30 is filed simultaneously with the adoption of new §§23.23 - 23.27 to reorganize existing language and improve clarity of the subchapter.

No comments were received regarding these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 December 23, 2014.

TRD-201406295  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: March 1, 2015  
Proposal publication date: October 31, 2014  
For further information, please call: (512) 424-5848



## SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

### 37 TAC §23.42

The Texas Department of Public Safety (the department) adopts amendments to §23.42, concerning Commercial Vehicle Inspection Items. The amended section is adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8552) and will not be republished.

The adopted amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The adopted amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

No comments were received regarding the adoption of this amendment.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 December 23, 2014.

TRD-201406296  
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Effective date: March 1, 2015  
Proposal publication date: October 31, 2014  
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## SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

### 37 TAC §§23.51 - 23.53, 23.55 - 23.57

The Texas Department of Public Safety (the department) adopts amendments to §§23.51 - 23.53, 23.55, and 23.56 and new §23.57, concerning Vehicle Emissions Inspection and Maintenance Program. These sections are adopted with changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8553) and will be republished. Non-substantive changes were made to eliminate any reference to the previous practice of placing a certificate on the windshield and to remove any reference to the unique emission-only inspection certificate previously issued by the department.

The adopted amendments and new section are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The adopted amendments and new section reflect such changes as well as minor changes adopted for the purposes of clarification.

No comments were received on the proposal.

The amendments and new section are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

#### *§23.51. Vehicle Emissions Inspection Requirements.*

(a) In affected counties, to be certified by the department as a vehicle inspection station, the station must be certified by the department to perform vehicle emissions testing. This provision does not apply to vehicle inspection stations certified by the department as stations endorsed only to issue inspection reports for one or more of the listed categories of vehicles: trailer, motorcycle, commercial motor vehicle, or commercial trailer.

(b) A vehicle inspection station in a county not designated as an affected county shall not inspect a designated vehicle unless the vehicle inspection station is certified by the department to perform emissions testing, or unless the motorist presenting the vehicle signs an affidavit as prescribed by the department stating the vehicle is exempted from emissions testing. Under the exceptions outlined in paragraphs (1) - (3) of this subsection, a vehicle registered in an affected county may receive a safety inspection at a vehicle inspection station in a non-affected county.

(1) The vehicle is not a designated vehicle because it has not and will not be primarily operated in an affected county. This exception includes the subparagraphs (A) and (B) of this paragraph:

(A) Company fleet vehicles owned by business entities registered at a central office located in an affected county but operated from branch offices and locations in non-affected counties on a permanent basis.

(B) Hunting and recreational vehicles registered to the owner in an affected area, but permanently maintained on a hunting property or vacation home site in a non-affected county.

(2) The vehicle no longer qualifies as a designated vehicle because it no longer and will be no longer primarily operated in an

affected county. For example, the vehicle registration indicates it is registered in an affected county, but the owner has moved, does not currently reside in, nor will primarily operate the vehicle in an affected county.

(3) The vehicle is registered in an affected county and is primarily operated in a non-affected county, but will not return to an affected county prior to the expiration of the current registration. Under this exception the vehicle will be reinspected at a vehicle inspection station certified to do vehicle emissions testing immediately upon return to an affected county. Examples of this exception include vehicles operated by students enrolled at learning institutions, vehicles operated by persons during extended vacations, or vehicles operated by persons on extended out-of-county business.

(c) All designated vehicles must be emissions tested at the time of and as a part of the designated vehicle's annual vehicle safety inspection at a vehicle inspection station certified by the department to perform vehicle emissions testing. The exceptions outlined in paragraphs (1) and (2) of this subsection apply to this provision.

(1) Commercial motor vehicles, as defined by Texas Transportation Code, §548.001, meeting the description of "designated vehicle" provided in this section. Designated commercial motor vehicles must be emissions tested at a vehicle inspection station certified by the department to perform vehicle emissions testing and must be issued an emissions test only inspection report, as authorized by Texas Transportation Code, §548.252 prior to receiving a commercial motor vehicle safety inspection report pursuant to Texas Transportation Code, Chapter 548. The emissions test only inspection report must be issued within 15 calendar days prior to the issuance of the commercial motor vehicle safety inspection report and will expire at the same time the newly issued commercial motor vehicle safety inspection report expires.

(2) Vehicles presented for inspection by motorists in counties not designated as affected counties meeting other exceptions listed in this section.

(d) A vehicle with a currently valid safety inspection report presented for an "Emissions Test on Resale" inspection shall receive an emissions test. The owner or selling dealer may choose one of two options:

(1) a complete safety and emissions test and receipt of a new inspection report; or

(2) an emissions test and receipt of the emissions test only inspection report. The emissions test only inspection report will expire at the same time as the current safety inspection report.

(e) Any vehicle not listed as an exempt vehicle that is capable of being powered by gasoline, from two years old up to and including 24 years old, presented for the annual vehicle safety inspection in affected counties will be presumed to be a designated vehicle and will be emissions tested as a part of the annual vehicle safety inspection. Emissions testing will be conducted as follows:

(1) In all affected counties, except Travis, Williamson, and El Paso counties:

(A) All 1996 model year and newer designated vehicles, which are equipped with an onboard diagnostic (OBD) system, will be emission tested using approved OBD inspection and maintenance (I/M) test equipment.

(B) All 1995 model year and older designated vehicles will be emission tested using the acceleration simulation mode (ASM-2) I/M test equipment.

(C) Vehicles which cannot be tested using the prescribed emission testing equipment will be tested using the default methods described within this subparagraph, only as prompted by the emissions testing analyzer or as approved by the department. OBD vehicles will be tested using ASM-2 test equipment. If the vehicle cannot be tested on ASM-2 test equipment (four-wheel drive and unique transmissions), then the vehicle will be tested using approved two-speed idle (TSI) I/M test equipment.

(2) This paragraph applies to all designated vehicles in Travis, Williamson and El Paso counties.

(A) All 1996 model year and newer designated vehicles, which are equipped with an onboard diagnostic system, will be emission tested using approved OBD I/M test equipment.

(B) All 1995 model year and older designated vehicles will be emissions tested using TSI I/M test equipment.

(C) Vehicles which cannot be tested using the prescribed emission testing equipment will be tested using the following default method, only as prompted by the emissions testing analyzer or as approved by the department. OBD vehicles will be tested using TSI I/M test equipment.

(f) Vehicles inspected under the vehicle emissions testing program and found to meet the requirements of the program in addition to all other vehicle safety inspection requirements will be approved by the certified inspector, who will issue a unique emissions inspection report pursuant to Texas Transportation Code, §548.252. The only valid inspection report for designated vehicles shall be a unique emissions inspection report approved by the department, unless otherwise provided in this chapter.

(g) The department shall perform challenge tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge test through the department within 15 calendar days.

(h) Federal and state governmental or quasi-governmental agency vehicles that are primarily operated in affected counties that fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M State Implementation Plan (SIP).

(i) Any motorist in an affected county whose designated vehicle has been issued an emissions related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested at the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(j) Inspection reports previously issued in a newly affected county shall be valid and remain in effect until the expiration date thereof.

(k) An emissions test only inspection report expires at the same time the vehicle's registration expires.

(l) The department may perform quarterly equipment and/or gas audits on all vehicle emissions analyzers used to perform vehicle emissions tests. If a vehicle emissions analyzer fails the calibration process during the gas audit, the department may cause the appropriate vehicle inspection station to cease vehicle emissions testing with the failing emissions analyzer until all necessary corrections are made and the vehicle emissions analyzer passes the calibration process.

(m) Pursuant to the Texas I/M SIP, the department may administer and monitor a follow up loaded mode I/M test on at least 0.1%

of the vehicles subject to vehicle emissions testing in a given year to evaluate the mass emissions test data as required in Code of Federal Regulations, Title 40, §51.353(c)(3).

(n) Vehicle owners receiving a notice from the department requiring an emission test shall receive an out-of-cycle test, if the vehicle already has a valid safety and emission inspection report. This test will be conducted in accordance with the terms of the department's notice. The results of this verification emissions inspection shall be reported (online) to the Texas Information Management System Vehicle Identification Database. Vehicles identified to be tested by the notice will receive the prescribed test regardless of the county of registration and regardless of whether the vehicle has a valid safety inspection report or a valid safety and emissions inspection report. If the vehicle has a valid safety inspection report or a valid safety and emissions inspection report, the owner may choose one of two options:

(1) a complete safety and emissions test and receipt of a new inspection report; or

(2) The emissions test only inspection report will expire at the same time as the current safety inspection report.

(o) Pursuant to Texas Education Code, §51.207, public institutions of higher education located in affected counties may require vehicles to be emissions tested as a condition to receive a permit to park or drive on the grounds of the institution, including vehicles registered out of state.

(1) Vehicles presented under this subsection shall receive an emissions inspection and be issued a unique emissions test only inspection report:

(A) For vehicles registered in this state from counties without an emissions testing program, the emissions test only inspection report will expire at the same time as the vehicle's current safety inspection report.

(B) For vehicles registered in another state, the emissions test only inspection report will expire on the twelfth month after the month indicated on the date of the vehicle inspection report generated by the emissions inspection. Under no circumstances is the vehicle inspection station authorized to remove an out-of-state inspection and/or registration certificate, including safety, emissions, or a combination of any of the aforementioned.

(2) The vehicle inspector shall notify the operator of a vehicle presented for an emissions inspection under this subsection of the requirement to retain the vehicle inspection report as proof of emissions testing under Texas Education Code, §51.207.

#### §23.52. Emissions Testing Waiver.

(a) The department may issue an emissions testing waiver to any vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular waiver. An emissions testing waiver defers the need for full compliance with vehicle emissions standards of the vehicle emissions inspection and maintenance (I/M) program for a specified period of time after a vehicle fails an emissions test. The motorist may apply once each testing cycle for the waiver.

(b) Qualified emissions related repairs are those repairs to emissions control components, including diagnosis, parts and labor, which count toward a low mileage waiver or individual vehicle waiver. To be considered qualified emissions related repairs, the repairs:

(1) must be directly applicable to the cause for the emissions test failure;



(2) must be performed after the initial emissions test or have been performed within 60 days prior to the initial emissions test;

(3) must not be tampering related repairs;

(4) must not be covered by any available warranty coverage unless the warranty remedy has been denied in writing by the manufacturer or authorized dealer; and

(5) must be performed by a recognized emissions repair technician of Texas at a recognized emissions repair facility of Texas to include the labor cost and/or diagnostic costs. If repairs are not performed by a recognized emissions repair technician of Texas at a recognized emissions repair facility of Texas, only the purchase price of parts applicable to the emissions test failure qualify as a repair expenditure for the low mileage waiver or individual vehicle waiver.

(c) Low mileage waiver.

(1) A vehicle may be eligible for a low mileage waiver provided it:

(A) has failed both its initial emissions inspection and retest;

(B) has incurred qualified emissions-related repairs, as defined in paragraph (2) of this subsection, costing \$100 or more;

(C) has been driven less than 5,000 miles in the previous inspection cycle; and

(D) is reasonably expected to be driven fewer than 5,000 miles before the next inspection is required.

(2) The requirements listed in subparagraphs (A) - (C) of this paragraph must be met to receive a low mileage waiver:

(A) The vehicle must pass a visual inspection performed by a department representative to ensure the emissions repairs claimed have actually been performed.

(B) The diagnosis, parts, and labor receipts for the qualified emissions related repairs must be presented to the department and support that the emissions repairs claimed have actually been performed.

(C) The valid retest vehicle inspection report and valid vehicle repair form for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the low mileage waiver amount, the vehicle repair form shall be completed by a recognized emissions repair technician of Texas.

(d) Individual vehicle waiver.

(1) If a vehicle has failed an emissions test required by the vehicle emissions I/M program, an applicant may petition the designated representative of the department for an individual vehicle waiver in order for the vehicle to receive a state vehicle inspection report. The applicant must demonstrate that all reasonable measures, such as diagnostics, repairs, or installation of replacement parts, have been implemented, but have failed to bring the vehicle into compliance with the program. The department will review the measures taken by the applicant to ensure they have been performed, further measures would be economically unfeasible during this inspection cycle and a waiver will result in a minimal impact on air quality. A vehicle may be eligible for an individual vehicle waiver provided:

(A) It failed both the initial emissions inspection and retest.

(B) The motorist has incurred qualified emissions related repairs, equal to or in excess of the maximum reasonable repair

expenditure amounts, as defined in this section for the county in which the vehicle is registered.

(2) The applicable maximum reasonable repair expenditure amounts are:

(A) in affected counties, except El Paso county--\$600; and

(B) in El Paso county--\$450.

(3) The individual vehicle waiver shall be valid through the end of the twelfth month from the date of issuance. Motorists must apply for the individual vehicle waiver each testing cycle.

(4) The conditions listed in subparagraphs (A) - (C) of this paragraph must be met to receive an individual vehicle waiver:

(A) The vehicle must pass a visual inspection performed by a department representative to ensure the emissions repairs being claimed have actually been performed.

(B) The diagnosis, parts, and labor receipts for the qualified emissions related repairs must be presented to the department and support that the emissions repairs being claimed have been performed.

(C) The valid retest vehicle inspection report and valid vehicle repair form for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the individual vehicle waiver, the vehicle repair form shall be completed by a recognized emissions repair technician of Texas.

§23.53. *Time Extensions.*

(a) The department may issue a time extension to any vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular time extension. A time extension defers the need for full compliance with vehicle emissions standards of the vehicle emissions inspection and maintenance (I/M) program for a specified period of time after a vehicle fails an emissions test. The motorist may apply once each testing cycle for the parts availability time extension. The motorist may apply every other testing cycle for the low income time extension.

(b) Low income time extension.

(1) The applicant must provide proof in writing, in a form approved by the department, that:

(A) The vehicle failed the initial emissions inspection test; proof shall be in the form of the original failed vehicle inspection report.

(B) The vehicle has not been granted a low income time extension in the previous testing cycle.

(C) The applicant is the owner of the vehicle that is the subject of the low income time extension.

(D) The applicant receives financial assistance from the Texas Health and Human Services Commission or the Texas Department of Aging and Disability Services due to indigence or the applicant's adjusted gross income (if the applicant is married, the applicant's adjusted gross income is equal to the applicant's adjusted gross income plus the applicant's spouse's adjusted gross income) is at or below the current federal poverty level as published by the United States Department of Health and Human Services, Office of the Secretary, in the Federal Register; proof shall be in the form of a federal income tax return or other documentation approved by the department that the applicant certifies as true and correct.

(2) After a vehicle receives an initial low income time extension, the vehicle must pass an emissions test prior to receiving another low income time extension.

(c) Parts availability time extension.

(1) The applicant must demonstrate to the department that:

(A) Reasonable attempts were made to locate necessary emissions control parts by retail or wholesale parts suppliers.

