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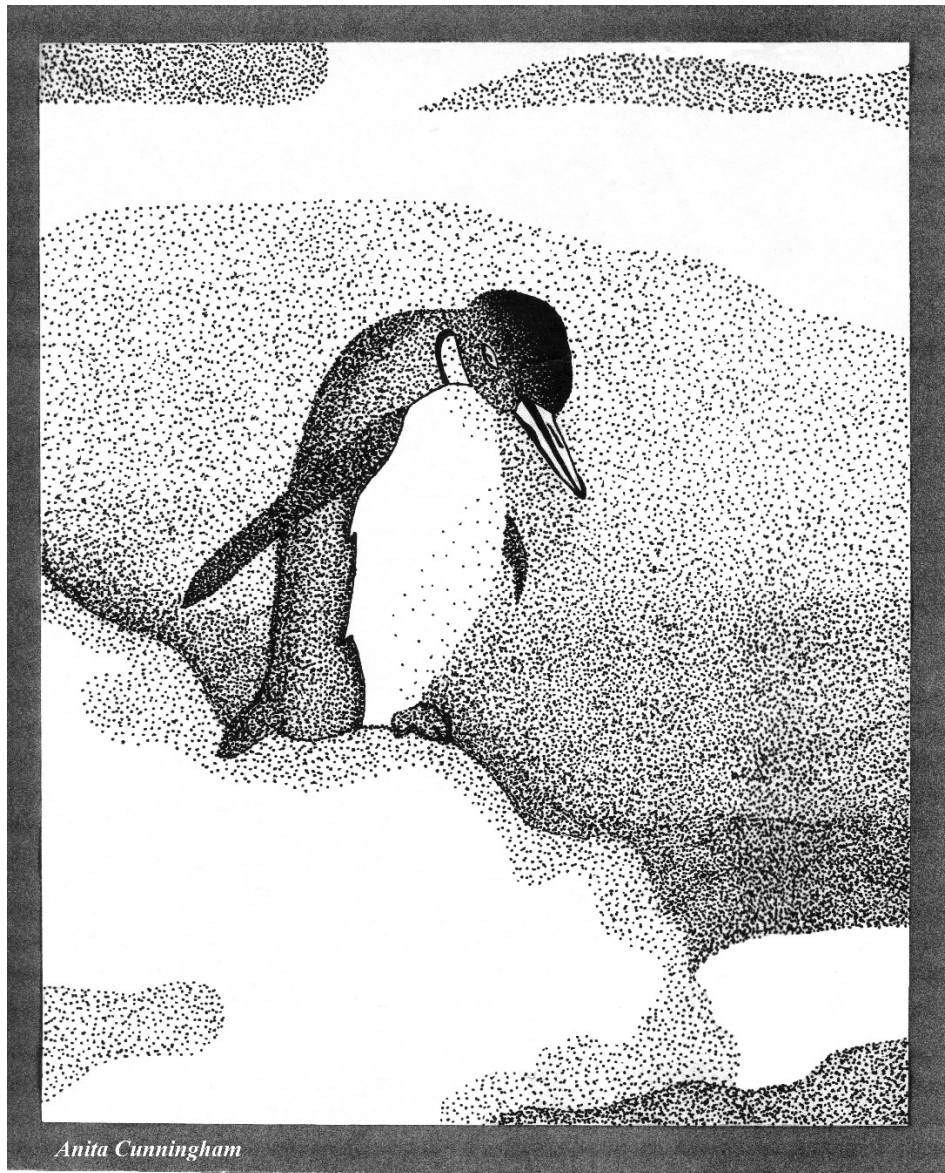
# TEXAS REGISTER

*Volume 43 Number 2*

*January 12, 2018*

*Pages 137 - 288*

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*Anita Cunningham*

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

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# IN THIS ISSUE

## **ATTORNEY GENERAL**

Requests for Opinions.....	143
Requests for Opinions.....	143

## **EMERGENCY RULES**

### **TEXAS REAL ESTATE COMMISSION**

#### GENERAL PROVISIONS

22 TAC §535.154.....	145
22 TAC §535.300.....	145

## **PROPOSED RULES**

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### RESPONSIBLE PET OWNERS

16 TAC §§92.1, 92.10, 92.20 - 92.22, 92.30 - 92.32, 92.51, 92.52, 92.60, 92.80, 92.90, 92.91, 92.95 .....	147
---	-----

#### MASSAGE THERAPY

16 TAC §117.2.....	152
16 TAC §§117.10 - 117.14.....	153
16 TAC §117.20.....	154
16 TAC §117.40.....	154
16 TAC §§117.50, 117.60, 117.62 .....	155
16 TAC §117.80, §117.82 .....	155
16 TAC §117.111 .....	156

### **TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

#### APPLICATIONS AND APPLICANTS

22 TAC §72.8.....	156
-------------------	-----

#### PROFESSIONAL CONDUCT

22 TAC §77.2.....	157
22 TAC §77.3.....	158
22 TAC §77.6.....	158
22 TAC §77.7.....	159
22 TAC §77.8.....	161

#### RULES OF PRACTICE

22 TAC §78.6.....	162
22 TAC §78.12.....	163
22 TAC §78.12.....	163

### **TEXAS MEDICAL BOARD**

#### PROCEDURAL RULES

22 TAC §187.21.....	165
22 TAC §187.44.....	166
22 TAC §§187.76, 187.79, 187.80.....	166

#### COMPLIANCE PROGRAM

22 TAC §189.11.....	166
---------------------	-----

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

#### STATE LONG-TERM CARE OMBUDSMAN PROGRAM

26 TAC §88.1, §88.2.....	173
26 TAC §§88.101 - 88.105 .....	176
26 TAC §88.201.....	180
26 TAC §§88.301 - 88.310 .....	180
26 TAC §§88.401 - 88.407 .....	185
26 TAC §88.501, §88.502.....	188

### **TEXAS DEPARTMENT OF INSURANCE**

#### TRADE PRACTICES

28 TAC §21.3001.....	190
28 TAC §§21.3030 - 21.3033 .....	190
28 TAC §21.3034.....	193

### **COMPTROLLER OF PUBLIC ACCOUNTS**

#### PROPERTY TAX ADMINISTRATION

34 TAC §9.1052.....	193
---------------------	-----

### **TEXAS DEPARTMENT OF PUBLIC SAFETY**

#### CAPITOL ACCESS PASS

37 TAC §2.3. §2.9 .....	194
-------------------------	-----

#### VEHICLE INSPECTION

37 TAC §23.63.....	195
--------------------	-----

### **DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

40 TAC §19.101.....	197
40 TAC §19.403, §19.413 .....	204
40 TAC §19.502.....	206
40 TAC §19.1001.....	207
40 TAC §19.1923.....	208
40 TAC §19.2002.....	208
40 TAC §§19.2112, 19.2114, 19.2119 .....	209
40 TAC §19.2310.....	212
40 TAC §19.2708.....	213

#### IMPLEMENTATION OF THE OLDER AMERICANS ACT

40 TAC §85.2.....	214
40 TAC §85.201.....	216

40 TAC §85.401 .....	219
40 TAC §85.501, §85.502 .....	219
LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES	
40 TAC §92.2 .....	221
40 TAC §92.125, §92.127 .....	224
40 TAC §92.551 .....	225
40 TAC §92.801 .....	227
40 TAC §92.801 .....	228
<b>ADOPTED RULES</b>	
<b>TEXAS JUDICIAL COUNCIL</b>	
INDIGENT DEFENSE POLICIES AND STANDARDS	
1 TAC §174.1 .....	229
1 TAC §174.10 .....	229
1 TAC §174.11, §174.12 .....	230
1 TAC §174.16, §174.21 .....	230
1 TAC §174.28 .....	230
<b>TEXAS BOARD OF CHIROPRACTIC EXAMINERS</b>	
APPLICATIONS AND APPLICANTS	
22 TAC §72.9 .....	232
CHIROPRACTIC FACILITIES	
22 TAC §§73.1 - 73.5 .....	232
LICENSES AND RENEWAL	
22 TAC §75.2 .....	232
22 TAC §75.4 .....	233
<b>TEXAS MEDICAL BOARD</b>	
USE OF EXPERTS	
22 TAC §182.8 .....	233
PERFUSIONISTS	
22 TAC §188.5, §188.9 .....	234
COMPLIANCE PROGRAM	
22 TAC §189.15 .....	234
STANDING DELEGATION ORDERS	
22 TAC §193.8 .....	234
MEDICAL RADIOLOGIC TECHNOLOGY	
22 TAC §§194.34 - 194.43 .....	235
<b>DEPARTMENT OF STATE HEALTH SERVICES</b>	
COMMUNICABLE DISEASES	
25 TAC §§97.151 - 97.156 .....	235
<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>	

TAX ADMINISTRATION	
34 TAC §3.595 .....	236
<b>TEXAS DEPARTMENT OF PUBLIC SAFETY</b>	
LICENSE TO CARRY HANDGUNS	
37 TAC §6.1 .....	236
37 TAC §6.14, §6.16 .....	236
37 TAC §§6.32, 6.40, 6.42 .....	237
37 TAC §6.39 .....	237
37 TAC §§6.81 - 6.92 .....	237
DRIVER LICENSE RULES	
37 TAC §15.44 .....	238
37 TAC §15.172 .....	238
<b>DEPARTMENT OF AGING AND DISABILITY SERVICES</b>	
LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES	
40 TAC §97.2 .....	239
40 TAC §§97.13, 97.17, 97.30 .....	244
<b>TABLES AND GRAPHICS</b>	
.....	247
<b>IN ADDITION</b>	
<b>Office of the Attorney General</b>	
Settlement of Claims for Federal Clean Air Act, Texas Clean Air Act, and Texas Water Code Violations .....	255
<b>Comptroller of Public Accounts</b>	
Notice of Contract Amendment .....	255
Notice of Contract Amendment .....	255
Notice of Contract Amendment .....	256
Notice of Request for Proposals .....	256
Notice of Request for Proposals .....	256
<b>Office of Consumer Credit Commissioner</b>	
Notice of Rate Ceilings .....	257
Notice of Rate Ceilings .....	257
<b>Texas Education Agency</b>	
Request for Applications Concerning the 2018-2019 Grow Your Own .....	257
Request for Applications Concerning the 2018-2019 Principal Preparation Grant .....	258
<b>State Board for Educator Certification</b>	
Notice of Correction of Error .....	259
<b>Texas Commission on Environmental Quality</b>	

Agreed Orders.....	259	<b>Department of State Health Services</b>	
Enforcement Orders.....	262	Certification Limitation Liability Report.....	270
Notice of Hearing.....	262	<b>Texas Department of Insurance</b>	
Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions.....	263	Company Licensing.....	270
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions.....	264	Company Licensing.....	270
Notice of Public Hearing.....	265	<b>Texas Lottery Commission</b>	
Notice of Public Hearing.....	265	Scratch Ticket Game Number 2029 "Numbers Game".....	271
Notice of Public Hearing.....	266	<b>Public Utility Commission of Texas</b>	
Notice of Public Hearing.....	266	Notice of Application for Sale, Transfer, or Merger.....	276
Notice of Public Hearing.....	267	Notice of Application for Waiver from Requirements.....	276
Notice of Public Hearing.....	267	Notice of Application to Transfer Load into the Electric Reliability Council of Texas.....	277
Proposal for Decision.....	268	<b>Supreme Court of Texas</b>	
<b>General Land Office</b>		In the Supreme Court of Texas.....	277
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program.....	268	In the Supreme Court of Texas.....	282
Notice of Request for Proposal for Financial Management - Internal Auditing Consulting Services.....	269	<b>Texas Department of Transportation</b>	
<b>Texas Health and Human Services Commission</b>		Public Notice - Aviation.....	286
Public Notice.....	269	<b>Workforce Solutions Brazos Valley Board</b>	
		Public Notice - Correction.....	287

# 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://texasattorneygeneral.gov/og/open-government>

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>

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**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

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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>.)

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Requests for Opinions

**RQ-0203-KP**

**Requestor:**

The Honorable Rafael Anchia

Chair, Committee on International Trade and Intergovernmental Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of an individual commissioner of the Railroad Commission to unilaterally terminate or hire an Executive Director for the Commission and related questions

(RQ-0203-KP)

**Briefs requested by January 25, 2018**

*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-201705405

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: December 28, 2017

Requests for Opinions

**RQ-0204-KP**

**Requestor:**

The Honorable Renee Ann Mueller

Washington County Attorney

100 East Main, Suite 200

Brenham, Texas 77833

Re: Authority of a Justice of the Peace to designate a specific peace officer or law enforcement agency to execute an emergency detention warrant under section 573.012(d) of the Health and Safety Code (RQ-0204-KP)

**Briefs requested by January 31, 2018**

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

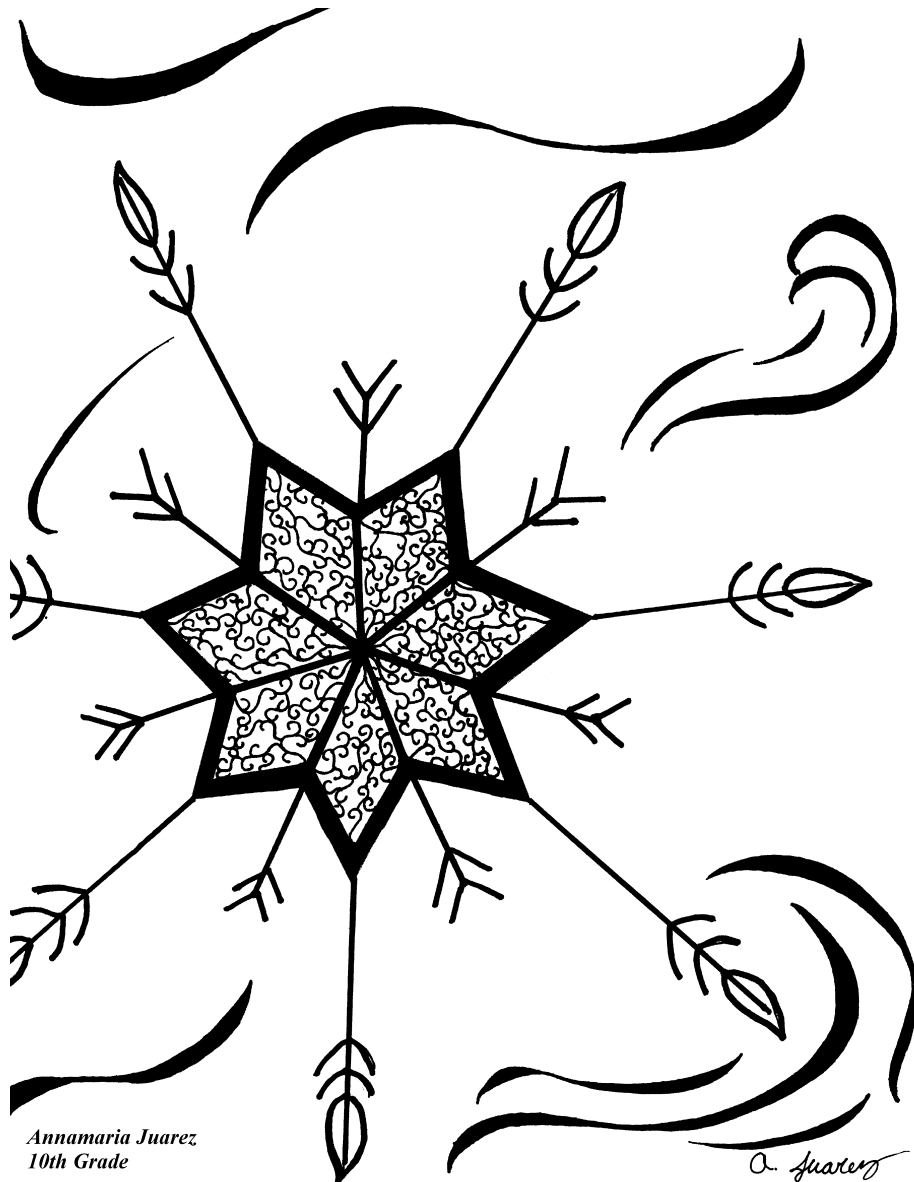
TRD-201800009

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: January 3, 2018



*Annamaria Juarez*  
*10th Grade*

*A. Juarez*



# EMERGENCY RULES

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

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## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 535. GENERAL PROVISIONS

##### SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

###### 22 TAC §535.154

The Texas Real Estate Commission is renewing the effectiveness of an emergency amendment to §535.154 for a 60-day period. The text of the emergency amendment was originally published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4197).

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705445

Kerri Lewis

General Counsel

Texas Real Estate Commission

Original effective date: September 1, 2017

Expiration date: February 28, 2018

For further information, please call: (512) 936-3092

### SUBCHAPTER S. RESIDENTIAL RENTAL LOCATORS

#### 22 TAC §535.300

The Texas Real Estate Commission is renewing the effectiveness of an emergency amendment to §535.300 for a 60-day period. The text of the emergency amendment was originally published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4198).

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705446

Kerri Lewis

General Counsel

Texas Real Estate Commission

Original effective date: September 1, 2017

Expiration date: February 28, 2018

For further information, please call: (512) 936-3092

*Victoria Castro  
11th 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 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 92. RESPONSIBLE PET OWNERS

16 TAC §§92.1, 92.10, 92.20 - 92.22, 92.30 - 92.32, 92.51, 92.52, 92.60, 92.80, 92.90, 92.91, 92.95

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC), Chapter 92, §§92.1, 92.10, 92.20 - 92.22, 92.30 - 92.32, 92.51, 92.52, 92.60, 92.80, 92.90, 92.91 and 92.95, regarding the Responsible Pet Owners program.

#### JUSTIFICATION AND EXPLANATION OF THE RULES

House Bill 162 (H.B. 162), 85th Legislature, Regular Session (2017), established the registration of Providers and Online Responsible Pet Owner courses. H.B. 162 authorizes the Texas Commission of Licensing and Regulation and the Department to establish rules to license and regulate providers and online responsible pet owner courses. The new rules are necessary to implement H.B. 162.

#### SECTION-BY-SECTION SUMMARY

The proposed new §92.1 establishes statutory authority.

The proposed new §92.10 creates the definitions to be used in the Responsible Pet Owners program.

The proposed new §92.20 provides for the course provider registration requirements.

The proposed new §92.21 establishes the renewal requirements for the course provider registration.

The proposed new §92.22 details when a registration may be denied.

The proposed new §92.30 provides for the responsible pet owner online course general requirements.

The proposed new §92.31 details the course requirements for the responsible pet owner online courses.

The proposed new §92.32 details the attendance verification requirements for the responsible pet owner online course.

The proposed new §92.51 establishes the responsibilities of course providers.

The proposed new §92.52 requires course providers to update information, including when a change of address occurs.

The proposed new §92.60 details the reporting and audit requirements and the manner the reports must be submitted.

The proposed new §92.80 creates the fees to be used in the responsible pet owners program.

The proposed new §92.90 provides for complaints and investigations.

The proposed new §92.91 allows for administrative sanctions and penalties.

The proposed new §92.95 details the reporting requirements.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Brian E. Francis, Executive Director, has determined that for each year of the first five years the new rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed new rules.

Brian E. Francis, Executive Director, has determined that for each year of the first five years the new rules are in effect, there is an estimated increase in general revenue to state government of \$600.00 as a result of enforcing or administering the proposed new rules. The Department anticipates two providers to register under the responsible pet owners program. In addition, the proposed new rules will not increase or decrease revenue to local governments.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Francis has determined that the proposed new rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Francis has also determined that for each year of the first five-year period, the proposed new rules are in effect, the public will benefit from the availability of an accredited online responsible pet owners course regulated by the Department.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Francis has determined that for each year of the first five-year period the proposed rules are in effect, the anticipated economic costs to persons who are required to comply with the proposed rules would be \$200.00 for the provider application and \$100.00 for the course approval totaling \$300.00 per business for the first year, and \$300.00 annually per business in subsequent years to include the renewal fee and the course approval fee.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed new rules.

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

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

Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

The proposed new rules implement legislation which is an exception under §2001.0045(c). Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) The proposed rules do not create a government program, however, H.B. 162 creates the Responsible Pet Owner program by amending Article 42A.511 of the Code of Criminal Procedure. The proposed new rules implement the intent of the legislature.
- (2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed rules require an increase in fees paid to the agency of roughly \$600.00 per year. The Department anticipates two providers will register under this program.
- (5) The proposed rules create a new regulation by establishing 16 Texas Administrative Code, Chapter 92, §§92.1, 92.10, 92.20 - 92.22, 92.30 - 92.32, 92.51, 92.52, 92.60, 92.80, 92.90, 92.91 and 92.95.
- (6) The proposed rules do not expand, limit, or repeal an existing regulation.
- (7) The proposed rules increase the number of individuals subject to the rule's applicability from zero to approximately two.
- (8) The proposed rules do not positively or adversely affect this state's economy.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, Texas Department of Licensing Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

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

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Code of Criminal Procedure, Article 42A.511. No other statutes, articles, or codes are affected by the proposal.

##### §92.1. Authority.

These rules are promulgated under the authority of Article 42A.511, Code of Criminal Procedure and Texas Occupations Code Chapter 51.

##### §92.10. Definitions.

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

(1) Attendance Verification--a system designed for personal validation of course participants with content validation throughout the full length of the course.

(2) Commission--The Texas Commission of Licensing and Regulation.

(3) Course--An online responsible pet owner course provided to a participant and approved by the department.

(4) Course Provider--A person registered by the department to offer online responsible pet owner courses.

(5) Department--The Texas Department of Licensing and Regulation.

(6) Instructional Hour-- One hour of instruction is equivalent to 50 minutes.

(7) Participant--An individual that receives court-ordered community supervision, pursuant to Article 42A.511, Code of Criminal Procedure, and is required to register and complete an online responsible pet owner course.

##### §92.20. Course Provider Registration Required.

(a) A person must register with and receive department approval, pursuant to Texas Occupations Code Chapter 51, before offering a course.

(b) To register as a course provider, an applicant must:

(1) submit an application on a form approved by the department; and

(2) pay all applicable fees.

##### §92.21. Course Provider Registration Renewals.

(a) Course provider registration is valid for one year, and may be renewed at the end of each registration period.

(b) To renew a registration, a course provider must:

(1) submit a renewal application on form approved by the department; and

(2) pay all applicable fees.

§92.22. Denial of Registration.

(a) The commission or the executive director may deny a registration, refuse to renew, or revoke a registration or course approval if the applicant or registered course provider has:

(1) violated an order of the commission or executive director, including an order for sanctions or administrative penalties;

(2) knowingly submitted false or incomplete information on the application; or

(3) provided false, misleading, or deceptive information in the application.

(b) If the commission or the executive director denies a registration, refuses to renew, or revokes a registration or course approval, a subsequent application for registration or course approval must contain a statement describing the circumstances leading to the denial or revocation and evidence to demonstrate that the basis for the denial or revocation no longer exists.

§92.30. Responsible Pet Owner Online Courses--General Requirements.

(a) Each course offered by a course provider must be approved by the department before being offered and is valid for one year.

(b) To obtain approval of a course, a provider must file a completed application on a department-approved form and pay all applicable fees.

(c) If a provider's registration expires, all course approvals for that provider shall expire.

§92.31. Responsible Pet Owner Online Courses--Course Requirements.

(a) Each application for course approval must be accompanied by:

(1) a course outline that identifies the educational objectives required by subsection (b); and

(2) the time allotted for each educational objective.

(b) The educational objectives of online responsible pet owner courses must include, but are not limited to the promotion of:

(1) respect and observance of federal and state laws which protect livestock and non-livestock animals, and wildlife;

(2) responsible care for spaying, neutering and tethering of animals;

(3) state and federal laws related to cruelty to livestock and non-livestock animals, attacks on assistance animals and dog fighting;

(4) responsible care concepts to include health, safety and welfare for non-livestock and livestock animals, wildlife and bite prevention; and

(5) Chapter 802, Texas Occupations Code (Dog or Cat Breeders Act) and Title 16, Chapter 91, Texas Administrative Code (Dog or Cat Breeders Program).

(c) The course must be offered online. Each course must be timed and contain a procedure for attendance verification to ensure the participant is active for the full length of the course.

(d) The course must include the log-in information for the course including passwords and the procedure for attendance verification.

(e) Course materials must have the following characteristics:

(1) appropriate grammar, spelling and punctuation;

(2) appropriate illustrations and graphics that are consistent with the educational objectives shown in §92.31(b); and

(3) comprehensive presentation of subject matter that is consistent with the educational objectives shown in §92.31(b).

(f) The course must include:

(1) a minimum of two (2) instructional hours;

(2) built-in timers to ensure the minimum hours of instruction have been completed by the participant; and

(3) attendance verification.

§92.32. Responsible Pet Owner Online Courses--Attendance Verification Requirements.

(a) Personal validation. The course provider shall maintain a system to validate the identity of the person taking the course. The personal validation system shall include the following requirements:

(1) Personal validation questions. The course provider shall ask a minimum of ten (10) personal validation questions throughout the course.

(2) Time to respond. The participant must correctly answer the online personal validation question within ninety (90) seconds. Failure by the participant to respond within ninety (90) seconds will result in the validation question being scored as incorrect.

(3) Placement of questions. At least one personal validation question shall appear in each major unit or section.

(4) Exclusion from the course. The course provider shall exclude the participant from the course after the participant has incorrectly answered more than thirty (30) percent of the personal validation questions.

(5) Correction of answer. The course provider may correct an answer to a personal validation question for a participant who inadvertently missed a personal validation question. In such a case, the course provider shall record both answers and an explanation of the reasons that the course provider corrected the answer.

(b) Alternative methods. Upon approval by the department, the course provider may use alternate methods that are at least as secure as the personal validation question method.

(c) Content validation. The course provider shall incorporate a course content validation process that verifies participant comprehension of course material related to the educational objectives shown in §92.31(b), including the following:

(1) Testing the participant's course comprehension. The course provider shall ask at least one course content validation question following each major unit or section.

(2) Course content validation question difficulty. The question shall be multiple choice. The question shall be difficult enough that the answer may not be easily determined without having viewed the contents of the major unit or section.

(3) Mastery of course content. The course provider shall test the participant's mastery of the course content by asking at least two questions from each major unit or section.

(A) Test bank. The test bank for course content mastery questions shall include at least five (5) questions from each major unit or section.

(B) Failure criteria. The course provider shall exclude the participant from the course after the participant has incorrectly answered more than thirty (30) percent of the content validation questions.

(C) Answer identification. The course provider shall not identify the correct answer to the content validation question to the participant.

§92.51. Responsibilities of Course Providers.

(a) A course provider must:

(1) ensure that courses are delivered online in a manner conducive to learning;

(2) include the department-issued provider and course numbers in all advertisements and webpages; and

(3) issue a certificate of completion to each participant who completes the course.

(b) The certificate of completion must be printable by the person completing the course and include:

(1) title and number of the course;

(2) unique participant registration number;

(3) course provider name, provider number, course name and number, and telephone number;

(4) case or cause number for the offense;

(5) offense type;

(6) court number and county of the offense;

(7) date of the offense;

(8) course completion date;

(9) number of instructional hours;

(10) name of the participant who completed the course;

(11) electronic signature of the course provider authorized representative, and the participant; and

(12) the following statement, signed by the participant: "Under penalty of law, I attest to the fact by name and signature on this document I have successfully completed the number of hours as required under Texas Administrative Code, Title 16, Chapter 92, and that any false information on this document will be used as evidence against me in a court of law and/or administrative proceeding."

(c) A provider may not publish false or misleading advertisements.

(d) Course providers are responsible for the conduct and administration of their courses, including the verification of participant attendance and course performance. Course providers must ensure that their courses are administered in a manner consistent with the representations contained in the application for course approval.

§92.52. Course Provider--Change of Address and Information.