(B) Emissions related repairs cannot be completed before the expiration of the registration, or before the 30 day period following an out of cycle inspection because the repairs require an uncommon part.

(2) The applicant shall provide to the department:

(A) an original vehicle inspection report indicating the vehicle failed the emissions test; and

(B) an invoice, receipt, or original itemized document indicating the uncommon part(s) ordered by: name; description; catalog number; order number; source of part(s), including name, address, and phone number of parts distributor; and expected delivery and installation date(s). The original itemized document must be prepared by a recognized emissions repair technician of Texas before a parts availability time extension can be issued.

(3) A parts availability time extension is not allowed for tampering related repairs.

(4) If the vehicle does not pass an emissions retest prior to the expiration of the parts availability time extension, the applicant must provide to the department adequate documentation that one of the conditions listed in subparagraph (A) or (B) of this paragraph exists:

(A) the motorist qualifies for a low mileage waiver, low income time extension or individual vehicle waiver; or

(B) the motor vehicle will no longer be operated in the affected county.

(5) A vehicle that receives a parts availability time extension in one testing cycle must have the vehicle repaired and retested prior to the expiration of such extension, or must qualify for another type of waiver or time extension to be eligible for a parts availability time extension in the subsequent testing cycle.

(6) The length of a parts availability time extension shall depend upon expected delivery and installation date(s) of the uncommon part(s) as determined by the department representative on a case by case basis. Parts availability time extensions will be issued for either 30, 60, or 90 days.

*§23.55. Certified Emissions Inspection Station and Inspector Requirements.*

(a) To be certified by the department as an emissions inspection station for purposes of the emissions inspection and maintenance (I/M) program, the station must:

(1) be certified by the department as an official vehicle inspection station;

(2) comply with this chapter, the DPS Training and Operations Manual for Vehicle Inspection Stations and Certified Inspectors, Texas Transportation Code, Chapter 547 and Chapter 548, and regulations of the department;

(3) complete all applicable forms and reports as required by the department;

(4) purchase or lease emissions testing equipment currently certified by the Texas Commission on Environmental Quality (TCEQ) to emissions test vehicles and maintain existing emissions testing equipment to meet the certification requirements of the TCEQ;

(5) have a dedicated data transmission line for each vehicle emissions analyzer to be used to perform vehicle emissions tests; and

(6) enter into and maintain a business arrangement with the Texas Information Management System contractor to obtain a telecommunications link to the Texas Information Management System vehicle identification database for each vehicle emissions analyzer to be used to inspect vehicles as described in the Texas I/M State Implementation Plan (SIP).

(b) All public certified emissions inspection stations in affected counties, excluding Travis, Williamson and El Paso counties shall offer both the acceleration simulated mode (ASM-2) test and the onboard diagnostic (OBD) test. Certified emissions inspection stations in these affected counties desiring to offer OBD only emission testing to the public must request a waiver as low volume emissions inspection station from a department regional manager, as provided in §23.56 of this title (relating to Waiver for Low Volume Emissions Inspection Stations). All public certified emissions inspection stations in Travis, Williamson and El Paso counties must offer both the OBD and two speed idle (TSI) test.

(c) The fee for an emissions test must provide for one free retest for each failed initial emissions inspection, provided that the motorist has the retest performed at the same vehicle inspection station where the vehicle originally failed and the retest is conducted within 15 calendar days of the initial emissions test, not including the date of the initial emissions test.

(d) To qualify as a certified emissions inspector, an applicant must:

(1) be certified by the department as an official vehicle inspector;

(2) complete the training required for the vehicle emissions inspection program and receive the department's certification for such training;

(3) comply with the DPS Training and Operations Manual for Official Vehicle Inspection Stations and Certified Inspectors, this chapter, and other applicable rules, regulations and notices of the department; and

(4) complete all applicable forms and reports as required by the department.

*§23.56. Waiver for Low Volume Emissions Inspection Stations.*

(a) This waiver allows a public inspection station to perform limited state required vehicle emissions testing on 1996 and newer model year vehicles using department approved onboard diagnostic (OBDII) testing equipment. Government and fleet inspection stations do not require this waiver. The low volume waiver is not available to vehicle inspection stations in Travis, Williamson, or El Paso counties.

(b) Limitations of low volume waiver.

(1) This low volume waiver does not authorize a vehicle inspection station to conduct an emissions inspection on a vehicle which is model year 1995 or older.

(2) Each month, the vehicle inspection station is allocated 150 emission tests. After the monthly test allocation of the vehicle inspection station has been used, no more inspections will be allowed until the next month. In the event that the station performs less than 150 emission tests, the remaining number will carry over to the next

month. The annual waiver limit number will be automatically reset each January with no carry over from the previous year.

(c) Applications for low volume waiver must be submitted in a manner prescribed by the department.

**§23.57. Prohibitions.**

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the department, unless all applicable air pollution emissions control related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance requirements and procedures contained in the Texas inspection and maintenance (I/M) State Implementation Plan (SIP) are completely and properly performed in accordance with the rules and regulations adopted by the department and the Texas Commission on Environmental Quality (TCEQ).

(b) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen inspection vehicle inspection report(s), vehicle repair form(s), vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions inspection and maintenance requirements and procedures contained in Texas Transportation Code, Chapter 548, and the Texas I/M SIP.

(c) No organization, business, person, or other entity may represent itself as an inspector certified by the department, unless such certification has been issued pursuant to the certification requirements and procedures contained in the Texas I/M SIP, this chapter, and the regulations of the department.

(d) No person may act as or offer to perform services as a recognized emissions repair technician of Texas or a recognized emissions repair facility of Texas without first obtaining and maintaining recognition by the department.

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

Filed with the Office of the Secretary of State on December 23, 2014.

TRD-201406297

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 1, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



**37 TAC §23.57, §23.58**

The Texas Department of Public Safety (the department) adopts the repeal of §23.57 and §23.58, concerning Vehicle Emissions Inspection and Maintenance Program. These repeals are adopted without changes to the proposal as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8557) and will not be republished.

The repeal of §23.57 is intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The repeal reflects the elimination of rules specific to the inspection certificate. The repeal of §23.58 is filed simultaneously with adopted

new §23.57 to reorganize existing language and improve clarity of the subchapter.

No comments were received regarding these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 December 23, 2014.

TRD-201406298

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Texas Department of Public Safety

Effective date: March 1, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



**SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES**

**37 TAC §23.61, §23.62**

The Texas Department of Public Safety (the department) adopts amendments to §23.61 and §23.62, concerning Violations and Administrative Penalties. These sections are adopted with changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8558) and will be republished.

The adopted amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The adopted amendments reflect such changes as well as minor changes adopted for the purposes of clarification.

The department accepted comment on the proposed rules through December 1, 2014. Identical written comments were submitted by Mr. Bill Bandy, with Lube Center Management, Ltd; Mr. Josh Edwards, with Forney Kwik Kar; Mr. Brent A. Stone, with Kwik Kar of Coffeyville; Mr. Kelly Privett, with Kwik Kar on Inwood (Dallas); Mr. Bill Flynt, Kwik Kar Auto Service Center, Richardson, Texas; and Mr. Michael Nowels, Executive Director of the Texas State Inspection Association.

The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: It is proposed that several of the violations listed in §23.62 include a requirement that the violation be "willful" or "knowing," in order to avoid penalizing an innocent mistake.

RESPONSE: "Willful" or "knowing" is a requirement for the prosecution of criminal cases in which intent is required. Such a requirement would impose a significant evidentiary burden on the prosecution of administrative cases and effectively prevent enforcement action. The issue of the violator's lack of knowledge or

intent can be raised by the respondent and is one factor among others that is considered at the administrative hearing. The department disagrees with the comment and will not be modifying the proposal.

Additional comments were received which relate exclusively to the implementation of House Bill 2305 and specifically to the proposed policy of a first year "grace period," i.e., the policy of not implementing the bill's requirement of a passing vehicle inspection within 90 days of the vehicle registration's expiration until March 1, 2016. The proposed grace period for the initial year of implementation is not addressed in and is unrelated to the department's rule proposals.

The department also received a comment from the Department of Motor Vehicle requesting clarification of the proposed amendments to §23.62(g) as the language was unclear. In response to the comment, staff reviewed the text and found language originally intended for the proposal had been omitted. To correct this omission, the department is reverting to the language that is currently in the administrative code. The text of §23.62 is being republished.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

#### §23.61. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), or in the rules of the Texas Department of Public Safety, the terms used in this chapter have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection. In addition to the terms defined by the TCAA, the words and terms detailed in this section, when used in this chapter, shall have the following meanings:

- (1) Lifetime revocation--The withdrawal of the authority granted by the department to inspect vehicles under the certificate of a vehicle inspection station or inspector for the lifetime of the applicant.
- (2) Re-education--To provide mandatory additional or remedial training to a vehicle inspector to correct errors observed, or discovered by department personnel. The department representative provides this training on-site, or later, as scheduling permits.
- (3) Revocation--The withdrawal of the authority granted by the department to inspect vehicles under the certificate of a vehicle inspection station or inspector for a period of at least three years.
- (4) Suspension--A temporary abatement of the authority associated with the certification of a vehicle inspection station, or inspector.
- (5) Warning--A written reprimand based on a category A violation, which if repeated will result in a more severe administrative sanction.

#### §23.62. Violations and Penalty Schedule.

- (a) As provided in Texas Transportation Code, §548.405, and in accordance with this section, the department may deny an application for a certificate, revoke or suspend the certificate of a person, vehicle inspection station, or inspector, place on probation, or reprimand a person who holds a certificate.
- (b) Pursuant to Texas Transportation Code, §548.405(h) and (i), the department will administer penalties by the category of the violation. The violations listed in this section are not an exclusive list of

violations. The department may assess penalties for any violations of Texas Transportation Code, Chapter 548 (the Act), or rules adopted by the department. The attached graphic summarizes the violation categories and illustrates the method by which penalties are enhanced for multiple violations.

- (c) Violation categories are as follows:

- (1) Category A.

- (A) Issuing a vehicle inspection report without inspecting one or more items of inspection.

- (B) Issuing a vehicle inspection report without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

- (C) Issuing the wrong series or type of inspection report for the vehicle presented for inspection.

- (D) Refusing to inspect a vehicle without an objective justifiable cause related to safety.

- (E) Failure to properly safeguard inspection reports, department issued forms, the electronic station interface device, emissions analyzer access/identification card, and/or any personal identification number (PIN).

- (F) Failure to maintain required records.

- (G) Failure to have at least one certified inspector on duty during the posted hours of operations for the vehicle inspection station.

- (H) Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart and other notices in a manner prescribed by the department.

- (I) Failure to post hours of operation.

- (J) Failure to maintain the required facility standards.

- (K) Issuing a vehicle inspection report to a vehicle with one failing item of inspection.

- (L) Failing to enter information or entering incorrect vehicle information into the electronic station interface device or emissions analyzer resulting in the reporting of erroneous information concerning the vehicle.

- (M) Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

- (N) Failure of inspector of record to ensure complete and proper inspection.

- (O) Failure to enter an inspection into the approved interface device at the time of the inspection.

- (P) Conducting an inspection without the appropriate and operational testing equipment.

- (Q) Failure to perform a complete inspection and/or issue a vehicle inspection report.

- (R) Requiring repair or adjustment not required by the Act, this chapter, or department regulation.

- (2) Category B.

- (A) Issuing a passing vehicle inspection report without inspecting the vehicle.

- (B) Issuing a passing vehicle inspection report to a vehicle with multiple failing items of inspection.

(C) Refusing to allow owner to have repairs or adjustments made at location of owner's choice.

(D) Allowing an uncertified person to perform, in whole or in part, the inspection or rejection of a required item during the inspection of a vehicle.

(E) Charging more than the statutory fee.

(F) Acting in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(G) Failing to list and charge for any additional services separately from the statutorily mandated inspection fee.

(H) Charging a fee, convenience fee or service charge in affiliation or connection with the inspection, in a manner that is false, misleading, deceptive or unauthorized.

(I) Inspector performing inspection while under the influence of alcohol or drugs.

(J) Inspecting a vehicle at a location other than the department approved inspection area.

(K) Altering a previously issued inspection report.

(L) Issuing a vehicle inspection report, while employed as a fleet or government inspection station inspector, to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station or the general public.

(M) Preparing or submitting to the department a false, incorrect, incomplete or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(N) Issuing a passing vehicle inspection report without inspecting multiple inspection items on the vehicle.

(O) Issuing a passing vehicle inspection report by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(P) Giving, sharing, lending or displaying an emissions analyzer access/identification card, the electronic station interface device unique identifier, or divulging the associated PIN to another.

(Q) Failure of inspector to enter all required data pertaining to the inspection, including, but not limited to data entry into the emissions testing analyzer, electronic station interface device, vehicle inspection report or any other department required form.

(R) Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(S) Issuing a passing vehicle inspection report in violation of Texas Transportation Code, §548.104(d).

(T) Vehicle inspection station owner, operator or manager directing a state certified inspector under his employ or supervision to issue a vehicle inspection report when in violation of this chapter, department regulations, or the Act.

(U) Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's

employ or supervision issuing a passing vehicle inspection report in violation of this chapter, department regulations, or the Act.

(V) Issuing a safety only inspection report to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county.

(3) Category C.

(A) Issuing more than one vehicle inspection report without inspecting the vehicles.

(B) Issuing a passing vehicle inspection report to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing a passing vehicle inspection report to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a passing vehicle inspection report to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue a vehicle inspection report or participate in the regulated operations of the vehicle inspection station.

(G) Charging more than the statutory fee in addition to not inspecting the vehicle.

(H) Misrepresenting a material fact in any application to the department or any other information filed pursuant to the Act or this chapter.

(I) Conducting or participating in the inspection of a vehicle during a period of suspension, revocation, denial, after expiration of suspension but before reinstatement, or after expiration of inspector certification.

(J) Altering or damaging an item of inspection with the intent that the item fail the inspection.

(K) Multiple instances of preparing or submitting to the department false, incorrect, incomplete, or misleading forms or reports.

(L) Multiple instances of failing to enter complete and accurate data into the emissions testing analyzer or electronic station interface device, or failing to transmit complete and accurate data in the manner required by the department.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to possess a valid driver license.

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emissions testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing a passing emissions inspection report without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test, or the use of unauthorized bypass for gas cap test.

(D) Issuing a passing emissions inspection report when the required emissions adjustments, corrections or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections or repairs.

(E) Falsely representing to an owner or operator of a vehicle that an emissions related component must be repaired, adjusted or replaced in order to pass emissions inspection.

(F) Requiring an emissions repair or adjustment not required by this chapter, department regulation, or the Act.

(G) Tampering with the emissions system or an emission related component in order to cause vehicle to fail emissions test.