A course provider must notify the department in writing within thirty (30) calendar days of any change in the course provider's address, telephone number, e-mail address, or course website address.

§92.60. Records and Audits.

(a) A course provider must retain participant records, as identified by §92.51(b), for a period of two years after completion of a course.

(b) To determine whether a provider is complying with the requirements of this chapter, department employees and representatives may conduct an audit of the approved course. Audits may be conducted

without prior notice to the provider and department employees and representatives may enroll in a course without identifying themselves as employees or representative of the department.

(c) Course providers must maintain a means to ensure the security and integrity of participant information which must include a privacy policy statement. The privacy policy statement must be provided to course registrants at the time of registration.

(d) Upon request, a course provider must provide information, including copies of specified records, to the department within ten business days of the date of the request.

§92.80. Fees.

(a) Course provider application fee--\$200.

(b) Course provider renewal application fee--\$200.

(c) Online responsible pet owner course-approval fee per course--\$100.

(d) Revised/Duplicate/Certificate/Permit/Registration--\$25.

(e) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(f) All fees paid to the department are non-refundable.

§92.90. Complaints; Investigations.

(a) Upon request from the department, a course provider must cooperate with the department, its employees and representatives, and furnish requested information concerning any department investigation.

(b) Within ten business days from the date of the request, a course provider must provide to the department any of its documents or records, unless otherwise prohibited by law.

(c) The course provider's name, address, phone number, and provider number shall appear on all business-related communications, business website and advertisements from the provider. The following information: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202 (in-state only), (512) 463-6599; website: "www.tdlr.texas.gov" shall appear for purposes of directing questions or complaints.

§92.91. Sanctions--Administrative Sanctions and Penalties.

If a person or entity violates any provision of Texas Occupations Code Chapter 51, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51, and any associated rules.

§92.95. Reporting Requirements.

A course provider must submit a monthly report to the department containing the:

(1) total number of course completion certificates issued;

(2) name and county of residence of all participants;

(3) location of the court and county where the offenses occurred; and

(4) dates of course completion.

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 28, 2017.



## CHAPTER 117. MASSAGE THERAPY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 117, Subchapter A, §117.2; Subchapter C, §117.20; Subchapter E, §117.40; Subchapter F, §§117.50, 117.60, 117.62; Subchapter G, §117.80 and §117.82; Subchapter J, §117.111; and proposes new rules at 16 TAC, Subchapter B §§117.10 - 117.14, regarding the Massage Therapy program.

### JUSTIFICATION AND EXPLANATION OF THE RULES

The proposed rules implement legislative changes from the 85th Legislature, Regular Session (2017), for the Massage Therapy Program, which includes updating the rules to reflect statutory requirements for criminal history investigations, conditions for license eligibility, conditions for revoking a license; and adding an advisory board. The proposed rules are necessary to implement legislative changes.

### SECTION - BY - SECTION SUMMARY

The proposed amendments to §117.2 adds the definition "applicant" and renumbers the section accordingly.

The proposed new Subchapter B, provides for the Massage Therapy Advisory board.

The proposed new §117.10 establishes the advisory board membership and composition.

The proposed new §117.11 explains the advisory board duties.

The proposed new §117.12 explains the advisory board terms and vacancies.

The proposed new §117.13 establishes the advisory board presiding officer.

The proposed new §117.14 details when the advisory board must meet.

The proposed amendments §117.20 makes editorial corrections.

The proposed amendments §117.40 requires passing a criminal history background check for massage therapy instructor applicants.

The proposed amendments §117.50 requires passing a criminal history background check for massage school license applicants.

The proposed amendments §117.60 makes editorial corrections.

The proposed amendments §117.62 details massage school enrollment procedures and makes editorial corrections.

The proposed amendments §117.80 requires passing a criminal history background check for massage establishment applicants.

The proposed amendments §117.82 makes editorial corrections.

The proposed amendments §117.111 details administrative penalties and sanctions.

### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Brian E. Francis, Executive Director, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Brian E. Francis, Executive Director, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Francis has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

### PUBLIC BENEFITS

Mr. Francis has also determined that for each year of the first five-year period, the proposed rules are in effect, the public will benefit by the establishment of the Massage Therapy Advisory Board, which allows stakeholders and the general public to provide input to the Department related to the regulation of the massage therapy profession. The requirement for criminal history background checks for applicants, and specific criminal history standards related to applicants who are ineligible to hold a license, protect consumers by ensuring that they receive massage therapy services from licensees who have not demonstrated a lack of honesty, trustworthiness, or integrity to hold a license.

### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Francis has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

There will be no adverse affect on small businesses, micro-businesses, or rural communities as a result of the proposed rules.

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

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

Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated

persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

The proposed rules do not impose a cost on regulated persons and implement legislation which is an exception under §2001.0045(c). Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed rule does not require an increase or decrease in fees paid to the agency.
- (5) The proposed rule does create a new regulation. House Bill 4007 (85R) created a new advisory board that did not previously exist. The proposed rules reflect the statutory composition and role of the new advisory board, and it will function similarly to the Department's existing advisory boards.
- (6) The proposed rule does expand, limit, or repeal an existing regulation. The proposed rules repeal a rule based on a statutory repeal in House Bill 4007 (85R). An applicant will no longer be ineligible to hold a massage therapy license based solely upon conviction for a felony or a misdemeanor or moral turpitude in the last five years preceding the application. The criminal history of these applicants will be reviewed in accordance with the existing Department criminal history standards in 16 Texas Administrative Code, Chapter 60.
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect this state's economy.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, Texas Department of Licensing Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 16 TAC §117.2

#### STATUTORY AUTHORITY

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

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposal.

#### §117.2. 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) Applicant--A person who submits an application to the department. The term includes: owner, owner's agent, operator, principal, officer, or general manager of the applicant.

(4) [~~3~~] Business practices and professional ethics--The study of standard bookkeeping and accounting practices, office practices, and advertising, and ethical guidelines for massage therapists established by law or the department.

(5) [~~4~~] Client--An individual or patron seeking or receiving massage therapy services.

(6) [~~5~~] Commission--The Texas Commission on Licensing and Regulation.

(7) [~~6~~] Compensation--Any and all forms of payment as remuneration for the provision of massage therapy or other massage therapy services, including but not limited to, fees, tips, memberships, goods, services, barter, or any other exchange or any value made to or on behalf of a licensee, an unlicensed person, or an unlicensed business. Compensation includes discounted, reduced, or waived student fees for tuition, books, supplies, or other educational expenses.

(8) [~~7~~] Department--The Texas Department of Licensing and Regulation.

(9) [~~8~~] Executive Director --The executive director of the department.

(10) [~~9~~] Health and hygiene--The study of recognized methods of sanitation and cleanliness including prophylaxis or disease prevention as applied to massage therapy services and current knowledge of elements of healthy life styles.

(11) [~~10~~] Hydrotherapy--The use of generally accepted methods of external application of water for its mechanical, thermal, or chemical effect.

(12) [~~11~~] Instructor--A person employed at a licensed massage school who instructs one or more students in any section of the course of instruction, other than massage therapy techniques, manipulation of soft tissue, or the internship.

(13) [~~12~~] Kinesiology--The study of the anatomy, physiology, and mechanics of movement of the human body.

(14) [~~13~~] Licensee--A person or entity licensed under the Act as a massage therapist, massage school, massage therapy instructor, or massage establishment.

(15) [~~14~~] Massage school--An entity that:

(A) teaches at a minimum the course of instruction required for a massage therapist license; and

(B) has at least two instructors.

(16) [~~15~~] Massage therapist--A person who practices or administers massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse,



myotherapist, body massager, body rubber, or any derivation of those titles.

(17) [(16)] Massage therapy--The manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage. The term includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. Massage therapy may include the use of oil, lubricant, salt glows, heat lamps, hot and cold packs, or tub, shower, jacuzzi, sauna, steam or cabinet baths. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, body massage, body rub, or any derivation of those terms. Massage therapy is a health care service when the massage is for therapeutic purposes. The terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law. Massage therapy does not constitute the practice of chiropractic.

(18) [(17)] Massage therapy educational program--The minimum 500 hour supervised course of instruction described in the Act, §455.156, required for licensure and provided by a licensed massage school.

(19) [(18)] Massage therapy establishment--A place of business that advertises or offers massage therapy or other massage services unless specifically exempted by the Act. The term includes a place of business that advertises or offers any service described by a derivation of the terms "massage therapy" or "other massage services" as defined by the Act.

(20) [(19)] Massage therapy instructor--A licensed massage therapist who provides to one or more students instruction approved by the department in massage therapy or manipulation of soft tissue and who holds a license issued by the department as a massage therapy instructor.

(21) [(20)] Owner--An owner is, in the case of a massage school or establishment, an individual, a partnership and any partners, a corporation, or any other legal business entity.

(22) [(21)] Pathology--The scientific study of the nature of disease and its causes, processes, development, and consequences.

(23) [(22)] Physiology--The study of the normal vital processes of the human body including the processes of cells, tissues, and organs including the contractibility of muscle tissue; coordination through the nervous system; digestion; circulatory; reproduction; and secretions.

(24) [(23)] State approved educational institution--An institution which is approved by the Texas Education Agency or which is an institution of higher education as defined in the Texas Codes Annotated, Texas Education Code, Chapter 61 or a higher education institution approved by a similar agency in another state.

(25) [(24)] Swedish gymnastics--Passive and active joint movements, nonspecific stretches, passive and active exercise, or any combination of these.

(26) [(25)] Swedish massage therapy techniques--The manipulation of soft tissue utilizing effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve stroke, and Swedish gymnastics.

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

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TRD-201705352

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179

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**SUBCHAPTER B. MESSAGE THERAPY  
ADVISORY BOARD**

**16 TAC §§117.10 - 117.14**

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

The statutory provisions affected by the proposal option are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposal.

§117.10. Advisory Board Membership.

The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

- (1) Two members who are licensed massage therapists;
- (2) Two members who represent licensed massage schools;
- (3) Two members who represent licensed massage establishments;

(4) One member who is a peace officer with expertise in the enforcement of Chapter 20A, Penal Code, and Subchapter A, Chapter 43, Penal Code; and

- (5) Two members of the public.

§117.11. Duties of Advisory Board.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

§117.12. Terms; Vacancies.

(a) Members of the advisory board are appointed for staggered six-year terms. The terms of three members expire September 1 of each odd-numbered year.

(b) If a vacancy occurs on the advisory board during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§117.13. Presiding Officer.

(a) The presiding officer of the commission shall designate a member of the advisory board to serve as presiding officer of the advisory board for a term of one year.

(b) The presiding officer of the advisory board may vote on any matter before the advisory board.

§117.14. Meetings.

The advisory board shall meet at the call of the executive director or the presiding officer of the commission.

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

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## SUBCHAPTER C. LICENSED MASSAGE THERAPIST

### 16 TAC §117.20

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

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposal.

*§117.20. Massage Therapist License--General Requirements and Application.*

(a) To be eligible for a Massage Therapist license an applicant must:

(1) - (7) (No change.)

(8) satisfactorily complete massage therapy studies in a minimum ~~500-hour~~ 500-hour department approved course at a licensed massage school in which includes at least:

(A) 200 hours of massage therapy techniques and theory and the practice of manipulation of soft tissue, with at least 125 hours of Swedish massage therapy techniques;

(B) 50 hours of anatomy;

(C) 25 hours of physiology;

(D) 50 hours of kinesiology;

(E) 40 hours of pathology;

(F) 20 hours of hydrotherapy;

(G) 45 hours of massage therapy laws and rules, business practices and professional ethics;

(H) 20 hours of health, hygiene, first aid, universal precautions, and cardiopulmonary resuscitation (CPR); and

(I) ~~50-hour~~ 50-hour internship program.

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

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

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## SUBCHAPTER E. LICENSED MASSAGE THERAPY INSTRUCTORS

### 16 TAC §117.40

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

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposal.

*§117.40. Massage Therapy Instructor--General Requirements and Application.*

(a) (No change.)

(b) To qualify for massage therapy instructor license, a person shall:

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

(3) submit a statement of assurance that the licensee has been engaged in the practice of massage therapy for at least one year and has conducted 500 hours of hands-on experience (does not include internship hours); ~~and~~

(4) (No change.)

(5) submit a completed application on a department-approved form; ~~and~~

(6) pay the required fee under §117.100; ~~and~~ [-]

(7) successfully pass a criminal history background check performed by the department.

(c) - (d) (No change.)

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

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## SUBCHAPTER F. LICENSED MASSAGE SCHOOLS

### 16 TAC §§117.50, 117.60, 117.62

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

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposal.

*§117.50. Massage School License--General Requirements and Application.*

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

(c) Each applicant for a massage school must [submit]:

(1) submit a completed application on a department-approved form;

(2) submit supporting documents that shall include:

(A) lease agreement;

(B) detailed floor plan; and

(C) inventory;

(3) provide the financial stability statements or documents as prescribed under §117.56; [and]

(4) pay the required fee under §117.100; and [-]

(5) successfully pass a criminal history background check performed by the department.

(d) - (f) (No change.)

*§117.60. Massage School Advanced Course Work.*

(a) Advanced course work offered by a massage school which is beyond and not a part of the minimum 500-hour ~~[500 hour]~~ course of instruction must be:

(1) directly related to the theory or clinical application of theory pertaining to the practice of massage therapy and the manipulation of soft tissue, business practices, professional ethics, massage therapy laws and rules, universal precautions, anatomy, physiology, kinesiology, pathology, hydrotherapy, and health and hygiene; and

(2) designed to increase and enhance professional knowledge, skills, or competence in the practice of massage therapy or other massage therapy services.

(b) - (e) (No change.)

*§117.62. Massage School Enrollment Procedures.*

(a) Before enrollment, each massage school shall provide each prospective student with the following:

(1) - (8) (No change.)

(9) the student-teacher ~~[pupil-teacher]~~ ratio;

(10) - (15) (No change.)

(16) a statement that the Act sets out that a person is ineligible for licensure:

(A) if the person has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication to crimes

or offenses under Chapter 20A, Penal Code, or Subchapter A, Chapter 43, Penal Code, ~~[involving prostitution]~~ or another sexual offense; or

~~[(B)]~~ until the fifth anniversary of the date of a conviction for a misdemeanor involving moral turpitude or a felony; or]

(B) ~~[(C)]~~ until the fifth anniversary of the date of a conviction of a violation of the Act.

(b) (No change.)

(c) Each massage school shall use a department-approved acknowledgment form to verify the prospective student's receipt of the information required in subsection (a). A signed copy of the form shall be given to the prospective student and the original shall be maintained in the student's file. The form shall include the following or similar statements:

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

(4) "I have been made aware that the State of Texas requires only the minimum 500-hour ~~[500 hour]~~ course of instruction for licensure as a massage therapist, and anything beyond that is strictly voluntary."

(d) - (e) (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.

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## SUBCHAPTER G. LICENSED MASSAGE ESTABLISHMENTS

### 16 TAC §§117.80, §117.82

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

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposal.

*§117.80. Massage Establishment Application Procedures and Licensure.*

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

(c) Each applicant for a massage establishment must [submit]:

(1) submit a completed application on a department approved form; [and]

(2) pay the fee as prescribed under §117.100; and[-]

(3) successfully pass a criminal history background check performed by the department.

§117.82. *Massage Establishments--General Requirements.*

(a) - (h) (No change.)

(i) For purposes of this section:

(1) (No change.)

(2) "Sexual contact" includes:

(A) - (D) (No change.)

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion [~~promotions~~] of prostitution as described in Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in such activities;

(F) - (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.

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## SUBCHAPTER J. ENFORCEMENT PROVISIONS

### 16 TAC §117.111

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

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposal.

§117.111. *Administrative Penalties and Sanctions.*

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

(c) The commission or executive director shall revoke the license of a person if:

(1) the person is convicted of, enters a plea of nolo contendere or guilty to, or receives deferred adjudication for an offense under Chapter 20A, Penal Code, or Subchapter A, Chapter 43, Penal Code [~~involving prostitution~~] or another sexual offense; or

(2) (No change.)

(d) (No change.)

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

Filed with the Office of the Secretary of State on December 21, 2017.

TRD-201705358

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 463-8179



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 72. APPLICATIONS AND APPLICANTS

##### 22 TAC §72.8

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 72, §72.8, concerning Failure to Appear at Jurisprudence Examination. The proposed repeal is made to reflect the Board's use of an online testing system, which no longer requires an examinee to appear in person.

The purpose of the rule repeal is to eliminate any requirement for an examinee to appear for the jurisprudence exam at a physical examination location.

The Board's Executive Director, Patricia Gilbert, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering.

Ms. Gilbert has determined that for the first five-year period the proposed repeal is in effect, the expected public benefit will be to eliminate confusion regarding taking the Board's Jurisprudence exam, which is only administered online.

Ms. Gilbert has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals, because it does not impose any duties or obligations upon small businesses or individuals.

Ms. Gilbert has determined that the proposed repeal does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposal and/or a request for a public hearing may be submitted to Courtney L. Ebeier, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, TX 78701, via email to rules@tbce.state.tx.us, or fax to (512) 305-6705, no later than 30 days from the date that this proposal is published in the *Texas Register*.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

##### §72.8. *Failure to Appear at Jurisprudence Examination.*

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, 2018.

TRD-201705443

Courtney L. Ebeier

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 305-6715



## CHAPTER 77. PROFESSIONAL CONDUCT

### 22 TAC §77.2

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 77, §77.2, concerning "Publicity." The proposed amended rule is necessary to reflect implementation of 2017 Sunset Commission legislation, SB 304, which dissolved the Board's statutory requirement to regulate and/or register chiropractic facilities, effective September 1, 2017.

The purpose of the proposed amendments is to remove the reference of regulation of facilities and facility owners stated in the rule.

The Board's Executive Director, Patricia Gilbert, has determined that for the first five-year period the amended rule is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Gilbert has determined that for the first five-year period the amended rule is in effect, the expected public benefit will be clearer guidance for the public and stakeholders regarding regulation of the practice of chiropractic.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals, because it does not impose any duties or obligations upon small businesses or individuals.

**GOVERNMENT GROWTH IMPACT STATEMENT:** Ms. Gilbert has determined that the proposed amendment does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposed amended rule and/or a request for a public hearing may be submitted to Courtney L. Ebeier, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

#### §77.2. Publicity.

(a) A [registered facility or] licensee shall not, on behalf of himself, his partner, associate, or any other licensee [or facility] affili-

ated with him, use or participate in the use of any form of public communication which contains a false, fraudulent, misleading, deceptive, or unfair statement of claim, or which has the tendency or capacity to mislead or deceive the general public, as defined in §77.4 of this title (relating to Misleading Claims).

(b) In any form of public communication, a licensee [or facility] shall not describe services that are inconsistent with the practice of chiropractic as described under §78.13 of this title (relating to Scope of Practice).

(c) A licensee [or facility] engaging in, or authorizing another to engage in, telemarketing of prospective patients shall not misrepresent to the person called any association with an insurance company or another doctor of chiropractic or another chiropractic group [or facility].

(1) A licensee[; facility;] or an [their ] agent[;] engaging in telemarketing shall not promise successful chiropractic treatment of injuries or make any other communication which would be prohibited under subsection (a) of this section.

(2) A licensee[; facility;] or an [their ] agent[;] engaging in telemarketing is [are] required, at the start of each call, to inform the person called who they are (caller's name) and who they represent (clinic/doctor).

(3) A licensee [or facility] engaging in telemarketing, either directly or through an agent, shall keep a copy of each script used for calling and a log of all calls made that shall include the date, telephone number, and the name of each person called. Such scripts and logs shall be maintained for a minimum of two years.

(d) Licensees who [or facilities that] intend to include a testimonial as part of any form of public communication shall maintain a signed statement from that person or group to support any statements that may be used in any public communication for a minimum of two years from publication of the testimonial.

(e) Licensees [or facilities] shall clearly differentiate a chiropractic office, clinic, or facility from another business or enterprise in any form of public communication.

(f) Licensees [or facilities] shall be identified as either "doctor of chiropractic," "DC," "chiropractor" or "chiropractic" in all forms of public communication in accordance with §201.002 of the Texas Occupations Code. [If each licensee that practices in a facility has identified themselves as required in this subsection, then the facility name need not include "chiropractic" or similar language.]

(g) In any form of public communication using the phrase "Board Certified" or similar terminology associated with any credentials, a licensee must identify the board certifying said credentials.

(h) In any form of public communication, if a licensee [or facility] makes a claim based on one or more research studies, the licensee or facility shall clearly identify the relevant research study or studies and make copies of such research studies available to the board or the public upon request.

(i) In any form of public communication, a licensee [or facility] shall not advertise any service as "free" unless the public communication clearly and specifically states:

(1) all the component services which will or might be performed at the time of, or as part of, the service;

(2) as to each such component service, whether that service will be free or, if not, the exact amount which will be charged for it; and

(3) if a component service is an evaluation, whether the report of findings will be free or, if not, the exact amount which will be charged for the report of findings.

(j) This section and §77.4 of this title apply to all advertising, communications, or telemarketing done by or on behalf of a licensee [or facility], including activities conducted by employees, students being mentored by the licensee, or other agents.

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, 2017.

TRD-201705414

Courtney L. Ebeier

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 305-6715



## 22 TAC §77.3

The Texas Board of Chiropractic Examiners (Board) proposes amendments to §77.3, concerning "Patient's Rights to Disclosure of Charges." The proposed amended reflects requested changes by the Texas Chiropractic Association (TCA).

The purpose of the amendment is to ensure clarity regarding a patient's right to obtain a receipt for services on the date the services are rendered.

The Board's Executive Director, Patricia Gilbert, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Gilbert has determined that for the first five-year period the amended rule is in effect, the expected public benefit will be clarity regarding a patient's right to a receipt of charges for chiropractic care at the time of service.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals, because it does not impose any duties or obligations upon small businesses or individuals.

GOVERNMENT GROWTH IMPACT: Ms. Gilbert has determined that the proposed amendment does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposed amended rule and/or a request for a public hearing may be submitted to Courtney L. Ebeier, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect public health and safety. The Board is further authorized to adopt rules

based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

### §77.3. Patient's Rights to Disclosure of Charges.

(a) A licensee shall, at a patient's request on the date of providing goods or services to a patient, make available [disclose] to the patient a receipt or summary of [in writing] the full amount of the licensee's charges for that day.

(b) Compliance with this rule may be in any written, printed or digital form reasonably calculated to notify the patient of the actual charges for the goods or services provided.

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, 2017.

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Courtney L. Ebeier

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 305-6715



## 22 TAC §77.6

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 77, §77.6, concerning "Default on Student Loans and Scholarship Agreements." The proposed amended rule is necessary to reflect implementation of 2017 Sunset Commission legislation, SB 304, which dissolved the Board's statutory requirement to register and/or regulate chiropractic facilities, effective September 1, 2017.

The purpose of the proposed amendments is to remove reference to regulation of facilities and facility owners stated in the rule.

The Board's Executive Director, Patricia Gilbert, has determined that for the first five-year period the proposed amended rule is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Gilbert has determined that for the first five-year period the amended rule is in effect, the expected public benefit will be clearer guidance for the public and stakeholders regarding regulation of the practice of chiropractic.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals, because it does not impose any duties or obligations upon small businesses or individuals.

GOVERNMENT GROWTH IMPACT STATEMENT: Ms. Gilbert has determined that the proposed amendment does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposed amended rule and/or a request for a public hearing may be submitted to Courtney L. Ebeier, General Counsel, Texas Board of Chiropractic Examiners, 333

Guadalupe St., Tower III, Suite 825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

*§77.6. Default on Student Loans and Scholarship Agreements.*

(a) Besides non-renewal of a license under §75.2 of this title (relating to Renewal of Chiropractic License) [~~or §73.3 of this title (relating to Annual Renewal of Facility Registration) of this title~~], a licensee who has defaulted on a student loan or breached a student loan repayment contract, a scholarship contract by failing to perform his or her service obligation under the contract, or any other agreement between the licensee and the administering entity, relating to payment of a student loan or performance of obligations under a scholarship, may be subject to disciplinary action by the board as authorized by Chapter 56 of the Occupations Code. This section applies to chiropractic licensees [~~and facility licensees~~] who operate a sole proprietor or partnership.

(b) The board may rescind any disciplinary action taken under this section upon receipt of information from an administering entity that the licensee is now in good standing, as provided in §72.3(b) of this title (relating to Qualification of Applicants).

(c) Upon notice that a licensee is again in default or breach of any loan or agreement relating to a student loan or scholarship, the board may reinstate the original disciplinary action, if rescinded, or take other disciplinary action.

(d) The maximum sanction for a violation of this section is revocation and/or \$1000 administrative penalty per violation. This sanction is incorporated into the board's maximum sanction table provided in §78.10(b) of this title (relating to Schedule of Sanctions) by this reference.

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

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TRD-201705416

Courtney L. Ebeier

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 305-6715



**22 TAC §77.7**

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 77, §77.7, concerning "Request for Information and Records from Covered Entities." The proposed amended rule is necessary to reflect implementation of 2017 Sunset Commission legislation, SB 304, which dissolved the Board's statutory requirement to register and/or regulate chiropractic facilities, effective September 1, 2017.

The purpose of the amendments is to remove reference to the regulation of facilities and facility owners stated in the rule.

The Board's Executive Director, Patricia Gilbert, has determined that for the first five-year period the proposed amended rule is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Gilbert has determined that for the first five-year period the proposed amended rule is in effect, the expected public benefit expected will be clearer guidance for the public and stakeholders regarding regulation of the practice of chiropractic.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals, because it does not impose any duties or obligations upon small businesses or individuals.

GOVERNMENT GROWTH IMPACT STATEMENT: Ms. Gilbert has determined that the proposed amendment does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposed amended rule and/or a request for a public hearing may be submitted to Courtney L. Ebeier, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

*§77.7. Request for Information and Records from Covered Entities.*

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

(1) Covered entity--Any person as identified within Health and Safety Code, Title 2. Health, Subchapter I. Medical Records, Chapter 181 Medical Records Privacy, Section 181.001. For the purposes of this rule, covered entities include only chiropractors [~~or chiropractic facility owners~~] regulated by Texas Occupations Code, Chapter 201.

(2) Chiropractic record--Any record regularly utilized, created, or stored by a covered entity in the ordinary course and scope of business pertaining to the history, diagnosis, treatment or prognosis of the patient, including records of other health care practitioners contained in the records of the covered entity.

(3) Patient--Any person who consults or is seen by a covered entity for the purposes of receiving chiropractic care.

(b) Request for chiropractic records. Upon request, a covered entity shall furnish copies of chiropractic records, a summary, or narrative of the records pursuant to a written consent for disclosure. A request may be in oral form if it is documented in writing by the covered entity. The requested information or record shall not be released if the covered entity determines that access to the information would be harmful to the physical, mental, or emotional health of the patient.

If the covered entity determines that access to the information would be harmful, the covered entity will document in writing the reasons why the disclosure would be harmful. The covered entity may delete from the requested records confidential information about another person who has not authorized disclosure.

(c) Written consent.

(1) The written consent required by subsection (b) of this section shall be signed by:

(A) the patient;

(B) the patient's [~~patients']~~ personal representative if the patient is deceased;

(C) a parent or legal guardian if the patient is a minor;

(D) a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs; or

(E) an attorney ad litem for the patient as authorized by law, including the Health and Safety Code, Title 7, Family Code, Chapter 11 or the Probate Code, Chapter 5.

(2) The written consent shall contain the specific information or chiropractic records to be disclosed under the consent; the reasons or purposes for the disclosure; and the person to whom the information is to be disclosed.

(3) The patient, or other person authorized to consent, has the right to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal. Any person who received information made confidential by the Chiropractic Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to disclose information was obtained.

(d) Oral consent.

(1) The oral consent permitted by subsection (b) of this section shall be documented by the covered entity by:

(A) identifying the patient by presentation of valid government identification; or

(B) the presentation of legal documents sufficient to identify a person as the patient's legal representative or guardian; and

(C) written documentation of the oral consent kept by the covered entity must include annotations recording the time, date, and identification of the patient, the patient's personal representative if the patient is deceased, a parent or legal guardian if the patient is a minor, a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs; or an attorney ad litem for the patient as authorized by law, including the Health and Safety Code, Title 7, Family Code, Chapter 11 or the Probate Code, Chapter 5.

(2) The written documentation of the oral consent shall contain the specific information or chiropractic records to be disclosed under the oral consent; the reasons or purposes for the disclosure; and the person to whom the information is to be disclosed.

(3) The patient, or other person authorized to consent, has the right to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the oral notice of the withdrawal. Any person who received information made confidential by the Chiropractic Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to disclose information was obtained.

(e) Reasonable time. A copy of chiropractic records or a summary or narrative of the records requested under subsection (b) of this

section shall be furnished by the covered entity within a reasonable time, not to exceed 15 business days from the date of the request.

(f) Denial of request. If the covered entity denies the request under subsection (b) of this section for a copy of chiropractic records or a summary or narrative of the records, either in whole or in part, the covered entity shall furnish the patient a written statement, signed and dated, stating the reason for the denial. Chiropractic records requested pursuant to subsection (b) of this section may not be withheld based upon:

(1) a past due account for care or treatment previously rendered to the patient;

(2) on the lack of a letter of protection; or

(3) any other document having a similar effect.

(g) Fee for records. The covered entity may charge a reasonable fee for furnishing the information requested under subsection (a) of this section, in accordance with the following provisions:

(1) The fee shall be paid by the patient or someone else on the patient's behalf.

(2) A covered entity may require payment in advance except from another covered entity or other health care provider, including a chiropractor licensed by any other state, territory, or insular possession of the United States or any state or province of Canada, if requested for purposes of emergency or acute medical care.

(3) In the event payment is not received, within ten calendar days from notification of the charge, the covered entity shall notify the requesting party in writing of the need for payment.

(4) A reasonable fee for a paper copy shall be a charge not to exceed:

(A) \$30 for retrieval of records and processing the request, including copies for the first 10 pages;

(B) \$1.00 per page for pages 11-60;

(C) \$.50 per page for pages 61-400; and

(D) \$.25 per page for pages over 400.

(5) A reasonable fee for copies of films or other static diagnostic imaging studies shall be a charge not to exceed \$45 for retrieval and processing, including copies for the first 10 pages, and \$1.00 for each additional page over 10.

(6) Reasonable fees may also include actual costs for mailing, shipping, and delivery fees incurred by the covered entity.

(7) A reasonable fee for completing and signing an affidavit or questionnaire certifying that the information provided is a true and current copy of the records may not exceed \$15.

(8) In addition to the fee contemplated in paragraph (7) of this subsection, reasonable fees may also include the actual costs paid by the covered entity to a notary for notarizing an affidavit, questionnaire, or other document.

(9) Notwithstanding subsection (g) of this section, a covered entity may not charge for records where prohibited as noted in Health and Safety Code, Title 2, Health, Subchapter H, Public Health Provisions, Chapter 161 Medical or Mental Health Records or any other applicable state and federal law.

(h) Subpoena not required. A subpoena shall not be required for the release of chiropractic records requested pursuant to subsection (b) of this section.



(i) Nothing within this section should be construed to supersede Health and Safety Code, Title 2, Health, Subchapter I, Medical Records, Chapter 181 Medical Records Privacy or any other applicable state and federal law.

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

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705417

Courtney L. Ebeier

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 305-6715



## 22 TAC §77.8

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 77, §77.8, concerning "Records and Documentation." The proposed amended rule is to reflect changes requested by the Texas Chiropractic Association ("TCA").

The purpose of the amendment is to provide clarity regarding the notes that are to be required in patient treatment records, depending on whether the written analysis is made for initial or subsequent visits.

The Board's Executive Director, Patricia Gilbert, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment to the rule.

Ms. Gilbert has determined that for the first five-year period the proposed amended rule is in effect, the expected public benefit will be clearer guidance for the public and stakeholders regarding requirements for chiropractic treatment records.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because it does not impose any duties or obligations upon small businesses or individuals.

**GOVERNMENT GROWTH IMPACT:** Ms. Gilbert has determined that the proposed amendment does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposed amended rule and/or a request for a public hearing may be submitted to Courtney L. Ebeier, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701, via email: [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

### §77.8. *Records and Documentation.*

(a) An adequate chiropractic record, as described in this section, for each patient shall be maintained for a minimum of six years from the date of last treatment.

(b) If a patient was younger than 18 years of age when last treated by a licensee, the chiropractic records of the patient shall be maintained until the patient reaches age 21 or for six years from the date of last treatment, whichever is longer.

(c) Chiropractic records that relate to any civil, criminal or administrative proceeding shall not be destroyed until the proceeding has been finally resolved.

(d) Chiropractic records shall be maintained for such longer length of time than that imposed by this section when mandated by other federal or state statute or regulation.

(e) Each licensee practicing at a facility [~~and each facility~~] is equally responsible for compliance with this section.

(f) Licensees shall maintain patient and billing records in a manner consistent with the protection and welfare of the patient. A licensee's patient records shall support all diagnoses, treatments, and billing. Records shall be timely, dated, accurate, legible, and signed or initialed by the licensee or the person providing treatment. Electronic signatures are acceptable.

(g) Licensees are required, as directed in subsections (h) and (i) of this section, to perform an appropriate history and exam based on the nature of the presenting problem described by the patient and in accordance with accepted documentation guidelines. Accepted guidelines include, but are not limited to, the latest edition of the American Chiropractic Association Clinical Documentation Manual, American Medical Association CPT Code Book, 1997 DG and/or Chiropractic Service Manual Guidelines set forth by CMS.

(h) Other than consultations, reports of findings, and/or non-therapeutic interaction(s), all [AH] patient records for an initial visit shall include:

- (1) Patient History;
- (2) Description of symptomatology or wellness care;
- (3) Examination findings, including imaging and laboratory records when clinically indicated;
- (4) Diagnosis;
- (5) Prognosis;
- (6) Assessment(s);
- (7) Treatment Plan;
- (8) Treatment provided or recommended; and
- (9) Periodic reassessment(s) when appropriate, with a minimum of once per calendar year.

(i) Other than a continuation of previously prescribed treatment plans, consultations, reports of findings, and/or non-therapeutic interaction(s), patient records for all subsequent visits shall include: [Each patient visit after the initial visit is considered a subsequent visit unless there is a new illness or injury. The following information must be reported in each patient's file on each subsequent visit:]

- (1) Updated History:
  - (A) Review of the chief complaint(s);

(B) Changes, if any, since the last visit;

(2) Physical Exam:

(A) Examination of the area involved in the diagnosis;

(B) Assessment of any change in the patient's condition since last visit;

(3) Treatment:

(A) Documentation of treatment given;

(B) Documentation of patient's response to the treatment rendered on that visit;

(C) Change in treatment plan or planned referrals if indicated.

(j) All licensed chiropractors shall observe and comply with all documentation laws pertaining to health care providers under state and federal law. Nothing within this section should be construed to constrain or limit the obligation of chiropractors to meet duly authorized law, rules and regulations.

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

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705418  
Courtney L. Ebeier  
General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 305-6715



## CHAPTER 78. RULES OF PRACTICE

### 22 TAC §78.6

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 78, §78.6, concerning "Required Fees and Charges." The proposed amended rule is necessary to reflect 2017 Sunset Commission legislation, SB 304, which dissolved the Board's requirement to register chiropractic facilities, effective September 1, 2017. The legislation also authorized the board to extend the annual license period to a two-year term.

The Board's Executive Director, Patricia Gilbert, has determined that for the first five-year period the amended rule is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Gilbert has determined that for the first five-year period the amended rule is in effect, the expected public benefit will be an updated fee chart to reflect statutory changes, including a change in the licensing fee due to the extension of a chiropractic license to a two-year period.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because it does not impose any duties or obligations upon small businesses or individuals.

GOVERNMENT GROWTH IMPACT: Ms. Gilbert has determined that the proposed amendment does not have a

government growth impact pursuant to Texas Government Code, §2001.0221.

The purpose of the amendment is to reflect implementation of 2017 Sunset Commission legislation, SB 304, which dissolved the Board's statutory requirement to register and regulate chiropractic facilities. The proposed amendment adjusts the fee schedule to reflect the elimination of facility registration fees and the license renewal fees to reflect a two-year cycle.

Comments on the proposed amended rule and/or a request for a public hearing may be submitted to Courtney L. Ebeier, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701, via email at [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us), or by fax: (512) 305-6705, no later than 30 days from the date this proposed amended rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

#### §78.6. Required Fees and Charges.

(a) Current fees required by the board are as follows:

Figure: 22 TAC §78.6(a)

[Figure: 22 TAC §78.6(a)]

(b) Application of Monetary Funds to Outstanding Balances.

When a person pays monetary funds to the Board to renew a license [or facility registration], the monetary funds paid shall first be applied to any outstanding unpaid fees, assessed costs owed by that person from a final Board order, as authorized under §79.10 of this title (relating to Decision of the Board), or administrative penalties owed from a final Board order, as authorized under §78.10 of this title (relating to Schedule of Sanctions).

(c) Any remittance submitted to the board in payment of a required fee for application, initial license, [registration,] or renewal, must be in the form of a cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable.

(d) Fees for license verification or certification, license replacement, and continuing education applications may submit the required fee in the form of a personal or company check, cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable. Persons who have submitted a check which has been returned, and who have not made good on that check and paid the returned check fee provided in subsection (a) of this section, within 10 days from notice from the board of the returned check, for whatever reason, shall submit all future fees in the form of a cashier's or certified check or money order.

(e) Copies of public information, not excepted from disclosure by the Texas Open Records Act, Chapter 552, Government Code, including the information listed in paragraphs (1) - (6) of this subsection may be obtained upon written request to the board, at the rates established by the Office of the Attorney General for copies of public information, 1 TAC Part 3, Chapter 70, §§70.1 - 70.10 (relating to Cost of Copies of Public Information).

(1) List of New Licensees

- (2) Lists of Licensees
- (3) Licensee Labels
- (4) Demographic Profile
- {(5) Facilities List}
- {(6) Facilities Labels}

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

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 Courtney L. Ebeier  
 General Counsel  
 Texas Board of Chiropractic Examiners  
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 For further information, please call: (512) 305-6715



**22 TAC §78.12**

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 78, §78.12, concerning "Peer Review Committee." The proposed repeal is necessary to reflect 2017 Sunset Commission legislation, SB 304, which repealed Subchapter F of the Chiropractic Act regarding establishment of a Peer Review Committee, and instead, authorized the Board to establish an Expert Review Process by rule. Accordingly, this rule is proposed for repeal and will be replaced with the Expert Review Process rule.

The Board's Executive Director, Patricia Gilbert, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Ms. Gilbert has determined that for the first five-year period the proposed repeal is in effect, the expected public benefit will be clarity for the public and stakeholders regarding the Board's Expert Review process.

Ms. Gilbert has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals, because it does not impose any duties or obligations upon small businesses or individuals.

GOVERNMENT GROWTH IMPACT: Ms. Gilbert has determined that the proposed repeal does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposed repeal and/or a request for a public hearing may be submitted to Courtney L. Ebeier, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701, via email rules@tbce.state.tx.us; or fax, (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register*.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt

rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

*§78.12. Peer Review Committee.*

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

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 Courtney L. Ebeier  
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 Texas Board of Chiropractic Examiners  
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 For further information, please call: (512) 305-6715



**22 TAC §78.12**

The Texas Board of Chiropractic Examiners (Board) proposes the new rule Chapter 78, §78.12, Peer Review Committee. The proposed new rule is necessary to comply with 2017 Sunset Commission legislation, SB 304, which repealed Subchapter F of the Chiropractic Act regarding establishment of a Peer Review Committee, and instead, authorized the Board to establish an Expert Review Process by rule. Accordingly, this new rule is proposed to replace the Peer Review Committee rule.

The purpose of the proposed rule is to comply with SB 304's removal of the current requirement to establish a Peer Review Committee.

The Board's Executive Director, Patricia Gilbert, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Gilbert has determined that for the first five-year period the proposed rule is in effect, the expected public benefit will be clarity and guidance for the public and stakeholders regarding the Board's Expert Review process.

Ms. Gilbert has also determined that the proposed new rule will not have an adverse economic effect on small businesses or individuals because it does not impose any duties or obligations upon small businesses or individuals.

GOVERNMENT GROWTH IMPACT STATEMENT: Ms. Gilbert has determined that the proposed amendment does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposed new rule and/or a request for a public hearing may be submitted to Courtney L. Ebeier, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701, via email rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt

rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

§78.12. Expert Review Process.

(a) Complaints Reviewed. The Board may require expert review or investigation of the chiropractic care provided by a licensee involving:

- (1) standard of care violation; or
- (2) other violation(s) as determined by the Board.

(b) Qualifications. To qualify of as an expert to review a complaint set out in this section, a licensee shall, at the time of assignment:

- (1) maintain an active license;
- (2) have no prior violations of Board Rules or pending complaints;
- (3) have no prior convictions of a felony or a misdemeanor involving a criminal act;

(4) demonstrate training or experience to offer an expert opinion regarding accepted standards of care;

(5) Demonstrate knowledge of accepted standards of care for the diagnosis, care and treatment related to the alleged violation; and

- (6) Have an acceptable malpractice complaint history.

(c) Conflicts of Interest. An expert cannot accept a complaint for review, or must be recused, if the expert has:

(1) a direct financial interest or relationship with any matter, party, or witness exists that would give the appearance of a conflict of interest;

(2) a familial relationship within the third degree of affinity with any party or witness; or

(3) knowledge of information about the licensee or related complaint that the expert cannot set aside to fairly and impartially consider the matter based solely on the information provided by the Board.

(d) List of Experts. The Board shall maintain a list of experts that meet the qualifications set forth in subsection (b) of this section. The Board will periodically audit the list to confirm the continued qualification of the experts listed.

(e) Assignment. In assigning experts to review complaints, an expert shall be selected:

(1) when an investigator identifies a standard of care or related issue in the complaint;

(2) on a random selection basis from the list, pending on availability of the expert; and

(3) based on the expert's qualifications to review the type of injury or care involved.

(f) Removal. On order of the Executive Director, an expert reviewer may be removed from an investigation and from the list set forth in subsection (d), for the following grounds:

(1) failure to maintain the required qualifications set forth in subsection (b);

(2) repeated failure to timely complete reports in the prescribed format;

(3) failure to inform the board of potential or apparent conflicts of interest; or

(4) failure to maintain confidentiality of the matter under review.

(g) Documents. The Board shall provide to the expert assigned to review a complaint the following documents to perform an expert review:

(1) the Complaint;

(2) the investigator's report and supporting exhibits;

(3) an expert report form to be completed by the expert;

and

(4) a contract for services.

(h) The expert shall review all relevant information and records collected by the agency and determine whether the Respondent has violated the standard of care applicable and issue a written report of that determination. The expert reviewer shall communicate with the board promptly, within at least seven (7) business days, if additional documentation is required to complete the review.

(i) Expert Report. A report prepared by the Expert shall include the following:

(1) The general qualifications of the Expert;

(2) relevant facts concerning the medical care rendered;

(3) applicable standard of care;

(4) application of the standard of care to the relevant facts;

(5) a determination of whether the standard of care has been violated; and

(6) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports;

(j) Time to Complete. The expert assigned to review a complaint shall complete the review within thirty (30) days, unless circumstances or complexities of the matter under review prevent completion within this time frame. The expert reviewer shall communicate promptly in writing to the Board any reason for the delay and the alternative expected date of completion.

(k) Respondent rebuttal. The Board shall provide the Expert findings to the Respondent to allow for a response. Any reply or rebuttal offered by Respondent shall be made in writing and provided to the Board within thirty (30) days of the date the report is provided to Respondent.

(l) Review by Enforcement Committee. The Enforcement Committee shall review the Expert Report and any response by Respondent to determine if a violation occurred. The matter may be referred for review by another expert, if necessary, upon determination by the Enforcement Committee.

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

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## PART 9. TEXAS MEDICAL BOARD

### CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) proposes amendments to §§187.21, 187.44, 187.76, 187.79, and 187.80, concerning Procedural Rules.

The amendments to §187.21(a), concerning Board and District Review Committee Members Participation, and §187.44(3), concerning Probationer Show Compliance Proceedings, correct the title of the reference to §187.18 of this chapter, which was recently changed to "ISC Scheduling, Process, and Procedures."

The amendment to §187.76(c)(3), concerning Notice of Intention to Impose Administrative Penalty; Response, removes the undefined term "informal meeting" and replaces it with "ISC," which is defined in §187.2 of this chapter (relating to Definitions).

The amendment to §187.79, concerning Personal Appearance at an Informal Meeting, changes the title to "Personal Appearance at an ISC," as "Informal Meeting" is not a defined term and "ISC" is a defined term and is the correct reference within the rule. The amendment in subsection (a) corrects the reference to "informal meeting" and replaces it with "ISC." The amendment in subsection (b) also corrects the reference to "informal meeting" and replaces it with "ISC" and corrects the title of the reference to §187.18 of this chapter, which was recently changed to "ISC Scheduling, Process, and Procedures."

The amendment to §187.80(c), concerning Imposition of Administrative Penalty, removes the undefined term "informal meeting" and replaces it with "ISC," which is defined in §187.2 of this chapter.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing these proposals will be to have correct references to other sections within the rules as well as to have clear, consistent and unambiguous references and terms within the rules.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

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

(1) The proposed rules do not create or eliminate a government program.

(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

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

(4) The proposed rules do not require an increase or decrease in fees paid to the agency.

(5) The proposed rules do not create a new regulation.

(6) The proposed rules do not expand, limit, or repeal an existing regulation.

(7) The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed rules do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

### SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

#### 22 TAC §187.21

The amendment is proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

*§187.21. Board and District Review Committee Members Participation.*

(a) Two or more members of the board or the district review committee shall conduct an ISC as the board's representatives, except as provided in [Section] §187.18(d), of this title (relating to ISC Scheduling, Process, and Procedures [Informal Show Compliance Proceedings and Settlement Conference Based on Personal Appearance]). The senior board member shall serve as chair of the proceeding. In the event that the representatives consist only of district review committee members, the senior committee member shall serve as the chair of the proceeding.

(b) To the extent possible, board members and district review committee members are required to serve as representatives at informal show compliance proceedings an equal number of times during a calendar year.

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

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Scott Freshour  
Interim Executive Director  
Texas Medical Board

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For further information, please call: (512) 305-7016



## SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

### 22 TAC §187.44

The amendment is proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### §187.44. Probationer Show Compliance Proceedings.

Pursuant to §§164.003 - 164.004 of the Act and §§2001.054 - 2001.056 of the APA, the following rules shall apply to probationer show compliance proceedings.

(1) If a licensee is placed under an order, the licensee shall be monitored by the board to ensure compliance. In the event that a licensee fails to comply with the licensee's order, such noncompliance will be addressed at a probationer show compliance proceeding.

(2) All licensees under any order must maintain their licenses in good standing, including meeting all fee and continuing medical education requirements. Failure to keep a license in good standing shall be evidence of noncompliance with a board order and considered a violation of the Act and board rules.

(3) Unless otherwise stated, the policies and procedures as described for ISCs in §187.18 of this title (relating to ISC Scheduling, Process, and Procedures [Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance ("ISC")]) shall apply to probationer show compliance proceedings.

(4) - (6) (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.

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## SUBCHAPTER H. IMPOSITION OF ADMINISTRATIVE PENALTY

### 22 TAC §§187.76, 187.79, 187.80

The amendments are proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§187.76. *Notice of Intention to Impose Administrative Penalty; Response.*

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

(c) The licensee may respond to the notice as follows:

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

(3) The licensee may request a personal appearance at an ISC [informal meeting].

(d) (No change.)

#### §187.79. *Personal Appearance at an ISC [Informal Meeting].*

(a) If, within 30 days after the Notice of Intention to Impose Administrative Penalty is sent to the licensee, the licensee submits a request for personal appearance at an ISC [informal meeting], an ISC [informal meeting] shall be scheduled in accordance with §164.004(a)(2) of the Act before one or more board representatives.

(b) An ISC [informal meeting] under this Subchapter may consider only dismissal of the matter or the imposition of an administrative penalty. The board representatives may not consider revocation, suspension, or any other sanction. The provisions of §187.18 of this title (relating to ISC Scheduling, Process, and Procedures [Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance]) shall apply to the ISC [informal meeting], except that there may be one or more board representatives at the ISC [informal meeting], who may be either a physician or public member of the Board or District Review Committee.

(c) (No change.)

#### §187.80. *Imposition of Administrative Penalty.*

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

(c) If the licensee pursues judicial review of the order, the administrative record shall include the Notice of Intention to Impose Administrative Penalty, any written response provided by the licensee, any documents reviewed by board representatives at an ISC [informal meeting], the recommendation of the board representative(s), any documents considered by the DPRC, the minutes of the DPRC, the minutes of the board imposing an administrative penalty, and the order imposing an administrative penalty.

(d) (No change.)

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

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## CHAPTER 189. COMPLIANCE PROGRAM

### 22 TAC §189.11

The Texas Medical Board (Board) proposes amendments to §189.11, concerning Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings.

The amendment to §189.11, eliminates the words "or remedial plan" from the provision describing the mechanism under which

the Board may require a licensee to practice with an approved physician or other professional to serve as a proctor, monitor, or supervisor or in an approved group practice or institutional setting, as §164.0015 of the Texas Occupations Code states that Remedial Plans may not contain provisions that limit or restrict a licensee's practice.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section, as proposed, is in effect, the public benefit anticipated as a result of enforcing this proposal will be to have rules that are correct and adhere to statutory provisions.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

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

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed rule does not require an increase or decrease in fees paid to the agency.
- (5) The proposed rule does not create a new regulation.
- (6) The proposed rule does not expand or limit an existing regulation; however, the proposed rule does repeal some incorrect language in the existing regulation that is contrary to statute.
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or email comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

*§189.11. Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings.*

(a) Any approval of a physician or other professional to serve as a proctor, monitor, or supervisor or the approval of a group practice or institutional setting required by an order [~~or remedial plan as applicable,~~] shall be given by the executive director or his or her designee.

(b) - (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.

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Scott Freshour

Interim Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 88. STATE LONG-TERM CARE OMBUDSMAN PROGRAM

The Health and Human Services Commission (HHSC) proposes new Chapter 88, State Long-Term Care Ombudsman Program, consisting of Subchapter A, Purpose and Definitions, §§88.1 and §88.2; Subchapter B, Establishment of the Office, §§88.101 - 88.105; Subchapter C, Access by the State Ombudsman and Representatives of the Office, §88.201; Subchapter D, Requirements of a Local Ombudsman Entity, §§88.301 - 88.310; Subchapter E, Requirements of a Host Agency, §§88.401 - 88.407; and Subchapter F, Requirements of HHSC, §§88.501 - 88.502.

#### BACKGROUND AND PURPOSE

The proposed rules in new Chapter 88 set forth the requirements of the State Long-Term Care Ombudsman Program (Ombudsman Program), which is authorized by §711 and §712 of the Older Americans Act, United States Code, Title 42, §3058f and §3058g. The purpose of the Ombudsman Program is to protect the health, safety, welfare, and rights of residents of nursing facilities and assisted living facilities. The requirements of the Ombudsman Program that are currently in 40 TAC Chapter 85 (relating to Implementation of the Older Americans Act) are proposed for repeal elsewhere in this issue of the *Texas Register*. New Chapter 88 is proposed for easier use and understanding of rules regarding the Ombudsman Program.

The proposed rules also implement recent changes to §712 of the Older Americans Act and new federal regulations at Title 45, Code of Federal Regulations (CFR), Parts 1321 and 1324. Changes to the Older Americans Act include: a requirement that the State Long-Term Care Ombudsman (State Ombudsman) is responsible for the fiscal management of the Office of the State Ombudsman (Office); authority for the State Ombudsman to investigate complaints on behalf of residents who are unable to communicate consent; clarification that the State Ombudsman and representatives of the Office have private and unimpeded access to facilities, residents, and resident records; and requirements regarding organizational conflicts of interest related to the Office and to governmental entities or non-profit organizations contracting with the State to carry out functions of the Ombudsman Program. The new federal regulations establish new re-

quirements and provide clarification about the Ombudsman Program regarding: enhancing the description of a local ombudsman entity, including that it may be part of a host agency; establishing requirements regarding complaint investigations, including a requirement to involve the resident in the process; requiring the Ombudsman Program to establish a coordination process between the State Ombudsman and a host agency in the employment of representatives of the Office; requiring a grievance process for complaints regarding an ombudsman and decisions made by the State Ombudsman; describing procedures to remedy and remove individual conflicts of interest and organizational conflicts of interest; and excluding the State Ombudsman and representatives of the Office from any State lobbying prohibitions if the prohibitions are inconsistent with the Older Americans Act.

The proposed rules change how the State Long-Term Care Ombudsman (State Ombudsman) distributes federal funds to a host agency for the operation of the Ombudsman Program. Currently, after each host agency has received a base amount of federal funds, remaining federal funds are distributed as follows: 50 percent based on the number of nursing facilities in the local ombudsman entity's service area, 25 percent based on the number of assisted living facilities in the local ombudsman entity's service area, and 25 percent based on the number of ombudsmen in the local ombudsman entity's service area. Proposed rules change this method and require remaining federal funds to be distributed so that 75 percent is based on the number of nursing facilities in the local ombudsman's service area and 25 percent is based on the number of ombudsmen in the local ombudsman entity's service area. The proposed rules do not include a percentage of remaining funds being distributed based on the number of assisted living facilities because a host agency currently receives state general revenue funds based solely on the number and type of assisted living facilities in the local ombudsman entity's service area. Therefore, it is more equitable to base the distribution of remaining federal funds solely on the number of nursing facilities and number of ombudsmen in a local ombudsman entity's service area.

#### SECTION-BY-SECTION SUMMARY

Proposed new §88.1 states that the purpose of the chapter is to implement the State Long-Term Care Ombudsman Program as established by the Older Americans Act, §711 and §712; the Code of Federal Regulations, Title 45, Parts 1321 and 1324; and Texas Human Resources Code, Title 6, Chapter 101A, Subchapter F.

Proposed new §88.2 defines relevant terms used in Chapter 88.

Proposed new §88.101 describes the responsibilities of the State Ombudsman, including that the State Ombudsman, directly or through a designee (1) may designate a local ombudsman entity to perform the functions of the Ombudsman Program in an ombudsman service area; (2) certifies ombudsmen and refuses, suspends, and terminates certification; (3) designates local ombudsman entities, and refuses, suspends, or terminates designation; (4) approves the allocation of federal and state funds provided to a host agency for the local ombudsman entity; (5) is responsible for the programmatic oversight of a representative of the Office; and (6) identifies, investigates, and resolves complaints made by or on behalf of residents. The proposed section states that the Office makes decisions independent of HHSC and describes the responsibilities of the Office including (1) analyzing, commenting on, and monitoring the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to long-term

care (LTC) facilities and services and to the health, safety, welfare, and rights of residents; (2) recommending any changes in such laws, rules, regulations, policies, and actions as the Office determines to be appropriate; (3) providing information to public and private agencies, legislators, the media, and other persons regarding problems and concerns about residents and providing recommendations related to the problems and concerns; and (4) overseeing and coordinating such activities carried out by representatives of the Office.

Proposed new §88.102 describes the criteria that must be met for the State Ombudsman to initially certify and renew certification of a staff ombudsman, including a managing local ombudsman, and initially certify and renew certification of a volunteer ombudsman.