(H) Refusing to allow the owner to have emissions repairs or adjustments made at a location of the owner's choice.

(I) Allowing an uncertified person to conduct an emissions inspection.

(J) Charging more than the authorized emissions inspection fee.

(K) Entering false information into an emission analyzer in order to issue an inspection certificate.

(L) Violating a prohibition described in §28.57 of the title (relating to Prohibitions).

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previously adjudicated or otherwise finalized violations in the same category within the five year period preceding the date of the current violation.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked, or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation or pending action, has no, nor will have any, further involvement in the business of state inspections.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation, has no, nor will have any, further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and

agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for certification as an official vehicle inspection station.

(g) Reinstatement. After expiration of a period of suspension, reinstatement must be requested by submitting a written application to the department. In addition, the conditions detailed in paragraphs (1) - (4) of this subsection must be met:

(1) all qualifications for appointment;

(2) passing the complete written and demonstration test when required;

(3) submitting the certification fee if certification has expired during suspension; and

(4) paying all charges assessed related to the administrative hearing process, if applicable.

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 December 23, 2014.

TRD-201406299

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 1, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER G. VEHICLE INSPECTION ADVISORY COMMITTEE

### 37 TAC §§23.71 - 23.77

The Texas Department of Public Safety (the department) adopts new §§23.71 - 23.77, concerning Vehicle Inspection Advisory Committee. These sections are adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8561) and will not be republished.

This adoption is necessary for the purpose of reorganizing and consolidating the rules governing the vehicle inspection advisory committee and to simplify and generally improve the clarity of the related rules.

The department accepted comment on the proposed rules through December 1, 2014. Identical written comments were submitted by Mr. Bill Bandy, with Lube Center Management, Ltd; Mr. Josh Edwards, with Forney Kwik Kar; Mr. Brent A. Stone, with Kwik Kar of Coffeyville; Mr. Kelly Privett, with Kwik Kar on Inwood (Dallas); Mr. Bill Flynt, Kwik Kar Auto Service Center, Richardson, Texas; and Mr. Michael Nowels, Executive Director of the Texas State Inspection Association.

The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: We suggest that a provision be added that states: "Any and all proposed rule changes considered for adoption under Texas Transportation Code, Chapter 548, and Texas Health and Safety Code, Chapter 382, shall be provided to the Inspection Advisory Committee [sic] prior to publication for their comment and input."

RESPONSE: The department regularly consults with the Vehicle Inspection Advisory Committee relating to proposed rules. Moreover, §548.006(h) of the Texas Transportation Code provides: "The committee is entitled to review and comment on rules to be considered for adoption by...the department under this chapter or Chapter 382, Health and Safety Code." The department believes the proposed rule is unnecessary and in light of this statutory requirement will not modify the proposals in response to this comment.

COMMENT: "Any rules designed to lessen the input and assistance of the Vehicle Inspection Advisory Committee should not be approved, and the Department should work much harder to include this Committee in planning that involves the Vehicle Inspection Program."

RESPONSE: The proposed amendments do not lessen the input or otherwise reduce the influence of the Committee. The amendments merely update the rules and eliminate obsolete provisions. The department disagrees with this comment and will not modify the proposals.

Additional comments were received which relate exclusively to the implementation of House Bill 2305 and specifically to the proposed policy of a first year "grace period," i.e., the policy of not implementing the bill's requirement of a passing vehicle inspection within 90 days of the vehicle registration's expiration until March 1, 2016. The proposed grace period for the initial year of implementation is not addressed in and is unrelated to the department's rule proposals.

Comments were also received from Mr. Chris Klaus, Senior Program Manager, North Central Texas Council of Governments (NCTCOG) regarding the adoption of this proposal. The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: NCTCOG recommends the department incorporate information about the structure and membership of the Vehicle Inspection Advisory Committee and not repeal the existing rules that provide this information.

RESPONSE: The requested information is provided in §548.006 of the Transportation Code. The rules to be repealed simply restate the statutory provisions. There will be no changes to the proposals.

COMMENT: NCTCOG recommends rules requiring the department post meeting notices of the Vehicle Inspection Advisory Committee on the department's website and provide notice by email to interested parties.

RESPONSE: The department is receptive to suggestions regarding the notification and scheduling of the meetings and will work to address these concerns as proposed by the commenter. However, the department does not believe there is a need to modify the proposals at this time.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which

authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548; and §548.006.

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 December 23, 2014.

TRD-201406300

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 1, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER H. MISCELLANEOUS VEHICLE INSPECTION PROVISIONS

### 37 TAC §23.82

The Texas Department of Public Safety (the department) adopts new §23.82, concerning Acceptance of Out-of-State Vehicle Inspection Certificates. This section is adopted without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8562) and will not be republished.

This adoption is filed simultaneously with the repeal of §3.72, concerning Acceptance of Out-of-State Vehicle Inspection Certificates. The adopted new section is intended to consolidate the rules relating to vehicle inspection and to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The new section also reflects such changes as well as minor changes adopted for the purposes of clarification.

No comments were received regarding the proposal.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548.

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 December 23, 2014.

TRD-201406301

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 1, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER I. VEHICLE INSPECTION ADVISORY COMMITTEE

### 37 TAC §§23.201 - 23.214

The Texas Department of Public Safety (the department) adopts the repeal of §§23.201 - 23.214, concerning Vehicle Inspection Advisory Committee. These repeals are adopted without changes to the proposal as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8563) and will not be republished.

The repeal of §§23.201 - 23.214 is filed simultaneously with the adoption of new §§23.71 - 23.77 to reorganize and consolidate the rules governing the vehicle inspection advisory committee and to simplify and generally improve the clarity of the related rules.

No comments were received regarding these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 December 23, 2014.

TRD-201406304

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 1, 2015

Proposal publication date: October 31, 2014

For further information, please call: (512) 424-5848



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 20. TEXAS WORKFORCE COMMISSION

#### CHAPTER 849. EMPLOYMENT AND TRAINING SERVICES FOR DISLOCATED WORKERS ELIGIBLE FOR TRADE BENEFITS

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 849, relating to Employment and Training Services for Dislocated Workers Eligible for Trade Benefits, *without* changes, as published in the October 10, 2014, issue of the *Texas Register* (39 TexReg 8065):

Subchapter A. General Provisions, §§849.1 - 849.3

Subchapter B. Trade Services Responsibilities, §849.11 and §849.12

Subchapter C. Trade Services, §849.21 and §849.22

The Commission adopts amendments to the following section of Chapter 849, relating to Employment and Training Services for Dislocated Workers Eligible for Trade Benefits, *with* changes, as published in the October 10, 2014, issue of the *Texas Register* (39 TexReg 8065):

Subchapter C. Trade Services, §849.23

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 849 rule change is to align changes to the Trade Adjustment Assistance (TAA) program statutes, Agency operations, and program requirements.

TAA is a federal program that provides a path for employment growth and opportunity through aid to workers who have lost their jobs as a result of foreign trade. The TAA program seeks to provide these trade-affected workers with opportunities to obtain the skills, resources, and support they need to become reemployed.

TAA offers a variety of benefits and services to support workers in their search for reemployment. This includes job training, job search and relocation allowances, and income support. The Commission's workforce partners administer these services using federal funds.

The Trade Act of 1974 has been amended numerous times since its enactment in January 1975 and has continued to evolve. The benefits and services available to adversely affected workers depend on which of the following versions of the Trade Act a worker is certified under:

--Trade Adjustment Assistance Reform Act of 2002: reauthorized the TAA program through Fiscal Year 2007;

--Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009: overhauled the TAA program and expanded TAA coverage to more workers and firms in the service sector, and expanded workers' opportunities for training, health insurance coverage, and reemployment;

--Omnibus Trade Act of 2011: extended the TGAAA of 2009 amendments for six weeks;

--Trade Adjustment Assistance Extension Act (TAAEA) of 2011: changed the group eligibility requirements and individual benefits and services available under TAA for some workers; and

--Reversion 2014: the sunset provisions of the TAAEA, effective January 1, 2014, which largely revert the TAA program to the provisions of the 2002 amendments with some provisions carried forward from the 2011 TAAEA.

Rule revisions are needed to implement the changes regarding program requirements, individual benefits, and services available.

To ensure appropriate delivery of services, amendments are necessary to address statutory changes and clarify operational and procedural guidance. These changes include moving functions from the state level to the Board level that update roles and responsibilities as well as better defining the responsibilities of participants.

The intent of these amendments is to provide maximum flexibility for the Boards, ensure compliance with laws and regulations,



and integrate and align the Trade program requirements with other workforce programs.

## 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

The Commission adopts the following amendments to Subchapter A:

#### §849.1. Purpose

Section 849.1(a)(2), regarding the laws under which coordination and integration of services to dislocated workers are conducted, adds reference to the Trade Act, including the federal statutes relating to the Trade Act of 1974.

Section 849.1(a)(4), referencing the Trade Act and the federal statutes relating to the Trade Act of 1974, is removed.

#### §849.2. Definitions

Section 849.2(1), the definition of "Alternative Trade Adjustment Assistance for Older Workers" (ATAA):

--adds Reemployment Trade Adjustment Assistance (RTAA), which is similar to the ATAA benefit. The availability of RTAA depends on the Trade law under which the US Department of Labor (DOL) issues a Trade certification. Both ATAA and RTAA provide a subsidy for older workers who secure subsequent employment; and

--removes reference to the requirement that new employment must be within 26 weeks of separation because eligibility standards for ATAA and RTAA are different.

New §849.2(2) defines "benchmarking," as a process established by the Trade Adjustment Extension Act of 2011 (TAAEA) to ensure worker success by monitoring workers' academic status and progress in training. Benchmarking is conducted no less often than once every sixty (60) days and designed to monitor and ensure the worker progresses toward completing the approved training based on:

--maintaining satisfactory academic standing; and

--staying on schedule to complete training within the time frame identified in the approved training plan.

New §849.2(5), the definition of "HCTC--Health Coverage Tax Credit," is removed. HCTC expired January 1, 2014; TAA participants will no longer receive HCTC to assist them in paying their health coverage premiums.

New §849.2(6), the definition of "Individual Employment Plan," is removed.

New §849.2(6) defines "job search allowance" as a cash benefit provided to Trade-certified workers to support out-of-area job search when suitable employment is not available within the Commission-established local commuting area. Trade-certified workers receive a job search allowance as a benefit to support out-of-area job search.

New §849.2(8) defines "relocation allowance," as a cash benefit provided to a Trade-certified worker to support relocation of the worker's household and family when suitable employment is not available to the worker within the Commission-established local

commuting area and relocation is necessary to secure suitable employment.

New §849.2(9) defines "Reemployment and Training Plan" (REP), as an employability development plan and service strategy that identifies the results of a comprehensive and objective assessment of the participant's knowledge, skills, abilities, and interests; employment goals; a description of training services; the appropriate combination of services for the participant to achieve employment goals and objectives; and the benchmarks for successful completion of the plan.

New §849.2(10) clarifies the definition of "suitable employment" by removing "prior to a referral to Trade-approved training." Suitable employment is any employment that meets the requirements of 19 United States Code (USC) §2296 and results in work of a substantially equal or higher skill level as compared to the worker's past adversely affected employment with wages of not less than 80 percent of the worker's average weekly wage.

New §849.2(11) amends the definition of "Trade Act" to clarify that the Trade Act of 1974, as amended, includes the Trade Adjustment Assistance Reform Act of 2002; the Trade and Globalization Adjustment Assistance Act of 2009; the Omnibus Trade Act of 2010; the Trade Adjustment Assistance Extension Act of 2011; and the sunset provisions of the Trade Adjustment Assistance Extension Act of 2011, referred to as Reversion 2014.

New §849.2(17) amends the definition of "waiver of the training requirement" to specify that a waiver must be approved by state merit staff. Only state merit staff can approve services and benefits for Trade-certified workers.

Certain paragraphs have been renumbered to reflect additions.

#### §849.3. Trade Service Strategy

Section 849.3(b)(3) clarifies that training supported under the Trade Act may include demand and targeted occupations as well as occupations in which there is a reasonable expectation of employment.

Section 849.3(c) clarifies that coenrollment with Workforce Investment Act (WIA) services must not interfere with the timely provision of TAA services.

Section 849.3(d)(1) - (5) is removed.

New §849.3(d)(1) - (12) retains the services previously located in §849.3(d)(1) - (5) and adds additional services, set forth in the order they are provided. Boards must ensure that the following services are provided to dislocated workers:

(1) Explanation of benefits and services available under the Trade Act, to include applicable deadlines;

(2) Assessment of education, skills, and service needs;

(3) Information on training available locally and regionally, including information on how to apply for financial aid supported under the Higher Education Act of 1965;

(4) Individual career counseling, including job search and placement counseling;

(5) Short-term prevocational services;

(6) Issuance of a waiver of the training requirement where suitable work is unavailable, training is determined not to be feasible or appropriate, and the worker meets applicable eligibility criteria;

(7) Development of an REP;

- (8) Referral to training services where suitable employment is unavailable;
- (9) Assistance in filing requests for job search and/or relocation allowances;
- (10) Support services available under the WIA Title I dislocated worker program;
- (11) Case management; and
- (12) Follow-up services upon completion of training.

#### SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES

The Commission adopts the following amendments to Subchapter B:

##### §849.11. General Board Responsibilities

Section 849.11(c)(4), relating to Boards' monitoring requirements, adds benchmarking as the required means of ensuring progress toward goals and objectives.

Section 849.11(c)(5), the requirement that the Commission be notified if a participant drops out of training, is removed because this is no longer a monitoring responsibility or requirement of the Boards.

Certain paragraphs have been renumbered to reflect additions.

##### §849.12. Participant Responsibilities

Section 849.12(1) adds that, in addition to Unemployment Insurance, dislocated workers eligible for Trade benefits must apply for Trade Readjustment Allowances (TRA).

Section 849.12(5) adds that dislocated workers eligible for Trade benefits are required to accept a job offer "and/or retain employment," if the position meets the criteria for suitable employment.

Section 849.12(7) specifies that dislocated workers eligible for Trade benefits are required to "fully participate in Trade-approved training."

Section 849.12(8) specifies that dislocated workers eligible for Trade benefits are required to notify the case manager prior to modifying coursework rather than within one week of having dropped out.

New §849.12(9) requires dislocated workers eligible for Trade benefits to maintain a satisfactory academic status and progress in training as stipulated in the REP.

Certain paragraphs have been renumbered to reflect additions.

#### SUBCHAPTER C. TRADE SERVICES

The Commission adopts the following amendments to Subchapter C:

##### §849.21. Activities Prior to Certification of a Trade Petition

Section 849.21(a) replaces the reference to "Texas Workforce Centers" with "Workforce Solutions Offices" to clarify that Workforce Solutions Offices provide services.