Proposed new §88.103 describes the circumstances under which the State Ombudsman refuses to certify or renew certification of a staff ombudsman, including a managing ombudsman, and those circumstances under which certification may be suspended. The proposed rule also describes the circumstances under which the State Ombudsman may terminate certification of a certified ombudsman, including that (1) the certified ombudsman is not adequately performing the functions of the Ombudsman Program; (2) the certified ombudsman fails to complete continuing education in accordance with the Ombudsman Policies and Procedures Manual; (3) the certified ombudsman does not disclose an individual conflict of interest regarding the certified ombudsman to the local ombudsman entity or host agency; or (4) an individual conflict of interest regarding the certified ombudsman is not removed or remedied. The proposed rule requires the State Ombudsman to, if the State Ombudsman has a concern about a representative of the Office, inform the local ombudsman entity and, if appropriate, the host agency about the concern and may work with the local ombudsman entity and the host agency to address the concern. The proposed rule states that the State Ombudsman immediately notifies the managing local ombudsman and, if appropriate, the host agency, of a decision to refuse, suspend, or terminate certification of a certified ombudsman.

Proposed new §88.104 allows the State Ombudsman to designate a local ombudsman entity to perform the functions of the Ombudsman Program in an ombudsman service area. The proposed rule prohibits the State Ombudsman from designating a local ombudsman entity if the host agency or a governmental entity or nonprofit organization contracting with the host agency has an organizational conflict of interest described in §88.2(25)(A) - (C) or an organizational conflict of interest described in §88.2(25)(D) - (L) that has not been removed or remedied. The proposed rule describes the circumstances under which the State Ombudsman may remove the designation of a local ombudsman entity and that if the State Ombudsman removes the designation of a local ombudsman entity, the Office notifies the local ombudsman entity and host agency, in writing, of the decision to remove the designation. The proposed rule also describes the process for a host agency to request reconsideration of a decision to remove the designation and that a host agency may appeal the termination in accordance with 40 TAC §81.15.

Proposed new §88.105 allows the State Ombudsman to determine the use of the federal and state funds appropriated for the operation of the Office; approve the allocation of federal and state funds to a host agency for the operation of the Ombudsman Program in accordance with subsection (b) of the section;



and determine that Ombudsman Program budgets and expenditures are for an appropriate amount and relate to functions of the Ombudsman Program. The proposed rule describes how the State Ombudsman distributes funds to a host agency for the operation of the Ombudsman Program in accordance with the Older Americans Act, §306(a)(9). The proposed rule states that the Office conducts an onsite visit or a desk review to monitor: the performance of functions of the Ombudsman Program by a representative of the Office; compliance with Subchapter D by a local ombudsman entity; and compliance with Subchapter E by a host agency. The proposed rule also states that the Office conducts an onsite visit at least every three years and describes the activities performed by the Office during the visit. The proposed rule describes how the Office selects a date for onsite visit and states that within 30 days after the Office completes an onsite visit, the Office provides to the local ombudsman entity and the host agency a written report containing findings from the visit. The proposed rule requires the host agency to submit to the Office for approval, within 30 days after receipt of the written report, a written plan of correction that describes the action that will be taken to correct each finding and the date by which each action will be completed. The proposed rules describe the requirements of the host agency if the Office approves the plan of correction or requires modification of the plan, and describes the actions the Office takes to determine if the local ombudsman entity has completed the actions in accordance with an approved plan of correction. The proposed rule also describes the process the Office follows in conducting a desk review and states that technical assistance may be requested by the local ombudsman entity or host agency regarding the monitoring process, findings, and identified concerns from a desk review.

Proposed new §88.201 requires the State Ombudsman and a representative of the Office to have (1) immediate, private, and unimpeded access to enter an LTC facility at any time during a facility's regular business hours or regular visiting hours and at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated; (2) immediate, private, and unimpeded access to a resident; and (3) access to the name and contact information of a resident representative, if any, when the State Ombudsman or representative of the Office determines the information is needed to perform functions of the Ombudsman Program. The proposed rule describes the conditions under which the State Ombudsman and a certified ombudsman have immediate access to files, records, and other information concerning a resident. The proposed rule requires the State Ombudsman and a certified ombudsman to have immediate access to the administrative records, policies, and documents of an LTC facility to which the residents or general public have access. The proposed rule also states that the rules adopted under the Health Insurance Portability and Accountability Act of 1996 do not preclude an LTC facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of §88.201(a)(3) and (c) are otherwise met and that the State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

Proposed new §88.301 requires, for a person to be certified as a staff ombudsman other than a managing local ombudsman, or to be certified as a volunteer ombudsman, a local ombudsman entity to recommend to the Office that the person be certified, using HHSC form "Certified Ombudsman Application." The pro-

posed rule also describes the criteria that must be met for the local ombudsman entity to make such a recommendation.

Proposed new §88.302 requires a local ombudsman entity to ensure that a certified ombudsman performs certain functions, including identifying, investigating, and resolving complaints made by or on behalf of residents; providing services to protect the health safety, welfare, and rights of residents; making regular visits to residents in LTC facilities; and analyzing, commenting on, making recommendations, and monitoring the development and implementation of laws, rules, regulations, and other policies and actions that pertain to the health, safety, welfare, and rights of residents. The proposed rule also requires a local ombudsman entity to ensure that: a representative of the Office consults with the Office before commenting on or recommending changes to a public official or governmental entity regarding the development and implementation of laws, rules, regulations, and other policies or providing information to a legislator or the media regarding a problem or concern about a resident or a recommendation related to the problem or concern; promptly responds to a request from the Office regarding a request for information from a legislator or the media; and complies with certain HHSC publications regarding the Ombudsman Program. The proposed rules require a local ombudsman entity to ensure a staff ombudsman and volunteer ombudsman complete continuing education provided by the Office and are evaluated annually to determine the staff ombudsman's compliance with training and policies. The proposed rule states that, in accordance with 45 CFR §1324.11(e)(5)(i), Texas Government Code §556.006 and Texas Local Government Code §391.0116, do not apply to a certified ombudsman performing the functions described in the section to the extent those statutes prohibit lobbying and other advocacy activities. The proposed rule requires a local ombudsman entity to address a performance concern or issue of non-compliance of a representative of the Office and allow the local ombudsman entity to recommend to the State Ombudsman that a certified ombudsman's certification be suspended or terminated.

Proposed new §88.303 requires a local ombudsman entity to ensure that an applicant for a volunteer ombudsman position completes HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" before performing functions of the Ombudsman Program and that a certified ombudsman, other than a managing local ombudsman, completes the form at least once a year and when an individual conflict of interest is identified. The proposed rule requires a local ombudsman entity to require a representative of the Office to immediately notify the local ombudsman entity of a potential individual conflict of interest regarding a representative of the Office. The proposed rule also requires a local ombudsman entity, if a conflict is identified for a representative of the Office other than a managing local ombudsman, to complete HHSC form "Conflict of Interest Identification, Removal, and Remedy" and submit the completed form to the Office within 30 days after identifying the conflict. The proposed rule also requires the local ombudsman entity to immediately notify the host agency if a conflict is identified regarding the managing local ombudsman. The proposed section describes the process the State Ombudsman follows if notified of a conflict of interest, which includes approving, modifying, or rejecting the recommended action to remove or remedy the conflict of interest; or, if it is not possible to remove or remedy the conflict of interest, refusing or terminating certification of the person with the individual conflict of interest.

Proposed new §88.304 provides that information identifying a resident or complainant is confidential and lists examples of con-

fidential information. The proposed rule requires a local ombudsman entity to ensure that a disclosure of confidential information that is not written information complies with the Older Americans Act and the Ombudsman Policies and Procedures Manual. The proposed rule describes the requirements for responding to a request to disclose written confidential information and prohibits a representative of the Office, except as provided in 45 CFR §1324.19(b)(5) - (8), from reporting allegations of abuse, neglect, or exploitation under state law, including Texas Human Resources Code, Chapter 48, without appropriate consent or court order. The proposed rule requires a local ombudsman entity, at the request of the Office, to immediately provide Ombudsman Program records to the Office.

Proposed new §88.305 requires a local ombudsman entity to ensure that a person is allowed to make a complaint in writing, in person, and by telephone; to initiate a complaint if the local ombudsman entity becomes aware of circumstances that may adversely affect the health, safety, welfare, or rights of a resident; to respond to the complainant within two business days after receipt of the complaint, except a complaint that is an allegation of abuse, neglect, or exploitation of a resident; and to ensure that a certified ombudsman initiates an investigation of a complaint as soon as practicable after receipt of the complaint. The proposed rule describes the process a certified ombudsman must follow in investigating complaints. The proposed rule prohibits the certified ombudsman from investigating a complaint if the resident or legally authorized representative declines to consent to have the complaint investigated; requires the certified ombudsman to inform the complainant that the complaint will not be investigated because the resident or legally authorized representative declined to consent; and requires the certified ombudsman to advise the complainant of his or her options to pursue resolution. The proposed rule allows a certified ombudsman to investigate and work to resolve a complaint without obtaining consent from each resident if the certified ombudsman determines that the complaint affects a substantial number of residents in an LTC facility. The proposed rule also allows the certified ombudsman to review confidential records while investigating the complaint only if consent or other authority is obtained in accordance with the Ombudsman Policies and Procedures Manual. The proposed rule requires a certified ombudsman to document the complaint investigation in the ombudsman database in accordance with the Ombudsman Policies and Procedures Manual. The proposed rule describes the process a certified ombudsman must use if a complaint is an allegation of abuse, neglect, or exploitation of a resident and prohibits a representative of the Office, except as provided in 45 CFR §1324.19(b)(5) - (8), from reporting allegations of abuse, neglect, or exploitation under state law without appropriate consent or court order. The proposed rule also allows confidential information described in §88.304(a) to be disclosed only in accordance with §88.304 and the Ombudsman Policies and Procedures Manual, and investigated only if: the resident or legally authorized representative consents to the investigation; or in accordance with 45 CFR §1324.19(b)(2)(iii), the resident is unable to consent and has no legally authorized representative.

Proposed new §88.306 requires a local ombudsman entity to comply with the Ombudsman Policies and Procedures Manual, Ombudsman Program Protocols, and the State Long-Term Care Ombudsman Certification Training Manual.

Proposed new §88.307 requires a local ombudsman entity to ensure each LTC facility in the ombudsman service area is visited by a certified ombudsman in accordance with the Ombuds-

man Policies and Procedures Manual during each federal fiscal year to monitor residents' health, safety, welfare, and rights; and receive, investigate, and resolve complaints on behalf of residents. The proposed rule also requires a local ombudsman entity to submit activities and casework, as described in the Ombudsman Policies and Procedures Manual, to the Office by entering information into the ombudsman database by 8:00 a.m. on the 16th day of each month if the 16th is a business day; or if the 16th day of the month is not a business day, the first business day immediately following the 16th day.

Proposed new §88.308 requires the local ombudsman entity to obtain approval by the Office of materials to be distributed to persons other than representatives of the Office, before the materials are distributed. The proposed rule requires a local ombudsman entity to ensure that an outgoing message for the telephone of a staff ombudsman includes a statement that the staff ombudsman works in the Ombudsman Program and that a message left by the caller will be confidential. The proposed rule allows a local ombudsman entity to request technical assistance from the Office regarding website content related to the Ombudsman Program.

Proposed new §88.309 describes the process a local ombudsman entity must follow regarding a grievance about the performance of functions of the Ombudsman Program by a representative of the Office or by a managing local ombudsman. The local ombudsman entity must allow a grievance to be submitted in writing, in person, or by telephone, and anonymously; investigate the grievance; develop a proposed response to the grievant, including any actions to be taken; and submit information about the grievance to the Office. The proposed rule also allows a person to file a grievance regarding the refusal, suspension, or termination of certification of a representative of the Office by the State Ombudsman and describes the process to be followed in filing such a grievance. The proposed rule also describes the process for a grievant to request a reconsideration of the State Ombudsman's decision to refuse, suspend, or terminate certification of a representative of the Office.

Proposed new §88.310 prohibits a local ombudsman entity from (1) willfully interfering with the State Ombudsman or a representative of the Office performing any of the functions of the Ombudsman Program; (2) retaliating against the State Ombudsman or a representative of the Office with respect to a resident, employee of an LTC facility, or other person filing a complaint with, providing information to, or otherwise cooperating with a representative of the Office or performing functions, responsibilities, or duties described in 45 CFR §1324.13 and §1324.19 and Chapter 88; or (3) having personnel policies or practices that prohibit a representative of the Office from performing the functions of the Ombudsman Program or from adhering to the requirements of the Older Americans Act, §712.

Proposed new §88.401 requires a host agency to submit certain documentation, including a resume or job application, to the Office before a person is hired to serve as a staff ombudsman. The proposed rule states that within two days of receiving the documentation, the State Ombudsman reviews the documentation and notifies the host agency or other requestor of whether any issues exist that may prevent the State Ombudsman from certifying the applicant as an ombudsman. The proposed rule also allows a host agency to request technical assistance from the Office for the purpose of hiring and terminating a staff ombudsman and requires a host agency to ensure that, if an employee who is a representative of the Office is terminated, the Office is

notified of the termination, in writing, within one business day after the effective date of termination.

Proposed new §88.402 requires a host agency to be responsible for the personnel management, but not the programmatic oversight, of a representative of the Office who works for the host agency and lists examples of activities that constitute personnel management. The proposed rule requires a host agency to ensure that a local ombudsman entity has a managing local ombudsman and that the managing local ombudsman: is the primary contact for the local ombudsman entity; participates in making the decision to hire and terminate a staff ombudsman; decides whether the local ombudsman entity recommends to the Office that a person be approved as a certified ombudsman; and, except as permitted by subsection (d), serves on a full-time basis in performing duties of the managing local ombudsman. The proposed rule states that a host agency may request that the State Ombudsman waive the requirement for the managing local ombudsman to serve on a full-time basis and describes the process to request a waiver. The proposed rule states that the State Ombudsman approves a request only if the host agency demonstrates that funding is not available for a full-time staff ombudsman position; and if the managing local ombudsman position is combined with another function within the host agency, any conflict of interest is removed or remedied. The proposed rule states that any approval of a request to waive the requirement for the managing local ombudsman to serve on a full-time basis is only for the fiscal year for which the request was submitted. The proposed rule requires that a host agency ensure, in its personnel management of representatives of the Office that a local ombudsman entity complies with Subchapter D. The proposed rule allows a host agency to request technical assistance from the Office for the purpose of evaluating the job performance of a staff ombudsman.

Proposed new §88.403 requires a host agency to ensure that a managing local ombudsman completes HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" at least once a year and when an individual conflict of interest is identified. The proposed rule requires a host agency, within 30 days after identifying an organizational conflict of interest or within five business days after identifying an individual conflict of interest regarding a managing local ombudsman, to complete HHSC form "Conflict of Interest Identification, Removal, and Remedy" and submit the completed form to the Office. The proposed rule describes the process the State Ombudsman follows if notified of a conflict of interest, which includes approving, modifying, or rejecting the recommended action to remove or remedy the conflict of interest; or, if it is not possible to remove or remedy the conflict of interest, removing the designation of the local ombudsman entity or refusing or terminating certification of the managing local ombudsman.

Proposed new §88.404 states that, in accordance with the Older Americans Act, the State Ombudsman has the sole authority to make determinations concerning the disclosure of confidential information, as described in §88.304(a). The proposed rule describes the process the State Ombudsman follows in responding to a request to disclose written confidential information. The proposed rule requires a host agency to ensure that, except as provided in 45 CFR §1324.19(b)(5) - (8), a representative of the Office is not required to report allegations of abuse, neglect, or exploitation under state law, including Texas Human Resources Code, Chapter 48, without appropriate consent or court order. The proposed rule also requires a host agency, at the request of the Office, to immediately provide Ombudsman Program records

that do not contain confidential information, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office, to the Office.

Proposed new §88.405 requires a host agency to work with the local ombudsman entity to develop the performance measure projections specified in the rule for a state fiscal year. The proposed rule requires: a host agency to submit the performance measure projections to the HHSC Office of the Area Agencies on Aging; the HHSC Office of the Area Agencies on Aging to send the performance measure projections to the Office; and the Office to review the form and approve, modify, or reject the proposed performance measure projections. The proposed rule allows a host agency to request that an approved performance measure projection be revised and describes the process to make such a request. The proposed rule requires a host agency to ensure that a local ombudsman entity, by the end of each state fiscal year, meets the approved projections by being within a variance of five percent less than the projections or exceeding the projections.

Proposed new §88.406 requires a host agency to, for the Ombudsman Program implemented by a local ombudsman entity, expend for a federal fiscal year at least the amount of federal funds expended in the federal fiscal year 2000. The proposed rule states that a function of the Ombudsman Program performed by a local ombudsman entity that is paid for with funds allocated by HHSC must be an allowable activity in accordance with the Ombudsman Policies and Procedures Manual. The proposed rule also requires a purchase of a service, material, equipment, or goods by a host agency for the Ombudsman Program with funds allocated by HHSC to meet the criteria described in 45 CFR Part 75 (relating to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards).

Proposed new §88.407 prohibits a host agency from: (1) willfully interfering with the State Ombudsman or a representative of the Office performing any of the functions of the Ombudsman Program; (2) retaliating against the State Ombudsman or a representative of the Office with respect to a resident, employee of an LTC facility, or other person filing a complaint with, providing information to, or otherwise cooperating with a representative of the Office, or for performance of the functions, responsibilities, or duties described in 45 CFR §1324.13 and §1324.19 and Chapter 88; or (3) having personnel policies or practices that prohibit a representative of the Office from performing the functions of the Ombudsman Program or from adhering to the requirements of the Older Americans Act, §712. The proposed rule also lists examples of activities constituting willful interference. The proposed rule requires a host agency to ensure that a governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(16)(B), complies with the prohibitions regarding willful interference and retaliation. The proposed rule also allows a host agency to require a representative of the Office to notify the host agency of: (1) comments or recommendations made in accordance with §88.302(a)(1)(F), and (2) subject to disclosure requirements, information being sent to a legislator or the media regarding a problem or concern about a resident or a response to a request for information from a legislator or the media.

Proposed new §88.501 states that, for purposes of determining if the State Ombudsman or a representative of the Office has an individual conflict of interest as defined in §88.2(14), the state of Texas is the ombudsman service area. The proposed rule re-

quires HHSC to ensure that an applicant for the position of State Ombudsman completes HHSC form "Individual Conflict of Interest Screening of a Representative of the Office." The proposed rule also requires the State Ombudsman to complete the same HHSC form on or about January 15th of each year and if the State Ombudsman identifies a conflict. The proposed rule describes the actions of the Executive Commissioner or designee regarding an individual conflict of interest identified by the State Ombudsman and the circumstances under which HHSC may employ the State Ombudsman or a representative of the Office. The proposed rule also requires HHSC to ensure that no person involved in selecting or terminating the State Ombudsman has an individual conflict of interest.

Proposed new §88.502 describes HHSC responsibilities regarding organizational conflicts of interest between the Office and HHSC. The proposed rule requires HHSC to take reasonable steps to avoid organizational conflicts of interests. The proposed rule requires HHSC to ensure that the State Ombudsman completes HHSC form "Conflict of Interest Identification, Removal, and Remedy," to identify an organizational conflict of interest between the Office and HHSC and propose a remedy for an identified conflict of interest. The proposed rule requires the State Ombudsman to complete the form no later than 30 days after assuming responsibilities as the State Ombudsman, on or about January 15th of each year, and if the State Ombudsman identifies a conflict. The proposed rule also describes the actions of the Executive Commissioner or designee regarding removal or remedy of an organizational conflict of interest identified by the State Ombudsman. The proposed rule requires HHSC to ensure that the State Ombudsman includes identified organizational conflicts of interest in the annual report submitted to the federal Administration for Community Living.

#### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed new sections are in effect, there will be no fiscal implications to state government as a result of enforcing and administering the sections as proposed. There are foreseeable implications relating to costs or revenues of local government because of the change in the method the State Ombudsman will use to distribute federal funds to a host agency for the operation of the Ombudsman Program in accordance with the Older Americans Act. The effect on local governments for fiscal year (FY) 2018 is an estimated increase in revenue to the following host agencies that are local governments:

East Texas Council of Governments - \$4,988  
Coastal Bend Council of Governments - \$4,831  
Deep East Texas Council of Governments - \$4,279  
Heart of Texas Council of Governments - \$4,142  
South East Texas Regional Planning Commission - \$3,389  
Ark-Tex Area Council of Governments - \$2,901  
Central Texas Council of Governments - \$2,847  
Lower Rio Grande Council of Governments - \$2,575  
Panhandle Regional Planning Commission - \$2,545  
Nortex Regional Planning Commission - \$2,252  
Texoma Council of Governments - \$2,115  
Brazos Valley Council of Governments - \$2,109

West Central Texas Council of Governments - \$2,008  
Concho Valley Council of Governments - \$1,756  
Middle Rio Grande Development Council - \$1,459  
Permian Basin Regional Planning Commission - \$1,198  
Golden Crescent Regional Planning Commission - \$1,153  
Alamo Area Council of Governments (Alamo Planning and Service Area) - \$1,127  
South Texas Development Council - \$1,058  
North Central Texas Council of Governments - \$558

The effect on local governments for fiscal year (FY) 2018 is an estimated decrease in revenue to the following host agencies that are local governments:

Harris County - \$19,156  
Houston Galveston Area Council - \$7,574  
Alamo Area Council of Governments (Bexar County) - \$6,744  
Rio Grande Council of Governments - \$3,193  
South Plains Association of Governments - \$2,447  
Capital Area Planning Council of Governments - \$1,569

The estimated increase and loss in revenue for local governments in FYs 2019-2022 are not expected to change from the estimates listed for FY 2018.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not apply to small or micro-businesses, or rural communities.

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

There will be an economic cost to persons who are required to comply with the new rules. The rules do not impose any new requirements that will require an additional expenditure of funds; however, in addition to the local governments listed above under the fiscal note that will have a decrease in revenue, the Commu-

nity Council of Greater Dallas will have a decrease in revenue of approximately \$11,297.

There is no anticipated negative impact on local employment.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT

Patty Ducayet, State Long-Term Care Ombudsman, has determined that, for each year of the first five years the new rules are in effect, the public benefit expected as a result of enforcing the new rules is compliance with the Older Americans Act and comprehensive rules that describe requirements of the Ombudsman Program.

#### TAKINGS IMPACT ASSESSMENT

HHSC 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 Patty Ducayet at (512) 438-4356 in HHSC State Long-Term Care Ombudsman Program. Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to [HHSRulesCoordinationOffice@hhsc.state.tx.us](mailto:HHSRulesCoordinationOffice@hhsc.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 HHSC before 5:00 p.m. on the last working day of the comment period; or (3) emailed by midnight on the last day of the comment period. Please indicate "Comments on Proposed Rule 15R14."

### SUBCHAPTER A. PURPOSE AND DEFINITIONS

#### 26 TAC §88.1, §88.2

##### STATUTORY AUTHORITY

The 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 HHSC; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The new sections implement Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

##### §88.1. Purpose.

The purpose of this chapter is to implement the State Long-Term Care Ombudsman Program, as established by:

(1) the Older Americans Act, §711 and §712 (United States Code, Title 42, §3058f and §3058g);

(2) CFR, Title 45, Parts 1321 and 1324; and

(3) Texas Human Resources Code, Title 6, Chapter 101A, Subchapter F.

##### §88.2. Definitions.

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

(1) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.

(2) Certified ombudsman--A staff ombudsman or a volunteer ombudsman.

(3) CFR--Code of Federal Regulations.

(4) Complainant--A person who makes a complaint.

(5) Complaint--A statement of dissatisfaction or concern made by or on behalf of a resident, that relates to action, inaction, or a decision by any of the following entities or persons, that may adversely affect the health, safety, welfare, or rights of the resident:

(A) an LTC facility or LTC facility staff;

(B) a governmental entity, including a health and human services agency; or

(C) any other person who provides care or makes decisions related to a resident.

(6) DAHS facility--A day activity and health services facility. A facility licensed in accordance with Texas Human Resources Code, Chapter 103.

(7) Day--A calendar day.

(8) Federal fiscal year--A 12-month period of time from October 1 through September 30.

(9) Governmental entity--An entity that is:

(A) a state agency;

(B) a district, authority, county, municipality, regional planning commission, or other political subdivision of the state; or

(C) an institution of higher education, as defined in Texas Education Code, §61.003.

(10) HCSSA--Home and community support services agency. An entity licensed in accordance with Texas Health and Safety Code, Chapter 142.

(11) HHSC--The Texas Health and Human Services Commission or its designee.

(12) Host agency--A governmental entity or nonprofit organization that contracts with HHSC to ensure that the local ombudsman entity implements the Ombudsman Program in an ombudsman service area.

(13) Immediate family member--A member of the same household or a relative with whom there is a close personal or significant financial relationship.

(14) Individual conflict of interest--A situation in which a person is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes a person:

(A) having direct involvement in the licensing, surveying, or certification of an LTC facility, a HCSSA, a DAHS facility, a nursing facility administrator, or a nurse aide;

(B) having ownership or investment interest (represented by equity, debt, or other financial relationship) in an LTC facility, a HCSSA, or a DAHS facility;

(C) managing or being employed in an LTC facility, a HCSSA, or a DAHS facility;

(D) being employed by an LTC facility within the 12 months before performing functions of the Ombudsman Program;

(E) accepting gifts, gratuities, or other consideration from an LTC facility or from a resident of such an LTC facility or the resident's family;

(F) accepting money or any other consideration from anyone other than the local ombudsman entity or host agency for performing functions of the Ombudsman Program;

(G) receiving or having the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of an LTC facility, a HCSSA, or a DAHS facility;

(H) being involved in PASRR screenings for LTC facility placements other than responding to a complaint made to the Ombudsman Program;

(I) determining eligibility regarding Medicaid or other public benefits for residents;

(J) being employed by a managed care organization that provides services to residents;

(K) serving as a representative of the Office for an LTC facility in the ombudsman service area and in which a relative of the representative resides or works;

(L) acting as a decision-maker or legally authorized representative for a resident in the ombudsman service area, including providing adult protective services as described in Texas Human Resources Code, Chapter 48;

(M) being a resident;

(N) being a member of a board or council that represents the interests of an LTC facility; or

(O) having an immediate family member who meets any of the descriptions in subparagraphs (A)- (N) of this paragraph.

(15) Legally authorized representative--A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including:

(A) a parent, guardian, or managing conservator of a minor;

(B) the guardian of an adult;

(C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or

(D) the representative of a deceased person.

(16) Local ombudsman entity--One of the following:

(A) an identifiable unit of a host agency that:

(i) consists of representatives of the Office who are employees, independent contractors, or volunteers of the host agency; and

(ii) implements the Ombudsman Program in an ombudsman service area; or

(B) an identifiable unit of a governmental entity or non-profit organization that:

(i) consists of representatives of the Office who are employees, independent contractors, or volunteers of the governmental entity or nonprofit organization; and

(ii) contracts with a host agency to implement the Ombudsman Program in an ombudsman service area.

(17) LTC facility--Long-term care facility. A nursing facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 242, and or an assisted living facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 247.

(18) Managing local ombudsman--A person who:

(A) is certified as a staff ombudsman to serve as a managing local ombudsman in accordance with §88.102 of this chapter (relating to Certification of an Ombudsman); and

(B) works with a host agency and the Office to oversee the implementation of the Ombudsman Program in an ombudsman service area.

(19) Office--The Office of the State Long-Term Care Ombudsman. An organizational unit within HHSC that:

(A) is headed by the State Ombudsman;

(B) consists of representatives of the Office who are employees of HHSC; and

(C) oversees the statewide implementation of the Ombudsman Program.

(20) Older Americans Act--A federal law (Title 42, United States Code, §3011 et seq.) that establishes and funds a comprehensive service system for persons 60 years of age or older.