Section 849.21(b) removes the reference to "in local workforce development areas."

Section 849.21(b)(3) specifies that when filing Trade petitions, Boards must ensure layoff assistance is provided to companies, workers, and labor unions.

Section 849.21(6)(iii) removes the requirement to provide HCTC information during orientation to Trade benefits. HCTC expired

on January 1, 2014; therefore, TAA participants will no longer receive HCTC to assist them in paying their health coverage premiums.

Section 849.21(6)(v)(I) - (III), the requirement to provide a signed waiver of training ensuring eligibility for HCTC and other Trade benefits that have regulatory time limits, is removed.

Section 849.21(7) specifies that Boards must coordinate with the appropriate UI field specialist when providing layoff assistance.

Certain clauses and subclauses have been renumbered to reflect additions.

##### §849.22. Post Certification of a Trade Petition

Section 849.22(a) sets forth in new paragraphs (1) and (2) that Boards must ensure that:

(1) Trade-certified workers referred to WIA intensive or training services are controlled in WIA dislocated worker services, consistent with WIA eligibility criteria, the needs of the worker, and a Board's policies and procedures; and

(2) the coenrollment of Trade-certified workers in WIA Title I dislocated worker services shall not interfere with the timely provision of TAA services.

Section 849.22(b) clarifies that Boards must ensure trade-affected workers are provided WIA intensive or training services and adds three additional criteria--described in new §849.22(b)(7) - (9)--to be met and documented in the REP.

Section 849.22(b)(4) removes the requirement that training must be in the commuting area as defined in the Texas Unemployment Compensation Act.

Section 849.22(b)(6) retains the provision that training is available at a reasonable cost for the selected occupation and removes the language stating that the availability is "based on a review of Board-approved training as set forth in §849.23(a)(1) - (4) of this subchapter in the workforce area for like training."

New §849.22(b)(7) - (9) adds the following as criteria that Boards must ensure, prior to referring a trade-affected worker to WIA intensive or training services, are met and documented in the REP:

(7) Training can be fully completed and the degree or credential secured within the maximum time frames established under the trade-affected worker's Trade Act certification;

(8) No portion of required training costs are borne by the worker; and

(9) Part-time training is approved only where permitted by the trade-affected worker's Trade Act certification, and the worker is aware that TRA support during periods of part-time training will be unavailable.

Section 849.22(c)(1) - (3) is removed.

New §849.22(c) provides that Boards must ensure the approval of Trade benefits and services is accomplished by state merit staff, including approval of training, waiver issuance, and waiver continuation, and the associated review and approval of waiver continuation.

New §849.22(d) provides that Boards must ensure that any denial of Trade benefits or services is accomplished by forwarding a recommendation to the Agency's TAA unit for issuance of a formal appealable decision.

## §849.23. Training Referrals

Section 849.23(a)(1) - (5) specifies that Boards must ensure that referrals to Trade-funded training are Board approved, and that training:

- (1) meets the nine criteria established in §849.22(b)(1) - (9);
- (2) uses training providers that are licensed under applicable state law or exempt from such requirements, or possessing accreditation recognized by the US Department of Education;
- (3) is occupationally specific;
- (4) meets the needs of employers for demand or targeted occupations, or ensures the participant has a reasonable expectation of employment; and
- (5) can be completed and a degree or credential secured within the maximum time frame established under the worker's Trade certification.

Section 849.23(a)(1)(B) removes the requirement for the Commission to approve prevocational or vocational skills training referrals.

Section 849.23(a)(2) removes the requirement for training to meet the time limitations for Trade benefits.

New §849.23(4) clarifies that training must offer a reasonable expectation of employment.

New §849.23(5) clarifies the requirement that training can be completed with a degree or credential secured within the statutory time frames established under the worker's Trade certification.

Section 849.23(b)(1) adds that employer-based training includes on-the-job training, customized training, and apprenticeship programs.

Section 849.23(b)(3) specifies that workers' remedial training, including literacy, particularly English as a Second Language, Adult Education and Literacy, or GED training, must be considered.

Section 849.23(b)(3)(A) removes the requirement for the training provider to submit amendments to the IEP.

Section 849.23(b)(3)(B) removes the requirement that the case manager approves amendments before the Commission makes the final determinations regarding extended training.

Certain paragraphs have been renumbered to reflect additions.

Comment: One commenter expressed concern that "GED" refers to a specific brand name for General Educational Development tests, and that the generic "high school equivalency certificate" is the more appropriate term to use in these rules.

Response: The Commission agrees and amends §849.23(b)(3) to remove GED and replace it with the more appropriate term, high school equivalency certificate.

COMMENTS WERE RECEIVED FROM:

Ellen Williams, on behalf of CTB/McGraw-Hill

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §§849.1 - 849.3

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 December 23, 2014.

TRD-201406268

Laurie Biscoe

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Effective date: January 12, 2015

Proposal publication date: October 10, 2014

For further information, please call: (512) 475-0829



## SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES

### 40 TAC §§849.11, §849.12

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 December 23, 2014.

TRD-201406269

Laurie Biscoe

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Effective date: January 12, 2015

Proposal publication date: October 10, 2014

For further information, please call: (512) 475-0829



## SUBCHAPTER C. TRADE SERVICES

### 40 TAC §§849.21 - 849.23

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§849.23. *Training Referrals.*

(a) Boards shall ensure that referrals to Trade-funded training are Board approved as set forth in this subsection, and that training:

(1) meets the nine criteria established in §849.22(b)(1) - (9) of this subchapter;

(2) uses training providers that are licensed under applicable state law or exempt from such requirements, or possessing accreditation recognized by the US Department of Education;

(3) is occupationally specific;

(4) meets the needs of employers for demand or targeted occupations, or ensures the participant has a reasonable expectation of employment; and

(5) can be completed and a degree or credential secured within the maximum time frame established under the worker's Trade certification.

(b) Boards shall ensure that the following types of intensive and training services are considered:

(1) employer-based training, including on-the-job training, customized training, and apprenticeship programs;

(2) contextual vocational skills training, particularly for Limited English Proficiency customers; and

(3) remedial training, including literacy, particularly English as a Second Language, Adult Education and Literacy, or high school equivalency certificate training.

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 December 23, 2014.

TRD-201406270

Laurie Biscoe

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Effective date: January 12, 2015

Proposal publication date: October 10, 2014

For further information, please call: (512) 475-0829



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Adopted Rule Reviews

Texas Workforce Commission

### Title 40, Part 20

The Texas Workforce Commission (Commission) adopts the review of Chapter 800, General Administration, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8601).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 800 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, re-adopts Chapter 800, General Administration.

TRD-201406272

Laurie Biscoe

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Filed: December 23, 2014



The Texas Workforce Commission (Commission) adopts the review of Chapter 801, Local Workforce Development Boards, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8601).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 801 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, re-adopts Chapter 801, Local Workforce Development Boards.

TRD-201406273

Laurie Biscoe

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Filed: December 23, 2014



The Texas Workforce Commission (Commission) adopts the review of Chapter 803, Skills Development Fund, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8602).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 803 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, re-adopts Chapter 803, Skills Development Fund.

TRD-201406274

Laurie Biscoe

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Filed: December 23, 2014



The Texas Workforce Commission (Commission) adopts the review of Chapter 813, Supplemental Nutrition Assistance Program Employment and Training, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8602).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 813 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, re-adopts Chapter 813, Supplemental Nutrition Assistance Program Employment and Training.

TRD-201406275

Laurie Biscoe

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Filed: December 23, 2014



The Texas Workforce Commission (Commission) adopts the review of Chapter 815, Unemployment Insurance, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8602).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 815 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 815, Unemployment Insurance.

TRD-201406285  
Laurie Biscoe  
Deputy Director, Workforce Development Division Programs  
Texas Workforce Commission  
Filed: December 23, 2014



The Texas Workforce Commission (Commission) adopts the review of Chapter 817, Child Labor, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8602).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 817 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 817, Child Labor.

TRD-201406276  
Laurie Biscoe  
Deputy Director, Workforce Development Division Programs  
Texas Workforce Commission  
Filed: December 23, 2014



The Texas Workforce Commission (Commission) adopts the review of Chapter 821, Texas Payday Rules, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8602).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 821 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 821, Texas Payday Rules.

TRD-201406277

Laurie Biscoe  
Deputy Director, Workforce Development Division Programs  
Texas Workforce Commission  
Filed: December 23, 2014



The Texas Workforce Commission (Commission) adopts the review of Chapter 833, Community Development Initiatives, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8603).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 833 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 833, Community Development Initiatives.

TRD-201406278  
Laurie Biscoe  
Deputy Director, Workforce Development Division Programs  
Texas Workforce Commission  
Filed: December 23, 2014



The Texas Workforce Commission (Commission) adopts the review of Chapter 843, Job Matching Services, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8603).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 843 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 843, Job Matching Services.

TRD-201406279  
Laurie Biscoe  
Deputy Director, Workforce Development Division Programs  
Texas Workforce Commission  
Filed: December 23, 2014



# TABLES & GRAPHICS

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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.

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Figure 22 TAC §102.1

SCHEDULE OF FEES

|   | Board Fee              | Professional Fee | Texas Online | Peer Assistance | Patient Protection | 83rd Leg - HB 3201 | Total Fee              |
|---|------------------------|------------------|--------------|-----------------|--------------------|--------------------|------------------------|
| <b>DENTIST</b>  |                        |                  |              |                 |                    |                    |                        |
| Application by Exam   | \$215.00               | \$200.00         | \$0.00       | \$0.00          | \$5.00             | \$55.00            | \$475.00               |
| Annual Renewal  | \$150.00               | \$200.00         | \$10.00      | \$9.00          | \$1.00             | \$55.00            | \$425.00               |
| Annual Renewal - Late 1 to 90 days                                    | \$225.00               | \$200.00         | \$10.00      | \$9.00          | \$1.00             | \$55.00            | \$500.00               |
| Annual Renewal - Late 90 to 365 days                                  | \$300.00               | \$200.00         | \$10.00      | \$9.00          | \$1.00             | \$55.00            | \$575.00               |
| Licensure by Credentials  | \$2,800.00             |                  |              |                 |                    | \$55.00            | \$2,855.00             |
| Temporary Licensure by Credentials                                    | \$750.00               |                  |              |                 |                    |                    | \$750.00               |
| Provisional License   | \$100.00               |                  |              |                 |                    |                    | \$100.00               |
| Faculty Initial Application   | \$115.00               |                  |              |                 | \$5.00             |                    | \$120.00               |
| Faculty Annual Renewal  | \$95.00                |                  | \$10.00      | \$9.00          | \$1.00             |                    | \$115.00               |
| Faculty Annual Renewal - Late 1 to 90 days                            | \$142.50               |                  | \$10.00      | \$9.00          | \$1.00             |                    | \$162.50               |
| Faculty Annual Renewal - Late 90 to 365 days                          | \$190.00               |                  | \$10.00      | \$9.00          | \$1.00             |                    | \$210.00               |
| Conversion Fee - Faculty to Full Privilege                            | \$50.00                |                  |              |                 |                    |                    | \$50.00                |
| Nitrous Oxide and Level 1 Anesthesia Application                      | \$32.00                |                  |              |                 |                    |                    | \$32.00                |
| Nitrous Oxide and Level 1 Anesthesia Annual Renewal                   | \$10.00                |                  |              |                 |                    |                    | \$10.00                |
| Level 2 thru Level 4 Anesthesia Application                           | \$60.00                |                  |              |                 |                    |                    | \$60.00                |
| Level 2 thru Level 4 Anesthesia Annual Renewal                        | \$10.00                |                  |              |                 |                    |                    | \$10.00                |
| Portability of Anesthesia Level 3 thru Level 4 Application            | \$120.00               |                  |              |                 |                    |                    | \$120.00               |
| Application to Reactivate a Retired License                           | \$75.00                |                  |              |                 |                    |                    | \$75.00                |
| <b><u>Reinstatement of a Canceled Dental License</u></b>              | <b><u>\$850.00</u></b> |                  |              |                 |                    |                    | <b><u>\$850.00</u></b> |
| Duplicate License / Renewal   | \$25.00                |                  |              |                 |                    |                    | \$25.00                |
| Conversion Fee - Full Privilege to Faculty                            | \$50.00                |                  |              |                 |                    |                    | \$50.00                |
| Conversion Fee - Temporary Licensure by Credentials to Full Privilege | \$2,050.00             |                  |              |                 |                    | \$55.00            | \$2,105.00             |
| <b>DENTAL HYGIENIST</b>   |                        |                  |              |                 |                    |                    |                        |
| Application by Exam   | \$115.00               |                  |              |                 | \$5.00             |                    | \$120.00               |
| Annual Renewal  | \$100.00               |                  | \$6.00       | \$2.00          | \$1.00             |                    | \$109.00               |
| Annual Renewal - Late 1 to 90 days                                    | \$150.00               |                  | \$6.00       | \$2.00          | \$1.00             |                    | \$159.00               |
| Annual Renewal - Late 90 to 365 days                                  | \$200.00               |                  | \$6.00       | \$2.00          | \$1.00             |                    | \$209.00               |
| Licensure by Credentials  | \$630.00               |                  |              |                 |                    |                    | \$630.00               |
| Temporary Licensure by Credentials                                    | \$220.00               |                  |              |                 |                    |                    | \$220.00               |
| Faculty Initial Application   | \$115.00               |                  |              |                 | \$5.00             |                    | \$120.00               |
| Faculty Annual Renewal  | \$83.00                |                  | \$6.00       | \$2.00          | \$1.00             |                    | \$92.00                |