(21) Ombudsman intern--A person who is being trained to be a volunteer ombudsman in accordance with the Ombudsman Certification Training Manual but has not been certified as a volunteer ombudsman.

(22) Ombudsman Program--The State Long-Term Care Ombudsman Program as defined in 45 CFR §1324.1. The program through which the functions of the Office are carried out by the State Ombudsman and representatives of the Office.

(23) Ombudsman Program records--The files, records, and other information created or maintained by the State Ombudsman or a representative of the Office in the performance of functions of the Ombudsman Program, including:

(A) information relating to complaint investigations;

(B) emails and documentation of phone conversations;

(C) documentation related to the budget and expenditures for the Ombudsman Program; and

(D) information contained in the ombudsman database.

(24) Ombudsman service area--The county or counties, specified in the contract between HHSC and a host agency, in which

the local ombudsman entity performs functions of the Ombudsman Program.

(25) Organizational conflict of interest--A situation in which an organization is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes an organization:

(A) having any ownership, operational, or investment interest in, or receiving grants or donations from, an LTC facility;

(B) being an association of LTC facilities or an affiliate of such an association;

(C) having responsibility for licensing, surveying, or certifying LTC facilities;

(D) having a governing board member with an ownership, investment, or employment interest in an LTC facility;

(E) providing long-term care to residents of LTC facilities, including the provision of personnel for LTC facilities or the operation of programs that control access to, or services of, LTC facilities;

(F) providing long-term care coordination or case management for residents of LTC facilities;

(G) setting reimbursement rates for LTC facilities;

(H) providing adult protective services, as described in Texas Human Resources Code, Chapter 48;

(I) determining eligibility regarding Medicaid or other public benefits for residents of LTC facilities;

(J) conducting PASRR screening for LTC facility placements;

(K) making decisions regarding admission of residents to, or discharge of residents from, LTC facilities; or

(L) providing guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of LTC facilities.

(26) PASRR--Preadmission Screening and Resident Review. A review performed in accordance with 42 CFR Part 483, Subpart C.

(27) Private and unimpeded access--Has the following meanings:

(A) as used in §88.201(a)(1) of this chapter (relating to Access to Facilities, Residents, and Resident Records), access to enter an LTC facility without interference or obstruction from facility employees, volunteers, or contractors; and

(B) as used in §88.201(a)(2) of this chapter, access to communicate with a resident outside of the hearing and view of other persons without interference or obstruction from facility employees, volunteers, or contractors.

(28) Representative of the Office--A staff ombudsman, volunteer ombudsman, or ombudsman intern.

(29) Resident--A person of any age who resides in an LTC facility.

(30) Resident representative--A person chosen by a resident, through formal or informal means, to act on behalf of the resident to:

(A) support the resident in decision-making;

(B) access medical, social, or other personal information of the resident;

(C) manage financial matters; or

(D) receive notifications.

(31) Staff ombudsman--A person who:

(A) is certified as a staff ombudsman in accordance with §88.102 of this chapter;

(B) performs functions of the Ombudsman Program; and

(C) is an employee or independent contractor of:

(i) a host agency;

(ii) a governmental entity or nonprofit organization that contracts with a host agency, as described in paragraph (16)(B) of this section; or

(iii) HHSC.

(32) State fiscal year--A 12-month period of time from September 1 through August 31.

(33) State Ombudsman--The State Long-term Care Ombudsman, as defined in 45 CFR §1324.1. The person who heads the Office and performs the functions, responsibilities, and duties described in §88.101 of this chapter (relating to Responsibilities of the State Ombudsman and the Office).

(34) Volunteer ombudsman--A person who:

(A) is certified as a volunteer ombudsman in accordance with §88.102 of this chapter;

(B) performs functions of the Ombudsman Program; and

(C) is not an employee or independent contractor of:

(i) HHSC;

(ii) a host agency; or

(iii) a governmental entity or nonprofit organization that contracts with a host agency, as described in paragraph (16)(B) of this section.

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

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-4356



## SUBCHAPTER B. ESTABLISHMENT OF THE OFFICE

**26 TAC §§88.101 - 88.105**

**STATUTORY AUTHORITY**

The 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 HHSC; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The new sections implement Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

§88.101. Responsibilities of the State Ombudsman and the Office.

- (a) The Office is headed by the State Ombudsman.
- (b) The State Ombudsman, directly or through a designee:
  - (1) may designate a local ombudsman entity to perform the functions of the Ombudsman Program in an ombudsman service area;
  - (2) certifies ombudsmen as described in §88.102 of this subchapter (relating to Certification of an Ombudsman), and refuses, suspends, and terminates certification, as described in §88.103 of this subchapter (relating to Refusal, Suspension, and Termination of Certification of an Ombudsman);
  - (3) designates local ombudsman entities, and refuses, suspends, or terminates designation in accordance with §88.104 of this subchapter (relating to Designation of a Local Ombudsman Entity);
  - (4) approves the allocation of federal and state funds provided to a host agency for the local ombudsman entity and determines that program budgets and expenditures of the Office, host agency, and local ombudsman entities are consistent with laws, rules, policies, and procedures governing the Ombudsman Program;
  - (5) is responsible for the programmatic oversight of a representative of the Office, which includes:
    - (A) screening a representative of the Office who is employed by HHSC for individual conflicts of interest as described in subsection (d) of this section;
    - (B) screening a host agency for organizational conflicts of interest, as described in §88.403 of this chapter (relating to Conflicts of Interest Regarding a Host Agency) at least once a year;
    - (C) directing a representative of the Office to investigate a complaint or take other action related to a complaint; and
    - (D) providing advice and consultation to a representative of the Office in the performance of functions of the Ombudsman Program;
  - (6) identifies, investigates, and resolves complaints, made by or on behalf of residents, that relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, and rights of residents;
  - (7) represents the interests of residents before governmental agencies and pursues administrative, legal, and other remedies to protect residents;
  - (8) provides administrative and technical assistance to representatives of the Office, local ombudsman entities, and host agencies regarding performance of the functions of the Ombudsman Program;
  - (9) consults with host agencies and representatives of the Office in the establishment of Ombudsman Program policies and procedures;

(10) monitors the performance of local ombudsman entities, including providing information to a host agency regarding the performance of a staff ombudsman;

(11) investigates grievances made against a representative of the Office regarding the performance of the functions of the Ombudsman Program, as described in §88.309 of this chapter (relating to Grievances Regarding Performance of a Representative of the Office or Certification Decisions by the State Ombudsman);

(12) coordinates with a local ombudsman entity and, if appropriate, a host agency about concerns the State Ombudsman has regarding a representative of the Office, as described in §88.103(e) of this subchapter (relating to Refusal, Suspension, and Termination of Certification of an Ombudsman); and

(13) publishes an annual report in accordance with 45 CFR §1324.13(g).

(c) For purposes of determining if a representative of the Office has an individual conflict of interest in accordance with this section, the state of Texas is the ombudsman service area.

(d) The State Ombudsman:

(1) requires an applicant for a position within the Office to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" to identify an individual conflict of interest of the applicant;

(2) requires a representative of the Office employed by HHSC to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" at least once a year and if the representative of the Office identifies an individual conflict of interest; and

(3) reviews a form required by paragraphs (1) and (2) of this subsection to determine if an identified conflict of interest can be removed or remedied.

(e) The Office makes decisions independent of HHSC, including decisions about:

(1) the disclosure of confidential information maintained by the Ombudsman Program;

(2) recommendations to changes in federal, state, and local laws, rules, regulations, and other governmental policies and actions that relate to the health, safety, welfare, and rights of residents; and

(3) the provision of information to public and private agencies, legislators, the media, and other persons regarding problems and concerns about residents and recommendations related to the problems and concerns.

(f) In accordance with the Older Americans Act, §712(a)(3) and 45 CFR §1324.11(e)(5) and §1324.13(a)(7) - (9), the Office is responsible for:

(1) analyzing, commenting on, and monitoring the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to LTC facilities and services and to the health, safety, welfare, and rights of residents;

(2) recommending any changes in such laws, rules, regulations, policies, and actions as the Office determines to be appropriate;

(3) providing information to public and private agencies, legislators, the media, and other persons regarding problems and concerns about residents and providing recommendations related to the problems and concerns;



(4) overseeing activities described in paragraphs (1) - (3) of this subsection, including coordination of such activities carried out by representatives of the Office, as described in §88.302(a)(2)(A) of this chapter (relating to Requirement to Ensure a Representative of the Office Performs Functions of the Ombudsman Program);

(5) coordinating with and promoting the development of citizen organizations that have a purpose consistent with the interests of residents;

(6) promoting and providing technical support for the development of resident and family councils; and

(7) providing ongoing support as requested by resident and family councils to protect the well-being and rights of residents.

§88.102. Certification of an Ombudsman.

(a) The State Ombudsman initially certifies a person as a staff ombudsman described in §88.2(31)(C)(i) or (ii) of this chapter (relating to Definitions), other than a managing local ombudsman, if:

(1) the person has one of the following:

(A) a bachelor's or advanced degree from an accredited college or university; or

(B) a high school diploma or a certificate recognized by the state in which it was issued as the equivalent of a high school diploma and at least four years of one, or a combination, of the following:

(i) paid experience in a social, behavioral, health, or human service field; or

(ii) experience as a certified ombudsman;

(2) the person has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;

(3) the person:

(A) does not have an individual conflict of interest according to HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" completed by the person; or

(B) has an individual conflict of interest that has been remedied, as described in §88.303 of this chapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity);

(4) the person successfully completes the certification training provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual; and

(5) the local ombudsman entity recommends to the Office, using HHSC form "Certified Ombudsman Application," that the person be approved as a certified ombudsman in accordance with §88.301(a) of this chapter (relating to Requirements to Recommend Certification as an Ombudsman).

(b) The State Ombudsman initially certifies a person as a staff ombudsman to serve as the managing local ombudsman if:

(1) the person meets the criteria in subsection (a)(1) - (3) of this section;

(2) the person successfully completes certification training provided by the Office; and

(3) the person demonstrates competency to serve as a managing local ombudsman.

(c) The State Ombudsman initially certifies a person as a volunteer ombudsman if:

(1) the person meets the criteria in subsection (a)(2) - (4) of this section;

(2) the local ombudsman entity recommends to the Office, using HHSC form "Certified Ombudsman Application," that the person be approved as a certified ombudsman in accordance with §88.301(b) of this chapter; and

(3) the person successfully completes an internship in accordance with the Ombudsman Policies and Procedures Manual.

(d) The State Ombudsman initially certifies a person to be a staff ombudsman or volunteer ombudsman by signing HHSC form "Certified Ombudsman Application."

(e) The State Ombudsman certifies a person to be a staff ombudsman or volunteer ombudsman for a period of two years. After initial certification, the Office renews the certification of a staff ombudsman or volunteer ombudsman if:

(1) for a staff ombudsman, the staff ombudsman:

(A) meets the requirements in subsection (a)(1) - (3) of this section;

(B) completes continuing education provided by the Office; and

(C) demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual; and

(2) for a volunteer ombudsman, the volunteer ombudsman:

(A) meets the requirements in subsection (a)(2) and (3) of this section;

(B) completes continuing education provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual; and

(C) demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual.

(f) The State Ombudsman certifies a person as a staff ombudsman described in §88.2(31)(C)(iii) of this chapter if the person:

(1) has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;

(2) meets one of the following:

(A) does not have an individual conflict of interest according to HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" completed by the person; or

(B) has an individual conflict of interest that has been remedied by the State Ombudsman; and

(3) successfully completes the certification training provided by the Office.

§88.103. Refusal, Suspension, and Termination of Certification of an Ombudsman.

(a) The State Ombudsman refuses to initially certify:

(1) a staff ombudsman, other than a managing local ombudsman, if the requirements in §88.102(a) of this subchapter (relating to Certification of an Ombudsman) are not met;

(2) a managing local ombudsman if the requirements in §88.102(b) of this subchapter are not met; and

(3) a volunteer ombudsman if the requirements in §88.102(c) of this subchapter are not met.

(b) The State Ombudsman refuses to renew certification of:

(1) a staff ombudsman if the requirements in §88.102(e)(1) of this subchapter are not met; and

(2) a volunteer ombudsman if the requirements in §88.102(e)(2) of this subchapter are not met.

(c) The State Ombudsman may suspend certification of a certified ombudsman for good cause, as determined by the State Ombudsman, including if:

(1) the certified ombudsman is not adequately performing the functions of the Ombudsman Program;

(2) the certified ombudsman fails to complete continuing education in accordance with the Ombudsman Policies and Procedures Manual;

(3) an individual conflict of interest regarding the certified ombudsman is identified; or

(4) the State Ombudsman is in the process of deciding whether to terminate the certified ombudsman's certification.

(d) The State Ombudsman may terminate certification of a certified ombudsman for good cause, as determined by the State Ombudsman, including if:

(1) the certified ombudsman is not adequately performing the functions of the Ombudsman Program;

(2) the certified ombudsman fails to complete continuing education in accordance with the Ombudsman Policies and Procedures Manual;

(3) the certified ombudsman does not disclose an individual conflict of interest regarding the certified ombudsman to the local ombudsman entity or host agency;

(4) an individual conflict of interest regarding the certified ombudsman is not removed or remedied, as described in §88.303 of this chapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity) and §88.403 of this chapter (relating to Conflicts of Interest Regarding a Host Agency);

(5) the certified ombudsman has been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006;

(6) the certified ombudsman acts in a manner that threatens the health, safety, welfare, or rights of residents or undermines the integrity of the Ombudsman Program; or

(7) the certified ombudsman is no longer an employee or volunteer of the local ombudsman entity or host agency.

(e) If the State Ombudsman has a concern about a representative of the Office, the State Ombudsman informs the local ombudsman entity and, if appropriate, the host agency about the concern and may:

(1) work with the local ombudsman entity and the host agency to address the concern; and

(2) develop a corrective action plan and request comments on the plan from the local ombudsman entity and the host agency.

(f) The State Ombudsman immediately notifies the managing local ombudsman and, if appropriate, the host agency of a decision to refuse, suspend, or terminate certification of a certified ombudsman.

#### §88.104. Designation of a Local Ombudsman Entity.

(a) The State Ombudsman may designate a local ombudsman entity to perform the functions of the Ombudsman Program in an ombudsman service area.

(b) The State Ombudsman does not designate a local ombudsman entity if the host agency or a governmental entity or nonprofit organization contracting with the host agency, as described in §88.2(16)(B) of this chapter (relating to Definitions):

(1) has an organizational conflict of interest described in §88.2(25)(A) - (C) of this chapter; or

(2) has an organizational conflict of interest described in §88.2(25)(D) - (L) of this chapter that has not been removed or remedied as approved by the State Ombudsman in accordance with §88.403(d) of this chapter (relating to Conflicts of Interest Regarding a Host Agency).

(c) The State Ombudsman may remove the designation of a local ombudsman entity if:

(1) the host agency or local ombudsman entity has policies, procedures, or practices that the State Ombudsman determines to be in conflict with the laws, rules, policies, or procedures governing the Ombudsman Program; or

(2) the host agency or local ombudsman entity fails to comply with the requirements of this chapter including:

(A) not removing or remedying an organizational or individual conflict of interest as described in §88.303 of this chapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity) and §88.403 of this chapter;

(B) not submitting a plan of correction required by §88.105(f) of this subchapter (relating to Fiscal Management and Monitoring of a Local Ombudsman Entity) or a modified plan of correction required by §88.105(g) of this subchapter; or

(C) not obtaining approval by the Office of a plan of correction required by §88.105(f) of this subchapter or a modified plan of correction required by §88.105(g) of this subchapter.

(d) If the State Ombudsman removes the designation of a local ombudsman entity, the Office notifies the local ombudsman entity and host agency, in writing, of the decision to remove the designation.

(e) A host agency may request reconsideration of the State Ombudsman's decision to remove the designation of the local ombudsman entity. To request a reconsideration of the decision, the host agency must, within 10 days after receiving the notification of removal of the designation, submit a written request for reconsideration and additional information supporting the request to the State Ombudsman.

(f) If the removal of designation of a local ombudsman entity results in termination of the contract between HHSC and the host agency, the host agency may appeal the termination in accordance with 40 TAC §81.15 (relating to Appeal Procedures for Area Agency on Aging Contractors).

#### §88.105. Fiscal Management and Monitoring of a Local Ombudsman Entity.

(a) The State Ombudsman:

(1) determines the use of the federal and state funds appropriated for the operation of the Office;

(2) approves the allocation of federal and state funds to a host agency for the operation of the Ombudsman Program in accordance with subsection (b) of this section; and

(3) determines that Ombudsman Program budgets and expenditures are for an appropriate amount and relate to functions of the Ombudsman Program.

(b) This subsection describes how the State Ombudsman distributes funds to a host agency for the operation of the Ombudsman Program in accordance with the Older Americans Act, §306(a)(9).

(1) A host agency is allocated a base amount of \$3,000 from federal funds appropriated or otherwise available for the Ombudsman Program. Additional federal funds are allocated as follows:

(A) 75 percent of the additional funds is allocated based on the licensed capacity of nursing facilities in the ombudsman service area; and

(B) 25 percent of the additional funds is allocated based on the number of certified ombudsmen in the ombudsman service area who actively performed functions of the Ombudsman Program during the previous state fiscal year.

(2) A host agency is allocated funds from state general revenue funds appropriated or otherwise available for the Ombudsman Program based on the following factors:

(A) the number of assisted living facilities in the ombudsman service area on or about July 1 of each year;

(B) the number of assisted living facilities in the ombudsman service area located in a rural area, as determined by the State Ombudsman, on or about July 1 of each year; and

(C) the type and licensed capacity of assisted living facilities in the ombudsman service area on or about July 1 of each year.

(c) The Office conducts an onsite visit or a desk review to monitor:

(1) the performance of functions of the Ombudsman Program by a representative of the Office;

(2) the compliance by a local ombudsman entity with Subchapter D of this chapter (relating to Requirements of a Local Ombudsman Entity); and

(3) the compliance by a host agency with Subchapter E of this chapter (relating to Requirements of a Host Agency).

(d) The Office conducts at least one onsite visit every three years. An onsite visit includes:

(1) observing and evaluating a visit of a managing local ombudsman to an LTC facility; and

(2) reviewing information regarding a local ombudsman entity's compliance with subchapter D of this chapter, including documentation regarding:

(A) the training of representatives of the Office;

(B) identification of individual conflicts of interest; and

(C) expenditures for the Ombudsman Program, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office.

(e) The Office:

(1) selects a date for an onsite visit in consultation with the managing local ombudsman;

(2) notifies the host agency of a scheduled onsite visit at least 30 days before the visit; and

(3) within 30 days after the Office completes an onsite visit, provides to the local ombudsman entity and the host agency a written report containing findings from the visit.

(f) The host agency must, within 30 days after receipt of the written report described in subsection (e)(3) of this section, submit a written plan of correction to the Office that describes:

(1) the action that will be taken to correct each finding; and

(2) the date by which each action will be completed.

(g) Within 30 days after the date the Office receives the plan of correction required by subsection (f) of this section, the Office notifies the local ombudsman entity and host agency of whether the plan is approved or requires modification. If the Office approves the plan, the local ombudsman entity must complete the actions contained in the plan of correction by the dates in the plan. If the Office determines that the plan requires modification, the host agency must submit a modified written plan of correction within a time period determined by the Office for approval by the Office.

(h) The Office may take one or both of the following actions to determine if the local ombudsman entity has completed the actions in accordance with an approved plan of correction or approved modified plan of correction:

(1) request that the local ombudsman entity submit evidence of correction to the Office; or

(2) visit the local ombudsman entity.

(i) The Office:

(1) may conduct a desk review at any time; and

(2) conducts at least one desk review every three months to determine if a local ombudsman entity:

(A) is in compliance with §88.305(a)(3) and (c)(2) of this chapter (relating to Complaints) and §88.307(a) of this chapter (relating to Requirements Regarding LTC Visits and Submitting Information to the Office); and

(B) is making progress toward meeting performance measure projections required by §88.405(a) of this chapter (relating to Meeting Performance Measure Projections).

(j) If the Office identifies an issue of non-compliance or other concern from a desk review, the Office sends the local ombudsman entity and host agency written results of the desk review within 30 days after the Office completes the desk review.

(k) Upon request by a local ombudsman entity or host agency, the Office provides technical assistance to a local ombudsman entity or host agency regarding developing a plan of correction or addressing an issue of non-compliance or other concern from a desk review.

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

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Chief Counsel  
Health and Human Services Commission  
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For further information, please call: (512) 438-4356



## SUBCHAPTER C. ACCESS BY THE STATE OMBUDSMAN AND REPRESENTATIVES OF THE OFFICE

### 26 TAC §88.201

#### 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 HHSC; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The new section implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

§88.201. Access to Facilities, Residents, and Resident Records.

(a) The State Ombudsman and a representative of the Office have:

(1) immediate, private, and unimpeded access to enter an LTC facility, in accordance with the Older Americans Act, §712(b)(1)(A) and 45 CFR §1324.11(e)(2)(i):

(A) at any time during a facility's regular business hours or regular visiting hours; and

(B) at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated;

(2) immediate, private, and unimpeded access to a resident, in accordance with the Older Americans Act, §712(b)(1)(A) and 45 CFR §1324.11(e)(2)(ii); and

(3) access to the name and contact information of a resident representative, if any, when the State Ombudsman or representative of the Office determines the information is needed to perform functions of the Ombudsman Program, in accordance with 45 CFR §1324.11(e)(2)(iii).

(b) Disclosure of information by the State Ombudsman or a representative of the Office related to any complaint, including a description of the circumstances to be investigated, is subject to requirements in the Ombudsman Policies and Procedures Manual related to disclosure of confidential information.

(c) The State Ombudsman and a certified ombudsman have immediate access:

(1) in accordance with the Older Americans Act, §712(b)(1)(B), to all files, records, and other information concerning a resident, including an incident report involving the resident, if:

(A) in accordance with 45 CFR §1324.11(e)(2)(iv)(A) or (B), the State Ombudsman or certified ombudsman has the consent of the resident or legally authorized representative;

(B) in accordance with the Older Americans Act, §712(b)(1)(B)(i)(II), the resident is unable to communicate consent to access and has no legally authorized representative; or

(C) in accordance with 45 CFR §1324.11(e)(2)(iv)(C), such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access to the records, files, and other information;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and

(iii) if it is the certified ombudsman seeking access to the records, files, or other information the certified ombudsman obtains the approval of the State Ombudsman to access the records, files, or other information without the legally authorized representative's consent; and

(2) in accordance with 45 CFR §1324.11(e)(2)(v), to the administrative records, policies, and documents of an LTC facility to which the residents or general public have access.

(d) The rules adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Part 160 and 45 CFR Part 164, subparts A and E, do not preclude an LTC facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (a)(3) and (c) of this section are otherwise met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

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

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For further information, please call: (512) 438-4356



## SUBCHAPTER D. REQUIREMENTS OF A LOCAL OMBUDSMAN ENTITY

### 26 TAC §§88.301 - 88.310

#### STATUTORY AUTHORITY

The 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 HHSC; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The new sections implement Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

§88.301. Requirements to Recommend Certification as an Ombudsman.

(a) For a person to be certified as a staff ombudsman, other than a managing local ombudsman, in accordance with §88.102 of this chapter (relating to Certification of an Ombudsman), the local ombudsman entity must recommend to the Office that the person be certified, using HHSC form "Certified Ombudsman Application." The local ombudsman entity may make a recommendation only if:

(1) the person has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006;

(2) the person does not have an individual conflict of interest or has an individual conflict of interest that has been remedied, as described in §88.303 of this subchapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity); and

(3) the person successfully completes the certification training provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual.

(b) For a person to be certified as a volunteer ombudsman in accordance with §88.102 of this chapter, the local ombudsman entity must recommend to the Office that the person be certified, using HHSC form "Certified Ombudsman Application." The local ombudsman entity may make a recommendation only if:

(1) the person meets the criteria in subsection (a)(1) - (3) of this section; and

(2) the person successfully completes an internship in accordance with the Ombudsman Policies and Procedures Manual.

§88.302. Requirement to Ensure a Representative of the Office Performs Functions of the Ombudsman Program.

(a) A local ombudsman entity must ensure that:

(1) a certified ombudsman performs the functions described in the Older Americans Act, §712(a)(3) and (5) and 45 CFR §1324.19(a), including:

(A) identifying, investigating, and resolving complaints, made by or on behalf of residents, that relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of residents;

(B) providing services to protect the health safety, welfare, and rights of residents;

(C) providing residents with information about the Ombudsman Program;

(D) making regular visits to residents in LTC facilities, as well as promptly responding to requests received by telephone, mail, and electronic means;

(E) representing the interests of residents before governmental agencies, and pursuing administrative, legal, and other remedies to protect residents;

(F) analyzing, commenting on, making recommendations, and monitoring the development and implementation of laws, rules, regulations, and other policies and actions that pertain to the health, safety, welfare, and rights of residents, with respect to the adequacy of LTC facilities and services; and

(G) coordinating with and promoting the development of citizen organizations, including resident and family councils;

(2) a representative of the Office:

(A) consults with the Office before:

(i) commenting on or recommending changes to a public official or governmental entity regarding the development and implementation of laws, rules, regulations, and other policies and actions that pertain to the health, safety, welfare, and rights of residents, with respect to the adequacy of LTC facilities and services; or

(ii) providing information to a legislator or the media regarding a problem or concern about a resident or a recommendation related to the problem or concern;

(B) promptly responds to a request from the Office regarding a request for information from a legislator or the media; and

(C) complies with the following:

(i) the Ombudsman Policies and Procedures Manual available on the HHSC website;

(ii) the Ombudsman Program Protocols available on the HHSC website; and

(iii) the Ombudsman Certification Training Manual available on the HHSC website;

(3) a staff ombudsman:

(A) completes continuing education provided by the Office as required by §88.102(e)(1)(B) of this chapter (relating to Certification of an Ombudsman); and

(B) is evaluated annually to determine if the staff ombudsman demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual; and

(4) a volunteer ombudsman:

(A) completes continuing education provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual; and

(B) is evaluated annually to determine if the volunteer ombudsman demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual.

(b) In accordance with 45 CFR §1324.11(e)(5)(i), Texas Government Code §556.006 and Texas Local Government Code §391.0116, which prohibit lobbying and other advocacy activities by employees of the state, a council of governments, or regional planning commission, do not apply to a certified ombudsman performing the functions described in subsection (a)(1)(F) of this section.

(c) If a local ombudsman entity determines that a certified ombudsman is not demonstrating compliance with the Ombudsman Certification Training Manual or the Ombudsman Policies and Procedures Manual or identifies a concern with a certified ombudsman's performance, the local ombudsman entity:

(1) must address the performance concern or resolve the failure to demonstrate compliance; and

(2) may request technical assistance from the Office in complying with paragraph (1) of this subsection.

(d) A local ombudsman entity may recommend to the State Ombudsman that a certified ombudsman's certification be suspended or terminated.

§88.303. Individual Conflicts of Interest Regarding a Local Ombudsman Entity.

(a) A local ombudsman entity must ensure that HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" is completed by:

(1) an applicant for a volunteer ombudsman position before performing functions of the Ombudsman Program; and

(2) a certified ombudsman, other than a managing local ombudsman:

(A) at least once a year; and

(B) if the local ombudsman entity identifies an individual conflict of interest involving the certified ombudsman.

(b) A local ombudsman entity must require a representative of the Office to immediately notify the local ombudsman entity of an individual conflict of interest regarding a representative of the Office.

(c) If a local ombudsman entity identifies an individual conflict of interest:

(1) regarding a representative of the Office other than the managing local ombudsman, within 30 days after identifying the conflict, the local ombudsman entity must:

(A) complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," including a recommended action to remove or remedy the conflict of interest, if possible; and

(B) submit the completed form to the Office; and

(2) regarding the managing local ombudsman, the local ombudsman entity must immediately notify the host agency so the host agency can comply with §88.403(c) of this chapter (relating to Conflicts of Interest Regarding a Host Agency).

(d) If the Office receives a completed form as described in subsection (c)(1) of this section, the State Ombudsman reviews the form and:

(1) approves, modifies, or rejects the recommended action to remove or remedy the conflict of interest; or

(2) if it is not possible to remove or remedy the conflict of interest, refuses or terminates certification of the person with the individual conflict of interest.

§88.304. Disclosure of Confidential Information; Exclusion from Reporting Requirements Regarding Abuse, Neglect, or Exploitation; and Provision of Records to the Office.

(a) Information identifying a resident or complainant is confidential. Such information includes:

(1) the name of the resident or complainant;

(2) information about the resident's medical condition;

(3) the resident's medical history;

(4) the resident's social history, which includes occupation, residences, and information about a resident's family;

(5) the resident's source of payment;

(6) information about the resident's personal life; and

(7) information from a communication between a resident and a representative of the Office.

(b) A local ombudsman entity must ensure that a disclosure of confidential information that is not written information complies with the Older Americans Act, §712(d), 45 CFR §1324.11(e)(3), and the Ombudsman Policies and Procedures Manual.

(c) A response to a request to disclose written confidential information must be in accordance with this subsection.

(1) If a representative of the Office receives a request to disclose written confidential information as described in subsection (a) of this section, including a subpoena, the representative must immediately:

(A) notify the State Ombudsman of the request; and

(B) provide the State Ombudsman with any communication from the requestor.

(2) If the State Ombudsman receives a request to disclose written confidential information, the State Ombudsman:

(A) sends written acknowledgement of receipt of the request to the representative of the Office;

(B) reviews the request and responds to the requestor within a time frame required by applicable state or federal law; and

(C) sends a copy of the response to the local ombudsman entity.

(d) In accordance with 45 CFR §1324.11(e)(3)(iv), a representative of the Office must not, except as provided in §1324.19(b)(5) - (8), report allegations of abuse, neglect, or exploitation under state law, including Texas Human Resources Code, Chapter 48, without appropriate consent or court order. This prohibition applies:

(1) regardless of whether a representative of the Office is required to report allegations of abuse, neglect, or exploitation under professional licensure standards; and

(2) to a representative of the Office only in the performance of functions of the Ombudsman Program.

(e) A local ombudsman entity must, at the request of the Office, immediately provide Ombudsman Program records to the Office.

§88.305. Complaints.

(a) A local ombudsman entity must:

(1) ensure that a person is allowed to make a complaint as follows:

(A) in writing, including by email;

(B) in person; and

(C) by telephone;

(2) initiate a complaint if the local ombudsman entity becomes aware of circumstances that may adversely affect the health, safety, welfare, or rights of a resident;

(3) respond to the complainant within two business days after receipt of the complaint, except as provided in subsection (c)(2) of this section regarding a complaint that is an allegation of abuse, neglect, or exploitation of a resident; and

(4) ensure that a certified ombudsman initiates an investigation of a complaint as soon as practicable after receipt of the complaint.

(b) A local ombudsman entity must ensure that a certified ombudsman investigates complaints in accordance with this subsection.

(1) If a certified ombudsman receives a complaint, the certified ombudsman must:

(A) document the nature of the complaint;

(B) determine:

(i) whether the complaint is appropriate for the certified ombudsman to investigate;

(ii) if any attempts have been made to resolve the complaint; and

(iii) the outcome sought by the complainant;

(C) if the complainant is not the resident, inform the complainant that the complaint will be investigated only if:

(i) the resident or legally authorized representative consents to the investigation; or

(ii) in accordance with 45 CFR §1324.19(b)(2)(iii), the resident is unable to consent and has no legally authorized representative; and

(D) in accordance with the Ombudsman Policies and Procedures Manual:

(i) seek the consent of the resident or legally authorized representative to investigate the complaint; or

(ii) determine if authority exists to investigate the complaint because, in accordance with 45 CFR §1324.19(b)(2)(iii), the resident is unable to consent and has no legally authorized representative.

(2) If the complainant is the resident and the certified ombudsman has determined the complaint is appropriate for ombudsman investigation and has obtained consent to investigate the complaint or has authority to investigate the complaint in accordance with 45 CFR §1324.19(b)(2)(iii), the certified ombudsman must:

(A) determine what, if any, federal or state law or rule applies to the complaint;

(B) observe the environment of the resident and situations in the LTC facility related to the complaint;

(C) interview relevant witnesses;

(D) review relevant records, if necessary, including confidential information if consent or other authority is obtained in accordance with the Ombudsman Policies and Procedures Manual;

(E) if the complaint relates to a regulatory violation, inform the resident of the option to report the complaint to the appropriate regulatory or law enforcement authority;

(F) work with the resident to develop a plan of action for resolution of the complaint;

(G) encourage the resident to participate in the process to resolve the complaint; and

(H) determine the resident's satisfaction with the outcome of the investigation.

(3) If the complainant is not the resident and the certified ombudsman has determined the complaint is appropriate for ombudsman investigation and has obtained consent to investigate the complaint, the certified ombudsman must:

(A) communicate with the resident about the complaint and obtain the resident's perspective about the complaint, if the resident is able to communicate;

(B) determine what, if any, federal or state law or rule applies to the complaint;

(C) inform the resident or legally authorized representative of the residents' rights and other law related to the complaint;

(D) observe the environment of the resident and situations in the LTC facility related to the complaint;

(E) interview relevant witnesses;

(F) review relevant records, if necessary, including confidential records if consent or other authority is obtained in accordance with the Ombudsman Policies and Procedures Manual;

(G) if the complaint relates to a regulatory violation, inform the resident or the legally authorized representative of the option to report the complaint to the appropriate regulatory or law enforcement authority;

(H) work with the resident or legally authorized representative to develop a plan of action for resolution of the complaint;

(I) encourage the resident or legally authorized representative to participate in the process to resolve the complaint; and

(J) determine the resident's or legally authorized representative's satisfaction with the outcome.

(4) If the complainant is not the resident and the certified ombudsman has determined the complaint is appropriate for ombudsman investigation and has authority to investigate the complaint in accordance with 45 CFR §1324.19(b)(2)(iii), the certified ombudsman must:

(A) determine what, if any, federal or state law, regulation, or rule applies to the complaint;

(B) determine how many residents are potentially affected by the complaint;

(C) observe the environment of the resident and situations in the LTC facility related to the complaint;

(D) interview relevant witnesses;

(E) review relevant records, if necessary, including confidential records if consent or other authority is obtained in accordance with the Ombudsman Policies and Procedures Manual; and

(F) determine whether the complaint is satisfactorily resolved.

(5) If the resident or legally authorized representative declines to consent to have the complaint investigated, the certified ombudsman must:

(A) not investigate the complaint;

(B) inform the complainant that the complaint will not be investigated because the resident or legally authorized representative declined to consent; and

(C) advise the complainant of his or her options to pursue resolution.

(6) If a certified ombudsman identifies a complaint that affects a substantial number of residents in an LTC facility, the certified ombudsman may investigate and work to resolve the complaint without obtaining consent from each resident to investigate the complaint. In investigating the complaint, a certified ombudsman may review confidential records only if consent or other authority is obtained in accordance with the Ombudsman Policies and Procedures Manual.

(7) A certified ombudsman must document the complaint investigation in the ombudsman database in accordance with the Ombudsman Policies and Procedures Manual.

(c) If a complaint is an allegation of abuse, neglect, or exploitation of a resident, a certified ombudsman:

(1) must not investigate whether abuse, neglect, or exploitation of a resident has occurred;

(2) within one business day after receipt of the complaint, inform the complainant of the appropriate investigative authority to report the allegation; and

(3) comply with the Ombudsman Policies and Procedures Manual.

(d) In accordance with 45 CFR §1324.11(e)(3)(iv), a representative of the Office must not, except as provided in §1324.19(b)(5) - (8), report allegations of abuse, neglect, or exploitation under state law, including Texas Human Resources Code, Chapter 48, without appropriate consent or court order.

(e) Confidential information described in §88.304(a) of this subchapter (relating to Disclosure of Confidential Information; Exclusion from Reporting Requirements Regarding Abuse, Neglect, or Exploitation; and Provision of Records to the Office) may only be disclosed in accordance with §88.304 of this subchapter.

§88.306. Compliance with Documents of the Office.

A local ombudsman entity must comply with:

(1) the Ombudsman Policies and Procedures Manual available on the HHSC website;

(2) the Ombudsman Program Protocols available on the HHSC website; and

(3) the Ombudsman Certification Training Manual available on the HHSC website.

§88.307. Requirements Regarding LTC Visits and Submitting Information to the Office.

(a) A local ombudsman entity must ensure each LTC facility in the ombudsman service area is visited by a certified ombudsman in accordance with the Ombudsman Policies and Procedures Manual during each federal fiscal year to:

(1) monitor residents' health, safety, welfare, and rights; and

(2) receive, investigate, and resolve complaints on behalf of residents.

(b) A local ombudsman entity must submit activities and case-work, as described in the Ombudsman Policies and Procedures Manual, to the Office by entering information into the ombudsman database by 8:00 a.m. on:

(1) the 16th day of each month if the 16th is a business day; or

(2) if the 16th day of the month is not a business day, the first business day immediately following the 16th.

§88.308. Ombudsman Program Logo and Communications to the Public.

(a) The local ombudsman entity must obtain approval by the Office of materials to be distributed to persons other than representatives of the Office, before the materials are distributed.

(b) If a local ombudsman entity uses a logo on printed materials created by the local ombudsman entity, the local ombudsman entity must use the logo approved by the Office. A host agency may use its logo on printed materials in addition to the logo approved by the Office.

(c) A local ombudsman entity must ensure that an outgoing message for the telephone of a staff ombudsman includes:

(1) a statement that the staff ombudsman works in the Ombudsman Program; and

(2) that a message left by the caller will be confidential.

(d) A local ombudsman entity may request technical assistance from the Office regarding website content related to the Ombudsman Program.

§88.309. Grievances Regarding Performance of a Representative of the Office or Certification Decisions by the State Ombudsman.

(a) A grievance regarding the performance of functions of the Ombudsman Program by a representative of the Office, other than a grievance about the managing local ombudsman, is addressed in accordance with this subsection.

(1) The local ombudsman entity must:

(A) ensure that a grievance may be submitted:

(i) in writing, in person, or by telephone; and

(ii) anonymously;

(B) request, but not require disclosure of, the name and contact information of a grievant;

(C) document the nature of the grievance in detail;

(D) document the name of the person who conducted the investigation required by subparagraph (F)(ii) of this paragraph;

(E) document the name of persons contacted during the investigation; and

(F) within 30 days after receiving the grievance:

(i) notify the representative of the Office who is the subject of the grievance that a grievance was submitted;

(ii) investigate the grievance;

(iii) develop a proposed response to the grievant, including actions to be taken, if any; and

(iv) submit the following information to the Office:

(I) the information described in subparagraphs (C) - (E) of this paragraph;

(II) a description of the activities conducted during the investigation; and

(III) the proposed response to the grievant as required by clause (iii) of this subparagraph.

(2) If the Office receives the information regarding a grievance described in paragraph (1)(F)(iv) of this subsection, the State Ombudsman:

(A) reviews the information; and

(B) approves or modifies the proposed response to the grievant developed by the local ombudsman entity.

(3) The local ombudsman entity must send a response to the grievant as approved or modified by the State Ombudsman.

(b) A grievance regarding the performance of functions of the Ombudsman Program by a managing local ombudsman is addressed in accordance with this subsection.

(1) A grievance about the managing local ombudsman must be submitted to the Office.

(2) If the Office receives a grievance about a managing local ombudsman, the Office:



(A) investigates the grievance, including interviewing employees of the host agency;

(B) informs the host agency of the actions to be taken, if any; and

(C) sends a response to the grievant.

(c) A person may file a grievance regarding the refusal, suspension, or termination of certification of a representative of the Office by the State Ombudsman in accordance with this subsection.

(1) The grievant must complete HHSC form "Grievance Regarding Ombudsman Certification Decision" and submit the completed form to the Office.

(2) If the Office receives a completed form described in paragraph (1) of this subsection, the State Ombudsman reviews the form, takes any necessary action, and sends a response to the grievant.

(3) The grievant may request a reconsideration of the State Ombudsman's decision. To request a reconsideration, the grievant must, within 10 days after receiving the decision, submit the following to the State Ombudsman:

(A) a written request for reconsideration; and

(B) any additional information supporting the request.

§88.310. Prohibition of Interference and Retaliation by a Local Ombudsman Entity.

A local ombudsman entity must not:

(1) willfully interfere with the State Ombudsman or a representative of the Office performing any of the functions of the Ombudsman Program;

(2) retaliate against the State Ombudsman or a representative of the Office:

(A) with respect to a resident, employee of an LTC facility, or other person filing a complaint with, providing information to, or otherwise cooperating with a representative of the Office; or

(B) for performance of the functions, responsibilities, or duties described in 45 CFR §1324.13 and §1324.19 and this chapter, including prohibiting a representative of the Office from commenting or recommending changes as described in §88.302(a)(1)(F) of this subchapter (relating to Requirement to Ensure a Representative of the Office Performs Functions of the Ombudsman Program); or

(3) have personnel policies or practices that prohibit a representative of the Office from performing the functions of the Ombudsman Program or from adhering to the requirements of the Older Americans Act, §712.

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

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Health and Human Services Commission

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For further information, please call: (512) 438-4356



## SUBCHAPTER E. REQUIREMENTS OF A HOST AGENCY

### 26 TAC §§88.401 - 88.407

#### STATUTORY AUTHORITY

The 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 HHSC; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The new sections implement Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

§88.401. Coordination with the State Ombudsman in Hiring and Terminating a Staff Ombudsman.

(a) In accordance with 45 CFR §1324.11(e)(1)(iv), a host agency must coordinate with the Office about the hiring and termination of a staff ombudsman.

(b) Before a person is hired to serve as a staff ombudsman, including the hiring or promotion of a person to serve as a managing local ombudsman, the host agency must ensure that the following documentation is submitted to the Office:

(1) the applicant's resume or job application;

(2) HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" as evidence of screening for an individual conflict of interest and, if a conflict is identified, a proposed removal or remedy plan for the conflict, using HHSC form "Conflict of Interest Identification, Removal, and Remedy"; and

(3) one of the following:

(A) consent by the applicant for a criminal history check, using HHSC form "Consent for Criminal History Check"; or

(B) the criminal history record of the applicant from the Texas Department of Public Safety obtained directly by the host agency or through a private agency.

(c) Within two business days after receiving the documentation described in subsection (b) of this section, the State Ombudsman reviews the documentation and notifies the requestor of whether any issues exist that may prevent the State Ombudsman from certifying the applicant as an ombudsman as described in §88.102 of this chapter (relating to Certification of an Ombudsman).

(d) A host agency may request technical assistance from the Office for the purpose of hiring and terminating a staff ombudsman.

(e) A host agency must ensure that, if an employee who is a representative of the Office is terminated, the Office is notified of the termination, in writing, within one business day after the effective date of termination.

§88.402. Personnel Management of Representatives of the Office.

(a) In accordance with 45 CFR § 1324.17(a), a host agency is responsible for the personnel management, but not the programmatic oversight, of a representative of the Office who works for the host agency. Personnel management includes:

(1) hiring and terminating a staff ombudsman as described in §88.401 of this subchapter (relating to Coordination with the State Ombudsman in Hiring and Terminating a Staff Ombudsman) and subsection (c)(2) of this section;

(2) overseeing compliance with host agency policies by a representative of the Office;

(3) collecting timesheets from a staff ombudsman to demonstrate work performance;

(4) determining salary and benefits for a staff ombudsman;

(5) evaluating job performance of a staff ombudsman;

(6) assigning work space and equipment for a staff ombudsman; and

(7) performing payroll and accounting activities regarding the local ombudsman entity.

(b) A host agency must ensure that a local ombudsman entity has a managing local ombudsman.

(c) A host agency must ensure that a managing local ombudsman:

(1) is the primary contact for the local ombudsman entity;

(2) participates in making the decision to hire and terminate a staff ombudsman;

(3) decides whether the local ombudsman entity recommends to the Office that a person be approved as a certified ombudsman in accordance with §88.301 of this chapter (relating to Requirements to Recommend Certification as an Ombudsman); and

(4) except as permitted by subsection (d) of this section, serves on a full-time basis in performing duties of the managing local ombudsman.

(d) A host agency may request that the State Ombudsman waive the requirement for the managing local ombudsman to serve on a full-time basis.

(1) To make a request to waive the requirement, the host agency must:

(A) complete HHSC form "Waiver Request for Full-Time Requirement of a Managing Local Ombudsman"; and

(B) submit the form to the State Ombudsman before the beginning of the federal fiscal year that the host agency is requesting the requirement be waived.

(2) Within two business days after receiving a completed form as described in paragraph (1) of this subsection, the State Ombudsman reviews the request and notifies the host agency of whether the request is approved.

(3) The State Ombudsman approves a request only if the host agency demonstrates that:

(A) funding is not available for a full-time staff ombudsman position; and

(B) if the managing local ombudsman position is combined with another function within the host agency, any conflict of interest is removed or remedied as required by §88.403 of this subchapter (relating to Conflicts of Interest Regarding a Host Agency).

(4) Any approval of a request to waive the requirement for the managing local ombudsman to serve on a full-time basis is only for the fiscal year for which the request was submitted.

(e) A host agency must ensure that, in its personnel management of representatives of the Office, a local ombudsman entity complies with Subchapter D of this chapter (relating to Requirements of a Local Ombudsman Entity).

(f) A host agency may request technical assistance from the Office for the purpose of evaluating the job performance of a staff ombudsman.

§88.403. Conflicts of Interest Regarding a Host Agency.

(a) If a host agency, or a governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(16)(B) of this chapter (relating to Definitions), has an organizational conflict of interest, the host agency must, within 30 days after identifying the conflict of interest:

(1) complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," including a recommended action to:

(A) remove a conflict of interest described in §88.2(25)(A) - (C) of this chapter (relating to Definitions); and

(B) remove or remedy a conflict of interest described in §88.2(25)(D) - (L) of this chapter; and

(2) submit the completed form to the Office.

(b) A host agency must ensure that HHSC form "Individual Conflict of Interest Screening of a Representative of the Office," is completed by a managing local ombudsman:

(1) at least once a year; and

(2) if the host agency identifies an individual conflict of interest involving the managing local ombudsman.

(c) Within five business days after identifying an individual conflict of interest regarding a managing local ombudsman, the host agency must:

(1) complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," including a recommended action to remove or remedy the conflict of interest; and

(2) submit the completed form to the Office.

(d) If the Office receives a completed form described in subsection (a) or (c) of this section, the State Ombudsman reviews the form and approves, modifies, or rejects the recommended action to remove or remedy the conflict of interest.

(1) If it is not possible to remove or remedy an organizational conflict of interest of the host agency, the State Ombudsman removes the designation of the local ombudsman entity, as described in §88.104(c)(2)(A) of this chapter (relating to Designation of a Local Ombudsman Entity).

(2) If it is not possible to remove or remedy an individual conflict of interest of the managing local ombudsman, the State Ombudsman refuses to initially certify or terminates certification of the managing local ombudsman as described in §88.103(a)(2) and (d)(4) of this chapter (relating to Refusal, Suspension, and Termination of Certification of an Ombudsman).

§88.404. Provision of Records to the Office, Disclosure of Confidential Information, and Allegations of Abuse, Neglect, or Exploitation.

(a) In accordance with the Older Americans Act, §712(d)(2)(A) and 45 CFR §1324.13(e)(1), the State Ombudsman has the sole authority to make determinations concerning the disclosure of confidential information, as described in §88.304(a) of this chapter (relating to Disclosure of Confidential Information, Exclusion from Reporting Requirements Regarding Abuse, Neglect, and Exploitation, and Provision of Records to the Office).

(b) A request to disclose written confidential information is responded to in accordance with this subsection.

(1) If a person who is not a representative of the Office but works for a host agency or governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(16)(B) of this chapter (relating to Definitions), receives a request to disclose written confidential information, as described in §88.304(a) of this chapter, the host agency must ensure that the State Ombudsman is immediately:

- (A) notified of the request; and
- (B) provided any communication from the requestor.

(2) If the State Ombudsman receives a request to disclose written confidential information, the State Ombudsman:

- (A) sends written acknowledgement of receipt of the request to the host agency;
- (B) reviews the request and responds to the requestor within a time frame required by applicable state or federal law; and
- (C) sends a copy of the response to the host agency.

(c) A host agency must ensure that, except as provided in 45 CFR §1324.19(b)(5) - (8), a representative of the Office is not required to report allegations of abuse, neglect, or exploitation under state law, including Texas Human Resources Code, Chapter 48, without appropriate consent or court order.

(d) A host agency must, at the request of the Office, immediately provide Ombudsman Program records that do not contain confidential information, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office, to the Office.

§88.405. Meeting Performance Measure Projections.

(a) A host agency must work with the local ombudsman entity to develop the following performance measure projections for a state fiscal year:

- (1) the number of certified ombudsmen who will, during a state fiscal year:
  - (A) conduct visits at LTC facilities; and
  - (B) identify and investigate complaints;
- (2) the number of visits to assisted living facilities by certified ombudsmen that will occur during a state fiscal year;
- (3) the number of assisted living facilities that will receive at least one visit by a certified ombudsman in a state fiscal year; and
- (4) the percentage of complaints that will be resolved or partially resolved in a state fiscal year.

(b) A host agency must submit the performance measure projections required by subsection (a) of this section to the HHSC Office of the Area Agencies on Aging. The HHSC Office of the Area Agencies on Aging sends the performance measure projections to the Office. The Office reviews the form and approves, modifies, or rejects the proposed performance measure projections.

(c) A host agency may request that an approved performance measure projection be revised in accordance with this subsection.

- (1) To make such a request, the host agency must:
  - (A) complete HHSC form "Key Performance Measure Target Revision," and
  - (B) submit the completed form to the HHSC Office of the Area Agencies on Aging.
- (2) The HHSC Office of the Area Agencies on Aging sends the completed form to the Office. The Office reviews the form and

approves, modifies, or rejects the request to revise the performance measure projection.

(d) A host agency must ensure that a local ombudsman entity, by the end of each state fiscal year, meets the approved projections described in subsection (a) of this section by:

- (1) being within a variance of minus five percent of the projections; or
- (2) exceeding the projections.

§88.406. Requirements Regarding Expenditures for the Ombudsman Program.

(a) A host agency must, for the Ombudsman Program implemented by a local ombudsman entity, expend for a federal fiscal year at least the amount of federal funds expended in the federal fiscal year 2000.

(b) A function of the Ombudsman Program performed by a local ombudsman entity that is paid for with funds allocated by HHSC must be an allowable activity in accordance with the Ombudsman Policies and Procedures Manual.

(c) A purchase of a service, material, equipment, or good by a host agency for the Ombudsman Program implemented by a local ombudsman entity with funds allocated by HHSC must meet the criteria described in 45 CFR Part 75 (relating to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards).

§88.407. Prohibition of Interference and Retaliation by a Host Agency.

(a) A host agency must not:

(1) willfully interfere with the State Ombudsman or a representative of the Office performing any of the functions of the Ombudsman Program, which includes:

- (A) prohibiting a representative of the Office from:
  - (i) commenting or recommending changes, as described in §88.302(a)(1)(F) of this chapter (relating to Requirement to Ensure a Representative of the Office Performs Functions of the Ombudsman Program);
  - (ii) submitting comments to the Office regarding proposed legislation; or
  - (iii) responding to a question from a legislator or the media regarding a problem that pertains to an LTC facility or service, or to the health, safety, welfare, and rights of residents; and
- (B) requiring a representative of the Office to obtain approval from the host agency before submitting testimony at a legislative hearing;

(2) retaliate against the State Ombudsman or a representative of the Office:

- (A) with respect to a resident, employee of an LTC facility, or other person filing a complaint with, providing information to, or otherwise cooperating with, a representative of the Office; or
- (B) for performance of the functions, responsibilities, or duties described in 45 CFR §1324.13 and §1324.19 and this chapter; or
- (3) have personnel policies or practices that prohibit a representative of the Office from performing the functions of the Ombudsman Program or from adhering to the requirements of the Older Americans Act, §712.

(b) A host agency must ensure that a governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(16)(B) of this chapter (relating to Definitions), complies with subsection (a) of this section as if the entity or organization is a host agency.

(c) A host agency may require a representative of the Office to notify the host agency of:

(1) comments or recommendations made in accordance with §88.302(a)(1)(F) of this chapter; and

(2) subject to disclosure requirements in §88.304 of this chapter (relating to Disclosure of Confidential Information; Exclusion from Reporting Requirements Regarding Abuse, Neglect, or Exploitation; and Provision of Records to the Office):

(A) information being sent to a legislator or the media regarding a problem or concern about a resident or a recommendation related to the problem or concern, as described in §88.302 (a)(2)(A)(ii) of this chapter; and

(B) a response to a request for information from a legislator or the media, as described in §88.302(a)(2)(B) of this chapter.

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

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705451

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 438-4356



## SUBCHAPTER F. REQUIREMENTS OF HHSC

### 26 TAC §88.501, §88.502

#### STATUTORY AUTHORITY

The 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 HHSC; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The new sections implement Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

§88.501. HHSC Responsibilities Regarding Individual Conflicts Of Interest.

(a) For purposes of determining if the State Ombudsman or a representative of the Office has an individual conflict of interest, the state of Texas is the ombudsman service area.

(b) HHSC requires an applicant for the position of State Ombudsman to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" to identify an individual conflict of interest of the applicant.

(c) HHSC requires the State Ombudsman to complete HHSC form "Individual Conflict of Interest Screening of a Representative of

the Office" on or about January 15th of each year and if the State Ombudsman identifies an individual conflict of interest.

(d) The Executive Commissioner or designee reviews a form completed by an applicant or the State Ombudsman as described in subsection (b) or (c) of this section to determine if an identified conflict of interest can be removed or remedied.

(e) Except as provided in subsection (f) of this section, HHSC does not employ the State Ombudsman or a representative of the Office who has an individual conflict of interest.

(f) HHSC may employ the State Ombudsman or a representative of the Office who has an individual conflict of interest described in §88.2(14)(K), (L), or (O) of this chapter (relating to Definitions) if:

(1) the Executive Commissioner or designee approves a remedy for the conflict of interest of the State Ombudsman; or

(2) the State Ombudsman approves a remedy for the conflict of interest of a representative of the Office.

(g) HHSC ensures that no person involved in selecting or terminating the State Ombudsman has an individual conflict of interest.

§88.502. HHSC Responsibilities Regarding Organizational Conflicts of Interest Between the Office and HHSC.

(a) HHSC takes reasonable steps to avoid organizational conflicts of interest between the Office and HHSC.

(b) HHSC requires the State Ombudsman to complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," to identify an organizational conflict of interest between the Office and HHSC and propose a remedy for an identified conflict of interest:

(1) no later than 30 days after the date the State Ombudsman assumes responsibilities;

(2) on or about January 15th of each year; and

(3) if the State Ombudsman identifies an organizational conflict of interest.

(c) The Executive Commissioner or designee reviews a form completed by the State Ombudsman as described in subsection (b) of this section and removes or remedies an identified conflict of interest.

(d) HHSC ensures that the State Ombudsman includes identified organizational conflicts of interest between the Office and HHSC and the steps taken to remove or remedy the conflicts in the annual report submitted to the federal Administration for Community Living through the National Ombudsman Reporting System.