|   | Professional<br>Board Fee | Texas<br>Fee | Peer<br>Online | Patient<br>Assistance | 83rd Leg -<br>HB 3201<br>Protection | Total Fee              |
|---|---------------------------|--------------|----------------|-----------------------|-------------------------------------|------------------------|
| Faculty Annual Renewal - Late 1 to 90 days                            | \$124.50                  |              | \$6.00         | \$2.00                | \$1.00                              | \$133.50               |
| Faculty Annual Renewal - Late 90 to 365 days                          | \$166.00                  |              | \$6.00         | \$2.00                | \$1.00                              | \$175.00               |
| Conversion Fee - Faculty to Full Privilege                            | \$50.00                   |              |                |                       |                                     | \$50.00                |
| Application to Reactivate a Retired License                           | \$75.00                   |              |                |                       |                                     | \$75.00                |
| <b><u>Reinstatement of a Canceled Dental Hygiene License</u></b>      | <b><u>\$218.00</u></b>    |              |                |                       |                                     | <b><u>\$218.00</u></b> |
| Duplicate License / Renewal   | \$25.00                   |              |                |                       |                                     | \$25.00                |
| Nitrous Oxide Cons Sed Monitoring Application                         | \$12.00                   |              |                |                       |                                     | \$12.00                |
| Nitrous Oxide Monitoring Duplicate Certificate                        | \$10.00                   |              |                |                       |                                     | \$10.00                |
| Conversion Fee - Full Privilege to Faculty                            | \$50.00                   |              |                |                       |                                     | \$50.00                |
| Conversion Fee - Temporary Licensure by Credentials to Full Privilege | \$410.00                  |              |                |                       |                                     | \$410.00               |
| <b>DENTAL ASSISTANT</b>   |                           |              |                |                       |                                     | <b>\$0.00</b>          |
| Initial Application   | \$31.00                   |              |                |                       | \$5.00                              | \$36.00                |
| Annual Renewal  | \$29.00                   |              | \$2.00         |                       | \$1.00                              | \$32.00                |
| Annual Renewal - Late 1 to 90 days                                    | \$43.50                   |              | \$2.00         |                       | \$1.00                              | \$46.50                |
| Annual Renewal - Late 90 to 365 days                                  | \$58.00                   |              | \$2.00         |                       | \$1.00                              | \$61.00                |
| Duplicate License / Renewal   | \$25.00                   |              |                |                       |                                     | \$25.00                |
| Pit and Fissure Sealant Application                                   | \$30.00                   |              |                |                       |                                     | \$30.00                |
| Pit and Fissure Sealant Renewal                                       | \$18.00                   |              |                |                       |                                     | \$18.00                |
| Duplicate Pit Fissure Certificate                                     | \$15.00                   |              |                |                       |                                     | \$15.00                |
| Nitrous Oxide Cons Sed Monitoring Application                         | \$12.00                   |              |                |                       |                                     | \$12.00                |
| Nitrous Oxide Monitoring Duplicate Certificate                        | \$10.00                   |              |                |                       |                                     | \$10.00                |
| Coronal Polishing Application   | \$12.00                   |              |                |                       |                                     | \$12.00                |
| Duplicate Coronal Polishing Certificate                               | \$10.00                   |              |                |                       |                                     | \$10.00                |
| <b>DENTAL LABORATORIES</b>  |                           |              |                |                       |                                     | <b>\$0.00</b>          |
| Application   | \$120.00                  |              |                |                       | \$5.00                              | \$125.00               |
| Annual Renewal  | \$131.00                  |              | \$3.00         |                       | \$1.00                              | \$135.00               |
| Annual Renewal - Late 1 to 90 days                                    | \$196.50                  |              | \$3.00         |                       | \$1.00                              | \$200.50               |
| Annual Renewal - Late 90 to 365 days                                  | \$262.00                  |              | \$3.00         |                       | \$1.00                              | \$266.00               |
| Duplicate Certificate   | \$25.00                   |              |                |                       |                                     | \$25.00                |
| <b>OTHER</b>  |                           |              |                |                       |                                     | <b>\$0.00</b>          |
| Mobile Application  | \$120.00                  |              |                |                       |                                     | \$120.00               |
| Annual Mobile Renewal   | \$60.00                   |              |                |                       |                                     | \$60.00                |

|  | Board Fee | Professional Fee | Texas Online | Peer Assistance | Patient Protection | 83rd Leg - HB 3201 | Total Fee |
|--|-----------|------------------|--------------|-----------------|--------------------|--------------------|-----------|
| Duplicate Certificate Mobile Certificate                 | \$15.00   |                  |              |                 |                    |                    | \$15.00   |
| Dentist Intern / Resident Prescription Privileges        | \$50.00   |                  |              |                 |                    |                    | \$50.00   |
| Dental Assistant Course Provider                         | \$100.00  |                  |              |                 |                    |                    | \$100.00  |
| Jurisprudence  | \$55.00   |                  |              |                 |                    |                    | \$55.00   |
| Licensure Verification without Seal                      | \$4.00    |                  |              |                 |                    |                    | \$4.00    |
| Licensure Verification with Seal                         | \$9.00    |                  |              |                 |                    |                    | \$9.00    |
| Criminal History Letter                                  | \$25.00   |                  |              |                 |                    |                    | \$25.00   |
| Printed Copy - Rules and Regulations                     | \$20.00   |                  |              |                 |                    |                    | \$20.00   |
| Printed Copy - TX Occupations Code - Dental Practice Act | \$15.00   |                  |              |                 |                    |                    | \$15.00   |
| Printed Consumer Signage                                 | \$5.00    |                  |              |                 |                    |                    | \$5.00    |
| Board Scores   | \$10.00   |                  |              |                 |                    |                    | \$10.00   |

## Texas State Affordable Housing Corporation

### Notice of the Implementation of a 2015 Qualified Mortgage Credit Certificate Program

The Texas State Affordable Housing Corporation (the "Corporation"), a nonprofit corporation organized under the laws of the State of Texas (the "Program Area"), is implementing a qualified mortgage credit certificate program (the "Program") within the Program Area to assist eligible purchasers. A Mortgage Credit Certificate ("MCC") is an instrument designed to assist persons better afford home ownership. The MCC Program allows first-time homebuyers an annual federal income tax credit equal to the lesser of \$2,000 or the credit rate for the MCC multiplied by the amount of interest paid by the holder on a home mortgage loan during each year that they occupy the home as their principal residence.

An eligible purchaser of a residence located within a Program Area may apply to the Corporation for an MCC through a participating lender of his or her choice at the time of purchasing a principal residence and obtaining a mortgage loan from a participating lender.

To be an eligible purchaser to receive an MCC, a purchaser must meet the following criteria:

(1) Be one of the following:

(a) A person living in Texas whose annual household income does not exceed 80% Area Median Family Income (AMFI); or

(b) A full-time Texas classroom teacher, teacher's aide, school librarian, school nurse, school counselor, or an allied health or nursing faculty member whose annual family income does not exceed 100% of AMFI (for families of two persons or less) or 115% of AMFI (for families of three or more persons); or

(c) A full-time paid fire fighter, peace officer, corrections officer, juvenile corrections officer, county jailer, EMS personnel, veteran, or public security officer, working in the State of Texas whose annual family income does not exceed 100% of AMFI (for families of two persons or less) or 115% of AMFI (for families of three or more persons).

Visit [www.tsahc.org](http://www.tsahc.org) for a more complete description of the maximum income limits.

(2) The applicant for the MCC cannot have had an ownership interest in his or her principal residence during the three-year period ending on the date the mortgage loan is obtained.

(3) The applicant must intend to occupy the residence with respect to which the MCC is obtained as his or her principal residence within 60 days after the MCC is issued. The MCC issued to an applicant will be revoked if the residence to which the MCC relates ceases to be occupied by the applicant as his or her principal residence.

(4) The MCC cannot be issued to an applicant in conjunction with the replacement or refinancing of an existing mortgage loan. The MCC can, however, be obtained in conjunction with the replacement of a construction period or bridge loan having a term of less than 24 months.

(5) Federal law imposes limitations on the purchase price of homes financed under the program. These limitations are periodically adjusted.

Visit [www.tsahc.org](http://www.tsahc.org) to view the current maximum purchase prices allowed. Two-family, three-family and four-family residences are also eligible, provided that one of the units will be occupied by the mortgagor as his or her principal residence and that the residence was first occupied for residential purposes at least five years prior to the closing of the mortgage.

Anyone receiving an MCC and selling his or her residence within nine years of the issuance of the MCC may be required to return all or a portion of the tax credit received in connection therewith to the Internal Revenue Service.

To defray the costs of implementing the Program, the Corporation will charge applicants a compliance fee, plus an MCC issuance fee equal to one percent of the amount of such person's loan.

The Corporation strongly encourages anyone who believes that he or she qualifies for an MCC to apply at the offices of a participating lender. For more information regarding the Program and its restrictions, including a list of current participating lenders, please contact the Paige Omohundro, Homeownership Finance Manager, at (512) 477-3561 or by email at [pomohundro@tsahc.org](mailto:pomohundro@tsahc.org).

TRD-201406232

David Long

President

Texas State Affordable Housing Corporation

Filed: December 22, 2014

## Texas Department of Agriculture

Request for Applications: Rural Communities Healthcare Investment Program

### Statement of Purpose

The Texas Department of Agriculture (TDA) announces the availability of the Fiscal Year (FY) 2015 funds to assist rural communities in recruiting health care providers, other than physicians, to practice in their community by providing partial student loan reimbursements or stipend payments to non-physicians. The Rural Communities Health Care Investment Program (RCHIP) utilizes funds from a permanent endowment established from the tobacco settlement for the State of Texas and authorized under Texas Government Code, §487.558. The authority for this program is provided in Texas Government Code, Chapter 487, Subchapter M and Texas Administrative Code Chapter 30, Subchapter B.

### Eligibility

RCHIP is intended to assist rural communities in recruiting health care providers, other than physicians, to practice in their community. The program provides partial student loan reimbursement or stipend payments to **non-physician providers**:

\* who practice in a qualifying community upon receiving their license within the last 12 months; or

\* who change employment from a practice site in a large county (over 500,000) to a qualifying community to practice in the field for which they are licensed.

Eligible clinicians include, but are not limited to, dentists and licensed non-physician mental health care providers. **Clinicians must:**

- 1) Reside in the State of Texas;
- 2) Not have a service obligation to any entity or participate in any educational loan reimbursement program or other incentive program;
- 3) Hold a Texas license to work in a health care field, **other than** MD or DO, and
  - \* Be newly licensed in the field under which this application is submitted (received first license on or after 01/01/2014); OR
  - \* Be a licensed clinician practicing in a county with more than 500,000 people and move to practice in a qualifying community (on or after 01/01/2014), in the field under which this application is submitted;
- 4) Provide services to clients that receive at least one form of indigent care in qualifying community;
- 5) Agree to practice in the qualifying community for at least 12 consecutive months; and
- 6) Provide services in a county that has either MUA designation or the HPSA designation appropriate for the provider type applying to the program (i.e. dentists apply for a dental HPSA, mental health providers apply for a mental health HPSA, primary care providers for a primary care HPSA).

Please note that for the purposes of this award, services **may not** be provided solely through tele-health.

#### Qualifying Communities

A medically underserved community for the purposes of this program refers to a community that is located in a Texas county with a population of 50,000 or less **and** has been designated under state or federal law as a Health Professional Shortage Area (HPSA) or a Medically Underserved Area (MUA). A list of eligible counties can be found in the appendix of the application.

For more information about HPSA and MUA designations see: (<http://www.hrsa.gov/shortage/>)

#### CAUTION:

Clinicians currently fulfilling an obligation to provide medical services as part of a scholarship agreement, a student loan agreement, or another student loan repayment program cannot simultaneously receive funding from a state-funded loan repayment program for the same period of service.

#### Funding Parameters

Awards are subject to the availability of funds. If funds are not appropriated or collected for this program, applicants will be informed accordingly.

Awards are made annually and an individual may only receive the RCHIP award once. Applications will be competitively reviewed and approximately 30 selected applicants will receive awards up to \$5,000. RCHIP provides funds for partial reimbursement for student loans, or, for clinicians without a student loan balance, funds are available as a stipend payment. Applicants with loan repayments will be prioritized ahead of stipend applicants.

Selected applicants will be required to submit evidence that they have begun practicing in a qualified community (e.g. letter from employer, pay stub). In addition, award recipients must sign a grant agreement,

agreeing to practice in the qualifying community for a minimum of 12 consecutive months.

A one-time disbursement will be made after 12 months of service has been provided by the award recipient and certified by the employer or community. Failure to remain in full-time practice in the qualifying community for the required service period may result in termination of the award contract, cancellation of the award and/or a requirement to repay the award to TDA plus penalty fees.

Within 30 days of receipt of award payments to loan repayment recipients, the recipient must provide TDA documentation that the award amount was used towards loan repayment for any loan previously listed in Section B of the application. Failure to use award funds towards a loan payment and failure to submit documentation of such loan repayment to TDA will result in a requirement to repay the award to TDA plus penalty fees.

#### Application Requirements

To be considered, applications must be complete and include all of the information specified or required in the Request for Application. Application and information can be downloaded from <http://www.texas-agriculture.gov/GrantsServices/GrantsandServices.aspx>

#### Submission Information

The complete application packet including the proposal with signatures must be RECEIVED by **5:00 p.m. (Central Time) on Wednesday, April 15, 2015**. It is the applicant's responsibility to submit all materials necessary for evaluation early enough to ensure timely delivery. Application materials must be typed. Handwritten applications will NOT be accepted. Late or incomplete proposals will not be accepted. TDA will send a confirmation email and application tracking number certifying that the application has been received.

For questions regarding submission of the proposal and TDA documentation requirements, please contact the State Office of Rural Health at (512) 936-6730 or by email at [RuralHealth@TexasAgriculture.gov](mailto:RuralHealth@TexasAgriculture.gov).

**Texas Public Information Act.** Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201406231  
Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
Filed: December 22, 2014

### Office of Consumer Credit Commissioner

#### Correction of Error

The Office of Consumer Credit Commissioner filed a notice to withdraw a proposed rulemaking action for 7 TAC §89.207 which was published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10391). Due to a Texas Register editing error, the section number "89.207" appeared as "89.206". The corrected notice reads as follows:

"7 TAC §89.207"

"The Office of Consumer Credit Commissioner withdraws the proposed amendments to §89.207 which appeared in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484)."

TRD-201406332

## 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 12/29/14 - 01/04/15 is 18% for Consumer<sub>1</sub>/Agricultural/Commercial<sub>2</sub> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/29/14 - 01/04/15 is 18% for Commercial over \$250,000.

<sub>1</sub> Credit for personal, family or household use.

<sub>2</sub> Credit for business, commercial, investment or other similar purpose.

TRD-201406241

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 23, 2014



## 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 01/05/15 - 01/11/15 is 18% for Consumer<sub>1</sub>/Agricultural/Commercial<sub>2</sub> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/05/15 - 01/11/15 is 18% for Commercial over \$250,000.

<sub>1</sub> Credit for personal, family or household use.

<sub>2</sub> Credit for business, commercial, investment or other similar purpose.

TRD-201406314

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 30, 2014



## Texas Education Agency

### Request for Proficiency Tests for the Assessment of Limited English Proficient Students

Filing Authority. Texas Education Code, §29.056(2) and (3), and 19 TAC §§89.1225(a)-(f) and (h), 89.1220(g), and 89.1265(a)

Description. The Texas Education Agency (TEA) is notifying assessment publishers that proficiency assessments and/or achievement tests may be submitted for review for the *List of State Approved Tests for the Assessment of Limited English Proficient Students*. Texas Education Code (TEC), §29.056(a)(2), authorizes the TEA to compile a list of approved assessments for the purposes of identifying students as limited English proficient for entry into or exit (when appropriate) from bilingual education and/or English as a second language (ESL) programs; annually assessing oral language proficiency in English and Spanish when required; and measuring reading and writing proficiency in English and Spanish for program placement. The state-approved tests placed on the list must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from Prekindergarten (PK)-Grade 12. Assessments

must also measure reading and writing in English and Spanish from PK-Grade 12.

Norm-referenced standardized achievement tests in English will be used for identification and entry into programs and for exit from programs for Grades 1 and 2 and may be used as formative assessments.

Norm-referenced standardized achievement tests in Spanish may be used for placement or language development purposes only. All tests to be included on the *List of State Approved Tests for the Assessment of Limited English Proficient Students* must be re-normed at least every eight years to meet the criteria specified in the TEC, §39.032, which requires that standardization norms not be more than eight years old at the time the test is administered. Only new assessments, newly normed assessments, and/or modified/updated assessments may be submitted for evaluation at this time.

The Assessment Committee, comprised of stakeholders from throughout the state, will review and approve the 2015-2016 *List of State Approved Tests for the Assessment of Limited English Proficient Students*.

Selection Criteria. Assessment publishers will be responsible for submitting tests that they wish to be reviewed for consideration for inclusion on the 2015-2016 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. All tests submitted for review must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from PK-Grade 12. Assessments must measure reading and writing in English and Spanish from PK-Grade 12 and must meet the state criteria for reliability and validity. Therefore, technical manuals must also be submitted and must be available for the review of assessments to be held on Friday, February 27, 2015. Assessments must also measure specific proficiency levels in oral language, reading, and writing in English and Spanish. Assessment instruments (English and Spanish) submitted for review will be grouped in the following categories: (1) Oral Language Proficiency Tests in English in Listening and Speaking domains; (2) Oral Language Proficiency Tests in Spanish in Listening and Speaking domains; (3) Reading and Writing Proficiency in English; and (4) Reading and Writing Proficiency in Spanish. Publishers are not required to submit proposals for all categories.

Proposals must be submitted and presented on Friday, February 27, 2015, to be considered for inclusion on the 2015-2016 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. Assessment publishers will be required to attend the review of the assessments on Friday, February 27, 2015, which will be held at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin, Texas. Complete official sample test copies in English and Spanish with comprehensive explanations, including (1) scoring information; (2) norming data information, including ethnicity, gender, grade level, and geographic region; and (3) technical manuals with validity and reliability information, must be presented at that time. Only materials presented on Friday, February 27, 2015, will be considered for approval. Publishers must be available all day at the request of the committee and must make arrangements to pick up all materials at the end of the day. Any materials and/or revisions submitted after the deadline cannot be reviewed until the following year.

Further Information. For clarifying information, contact Susie Coultriss, State Director of Bilingual/ESL/Title III/Migrant, Texas Education Agency, (512) 463-9581.

TRD-201406323

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: December 30, 2014

# Texas Commission on Environmental Quality

## Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is February 9, 2015. 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 **February 9, 2015**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission 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: Alex Garza; DOCKET NUMBER: 2014-1843-WOC-E; IDENTIFIER: RN103438743; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: landscape irrigation services; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license (landscape irrigation); PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480.

(2) COMPANY: BRIANNA'S STOP & SHOP, LLC; DOCKET NUMBER: 2014-1284-PST-E; IDENTIFIER: RN102403177; LOCATION: Gladewater, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month, and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$5,979; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734.

(3) COMPANY: City of College Station; DOCKET NUMBER: 2014-1320-PST-E; IDENTIFIER: RN101665826; LOCATION: College Station, Brazos County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Allyson Plantz, (512) 239-4593; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826.

(4) COMPANY: DANIEL MEMORIAL BAPTIST ENCAMPMENT, INCORPORATED; DOCKET NUMBER: 2014-1148-PWS-E; IDENTIFIER: RN101213262; LOCATION: Gary, Panola County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank (GST); 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), (iv), and (vi), by failing to make water works operation and maintenance records available for review by commission personnel upon request; 30 TAC §290.43(c)(8), by failing to ensure that all clearwells, GSTs, stand pipes and elevated tanks are painted, disinfected and maintained in strict accordance with American Water Works Association standards; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; PENALTY: \$531; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734.

(5) COMPANY: Dolores A. Luke and Shelby E. Luke, Sr. dba Little Big Horn Services; DOCKET NUMBER: 2014-1242-PWS-E; IDENTIFIER: RN101228740; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct triggered source monitoring for the month of April 2011; 30 TAC §290.106(c)(6) and (e), by failing to collect the annual nitrate sample and provide the results to the executive director for the 2013 monitoring period; 30 TAC §290.107(c)(1) and (e), by failing to collect triennial synthetic organic chemical (SOC) contaminants (methods 504, 515.4, and 531.1) samples and provide the results to the executive director for the January 1, 2011 - December 31, 2013 monitoring period; 30 TAC §290.106(c)(5) and (e), by failing to collect the nine-year asbestos sample and provide the results to the executive director for the January 1, 2005 - December 31, 2013 monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2013 - December 31, 2013 monitoring period; 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the maximum contaminant level for fecal coliform and *Escherichia coli* for the month of December 2012; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91000071 for Fiscal Year 2014; PENALTY: \$1,851; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892.

(6) COMPANY: Ellinger Materials, LLC; DOCKET NUMBER: 2014-1323-WQ-E; IDENTIFIER: RN106448913; LOCATION: Columbus, Colorado County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the registration of an aggregate production operation annually; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486.

(7) COMPANY: Energy Transfer Fuel, LP (Reed Compressor Station) and (Bethel Compressor Station); DOCKET NUMBER: 2014-1246-AIR-E; IDENTIFIER: RN104957600 (Facility 1) and RN100214501 (Facility 2); LOCATION: Fairfield (Facility 1) and Bethel (Facility 2), Freestone and Anderson County; TYPE OF FACILITY: natural gas compressor station and natural gas transmission; RULES VIOLATED: 30 TAC §122.145(2)(A) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit Number O3492, General Terms and Conditions, by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O3265/Oil and Gas General Operating Permit Number 514 Site-wide Requirements (b)(2), and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: \$2,713; ENFORCEMENT COORDINATOR: Farhaudd Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500 Waco, Texas 76710-7826 (Facility 1) and 2916 Teague Drive, Tyler, Texas 75701-3734 (Facility 2).

(8) COMPANY: Energy Transfer Partners, L.P.; DOCKET NUMBER: 2014-1140-PWS-E; IDENTIFIER: RN100869957; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed by an approved laboratory, and provide the results to the executive director; and 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed by an approved laboratory, and provide the results to the executive director; PENALTY: \$3,916; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486.

(9) COMPANY: K C UTILITIES, INCORPORATED; DOCKET NUMBER: 2014-1265-PWS-E; IDENTIFIER: RN101243921; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data for the year of 2010, 2011 and 2012; 30 TAC §290.113(e), by failing to provide the results of triennial Stage 1 disinfectant byproducts sampling to the executive director for the January 1, 2011 - December 31, 2013 monitoring period; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2013 monitoring period; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; PENALTY: \$1,926; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486.

(10) COMPANY: LANGHAM CREEK MACHINE WORKS, INCORPORATED; DOCKET NUMBER: 2014-1263-PWS-E; IDENTIFIER: RN104861034; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: Texas Health and Safety Code, §341.033(d), 30 TAC §290.109(c)(2)(A)(i), (f)(5) and (7), and §290.122(c)(2)(A) and (f), by failing to collect routine distribution water samples for coliform analysis for the months of December 2013 - May 2014 and failed to provide public notification and submit copy of the notification to the executive director regarding the failure to conduct routine coliform monitoring for the months December 2013 - March 2014; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit copy of the notification to the executive director regarding the failure to conduct coliform monitoring during the month of September 2013; PENALTY: \$1,659; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486.

(11) COMPANY: Liquid Environmental Solutions of Texas, LLC; DOCKET NUMBER: 2014-1443-AIR-E; IDENTIFIER: RN103002713; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: grease and waste processing; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance odor conditions; PENALTY: \$6,500; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(12) COMPANY: Petroleum Products, Incorporated dba Charlies 1; DOCKET NUMBER: 2014-1138-PST-E; IDENTIFIER: RN101670065; LOCATION: Mexia, Limestone County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month and, failed to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$14,101; ENFORCEMENT COORDINATOR: Allyson Plantz, (512) 239-4593; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826.

(13) COMPANY: Snyder Independent School District; DOCKET NUMBER: 2014-1811-WQ-E; IDENTIFIER: RN107717134; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833.

(14) COMPANY: TOTAL PETROCHEMICALS & REFINING USA, INCORPORATED; DOCKET NUMBER: 2014-1289-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas

Health and Safety Code, §382.085(b), Federal Operating Permit (FOP) Number O1267, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 29, and New Source Review Permit (NSRP) Numbers 46396, PSDTX1073M1, and N044, Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.115(b), and 122.143(4), Texas Health and Safety Code, §382.085(b), FOP Number O1267, GTC and STC Number 29, and NSRP Numbers 46396, PSDTX1073M1, and N044, SC Number 1, by failing to comply with the Tank Maintenance, Start-up, and Shutdown emissions rates; PENALTY: \$55,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892.

(15) COMPANY: William Donald Smith; DOCKET NUMBER: 2014-1480-MWD-E; IDENTIFIER: RN101703197; LOCATION: Klein, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014900001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486.

TRD-201406262

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: December 23, 2014



#### Enforcement Orders

An agreed order was entered regarding Langtry Water Supply Corporation, Docket No. 2014-0514-PWS-E on December 16, 2014 assessing \$630 in administrative penalties with \$126 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Reyna A. Martinez dba Reyna's Deli, Docket No. 2014-0540-PWS-E on December 16, 2014 assessing \$1,708 in administrative penalties with \$341 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Darryl Wheeler dba Magnolia Lake RV Park, Docket No. 2014-0624-PWS-E on December 16, 2014 assessing \$925 in administrative penalties with \$185 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kb Marine Industry, LLC, Docket No. 2014-0713-WQ-E on December 16, 2014 assessing \$2,375 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U & Z Incorporated dba Westchester Food Mart, Docket No. 2014-0726-PST-E on December 16, 2014 assessing \$2,567 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Donald Smith, Jr., Docket No. 2014-0732-MWD-E on December 16, 2014 assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Topsey Water Supply Corporation, Docket No. 2014-0734-PWS-E on December 16, 2014 assessing \$350 in administrative penalties with \$70 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stillwater Custom Homes, Ltd., Docket No. 2014-0809-WQ-E on December 16, 2014 assessing \$3,989 in administrative penalties with \$797 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Strouhal Family Partnership, Ltd., Docket No. 2014-0824-PWS-E on December 16, 2014 assessing \$2,567 in administrative penalties with \$512 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sylvester McCaulley Water Supply Corporation, Docket No. 2014-0836-MLM-E on December 16, 2014 assessing \$806 in administrative penalties with \$161 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Landmark Industries Energy, LLC dba Timewise Exxon 843, Docket No. 2014-0841-PST-E on December 16, 2014 assessing \$4,875 in administrative penalties with \$975 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sebastien Bonneau dba Countryside Farm, Docket No. 2014-0854-AIR-E on December 16, 2014 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaudd Abbaszadeh, Enforcement Coordinator at (512)



239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shalimar Enterprise Inc. dba Fisco Convenience Store 2, Docket No. 2014-0871-PST-E on December 16, 2014 assessing \$1,612 in administrative penalties with \$322 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maum Inc dba Ginas Kwik Pantry, Docket No. 2014-0872-PST-E on December 16, 2014 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2014-0897-AIR-E on December 16, 2014 assessing \$4,040 in administrative penalties with \$808 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nash Cinco Nw, LLC, Docket No. 2014-0901-WQ-E on December 16, 2014 assessing \$813 in administrative penalties with \$162 deferred.

Information concerning any aspect of this order may be obtained by contacting Alan Barraza, Enforcement Coordinator at (512) 239-4642, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TPC Group LLC, Docket No. 2014-0906-AIR-E on December 16, 2014 assessing \$3,975 in administrative penalties with \$795 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northwoods Avery Ranch, LLC, Docket No. 2014-0948-EAQ-E on December 16, 2014 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Barstow, Docket No. 2014-0962-PWS-E on December 16, 2014 assessing \$400 in administrative penalties with \$80 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nuevo Midstream, LLC, Docket No. 2014-0966-AIR-E on December 16, 2014 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhau Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brinson, Inc., Docket No. 2014-0969-PWS-E on December 16, 2014 assessing \$838 in administrative penalties with \$167 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hawk's Pantry, Inc. dba Hawk's Pantry 9, Docket No. 2014-0975-PST-E on December 16, 2014 assessing \$2,717 in administrative penalties with \$543 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harisith, Inc. dba Times Market 19, Docket No. 2014-0986-PST-E on December 16, 2014 assessing \$4,630 in administrative penalties with \$926 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Binal Patel dba Stop N Shop, Docket No. 2014-0988-PST-E on December 16, 2014 assessing \$5,954 in administrative penalties with \$1,190 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucite International, Inc., Docket No. 2014-1050-AIR-E on December 16, 2014 assessing \$7,001 in administrative penalties with \$1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol Mcgrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mount Vernon, Docket No. 2014-1073-MWD-E on December 16, 2014 assessing \$1,437 in administrative penalties with \$287 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Betway Parks, L.P. dba Ed Lou Mobile Home Park, Docket No. 2014-1085-PWS-E on December 16, 2014 assessing \$3,733 in administrative penalties with \$746 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Star Fuels, Inc. dba Gulfway Citgo, Docket No. 2014-1100-PST-E on December 16, 2014 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bjays Inc. dba J P Discount Beer & Wine, Docket No. 2014-1132-PST-E on December 16, 2014 assessing \$1,719 in administrative penalties with \$343 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Racetrac Petroleum, Inc. dba Racetrac 626, Docket No. 2014-1144-PST-E on December 16, 2014 assessing \$3,347 in administrative penalties with \$669 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Manning Homes, Inc., Docket No. 2014-1431-WQ-E on December 16, 2014 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Alfreda L. Samuel, Docket No. 2014-1454-WOC-E on December 16, 2014 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Port of Houston Authority, Docket No. 2014-1459-WQ-E on December 16, 2014 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alan Barraza, Enforcement Coordinator at (512) 239-4642, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Salinas Construction Technologies, Ltd., Docket No. 2014-1471-WR-E on December 16, 2014 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Dewitt County Precinct 2, Docket No. 2014-1472-WR-E on December 16, 2014 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Edward Leiber, Docket No. 2014-1521-WOC-E on December 16, 2014 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Landmark Residential Construction-Central Texas, Ltd., Docket No. 2014-1531-WQ-E on December 16, 2014 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding John Doyle Shaw, Docket No. 2014-1533-WOC-E on December 16, 2014 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Glenn Fuqua, Inc., Docket No. 2014-1534-WR-E on December 16, 2014 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201406331

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 31, 2014

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**General Land Office**

**Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program**

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 27, 2014 through December 22, 2014. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, January 2, 2015. The public comment period for this project will close at 5:00 p.m. on Monday, February 2, 2015.