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

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705452

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 438-4356



## TITLE 28. INSURANCE

# PART 1. TEXAS DEPARTMENT OF INSURANCE

## CHAPTER 21. TRADE PRACTICES SUBCHAPTER V. PHARMACY BENEFITS

The Texas Department of Insurance proposes to amend 28 TAC §21.3001 and §§21.3030 - 21.3033 and repeal §21.3034, concerning the transparency of certain information related to prescription drug coverage provided by certain individual health benefit plans. The amended sections implement House Bill 1227, 85th Legislature, Regular Session (2017).

EXPLANATION. Amending 28 TAC §21.3001 and §§21.3030 - 21.3033 is necessary to implement HB 1227. Section 21.3034 is proposed for repeal because it is no longer necessary. HB 1227 amended Insurance Code Chapter 1369 by specifying that the disclosure requirements imposed by the chapter apply only to the individual health insurance market. The rules - as originally amended, effective August 18, 2016, and published in the *Texas Register* (41 TexReg 6035) - required applicable health benefit plans to provide drug formulary information. HB 1227 clarified Insurance Code Chapter 1369 to specify that the requirements of §§1369.0542 - 1369.0544, redesignated by the bill as §§1369.078 - 1369.080, only apply to individual health benefit plans.

Section §21.3001. The proposal amends §21.3001 to reflect that Division 4 applies to health benefit plans under Insurance Code Chapter 1369 Subchapter B and clarifies that §§21.3031 - 21.3033 only apply to individual health benefit plans. The amendment is necessary to implement HB 1227.

Section §21.3030. The proposal amends §21.3030 to clarify that the requirements under §21.3032 and §21.3033 only apply to individual health benefit plans. The amendment is necessary to implement HB 1227 and Insurance Code §§1369.077 - 1369.079.

Section §21.3031. The proposal amends §21.3031 to clarify that the requirement that health benefit plans post formulary information on their website only applies to individual health benefit plans. The amendment also amends the title of the section to clarify that the section applies only to individual health benefit plans. The amendment is necessary to implement HB 1227 and Insurance Code §§1369.077 - 1369.079.

Section §21.3032. The proposal amends §21.3032 to clarify that the formulary disclosure requirements only apply to individual health benefit plans. The amendment also amends the title of the section to clarify that the section applies only to individual health benefit plans. The amendment is necessary to implement HB 1227 and Insurance Code §§1369.077 - 1369.079.

Section §21.3033. The proposal amends §21.3033 to clarify that the requirements intended to facilitate comparison shopping only apply to an individual health benefit plan. The amendment also amends the title of the section to clarify that the section applies only to individual health benefit plans. The amendment is necessary to implement HB 1227 and Insurance Code §§1369.077 - 1369.079.

Section §21.3034. Section 21.3034 is proposed for repeal. The staggered effective dates are no longer required and the section is now obsolete.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, manager, Accident and Health Program,

has determined that for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Bowden has determined that for each year of the first five years the proposed amendments are in effect, there are public benefits anticipated as a result of the administration and enforcement of the rule, and there will be no potential costs for persons required to comply with the proposal. TDI drafted the proposed rules to maximize public benefits consistent with the authorizing statutes while mitigating costs.

The anticipated public benefits are the implementation of rules necessary to comply with HB 1227, which amended the provisions added by HB 1624, 84th Legislature, Regular Session (2015). Insurance Code §§1369.078 - 1369.080 provide for transparency of formulary information for consumers so they can easily compare and shop among plans. Individual health benefit plan issuers will publish formulary information that is plan specific, discloses cost-sharing information, and contains a summary of formulary benefits.

Ms. Bowden expects that the proposed amendments will not increase the cost of compliance with Insurance Code Chapter 1369 because it does not impose requirements beyond those in the amended statute. HB 1227 limited the applicability of the newly designated subchapter. As a result, fewer entities and plans will face costs associated with compliance with 28 TAC Subchapter V Pharmacy Benefits.

### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses or rural communities. The amendments limit the applicability of the formulary disclosure requirements, and, therefore, fewer entities and plans will be required to comply with the provisions than before. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

### EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045

TDI has determined that the proposed amendments do not require another rule or rules to be amended or repealed in order to reduce the total costs imposed on regulated persons. The effect of the proposed amendments is not expected to increase the cost of compliance with Insurance Code Chapter 1369 because it does not impose requirements beyond those in the amended statute. In addition, this proposal will eliminate costs for some regulated persons previously required to comply with the rules. Additionally, even if the proposed amendments were to impose additional costs, Government Code §2001.0045 does not apply to the proposed amendments because the changes are necessary to implement HB 1227.

### GOVERNMENT GROWTH IMPACT STATEMENT

TDI had determined that each year of the first five years the proposed amendments are in effect, the rule will not create or eliminate a government program.

As a result of the proposed amendments, the rule will likely not require the creation of new employee positions or the elimination of existing employee positions.

The proposed amendments do not require an increase or decrease in future legislative appropriations to TDI.

The proposed amendments do not require an increase or decrease in fees paid to TDI. The proposed amendments do not create a new regulation.

The purpose of the proposed amendments is to conform existing rules to implement HB 1227, which narrowed the application of formulary information so that it applies only to individual health benefit plan issuers.

By implementing HB 1227, the proposed amendments limit an existing regulation. The most directly affected persons are health benefit plan issuers rather than individuals; and as a result of implementing HB 1227, fewer of those entities, and those entities' health plans, will be subject to the rule's applicability.

TDI has determined that each year of the first five years the proposed amendments are in effect, the rule will not positively or adversely affect this state's economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI seeks public comments on these amendments. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on February 5, 2018. TDI requires two copies of your comments. Send one copy to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov), or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov). Please simultaneously submit an additional copy of the comments by mail to Rachel Bowden, Life and Health Lines Office, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to [lhcomments@tdi.texas.gov](mailto:lhcomments@tdi.texas.gov). To request a public hearing on the proposal, send a separate request for hearing before the end of the comment period by email to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov), or by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

## DIVISION 1. GENERAL PROVISIONS

### 28 TAC §21.3001

**STATUTORY AUTHORITY.** TDI proposes amendments to TAC §21.3001 and §§21.3030 - 21.3033 under Insurance Code §§1369.078, 1369.079, and 36.001.

Insurance Code §1369.078 provides that a health benefit plan issuer shall display on a public Internet website maintained by the issuer formulary information for each of the issuer's individual health benefit plans as required by the commissioner by rule.

Insurance Code §1369.079 provides that the commissioner shall develop and adopt by rule requirements to promote consistency and clarity in the disclosure of formularies to facilitate comparison shopping among individual health benefit plans.

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

**CROSS-REFERENCE TO STATUTE.** Section 21.3001 and §§21.3030 - 21.3033 implement Insurance Code §§1369.078 - 1369.080, enacted by HB 1227, 85th Legislature, Regular Session (2017).

### §21.3001. *Applicability and Severability.*

(a) **Applicability.** This subchapter implements the provisions of Insurance Code Chapter 1369 as follows:

(1) Division 2 of this subchapter applies to a health benefit plan that is subject to Insurance Code Chapter 1369, Subchapter D, and relates to pharmacy identification cards.

(2) Division 3 of this subchapter applies to a health benefit plan that is subject to Insurance Code Chapter 1369, Subchapter A, and relates to coverage of off-label drugs.

(3) Division 4 of this subchapter applies to a health benefit plan that is subject to Insurance Code Chapter 1369, Subchapter B, and relates to the use of a drug formulary by a health benefit plan. Consistent with Insurance Code §1369.077, §§21.3031 - 21.3033 apply only to an individual health benefit plan.

(b) **Severability.** If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statute of this state, is unconstitutional, or for any other reason is invalid, the remaining provisions remain in full effect. If a court of competent jurisdiction holds that the application of any provision of this subchapter to particular persons, or in particular circumstances, is inconsistent with any statutes of this state, is unconstitutional, or for any other reason is invalid, the provision remains in full effect as to other persons or circumstances.

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 21, 2017.

TRD-201705363

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 676-6587



## DIVISION 4. PRESCRIPTION DRUG FORMULARY COVERAGE AND DISCLOSURE REQUIREMENTS

### 28 TAC §§21.3030 - 21.3033

**STATUTORY AUTHORITY.** TDI proposes amendments to TAC §21.3001 and §§21.3030 - 21.3033 under Insurance Code §§1369.078, 1369.079, and 36.001.

Insurance Code §1369.078 provides that a health benefit plan issuer shall display on a public Internet website maintained by the issuer formulary information for each of the issuer's individual health benefit plans as required by the commissioner by rule.

Insurance Code §1369.079 provides that the commissioner shall develop and adopt by rule requirements to promote consistency and clarity in the disclosure of formularies to facilitate comparison shopping among individual health benefit plans.

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

CROSS-REFERENCE TO STATUTE. Section 21.3001 and §§21.3030 - 21.3033 implement Insurance Code §§1369.078 - 1369.080, enacted by HB 1227, 85th Legislature, Regular Session (2017).

*§21.3030. Availability of Formulary Information.*

(a) An issuer of a health benefit plan, or its delegated entity, that covers prescription drugs and uses one or more drug formularies must provide, in plain language, the disclosures required by Insurance Code §1369.054. The plain language disclosure must be in the coverage documentation provided to each enrollee and include the address and telephone number where the enrollee may contact the issuer of the health benefit plan, or its delegated entity, to determine if a specific prescription drug is on the formulary.

(b) An issuer of an individual [a] health benefit plan must allow a current or prospective enrollee to obtain a paper copy of the formulary information required under §21.3032 and §21.3033 of this title (relating to Formulary Disclosure Requirements for Individual Health Benefit Plans and Facilitating Comparison Shopping for Individual Health Benefit Plans) by calling the toll-free number listed on the summary health plan document.

(c) An issuer may elect to exclude the plan-level cost-sharing information required under §21.3031(c) of this title (relating to Formulary Information for Individual Health Benefit Plans on Issuer's Website) from the paper format if the document provides a toll-free number through which a current or prospective enrollee may obtain formulary information contained in §21.3032 and §21.3033, including the plan-specific cost-sharing information required under §21.3032(c), for any formulary drug.

(d) The paper copy of the formulary information must use at least 10-point font.

*§21.3031. Formulary Information for Individual Health Benefit Plans on Issuer's Website.*

(a) Except as permitted under subsection (c) of this section, an issuer of an individual [a] health benefit plan must display the formulary information required under §21.3032 and §21.3033 of this title (relating to Formulary Disclosure Requirements for Individual Health Benefit Plans and Facilitating Comparison Shopping for Individual Health Benefit Plans) on a website that is publicly accessible to enrollees, prospective enrollees, and others without requiring the use of paid software, a password, user name, or personally identifiable information. The formulary information must:

- (1) be electronically searchable by drug name; and
- (2) use at least 10-point font.

(b) Each summary health plan document must include a direct electronic link to the website that contains the formulary information. The direct electronic link must deliver the user directly to the formulary information associated with the health benefit plan described by the health plan document, without requiring additional navigation or user input.

(c) As an alternative to displaying the information required under §21.3032(c) of this title, alongside the formulary information re-

quired generally under subsection (a) of this section, an individual [a] health benefit plan issuer may elect to make plan-specific cost-sharing information available through a web-based tool. A direct electronic link to the web-based tool must be included on each page of the formulary disclosure that lists each drug. The purpose of this alternative method is to encourage the provision of the most timely and accurate drug price information. In order to qualify for this alternative method, a web-based tool must:

(1) be publicly accessible to enrollees, prospective enrollees, and others without requiring the use of paid software or the necessity of a password, user name, or personally identifiable information;

(2) allow consumers to electronically search formulary information by the name under which the health benefit plan is marketed;

(3) include the following plan-specific cost-sharing information for each drug:

(A) whether the drug is subject to a pharmacy or medical deductible and where the deductible may be found;

(B) the full price of the drug, based on the plan's median allowed amount or the actual cost for the drug using the most up-to-date data available, and a statement as to whether the price is based on the median or the actual cost;

(C) the cost-sharing amount the enrollee will owe for each drug under the pharmacy or medical benefit in a retail, mail order, or physician- or practitioner-administered setting, if applicable, excluding any deductible requirement, including as applicable:

(i) the dollar amount of a copayment; and

(ii) for a drug subject to coinsurance, the dollar amount of cost sharing the enrollee will owe, calculated based on the full price of the drug and the cost-sharing parameters under the enrollee's health benefit plan for the tier under which the drug is assigned; and

(4) include, prominently displayed on the web page under the header "Formulary by Health Benefit Plan," a direct electronic link to a chart that displays [displaying] each formulary that applies to each individual health benefit plan issued by the issuer and includes a direct electronic link to the Summary of Benefits and Coverage and formulary document for each health plan listed. This chart may be limited to health benefit plans being sold in the market in which the applicable health benefit plan is issued.

*§21.3032. Formulary Disclosure Requirements for Individual Health Benefit Plans.*

(a) The formulary information required under this section must include each individual prescription drug covered under the plan that is dispensed in a network pharmacy or administered by a physician or health care provider and clearly differentiate between drugs covered under the plan's pharmacy benefits and medical benefits. Information pertaining to drugs covered under the plan's medical benefits may be provided as an addendum or link to the formulary and must include each parameter that is applicable.

(b) The formulary information must include the following coverage information for each drug:

(1) an explanation of coverage under the health benefit plan;

(2) an indication of whether the drug is preferred, if applicable, under the plan;

(3) a disclosure of any prior authorization, step therapy, or other protocol requirement; and

(4) the specific tier the drug falls under, if the plan uses a multitier formulary.

(c) The formulary information must include the following plan-specific cost-sharing information for each drug:

(1) whether the drug is subject to a pharmacy or medical deductible and where the deductible may be found;

(2) the cost-sharing amount for each drug under the pharmacy or medical benefit, in a retail, mail order, or physician- or practitioner-administered setting, if applicable, excluding any deductible requirement, including, as applicable:

(A) the dollar amount of a copayment; and

(B) for a drug subject to coinsurance:

(i) an enrollee's cost-sharing amount stated in dollars; or

(ii) a cost-sharing range denoted as follows:

(I) under \$100 - \$;

(II) \$100 - \$250 - \$\$;

(III) \$251 - \$500 - \$\$\$;

(IV) \$501 - \$1,000 - \$\$\$\$; or

(V) over \$1,000 - \$\$\$\$\$.

(d) Cost-sharing amounts must reflect the cost to the consumer, rounded to the next highest dollar amount, for a month-long supply unless otherwise noted. Cost-sharing information reflecting the cost for a different duration supply should indicate the applicable duration. The cost-sharing amount for a given drug must be calculated based on the plan's median allowed amount or the actual cost for the drug, using the most up-to-date data available and the cost-sharing parameters under the enrollee's health benefit plan for the tier under which the drug is assigned. The information must include whether the cost-sharing amount is based on the median or the actual cost.

(e) Any formulary information presented using abbreviations must provide a legend on each page explaining the meaning of each abbreviation used, including the dollar amounts that correspond to the cost-sharing range.

§21.3033. Facilitating Comparison Shopping for Individual Health Benefit Plans.

(a) The formulary information required by §21.3032 of this title (relating to Formulary Disclosure Requirements for Individual Health Benefit Plans) must include a summary titled "Summary of Formulary Benefits" that includes this statement: "The information in this document is designed to help you understand the prescription drug benefits offered under this plan and to compare these benefits to those offered by other plans. Information contained in this summary is designed to help you compare both the value and scope of formulary benefits." The summary must also include, in the following order:

(1) Under the header, "How to Find Information on the Cost of Prescription Drugs," a description of how a consumer may use the plan's summary health plan document, formulary information, and web-based tool, if applicable, to determine the cost sharing they may owe, and an explanation that cost-sharing information reflects a consumer's share of the cost excluding any deductible requirement, calculated using an estimate of the full price of the drug, which is based on the plan's median or the actual cost allowed amount at a given point in time.

(2) Under the header, "Formulary by Health Benefit Plan," a chart that displays each formulary that applies to each individual health benefit plan issued by the issuer and includes a direct electronic link to the Summary of Benefits and Coverage for each individual health plan listed. This chart may be limited to individual health benefit plans being sold in the market in which the applicable health benefit plan is issued.

(3) Under the header, "Drugs by Cost-Sharing Tier," if the drug formulary is a multitier formulary, a summary that displays the percent of drugs in each cost-sharing tier for all drugs in the formulary.

(4) Under the header, "How Prescription Drugs are Covered under the Plan":

(A) under a section titled, "Formulary Composition," an explanation of the method the issuer uses to determine the prescription drugs to be included in or excluded from the formulary, an explanation of whether the formulary is open or closed, and a statement of how often the issuer reviews the contents of the formulary.

(B) Under a section titled, "Right to Appeal," an explanation that if a drug is not covered under the formulary, but the enrollee's physician has determined that the drug is medically necessary, the consumer has the right to appeal, consistent with §21.3023 of this title (relating to Nonformulary Prescription Drugs; Adverse Determination) and Insurance Code §1369.056. A statement of how cost sharing will be determined for drugs covered as a result of a successful appeal.

(C) Under a section titled, "Continuation of Coverage," an explanation of a consumer's right to continued coverage for a prescription drug at the coverage level or tier at which the drug was covered at the beginning of the plan year, until the enrollee's plan renewal date, consistent with §21.3022 of this title (relating to Continuation of Benefits) and Insurance Code §1369.055 and §1369.0541.

(D) Under a section titled, "Off-Label Drug Use," an explanation of how formulary drugs are covered under the plan, including an explanation of coverage for off-label drug use.

(E) Under a section titled, "Cost Sharing," an explanation of how cost sharing is determined under the plan, including whether a deductible applies to prescription drug coverage; how cost sharing for prescription drugs counts towards the plan's deductible; how drugs are categorized into each of the formulary tiers or cost-sharing levels, whether the drug formulary is a multitier formulary; the difference between preferred and nonpreferred drugs, if applicable; the difference in coverage for drugs dispensed from in-network and out-of-network pharmacies; and the difference in coverage for drugs dispensed in a retail pharmacy and a mail-order pharmacy, if applicable.

(F) Under a section titled, "Medical Management Requirements," an explanation of each type of medical management requirement used by the individual health benefit plan, including prior authorization, step therapy, or other protocol requirements that limit access to prescription drugs, as applicable.

(b) Formulary information must include the summary information required under subsection (a) of this section beginning on the first page of the formulary document under the title, "Summary of Formulary Benefits."

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

Filed with the Office of the Secretary of State on December 21, 2017.



TRD-201705400  
Norma Garcia  
General Counsel  
Texas Department of Insurance  
Earliest possible date of adoption: February 11, 2018  
For further information, please call: (512) 676-6587



## 28 TAC §21.3034

STATUTORY AUTHORITY. TDI proposes the repeal of TAC §21.3034 under Insurance Code §§1369.078, 1369.079, and 36.001.

Insurance Code §1369.078 provides that a health benefit plan issuer shall display on a public Internet website maintained by the issuer formulary information for each of the issuer's individual health benefit plans as required by the commissioner by rule.

Insurance Code §1369.079 provides that the commissioner shall develop and adopt by rule requirements to promote consistency and clarity in the disclosure of formularies to facilitate comparison shopping among individual health benefit plans.

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

CROSS-REFERENCE TO STATUTE. Section 21.3034 is no longer necessary to implement Insurance Code §§1369.078 - 1369.080, enacted by HB 1227, 85th Legislature, Regular Session (2017).

§21.3034. *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 21, 2017.

TRD-201705364  
Norma Garcia  
General Counsel  
Texas Department of Insurance  
Earliest possible date of adoption: February 11, 2018  
For further information, please call: (512) 676-6587



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

### 34 TAC §9.1052

The Comptroller of Public Accounts proposes amendments to §9.1052, concerning forms.

The amendments to §9.1052 are to propose changes to subsection (a) to reflect new versions of Form 50-773A, Biennial Progress Report for Texas Economic Development Act and Form 50-827, Biennial School District Cost Data Request, and to add new subsection (d) to allow the Comptroller to periodically update certain marked areas of the adopted forms. Subsection (a) is amended to adopt new versions of Form 50-773A and Form 50-827. The form adopted by reference in paragraph (3) is being changed to apply only to projects that are subject to the Tax Code, Chapter 313 requirements that were effective prior to January 1, 2014 (three-digit projects). The form adopted by reference in paragraph (4) is being added to apply only to projects that are subject to the Tax Code, Chapter 313 requirements that were effective after January 1, 2014 (four-digit projects). Former paragraph (4) is renumbered as paragraph (5). Former paragraph (5), adopting by reference Form 50-827, is renumbered as paragraph (7) and changed to apply only to three-digit projects. The form adopted by reference in paragraph (8) is being added to apply only to four-digit projects. These forms are also changed to replace the paper filing requirements with an electronic filing requirement. The forms are also changed to reduce duplicative filings for projects with multiple agreement holders by permitting agreement holders in the same combined group to select a single agreement holder to report on behalf of the entire combined group.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by improving the administration of local property valuation and taxation. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the amendments may be submitted to John Villarreal, Manager, Data Analysis and Transparency Division, Comptroller of Public Accounts, at John.Villarreal@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §313.031, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments implement Tax Code, Chapter 313.

§9.1052. *Forms.*

- (a) The comptroller adopts by reference the following forms:

(1) Application for Appraised Value Limitation on Qualified Property (Form 50-296A);

(2) Annual Eligibility Report (Form 50-772A);

(3) Biennial Progress Report for Texas Economic Development Act; Three-Digit Tax Code, Chapter 313 Projects (Three-Digit Form 50-773A);

(4) Biennial Progress Report for Texas Economic Development Act; Four-Digit Tax Code, Chapter 313 Projects (Four-Digit Form 50-773B);

(5) [(4)] Job Creation Compliance Report (Form 50-825);

[(5) Biennial School District Cost Data Request (CDR) (Form 50-827); and]

(6) Texas Economic Development Act Agreement (Form 50-826);[-]

(7) Three-Digit Biennial School District Cost Data Request (CDR) (Three-Digit Form 50-827A); and

(8) Four-Digit Biennial School District Cost Data Request (CDR) (Four-Digit Form 50-827B).

(b) Copies of the forms are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's website, at <https://www.comptroller.texas.gov/economy/local/ch313/forms.php>. Copies may also be requested by calling our toll-free number, (800) 531-5441, extension 34679.

(c) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application or agreement form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

(d) The comptroller may periodically update the dates, form version numbers, and/or years in the appropriate marked sections of the forms 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 21, 2017.

TRD-201705365

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 475-2220



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 2. CAPITOL ACCESS PASS

##### 37 TAC §2.3. §2.9

The Texas Department of Public Safety (the department) proposes amendments to §2.3 and §2.9, concerning Capitol Access Pass. These amendments are proposed as a result of Senate Bill 16, 85th Legislative Session. SB 16 amends the License to Carry a Handgun statute, Government Code Chapter 411, Subchapter H, to reduce the fees for original and renewal licenses to carry handguns to \$40.00. Government Code §411.0625 requires the department establish application and renewal fees for the Capitol Access Pass that do not exceed the amounts of similar fees required for the license to carry a handgun. The rule proposals therefore reduce the application and renewal fees for the Capitol Access Pass from \$100.00 to \$40.00.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be reduced fees associated with the Capitol access pass, consistent with new legislation.

The department has determined 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.

Pursuant to Texas Government Code, §2001.0221, the department has prepared a Government Growth Impact Statement and determined for each year of the first five-year period the rule is in effect, the proposed rule will not have any impact as described by Texas Government Code, §2001.022. This proposal reduces a fee as required by Senate Bill 16, 85th Legislative Session.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.dps.texas.gov/rsd/contact/default.aspx>. Select "Capitol Access Pass". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed 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 §411.0625, which authorizes the department to adopt rules to administer this section.

Texas Government Code, §411.004(3) and §411.0625, are affected by this proposal.

§2.3. *Application Procedure, Required Materials and Fee.*

(a) Applications must include the materials described in Government Code, §411.174, and §6.12 of this title (relating to Application Procedure and Required Materials), with the exceptions that:

- (1) the application fee is \$40 [~~\$100~~];
- (2) evidence of handgun proficiency is not required;
- (3) the provisions regarding non-residents are not applicable; and
- (4) application materials may only be submitted electronically through the department's approved vendor or as otherwise determined by the department.

(b) Applicants must provide proof of residency in the form of valid Texas driver license or Texas identification card. The address on file for the driver license or identification card must be current, or the application will be considered deficient under §2.7(b) of this title (relating to Application Review and Background Investigation).

(c) The application fee is nonrefundable.

§2.9. *Renewal.*

The Capitol access pass may be renewed at any time during the six months prior to expiration by submitting the required fee of \$40 [~~\$100~~].

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, 2017.

TRD-201705376

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: February 11, 2018

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



## CHAPTER 23. VEHICLE INSPECTION

### SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

#### 37 TAC §23.63

The Texas Department of Public Safety (the department) proposes new §23.63, concerning Informal Hearings. This new rule provides for an optional, informal hearing with department staff, supplementing the existing due process available to applicants and license holders against whom the department is proposing administrative disciplinary action. This optional hearing will provide an opportunity for the parties to clarify the basis for the department's proposed action prior to the hearing before the State Office of Administrative Hearings (SOAH), and potentially assist with the determination of whether to proceed with the SOAH hearing.

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

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities 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. Whittenton 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 the rule will be greater efficiency in the provision of due process for applicants and licensees, potentially reducing costs associated with hearings before SOAH.

The department has determined 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.

Pursuant to Texas Government Code, §2001.0221, the department has prepared a Government Growth Impact Statement and determined for each year of the first five-year period the rule is in effect, the proposed rule will not have any impact as described by Texas Government Code, §2001.022. This proposal simply provides for an optional hearing to assist the parties with the resolution of administrative penalty cases. There are no fees or required expenditures associated with the application of this rule.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.dps.texas.gov/rsd/contact/default.aspx>. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed 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.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 and §548.407 are affected by this proposal.

§23.63. *Informal Hearings.*

(a) A person who receives notice of the department's intention to deny an application for an inspector certificate, or to suspend or revoke an inspector certificate and seeks an administrative hearing as provided in Texas Transportation Code, §548.407(f) may choose to have an informal, preliminary hearing prior to proceeding to the administrative hearing before the State Office of Administrative Hearings (SOAH). The preliminary hearing will be conducted by telephone, by department personnel, prior to the scheduling of the SOAH hearing.

(b) Following the informal hearing, the hearing officer will issue a written statement of findings to the person at the address on file. Unless the findings result in the dismissal of the matter and rescission of the proposed action, or the applicant or certificate holder accepts the findings and chooses to withdraw the appeal, the department will schedule the administrative hearing before SOAH.

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, 2017.

TRD-201705377

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

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

#### **CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION**

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously held by DADS that have transferred to HHSC. Texas Government Code, §531.0055, requires the executive commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the executive commissioner of HHSC proposes amendments to §19.101, concerning Definitions; §19.403, concerning Notice of Rights and Services; §19.413, concerning Access and Visitation Rights; §19.502, concerning Transfer and Discharge in Medicaid-certified Facilities; §19.1001, concerning Nursing Services; §19.1923, concerning Incident or Accident Reporting; §19.2002, concerning Procedural Requirements—Licensure Inspections and Surveys; §19.2112, concerning Administrative Penalties; §19.2114, concerning Right To Correct; §19.2119, concerning Open Hearing; §19.2310, concerning Nursing Facility Ceases to Participate; and §19.2708, concerning Educational and Informational Activities for Residents, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

#### **BACKGROUND AND PURPOSE**

HHSC proposes amendments to 40 TAC, Chapter 19, governing Nursing Facility Requirements for Licensure and Medicaid

Certification, to make HHSC rules consistent with federal rules governing the Office of the State Long-Term Care Ombudsman (the Office) by requiring nursing facilities (NFs) and assisted living facilities (ALFs) to allow the Office access to the facilities. The amendments will also allow HHSC to impose administrative penalties if a facility does not grant access in accordance with the rules.