**FEDERAL AGENCY ACTIONS:**

**Applicant:** The Law Office of Jerome Karam

**Location:** The project site is located underneath Eckert Bayou and within adjacent wetlands, along a private road named Road Less Traveled, west of 11-Mile Road, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: LAKE COMO, Texas.

**LATITUDE & LONGITUDE (NAD 83):**

Latitude: 29.2244° North; Longitude: 94.93592° West

**Project Description:** The applicant proposes to place fill material into 0.7 acres of wetlands for lot development, a turnaround area, road widening and culverts. The applicant also proposes to horizontal directional drill (HDD) a tidal area adjacent to Eckert Bayou and HDD across Eckert Bayou, during the installation of a sewer line. This work is associated with the previously authorized Department of the Army (DA) Permit SWG-2001-02267. The applicant proposed to add additional fill and will maintain approved elements of the previously authorized project.

**CMP Project No:** 15-1168-F1

**Type of Application:** U.S.A.C.E. permit application #SWG-2001-02267. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**FEDERAL AGENCY ACTIVITIES:**

**Applicant:** Texas Department of Transportation (TxDOT) and Federal Highway Administration (FHWA)

**Location:** The project site is located in near the northern shore of Corpus Christi Bay near the Inner Harbor of the Port of Corpus Christi along U.S. Highway 181. The project can be located on the USGS quadrangle map titled: CORPUS CHRISTI, Texas.

**LATITUDE & LONGITUDE (NAD 83):**

Latitude: 27.81324 North; Longitude: 97.39753 West

**Project Description:** TxDOT and FHWA have prepared a Draft Environmental Impact Statement/Section 4(f) Evaluation for the proposed replacement of the existing Harbor Bridge with a new bridge, including demolition of the existing bridge and realignment of connecting roadways (TxDOT Control-Section-Job Number 0101-06-095). The preferred alternative would relocate the Harbor Bridge approx. 1,000 feet west of the existing bridge within the Inner Harbor of the Port of Corpus Christi. The existing steel truss girder bridge is 600 feet in length, with a vertical clearance height of 138 feet above mean high water (MHW). The new structure would be constructed as a cable stay bridge approx. 1,400 feet in length, with a vertical clearance height of 216 feet above MHW.

**CMP Project No:** 15-1175-F2

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201406338

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: December 31, 2014



**Texas Health and Human Services Commission**

**Notice of Public Hearing on Proposed Medicaid Payment Rates for Annual 2015 Healthcare Common Procedure Coding System Updates**

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 18, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the 2015 Annual Healthcare Common Procedure Coding System (HCPCS) Updates.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at <http://www.hhsc.state.tx.us/news/meetings.asp>. The broadcast will be archived and can be accessed on demand at the same website.

**Proposal.** The payment rates for the Annual 2015 HCPCS Updates are proposed to be effective January 1, 2015, for the following services:

Radiology Services - Type of Service (TOS) 4 (Radiology), I (Interpretation component), and T (Technical component)

Nonclinical Laboratory Services - TOS 5 (Laboratory), I (Interpretation component), and T (Technical component)

Radiation Therapy Services - TOS 6 (Radiation Therapy), I (Interpretation component), and T (Technical component)

Physician-Administered Drugs - TOS 1 (Medical Services)

Durable Medical Equipment, Prosthetics, Orthotics and Supplies - TOS 9 (Supplies), J (Purchase), and L (Rental)

Surgery, Assistant Surgery, Interpretation and Technical Components - TOS 2 (Surgery), 8 (Assistant Surgery), I (Interpretation component), and T (Technical component)

Dental Services - TOS W (Texas Health Steps Dental/Orthodontia)

Surgery, Interpretation and Technical Components - TOS 2 (Surgery), I (Interpretation component), and T (Technical component)

Ambulatory Surgical Centers/Hospital Ambulatory Surgical Centers - TOS F (ASC/HASC)

Clinical Laboratory Services - TOS 5 (Laboratory Services)

Hospital Outpatient Imaging - TOS 4 (Radiology)

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8121, which addresses the reimbursement methodology for Ambulatory Surgical Centers; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after February 2, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201406317

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 30, 2014



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Biennial Calendar Fee Review

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 18, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Medicaid Biennial Calendar Fee Review are proposed to be effective April 1, 2015, for the following services:

Nonclinical Laboratory Services

Temporary National Codes - S Codes (Drugs, Services and Supplies)

Physician-Administered Drugs - Oncology

Physician-Administered Drugs - Non-Oncology

Durable Medical Equipment - E Codes

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after February 2, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201406316

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 30, 2014



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for Solid Organ Transplants

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 18, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Solid Organ Transplants.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Solid Organ Transplants are proposed to be effective April 1, 2015.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after February 2, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate

Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201406318

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 30, 2014



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for Third Quarter 2014 Healthcare Common Procedure Coding System Updates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 18, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the 3rd Quarter 2014 Healthcare Common Procedure Coding System (HCPCS) Updates.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for 3rd Quarter 2014 HCPCS Updates are proposed to be effective April 1, 2015, for the following services: Physician-Administered Drugs

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after February 2, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201406315

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 30, 2014



#### Department of State Health Services

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC) Chapter 289 for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the Department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity    | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|----------------------------|----------------|-------------------------|------------------|----------------|
| Houston                                | Surefire Industries L.L.C. | L06679         | Houston                 | 00               | 12/05/14       |
| Throughout Tx                          | Radcom Associates Inc.     | L06676         | Garland                 | 00               | 12/04/14       |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity  | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|--|----------------|-------------------------|------------------|----------------|
| Amarillo                               | BSA Hospital L.L.C.<br>dba Baptist St. Anthony's Hospital                                  | L06573         | Amarillo                | 02               | 12/05/14       |
| Arlington                              | Columbia Medical Center of Arlington<br>Subsidiary L.P.<br>dba Medical Center of Arlington | L02228         | Arlington               | 79               | 12/02/14       |
| Austin                                 | St. David's Healthcare Partnership L.P., L.L.P.<br>dba St. David's Medical Center          | L00740         | Austin                  | 122              | 12/08/14       |
| Austin                                 | Austin Nuclear Pharmacy Inc.   | L05591         | Austin                  | 19               | 12/12/14       |
| Austin                                 | Tri County Clinical<br>dba Seton Heart Institute   | L06598         | Austin                  | 03               | 12/12/14       |
| Austin                                 | Central Texas Medical Specialists P.L.L.C.<br>dba Austin Cancer Centers                    | L06618         | Austin                  | 02               | 12/09/14       |
| Austin                                 | Central Texas Medical Specialists P.L.L.C.<br>dba Austin Cancer Centers                    | L06618         | Austin                  | 03               | 12/11/14       |
| Beaumont                               | Advanced Cardiovascular Specialists L.L.P.   | L05512         | Beaumont                | 20               | 12/03/14       |
| Bedford                                | Mid-Cities Cardiac Care Center P.L.L.C.  | L06641         | Bedford                 | 02               | 12/12/14       |
| Carrollton                             | Trinity MC L.L.C.<br>dba Baylor Medical Center at Carrollton                               | L03765         | Carrollton              | 71               | 12/11/14       |
| Clarksville                            | East Texas Medical Center Clarksville  | L02978         | Clarksville             | 26               | 12/09/14       |
| Dallas                                 | Cardiology & Interventional Vascular<br>Associates   | L05412         | Dallas                  | 10               | 12/01/14       |
| Dallas                                 | Cardinal Health  | L05610         | Dallas                  | 30               | 12/04/14       |

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

|               |  |        |               |     |          |
|---------------|--|--------|---------------|-----|----------|
| Dallas        | IBA Molecular North America Inc.<br>dba IBA Molecular                            | L06174 | Dallas        | 14  | 12/05/14 |
| Deer Park     | Total Petrochemicals & Refining USA Inc.   | L00302 | Deer Park     | 63  | 12/02/14 |
| Denton        | Denton Heart Group P.A.  | L05381 | Denton        | 10  | 12/09/14 |
| Eagle Pass    | Fort Duncan Medical Center, L.P.   | L05640 | Eagle Pass    | 11  | 12/01/14 |
| Earth         | Savage-Tolk Corporation  | L02672 | Earth         | 27  | 12/02/14 |
| Fort Worth    | Terracon Consultants Inc.  | L05268 | Fort Worth    | 48  | 12/10/14 |
| Fort Worth    | Fort Worth Surgicare Partners Ltd.<br>dba Baylor Surgical Hospital at Fort Worth | L05668 | Fort Worth    | 13  | 12/05/14 |
| Fort Worth    | Fort Worth Surgicare Partners Ltd.<br>dba Baylor Surgical Hospital at Fort Worth | L05668 | Fort Worth    | 14  | 12/12/14 |
| Helotes       | Medicine and Radiation Oncology P.A.   | L06503 | Helotes       | 03  | 12/09/14 |
| Henderson     | East Texas Medical Center Henderson  | L06281 | Henderson     | 04  | 12/03/14 |
| Houston       | The University of Texas M.D. Anderson<br>Cancer Center                           | L00466 | Houston       | 156 | 12/02/14 |
| Houston       | Memorial Hermann Health System<br>dba Memorial Hermann Hosp. The Woodlands       | L03772 | Houston       | 115 | 12/02/14 |
| Houston       | TOPS Specialty Hospital Ltd.<br>dba TOPS Surgical Specialty Hospital             | L05441 | Houston       | 23  | 12/01/14 |
| Houston       | Cardinal Health  | L05536 | Houston       | 48  | 12/04/14 |
| Houston       | 1960 Family Practice P.A.<br>dba 1960 Digital Imaging                            | L06638 | Houston       | 01  | 12/05/14 |
| Irving        | Dallas-Ft. Worth Veterinary Imaging Center                                       | L04602 | Irving        | 17  | 12/03/14 |
| Lubbock       | IsoRx Texas Ltd.   | L05284 | Lubbock       | 29  | 12/05/14 |
| McAllen       | Valley Heart Consultants   | L05330 | McAllen       | 15  | 12/12/14 |
| McAllen       | Valley Positron L.L.C.   | L05869 | McAllen       | 08  | 12/05/14 |
| Orange        | Solvay Specialty Polymers USA, L.L.C.  | L06515 | Orange        | 01  | 12/01/14 |
| Port Arthur   | Christus Health Southeast Texas<br>dba Christus Hospital St. Mary                | L01212 | Port Arthur   | 99  | 12/11/14 |
| San Antonio   | South Texas Radiology Imaging Centers  | L00325 | San Antonio   | 219 | 12/10/14 |
| San Antonio   | Christus Santa Rosa Health Care  | L02237 | San Antonio   | 146 | 12/09/14 |
| Sherman       | Sherman/Grayson Hospital L.L.C.<br>dba Wilson N. Jones Regional Medical Center   | L06354 | Sherman       | 12  | 12/12/14 |
| Throughout Tx | Water Remediation Technology L.L.C.  | L06316 | Arvada        | 07  | 12/12/14 |
| Throughout Tx | Regional Engineering Inc.  | L06471 | Austin        | 02  | 12/11/14 |
| Throughout Tx | The University of Texas Medical Branch   | L01299 | Galveston     | 97  | 12/05/14 |
| Throughout Tx | Furmanite America Inc.   | L06554 | Houston       | 12  | 12/02/14 |
| Throughout Tx | Furmanite America Inc.   | L06554 | Houston       | 13  | 12/04/14 |
| Throughout Tx | Texas A&M University Kingsville  | L01821 | Kingsville    | 52  | 12/01/14 |
| Throughout Tx | FTI Industries Inc.  | L02810 | Mansfield     | 16  | 12/10/14 |
| Throughout Tx | J.Z. Russell Industries Inc.   | L06459 | Nederland     | 07  | 12/04/14 |
| Throughout Tx | Alliance Geotechnical Group of Austin Inc.                                       | L06147 | Taylor        | 04  | 12/05/14 |
| Throughout Tx | Delek Refining Ltd.  | L02289 | Tyler         | 25  | 12/05/14 |
| Tyler         | Mother Frances Hospital Regional Health Care<br>Center                           | L01670 | Tyler         | 197 | 12/01/14 |
| Tyler         | Mother Frances Hospital Regional Health Care<br>Center                           | L01670 | Tyler         | 198 | 12/03/14 |
| Waxahachie    | Baylor Medical Center at Waxahachie  | L04536 | Waxahachie    | 41  | 12/12/14 |
| Wichita Falls | Kell West Regional Hospital L.L.C.   | L05943 | Wichita Falls | 13  | 12/10/14 |

RENEWAL OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity   | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|---|----------------|-------------------------|------------------|----------------|
| Austin                                 | St. David's Healthcare Partnership L.P., L.L.P. dba St. David's South Austin Medical Center | L03273         | Austin                  | 97               | 12/05/14       |
| Dallas                                 | Texas Health Presbyterian Hospital Dallas   | L04288         | Dallas                  | 34               | 12/03/14       |
| Houston                                | CHCA West Houston L.P. dba West Houston Medical Center                                      | L05808         | Houston                 | 17               | 12/02/14       |
| Throughout Tx                          | Eastman Chemicals Company   | L00301         | Longview                | 120              | 12/11/14       |

TERMINATIONS OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity      | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|------------------------------|----------------|-------------------------|------------------|----------------|
| Midlothian                             | Ash Grove Texas L.P.         | L05424         | Midlothian              | 07               | 12/10/14       |
| Throughout Tx                          | Cobblestone Engineering Inc. | L04789         | Harlingen               | 06               | 12/10/14       |
| Throughout Tx                          | Phillips 66 Pipeline L.L.C.  | L02083         | Houston                 | 27               | 12/10/14       |

TRD-201406334  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: December 31, 2014



**Texas Department of Insurance**

Company Licensing

Application to change the name of UNITED NATIONAL CASUALTY INSURANCE COMPANY to CGB INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Mt. Vernon, Indiana.

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 Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201406336  
 Sara Waitt  
 General Counsel  
 Texas Department of Insurance  
 Filed: December 31, 2014



**Texas Department of Licensing and Regulation**

Notice of Vacancies on Medical Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces three vacancies on the Medical Advisory Committee (Committee) established by Texas Occupations Code, Chapter 2052. The pertinent rules may be found in 16 TAC §61.120. The purpose of the Medical Advisory Committee is to advise the Texas Commission of Licensing and Regulation (Commission) on health issues for combative sports event contestants including physical tests for contestants and registration requirements for ringside physicians.

The Committee is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of four members who shall be medical doctors licensed by the State of Texas; one emergency medical technician; and two public members. Members serve at the will of the Commission. This announcement is for a medical doctor licensed by the State of Texas, an emergency medical technician and a public member.

Interested persons should submit an application on the Department website at: <https://www.license.state.tx.us/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475 2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201406329  
 William H. Kuntz, Jr.  
 Executive Director  
 Texas Department of Licensing and Regulation  
 Filed: December 30, 2014



Notice of Vacancies on the Air Conditioning and Refrigeration Contractors Advisory Board

The Texas Department of Licensing and Regulation (Department) announces four vacancies on the Air Conditioning and Refrigeration Contractors Advisory Board (Board) established by Texas Occupations Code, Chapter 1302, Subchapter E. The pertinent rules may be found in 16 Texas Administrative Code §75.65. The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) in adopting rules, administering and enforcing this chapter, and setting fees.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of: (1) one official of a municipality with a population of more than 250,000; (2) one official of a municipality with a population of not



more than 250,000; (3) five full-time licensed air conditioning and refrigeration contractors, as follows: one member who holds a Class A license and practices in a municipality with a population of more than 250,000; one member who holds a Class B license and practices in a municipality with a population of more than 250,000; one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; one member who holds a Class B license and practices in a municipality with a population of not more than 25,000; one member who holds a license of any classification under this chapter, is principally engaged in air conditioning and refrigeration contracting, and practices in a municipality; (4) one building contractor who is principally engaged in home construction and is a member of a statewide building trade association; and (5) one public member. At least one appointed Board member must be an air conditioning and refrigeration contractor who employs organized labor. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the Board. Members serve staggered six-year terms. The terms of two appointed members expire on February 1 of each odd-numbered year.

This announcement is for: (1) one member who holds a Class B license and practices in a municipality with a population of more than 250,000; (2) one official of a municipality with a population of more than 250,000; (3) one official of a municipality with a population of not more than 250,000; and (4) one public member.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201406324

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: December 30, 2014



### Notice of Vacancy on the Advisory Board on Cosmetology

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Advisory Board on Cosmetology (Board) established by Texas Occupations Code, Chapter 1602. The pertinent rules may be found in 16 Texas Administrative Code §83.65. The purpose of the Advisory Board on Cosmetology is to advise the Commission and department on adopting rules, setting fees, and enforcing and administering the Act, as applicable.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of one member who holds a license for a beauty shop that is part of a chain of beauty shops; one member who holds a license for a beauty shop that is not part of a chain of beauty shops; one member who holds a private beauty culture school license; two members who each hold an operator license; one member who represents a licensed public secondary or post secondary beauty culture school; one member who represents a licensed public secondary beauty culture school; and two public members. Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year. This announcement is for a public member vacancy.

Interested persons should download an application from the Department website at: [www.tdlr.texas.gov](http://www.tdlr.texas.gov). Applicants can also request an

application from the Texas Department of Licensing and Regulation by telephone (800) 803-9202, FAX (512) 475 2874 or e-mail at [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov). Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201406328

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: December 30, 2014



### Notice of Vacancy on the Licensed Breeders Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Licensed Breeders Advisory Committee (Committee) established by Texas Occupations Code, Chapter 802. The purpose of the Committee is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on matters related to the administration and enforcement of Chapter 802, including licensing fees and standards adopted under Subchapter E.

The Committee is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of the following members: two members who are licensed breeders; two members who are veterinarians; two members who represent animal welfare organizations each of which has an office based in this state; two members who represent the public; and one member who is an animal control officer as defined in §829.001, Health and Safety Code. Members of the committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. This announcement is for a public member.

Interested persons should download an application from the Department website at: [www.tdlr.texas.gov](http://www.tdlr.texas.gov). Applicants can also request an application from the Texas Department of Licensing and Regulation by telephone (800) 803-9202, FAX (512) 475 2874 or email [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov). Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201406330

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: December 31, 2014



### Texas Lottery Commission

#### Instant Game Number 1670 "Hot Numbers®"

##### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1670 is "HOT NUMBERS®". The play style is "key number match".

##### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1670 shall be \$5.00 per Ticket.

##### 1.2 Definitions in Instant Game No. 1670.

A. Display Printing - That area of the Instant Game 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 Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant 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: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MATCH SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$2,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1670 - 1.2D

| PLAY SYMBOL  | CAPTION  |
|--------------|----------|
| 1            | ONE      |
| 2            | TWO      |
| 3            | THR      |
| 4            | FOR      |
| 5            | FIV      |
| 6            | SIX      |
| 7            | SVN      |
| 8            | EGT      |
| 9            | NIN      |
| 10           | TEN      |
| 11           | ELV      |
| 12           | TLV      |
| 13           | TRN      |
| 14           | FTN      |
| 15           | FFN      |
| 16           | SXN      |
| 17           | SVT      |
| 18           | ETN      |
| 19           | NTN      |
| 20           | TWY      |
| 21           | TWON     |
| 22           | TWTO     |
| 23           | TWTH     |
| 24           | TWFR     |
| 25           | TWV      |
| 26           | TWSX     |
| 27           | TWSV     |
| 28           | TWET     |
| 29           | TWNI     |
| 30           | TRTY     |
| 31           | TRON     |
| 32           | TRTO     |
| 33           | TRTH     |
| 34           | TRFR     |
| 35           | TRV      |
| 36           | TRSX     |
| 37           | TRSV     |
| 38           | TRET     |
| 39           | TRNI     |
| 40           | FRTY     |
| MATCH SYMBOL | DOUBLE   |
| \$5.00       | FIVE\$   |
| \$10.00      | TEN\$    |
| \$20.00      | TWENTY   |
| \$50.00      | FIFTY    |
| \$100        | ONE HUND |
| \$500        | FIV HUND |
| \$2,000      | TWO THOU |
| \$100,000    | HUN THOU |

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$100,000.

I. 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 Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1670), 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: 1670-000001-001.

K. Pack - A Pack of "HOT NUMBERS®" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT NUMBERS®" Instant Game No. 1670 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "HOT NUMBERS®" Instant Game is determined once the latex on the Ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MATCH" Play Symbol, the player wins DOUBLE the PRIZE for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the Latex Overprint on the front portion of the 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 Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and 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 Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 44 (forty-four) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the 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 Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The 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 Instant Game 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 Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No matching WINNING NUMBERS Play Symbols on a Ticket.

C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No more than four matching non-winning Prize Symbols on a Ticket.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

G. The "MATCH" (doubler) Play Symbol will only appear as dictated by the prize structure.

H. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "HOT NUMBERS®" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning 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 Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. 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 "HOT NUMBERS®" Instant Game prize of \$2,000 or \$100,000, the claimant must sign the winning 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 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 "HOT NUMBERS®" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. 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;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as 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 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 "HOT NUMBERS®" Instant 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 "HOT NUMBERS®" Instant 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant 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 Ticket, shall be forfeited.

2.8 Disclaimer. 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. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the 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 Ticket in the space designated. If more than one name appears on the back of the 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 Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 Tickets in the Instant Game No. 1670. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1670 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$5          | 750,400                        | 10.71                       |
| \$10         | 1,286,400                      | 6.25                        |
| \$20         | 107,200                        | 75.00                       |
| \$50         | 13,400                         | 600.00                      |
| \$100        | 26,465                         | 303.80                      |
| \$500        | 5,025                          | 1,600.00                    |
| \$2,000      | 380                            | 21,157.89                   |
| \$100,000    | 20                             | 402,000.00                  |

\*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 3.67. 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 Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1670 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1670, 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-201406319  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: December 30, 2014

◆ ◆ ◆  
**Texas Parks and Wildlife Department**

Notice of Proposed Real Estate Transaction

Acquisition of Land - Harrison County

Approximately 3.4 Acres for addition to Caddo Lake State Park

In a meeting on January 22, 2015, the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of approximately 3.4 acres in Harrison County for addition to Caddo Lake State Park. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744.

Prior to the meeting, public comment may be submitted by mail to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; by email at ted.hollingsworth@tpwd.texas.gov; or through the TPWD web site at tpwd.texas.gov.

TRD-201406230  
 Ann Bright  
 General Counsel  
 Texas Parks and Wildlife Department  
 Filed: December 22, 2014

◆ ◆ ◆  
**Public Utility Commission of Texas**

Notice of a Petition for a Cease and Desist Order and a Declaratory Order

Notice is given to the public of a petition for a cease and desist order and a declaratory order filed with the Public Utility Commission of Texas (commission) on December 18, 2014.

Docket Style and Number: Petition of Oncor Electric Delivery Company for a Cease and Desist Order Against Big Country Electric Cooperative, Inc. and for a Declaratory Order Regarding Service to the Ira ISD High School Facilities, Docket Number 43999.

The Application: Oncor Electric Delivery Company LLC (Oncon) filed a petition for a cease and desist order and a declaratory order regarding service to the Ira ISD High School facilities. Oncon stated that this dispute requires the commission to determine whether Big Country Electric Cooperative, Inc. (Big Country) may provide service to the new Ira ISD high school and related facilities located outside of its certificated service area. Oncon contends that it is singly certificated to approximately 95% of the new high school site, while Big Country and Oncon are dually certificated to the remaining roughly 5%.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas,

P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 43999.

TRD-201406233  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 22, 2014



#### Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 15, 2014, to amend a certificated service area for a service area exception within Coke County, Texas.

Docket Style and Number: Application of Concho Valley Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Service Area Exception within Coke County. Docket Number 43963.

The Application: Concho Valley Electric Cooperative, Inc. (CVEC) filed an application for a service area boundary exception to allow CVEC to provide service to a specific customer located within the certificated service area of Coleman County Electric Cooperative, Inc. (CCEC). CCEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than January 16, 2015, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43963.

TRD-201406228  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 19, 2014



#### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 18, 2014, to amend a certificate of convenience and necessity for a proposed transmission line in Liberty County, Texas.

Docket Style and Number: Application of Sam Houston Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line in Liberty County, Docket Number 43847.

The Application: The proposed project is designated as the Luce Bayou 138-kV Transmission Line Project. The facilities include construction of approximately 9 miles of double circuit 138-kV transmission line and substation facilities to serve a new 21,600 kVA water pumping facility. This proposed project starts at a point on Entergy Texas, Inc.'s Line 870 (located between Sam Houston's Long John and Tarkington Substations), traversing east-northeast to the pumping facility located on the Trinity River. The pumping facility is approximately

13 miles north-northeast of Dayton, Texas. The total estimated cost for the project ranges from approximately \$16,040,370 to \$17,069,166 depending on the route chosen.

The proposed project is presented with four alternate routes. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or 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. The deadline for intervention in this proceeding is February 2, 2015. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43847.

TRD-201406226  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 19, 2014



#### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 18, 2014, to amend a certificate of convenience and necessity for a proposed transmission line in Orange and Newton Counties, Texas.

Docket Style and Number: Application of Entergy Texas, Inc. to Amend its Certificate of Convenience and Necessity for a Proposed 230-kV Transmission Line in Newton and Orange Counties, Docket Number 43939.

The Application: The application of Entergy Texas, Inc. (ETI) include construction of a new 230-kV transmission line connecting the existing Hartburg substation located south of Deweyville, Texas to the new proposed Chisholm Road substation near the intersection of Linscomb Road and Joe Lane west of Farm-to-Market Road 1136 southwest of Mauriceville, Texas. The total estimated cost for the project ranges from approximately \$56 million to \$72 million depending on the route chosen.

The proposed project is presented with eight alternate routes and is estimated to be approximately 12.5 to 14.2 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or 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. The deadline for intervention in this proceeding is February 2, 2015. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43939.

TRD-201406227  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 19, 2014



Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 22, 2014, to amend a certificate of convenience and necessity for a proposed transmission line in Collin and Denton Counties, Texas.

Docket Style and Number: Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a 138-kV Double Circuit Transmission Line in Collin and Denton Counties, Docket Number 43878.

The Application: The proposed project of Brazos Electric Power Cooperative, Inc. (Brazos Electric) is designated as the Parvin Transmission and Substation Project. The facilities include construction of a new 138-kV double circuit transmission line with single-pole structures from a tap point along an existing transmission line in Denton County proceeding north to the proposed Parvin substation to be sited in eastern Denton County near the intersection of Parvin Road and Farm-to-Market (FM) 1385. The substation would be located along or near FM 1385 in the vicinity south of the intersection of FM 428 and FM 1385. The proposed project will provide necessary transmission support to alleviate capacity demands and improve service reliability for Brazos Electric's member cooperatives and its member customers.

The total estimated cost for the project is approximately \$17,519,156. The proposed project is presented with 29 alternate route segments, and three possible substation locations, and is estimated to be approximately 3.8 to 11.7 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or 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. The proposed deadline for intervention in this proceeding is February 6, 2015. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43878.

TRD-201406327

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: December 30, 2014

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**Texas Water Development Board**

Notice of Public Hearing on the State Fiscal Year 2015 Clean Water State Revolving Fund Intended Use Plan

The Texas Water Development Board (TWDB) will conduct a public hearing in accordance with 31 Texas Administrative Code §375.32 on Tuesday, January 20, 2015 to receive public comment on a draft amended State Fiscal Year (SFY) 2015 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP). The public hearing will begin at 2:00 P.M. in Room 172, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

The TWDB seeks to receive public comment related to the draft amendment to the SFY 2015 CWSRF IUP. The IUP is being amended to incorporate changes to the CWSRF program from the Water Resources Reform and Development Act (WRRDA), signed into law on June 10, 2014. The draft amended IUP reflects the U.S Environmental Protection Agency's interpretative guidance on changes to the CWSRF program related to WRRDA.

Interested persons are encouraged to attend the hearing to present comments concerning the draft amended IUP. Those who cannot attend the hearing may provide comments through the following three alternative methods: (1) submit comments via the online comment page: [www2.twdb.texas.gov/apps/iup](http://www2.twdb.texas.gov/apps/iup); (2) email comments to the electronic mail address: [iupcomments@twdb.texas.gov](mailto:iupcomments@twdb.texas.gov); or (3) submit written comments to the postal mail address: Ms. Jo Dawn Bomar, Director, Program Administration and Reporting, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711. The TWDB will receive public comment on the draft amended IUP until close of business at 5:00 p.m. on January 22, 2015. The draft amended SFY 2015 CWSRF IUP is available on the TWDB's website at [http://www.twdb.texas.gov/financial/programs/CWSRF/doc/Draft\\_Amended\\_SFY15\\_CWSRF\\_IUP.pdf](http://www.twdb.texas.gov/financial/programs/CWSRF/doc/Draft_Amended_SFY15_CWSRF_IUP.pdf).

TRD-201406335

Les Trobman

General Counsel

Texas Water Development Board

Filed: December 31, 2014  
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## How to Use the Texas Register

**Information Available:** The 14 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.

**Secretary of State** - opinions based on the election laws.

**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.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**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.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “40 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 40 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, Room 245, 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 *Register* is available in an .html version as well as a .pdf (portable document

format) 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 following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

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
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

40 TAC §3.704.....950 (P)

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