#### **SECTION-BY-SECTION SUMMARY**

Proposed §19.101 adds new definitions for "Certified ombudsman," "Managing local ombudsman," "Ombudsman intern," "Ombudsman Program," "Private and unimpeded access," "State Ombudsman," and "Willfully interfere." Proposed §19.101 also revises the definitions of "Dentist", "Dietitian" and "Physician Assistant (PA)" with editorial changes to provide more clarity to the use of the terms. Proposed §19.101 deletes the definition for "Ombudsman."

Proposed §19.403 updates terms related to the Ombudsman Program.

Proposed §19.413(a) updates terms related to the Ombudsman Program and terms related to the protection and advocacy system established under 42 USC Chapter 114, Subchapter I. Proposed §19.413(c) outlines the nursing facility requirements to allow access to a facility and a resident by the State Ombudsman, certified ombudsman and an ombudsman intern during regular visiting hours and for the State Ombudsman and a certified ombudsman at a time other than regular business hours to complete an investigation. Proposed §19.413(d) sets forth the conditions that must be met to allow the State Ombudsman or a certified ombudsman access to all files, records and other information concerning an incident, as well as the administrative records, policies and documents available to the residents and general public. Proposed §19.413(e) adds requirements related to the release of HIPPA information to the State Ombudsman or a certified ombudsman.

Proposed §§19.502, 19.1001, 19.1923, 19.2002, 19.2119, 19.2310 and 19.2708 make minor editorial and organizational changes for clarity and consistency, such as updating DHS to HHSC and terms related to the Ombudsman Program.

Proposed §19.2112(a)(4)-(5) adds that HHSC may assess an administrative penalty against a person who retaliates against a representative of HHSC completing the work required to enforce this chapter or preserving evidence of a violation of a rule, standard, or order adopted or license issued under Chapter 242, Texas Health and Safety Code. Proposed §19.2112(a)(8)-(9) adds that HHSC may assess an administrative penalty against a person who willfully interferes with or retaliates against a the State Ombudsman, certified ombudsman or an ombudsman intern performing the functions of the Ombudsman Program as described in Title 26, Part 1, Chapter 88, State Long-Term Care Ombudsman Program.

Proposed §19.2114(d)(4) states that a nursing facility does not have the right to correct a violation listed in §19.2112(a)(8) or (9). Proposed §19.2114 also makes minor editorial and organizational changes for clarity and consistency.

#### **FISCAL NOTE**

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities, because the rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

## ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the proposed rules.

There is no anticipated negative impact on local employment.

## COSTS TO REGULATED PERSONS

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

## PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Associate Commissioner for HHSC Long-Term Care Regulatory, 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 removal of duplicative rules from the HHSC rule base.

## TAKINGS IMPACT ASSESSMENT

HHSC 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 Josie Esparza at (512) 438-4077 in HHSC Long-Term Care Regulatory Services Division. Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street

address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to [HHRulesCoordinationOffice@hhsc.state.tx.us](mailto:HHRulesCoordinationOffice@hhsc.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 HHSC before 5:00 p.m. on the last working day of the comment period; or (3) emailed by midnight on the last day of the comment period. Please indicate "Comments on Proposed Rule 16R12."

## SUBCHAPTER B. DEFINITIONS

### 40 TAC §19.101

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

#### §19.101. Definitions.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code §21.08 (indecent exposure) or Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Advanced practice registered nurse--A person licensed by the Texas Board of Nursing as an advanced practice registered nurse.

(9) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(10) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(11) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(12) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(13) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(14) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(15) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(16) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(17) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(18) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(19) Certified Ombudsman--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(20) [(19)] Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(21) [(20)] CFR--Code of Federal Regulations.

(22) [(21)] CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(23) [(22)] Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(24) [(23)] Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(25) [(24)] Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(26) [(25)] Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least

the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(27) [(26)] Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(28) [(27)] Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(29) [(28)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(30) [(29)] DADS--The Department of Aging and Disability Services or the Health and Human Services Commission, as its successor agency.

(31) [(30)] Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(32) [(31)] Dentist--A practitioner licensed to practice dentistry by the Texas State Board of Dental Examiners.

(33) [(32)] Department--The Department of Aging and Disability Services or the Health and Human Services Commission, as its successor agency.

(34) [(33)] DHS--This term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(35) [(34)] Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, as a dietitian under Texas Occupations Code, Chapter 701 and [by the Texas State Board of Examiners of Dietitians. These individuals must have] one year of supervisory experience in dietetic service of a health care facility.

(36) [(35)] Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

- (A) assessment of the resident's health care status;
- (B) planning for the resident's care;
- (C) assignment of duties to achieve the resident's care;
- (D) nursing intervention; and
- (E) evaluation and change of approaches as necessary.

(37) [(36)] Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(38) [(37)] Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(39) [(38)] Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(40) [(39)] Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(41) [(40)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(42) [(41)] Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(43) [(42)] Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(44) [(43)] Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(45) [(44)] Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood and all body fluids when it is difficult or impossible to differentiate between body fluids.

(46) [(45)] Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(47) [(46)] Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(48) [(47)] Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(49) [(48)] Fiduciary agent--An individual who holds in trust another's monies.

(50) [(49)] Free choice--Unrestricted right to choose a qualified provider of services.

(51) [(50)] Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(52) [(51)] Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(53) [(52)] HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(54) [(53)] Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(55) [(54)] Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

(56) [(55)] HIV--Human Immunodeficiency Virus.

(57) [(56)] Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(58) [(57)] Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(59) [(58)] Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(60) [(59)] Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(61) [(60)] Interdisciplinary care plan--See the definition of "comprehensive care plan."

(62) [(61)] Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not exceed to 24 hours, until professional staff can develop a plan of care to meet the resident's needs.

(63) [(62)] IV--Intravenous.

(64) [(63)] Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(65) [(64)] License holder--A person that holds a license to operate a facility.

(66) [(65)] Licensed health professional--A physician; physician assistant; advanced practice registered nurse; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(67) [(66)] Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(68) [(67)] Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(69) [(68)] Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(70) [(69)] Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior fin-

ishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(71) [(70)] Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(72) [(71)] Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(73) [(72)] Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(74) [(73)] Long-term care-regulatory--DADS Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(75) [(74)] Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

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

(77) Managing local ombudsman--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(78) [(76)] MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(79) [(77)] MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(80) [(78)] Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(81) [(79)] Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(82) [(80)] Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(83) [(81)] Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(84) [(82)] Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(85) [(83)] Medical-social care plan--See Interdisciplinary Care Plan.

(86) [(84)] Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(87) [(85)] Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Pro-



gram Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(88) [(86)] Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(89) [(87)] MN--Medical necessity. A determination, made by physicians and registered nurses who are employed by or contract with the state Medicaid claims administrator, that a recipient requires the services of a licensed nurse in an institutional setting to carry out a physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute medical necessity.

(90) [(88)] Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(91) [(89)] NHIC--This term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(92) [(90)] Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(93) [(91)] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(94) [(92)] Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(95) [(93)] Nurse practitioner--An advanced practice registered nurse.

(96) [(94)] Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(97) [(95)] Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(98) [(96)] Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(99) [(97)] Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(100) [(98)] Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(101) [(99)] Objectives--See definition of "goals."

(102) [(100)] OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

[(101) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.]

(103) Ombudsman intern--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(104) Ombudsman Program--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(105) [(102)] Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(106) [(103)] Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(107) [(104)] PASARR or PASRR--Preadmission Screening and Resident Review.

(108) [(105)] Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(109) [(106)] Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(110) [(107)] Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(111) [(108)] Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a practitioner.

(112) [(109)] Physical restraint--See Restraints (physical).

(113) [(110)] Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(114) [(111)] Physician assistant (PA)--An individual who is licensed as a physician assistant under Texas Occupations Code, Chapter 204.

[(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;]

[(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant

is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:}]

~~[(i)]~~ is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or}]

~~[(ii)]~~ has satisfactorily completed a program for preparing physician assistants that:}]

~~[(i)]~~ was at least one academic year in length;}]

~~[(ii)]~~ consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and}]

~~[(iii)]~~ was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or}]

[(C)] A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.}]

(115) [(412)] Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(116) [(413)] Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a practitioner, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(117) [(414)] Practitioner--A physician, podiatrist, dentist, or an advanced practice registered nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(118) Private and unimpeded access--Access to enter a facility, or communicate with a resident outside of the hearing or view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(119) [(415)] PRN (pro re nata)--As needed.

(120) [(416)] Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(121) [(417)] Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(122) [(418)] Qualified mental health professional - community services--Has the meaning given in 25 TAC §412.303 (relating to Definitions).

(123) [(419)] Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(124) [(420)] Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(125) [(421)] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and expe-

rienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS Regulatory Services Division.

(126) [(422)] Quality measure report--A report that provides information derived from an MDS that provides a numeric value to quality indicators. This data is available to the public as part of the Nursing Home Quality Initiative (NHQI), and is intended to provide objective measures for consumers to make informed decisions about the quality of care in a nursing facility.

(127) [(423)] Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(128) [(424)] Rehabilitative services--Rehabilitative therapies and devices provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition. The term includes physical and occupational therapy, speech-language pathology, and psychiatric rehabilitation services.

(129) [(425)] Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(130) [(426)] Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(131) [(427)] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(132) [(428)] Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(133) [(429)] Resident--Any individual residing in a nursing facility.

(134) [(430)] Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(135) [(431)] Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(136) [(432)] Restraint hold--

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

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

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

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

(137) [(433)] Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(138) [(434)] Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(139) [(435)] RN--Registered nurse. An individual currently licensed by the Texas Board of Nursing as a registered nurse.

(140) [(436)] RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(141) [(437)] RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(142) [(438)] Secretary--Secretary of the U.S. Department of Health and Human Services.

(143) [(439)] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(144) [(440)] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(145) [(441)] Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(146) [(442)] Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(147) [(443)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(148) [(444)] State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(149) State Ombudsman--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(150) [(445)] State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees

to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(151) [(446)] State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(152) [(447)] Stay agreement--An agreement between a license holder and the executive commissioner that sets forth all requirements necessary to lift a stay and rescind a license revocation proposed under §19.2107 of this chapter (relating to Revocation of a License by the Executive Commissioner).

(153) [(448)] Substandard quality of care violation--One or more violations of §19.601 of this chapter (relating to Resident Behavior and Facility Practices), §19.701 of this chapter (relating to Quality of Life), or §19.901 of this chapter (relating to Quality of Care) that constitute:

(A) an immediate threat to resident health or safety;

(B) a pattern of or actual harm that is not an immediate threat; or

(C) a widespread potential for more than minimal harm, but less than an immediate threat, with no actual harm.

(154) [(449)] Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of an advanced practice registered nurse providing services in a nursing facility.

(155) [(450)] Supervision--General supervision, unless otherwise identified.

(156) [(451)] Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(157) [(452)] Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(158) [(453)] Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the qualified person providing the supervision.

(159) [(454)] *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.

(160) [(455)] Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(161) [(156)] Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(162) [(157)] Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(163) [(158)] Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(164) [(159)] Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(165) [(160)] Title XVIII--Medicare provisions of the Social Security Act.

(166) [(161)] Title XIX--Medicaid provisions of the Social Security Act.

(167) [(162)] Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(168) [(163)] UAR--HHSC's Utilization and Assessment Review Section.

(169) [(164)] Uniform data set--See RAI (Resident Assessment Instrument).

(170) [(165)] Universal precautions--The use of barrier and other precautions to prevent the spread of blood-borne diseases.

(171) [(166)] Unreasonable confinement--Involuntary seclusion.

(172) [(167)] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(173) [(168)] Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(174) [(169)] Widespread--When the problem causing a violation is pervasive in a facility or represents systemic failure that affected or has the potential to affect a large portion or all of a facility's residents.

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

(176) [(170)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

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## SUBCHAPTER E. RESIDENT RIGHTS

### 40 TAC §19.403, §19.413

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendments implement Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

§19.403. *Notice of Rights and Services.*

(a) The facility must inform the resident, the resident's next of kin or guardian, both orally and in writing, in a language that the resident understands, of the resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. This notification must be made prior to or upon admission and during the resident's stay if changed.

(b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

(1) facility admission policies;

(2) a description of the protection of personal funds as described in §19.404 of this subchapter (relating to Protection of Resident Funds);

(3) the Human Resources Code, Title 6, Chapter 102; or a written list of the rights and responsibilities contained in the Human Resources Code, Title 6, Chapter 102;

(4) a written description of the services available through the ~~[DADS Office of the State Long Term Care]~~ Ombudsman Program. This information must be made available to each facility by the ombudsman program. Facilities are responsible for reproducing this information and making it available to residents, their families, and legal representatives;

(5) a written statement to the resident, the resident's next of kin, or guardian describing the facility's policy for:

(A) the drug testing of employees who have direct contact with residents; and

(B) the criminal history checks of employees and applicants for employment; and

(6) HHSC [DADS'] rules and the facility's policies related to the use of restraint and involuntary seclusion. This information must also be given to the resident's legally authorized representative, if the resident has one.

(c) - (i) (No change.)

(j) The facility must provide a written description of a resident's legal rights, which includes:

(1) a description of the manner of protecting personal funds, described in §19.404 of this subchapter;

(2) a posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as HHSC [DADS], the Ombudsman Program [state ombudsman program], the protection and advocacy network, and, in Medicaid-certified facilities, the Medicaid fraud control unit; and

(3) a statement that the resident may file a complaint with HHSC [DADS] concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(k) - (m) (No change.)

§19.413. *Access and Visitation Rights.*

(a) A resident has the right to have access to, and the facility must provide immediate access to a resident to, the following:

(1) in Medicaid-certified facilities, a representative of the Secretary of Health and Human Services;

(2) a representative of the State of Texas;

(3) the resident's individual physician;

(4) [a representative of the Office of] the State [Long Term Care] Ombudsman [(the Office), as described in §85.401(r) of this title (relating to Long-Term Care Ombudsman Program)];

(5) a certified ombudsman;

(6) [(5)] a representative of [Advocacy, Incorporated, which is responsible for] the protection and advocacy system for individuals with intellectual or developmental disabilities [developmentally disabled individuals] established under the Developmental Disabilities Assistance and Bill of Rights Act, 42 USC Chapter 144, Subchapter I, Part [part] C;

(7) [(6)] a representative of [Advocacy, Incorporated, which is responsible for] the protection and advocacy system for individuals with mental illness [mentally ill individuals] established under the Protection and Advocacy for Mentally Ill Individuals Act, 42 USC Chapter 114, Subchapter I;

(8) [(7)] subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(9) [(8)] subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(b) A facility must provide reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) In accordance with the Older Americans Act, §712(b)(1)(A) and 45 CFR §1324.11(e)(2), a facility must allow:

(1) the State Ombudsman, a certified ombudsman, and an ombudsman intern to have:

(A) immediate, private, and unimpeded access to enter the facility at any time during the facility's regular business hours or regular visiting hours;

(B) immediate, private, and unimpeded access to a resident; and

(C) immediate and unimpeded access to the name and contact information of a responsible party if the State Ombudsman, a certified ombudsman, or an ombudsman intern determines the information is needed to perform a function of the Ombudsman Program; and

(2) the State Ombudsman and a certified ombudsman to have immediate, private, and unimpeded access to enter the facility at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated.

(d) A facility, in accordance with the Older American Act, §712(b)(1)(B) and 45 CFR §1324.11(e)(2), must allow the State Ombudsman and a certified ombudsman immediate access to:

(1) all files, records, and other information concerning a resident, including an incident report involving the resident, if:

(A) the State Ombudsman or certified ombudsman has the consent of the resident or legally authorized representative;

(B) the resident is unable to communicate consent to access and has no legally authorized representative; or

(C) such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access to the records, files and other information;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interest of the resident; and

(iii) if it is a certified ombudsman seeking access to the records, files, or other information, the certified ombudsman obtains the approval of the State Ombudsman to access the records, files, or other information without the legally authorized representative's consent; and

(2) the administrative records, policies, and documents of the facility to which the residents or general public have access.

(e) The rules adopted under the Health Insurance Portability and Accountability Act of 1996, 45 CFR Part 164, Subparts A and E, do not preclude a facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (c)(1)(C) and (d)(1)(A), (B), or (C) of this section are met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

[(e) A facility must allow a certified ombudsman, as defined in §85.2 of this title (relating to Definitions), and a staff person of the Office access:]

[(1) to the medical and social records of a resident, including an incident report involving the resident, if the certified ombudsman or staff person of the Office has the consent of the resident or the legally authorized representative of the resident;]

[(2) to the medical and social records of a resident 60 years of age or older, including an incident report involving the resident, in accordance with the Older Americans Act, §712(b); and]

[(3) to the administrative records, policies, and documents of the facility to which the facility residents or general public have access.]

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4356

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## SUBCHAPTER F. ADMISSION, TRANSFER, AND DISCHARGE RIGHTS IN MEDICAID-CERTIFIED FACILITIES

### 40 TAC §19.502

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

*§19.502. Transfer and Discharge in Medicaid-certified Facilities.*

(a) - (c) (No change.)

(d) Notice before transfer or discharge. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and, if known, a responsible party or family or legal representative of the resident about the transfer or discharge and the reasons for the move in writing and in a language the resident understands;

(2) record the reasons in the resident's clinical record;

(3) include in the notice the items described in subsection (f) of this section; and

(4) comply with §19.2310 of this chapter (relating to Nursing Facility Ceases to Participate) when the facility voluntarily withdraws from Medicaid or Medicare or is terminated from Medicaid or Medicare participation by HHSC [DADS] or the secretary.

(e) Timing of the notice.

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

(4) When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section, is contemplated, unless the discharge is to a hospital, the facility must:

(A) immediately call the staff of the state office Consumer Rights and Services section of HHSC [DADS] to report its intention to discharge; and

(B) submit to HHSC [DADS] the required physician documentation regarding the discharge.

(f) Contents of the notice. For nursing facilities, the written notice specified in subsection (d) of this section must include the following:

(1) the reason for transfer or discharge;

(2) the effective date of transfer or discharge;

(3) the location to which the resident is transferred or discharged;

(4) a statement that the resident has the right to appeal the action as outlined in HHSC's Fair Hearings, Fraud, and Civil Rights Handbook by requesting a hearing through the Medicaid eligibility worker at the local HHSC [DADS] office within 10 days;

(5) the name, address, and telephone number of the managing local ombudsman [regional representative of the Office of the State Long Term Care Ombudsman, DADS,] and [of] the toll-free number of the [Texas Long Term Care] Ombudsman Program[:; 1-800-252-2412; and]

(6) in the case of a resident with mental illness, the address and phone number of the state mental health authority; and[: which is Texas Department of State Health Services, P. O. Box 149347, Austin, Texas 78712-9347, 1-800-252-8154; or]

(7) in the case of a resident with an intellectual or developmental disability, the authority for individuals [persons] with intellectual and developmental disabilities, [which is DADS Access and Intake Division, P.O. Box 14930, Austin, Texas 78714-9030, 1-800-458-9858,] and the phone number of the agency responsible for the protection and advocacy of individuals [persons] with intellectual and developmental disabilities[: which is: Disability Rights Texas, 2222 West Braker Lane, Austin, Texas 78758, 1-800-252-9108].

(g) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(h) Notice of relocation to another room. Except in an emergency, the facility must notify the resident and either the responsible party or the family or legal representative at least five days before relocation of the resident to another room within the facility. The facility must prepare a written notice which contains:

(1) the reasons for the relocation;

(2) the effective date of the relocation; and

(3) the room to which the facility is relocating the resident.

(i) Fair hearings.

(1) Individuals who receive a discharge notice from a facility have 90 days to appeal. If the recipient appeals before the discharge date, the facility must allow the resident to remain in the facility, except in the circumstances described in subsections (b)(5) and (e)(3) of this section, until the hearing officer makes a final determination. Vendor payments and eligibility will continue until the hearing officer makes a final determination. If the recipient has left the facility, Medicaid eligibility will remain in effect until the hearing officer makes a final determination.

(2) When the hearing officer determines that the discharge was inappropriate, the facility, upon written notification by the hearing officer, must readmit the resident immediately, or to the next available bed. If the discharge has not yet taken place, and the hearing officer finds that the discharge will be inappropriate, the facility, upon written notification by the hearing officer, must allow the resident to remain in the facility. The hearing officer will also report the findings to

HHSC [DADS] Regulatory Services Division for investigation of possible noncompliance.

(3) When the hearing officer determines that the discharge is appropriate, the resident is notified in writing of this decision. Any payments made on behalf of the recipient past the date of discharge or decision, whichever is later, must be recouped.

(j) Discharge of married residents. If two residents in a facility are married and the facility proposes to discharge one spouse to another facility, the facility must give the other spouse notice of his right to be discharged to the same facility. If the spouse notifies a facility, in writing, that he wishes to be discharged to another facility, the facility must discharge both spouses on the same day, pending availability of accommodations.

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

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Karen Ray

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## SUBCHAPTER K. NURSING SERVICES

### 40 TAC §19.1001

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

#### §19.1001. Nursing Services.

(a) The facility must have sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. Nursing services to children must be provided by staff who have been instructed and have demonstrated competence in the care of children. Care and services are to be provided as specified in §19.901 of this chapter (relating to Quality of Care).

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

(3) Waiver of requirement to provide licensed nurses on a 24-hour basis.

(A) To the extent that a facility is unable to meet the requirements of paragraphs (1)(B) and (2)(A) of this subsection, the state may waive these requirements with respect to the facility, if:

(i) the facility demonstrates to the satisfaction of HHSC [the Texas Department of Aging and Disability Services

(DADS)] that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(ii) HHSC [DADS] determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(iii) the state finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility; and

(iv) the waived facility has a full-time registered or licensed vocational nurse on the day shift seven days a week. For purposes of this requirement, the starting time for the day shift must be between 6 a.m. and 9 a.m. The facility must specify in writing the schedule that it follows.

(B) A waiver granted under the conditions listed in this paragraph is subject to annual state review.

(C) In granting or renewing a waiver, a facility may be required by the state to use other qualified, licensed personnel.

(D) The state agency granting a waiver of these requirements provides notice of the waiver to the State Ombudsman [state long term care ombudsman (established under §307(a)(12) of the Older Americans Act of 1965)] and the protection and advocacy system in the state for individuals with mental illness or individuals with intellectual or developmental disabilities [the mentally ill and mentally retarded].

(E) The nursing facility that is granted a waiver by the state notifies residents of the facility (or, when appropriate, the guardians or legal representatives of the residents) and members of their immediate families of the waiver.

(4) Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week in a Medicare skilled nursing facility (SNF).

(A) The secretary of the U.S. Department of Health and Human Services (secretary) may waive the requirement that a Medicare SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (2) of this subsection, if the secretary finds that:

(i) - (iii) (No change.)

(B) The secretary provides notice of the waiver to the State Ombudsman [state long term care ombudsman (established under §307(a)(12) of the Older Americans Act of 1965)] and the protection and advocacy system in the state for individuals with mental illness or individuals with intellectual or developmental disabilities [the mentally ill and mentally retarded].

(C) The SNF that is granted a waiver by the state notifies residents of the facility (or, when appropriate, the guardians or legal representatives of the residents) and members of their immediate families of the waiver.

(D) A waiver of the registered nurse requirement under subparagraph (A) of this paragraph is subject to annual renewal by the secretary.

(5) Request for waiver concerning staffing levels. The facility must request a waiver through the local HHSC [DADS] Regulatory Services Division, in writing, at any time the administrator determines that staffing will fall, or has fallen, below that required in paragraphs (1) and (2) of this subsection for a period of 30 days or more out of any 45 days.

(A) The following information must be included in the request/notification:

(i) - (iv) (No change.)

(B) Waivers for licensed-only or certified facilities will be granted by HHSC [DADS] Regulatory Services Division staff. Waivers for a Medicare SNF receive final approval from the Centers for Medicare and Medicaid Services.

(C) If a facility, after requesting a waiver, is later able to meet the staffing requirements of paragraphs (1) and (2) of this subsection, HHSC [DADS] Regulatory Services Division staff must be notified, in writing, of the effective date that staffing meets requirements.

(D) Verification that the facility appropriately made a request and notification will be done at the time of survey.

(E) Amounts paid to Medicaid-certified facilities in the per diem payment to meet the staffing requirements of paragraphs (1) and (2) of this subsection may be adjusted if staffing requirements are not met.

(6) Duration of waiver. Approved waivers are valid throughout the facility licensure or certification period, unless approval is withdrawn. During the relicensure or recertification survey, the determination is made for approval or denial for the next facility licensure or certification period if a waiver continues to be necessary. The facility requests a redetermination for a waiver from HHSC [DADS] Regulatory Services Division staff at the time the survey is scheduled. At other times if a request is made, HHSC [DADS] staff may schedule a visit for waiver determination.

(7) - (9) (No change.)

(b) Nurse staffing information.

(1) - (4) (No change.)

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Karen Ray

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## SUBCHAPTER T. ADMINISTRATION

### 40 TAC §19.1923

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

### §19.1923. Incident or Accident Reporting.

(a) The facility must detail in the medical record every accident or incident, including allegations of mistreatment of residents by facility staff, medication errors, and drug reactions.

(b) Accidents, whether or not resulting in injury, and any unusual incidents or abnormal events including allegations of mistreatment of residents by staff or personnel or visitors, must be described in a separate administrative record and reported by the facility in accordance with the licensure Act and this section.

(1) If the incident appears to be of a serious nature, it must be investigated by or under the direction of the director of nurses, the facility administrator, or a committee charged with this responsibility.

(2) If the incident involves a resident and is serious or requires special reporting to HHSC [the Texas Department of Human Services (DHS)], the resident's responsible party and attending physician must be immediately notified.

(c) - (d) (No change.)

(e) The facility must make incident reports available for review, upon request and without prior notice, by representatives of HHSC [DHS], the U.S. Department of Health and Human Services, if applicable; and the Texas Department of Family and Protective [and Regulatory] Services. The facility must make reports [Reports] related to specific incidents [must be] available to the [designated regional staff ombudsman, Office of the] State [Long Term Care] Ombudsman and a certified ombudsman[, Texas Department of Aging].

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## SUBCHAPTER U. INSPECTIONS, SURVEYS, AND VISITS

### 40 TAC §19.2002

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

§19.2002. Procedural Requirements--Licensure Inspections and Surveys.

(a) HHSC [The Texas Department of Human Services (DHS)] inspection and survey personnel [will] perform inspections and sur-



veys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b) - (e) (No change.)

(f) Persons authorized to receive advance information on unannounced inspections include:

(1) citizen advocates invited to attend inspections, as described in subsection (g) of this section;

(2) the State Ombudsman, a certified ombudsman, and an ombudsman intern who are [representatives of the Texas Department of Aging serving as ombudsmen or] authorized to attend and [or] participate in inspections;

(3) representatives of the United States Department of Health and Human Services whose programs relate to the Medicare/Medicaid Long Term Care Program; and

(4) representatives of HHSC [the Texas Department of Human Services] whose programs relate to the Medicare/Medicaid long term care program.

(g) HHSC conducts [DHS will conduct] at least two unannounced inspections during each licensing period of each institution licensed under Health and Safety Code, Chapter 242, except as provided for in this subsection.

(1) In order to ensure continuous compliance, a sufficient number of inspections will be conducted between the hours of 5:00 p.m. and 8:00 a.m. in randomly selected institutions. This cursory after-hours inspection is [will be] conducted to verify staffing, assurance of emergency egress, resident care, medication security, food service or nourishments, sanitation, and other items as deemed appropriate. To the greatest extent feasible, any disruption of the residents is [will be] minimal.

(2) For at least two unannounced inspections each licensing period, HHSC invites [DHS will invite] to the inspections at least one person as a citizen advocate from the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the [Texas Department on Aging Certified Long Term Care] Ombudsman Program, or any other statewide organization for the elderly. HHSC provides [DHS will provide] to these organizations basic licensing information and requirements for the organizations' dissemination to their members whom they engage to attend the inspections. Advocates participating in the inspections must follow all protocols of HHSC [DHS]. Advocates [will] provide their own transportation. The schedule of inspections in this category are [will be] arranged confidentially in advance with the organizations. Participation by the advocates is not a condition precedent to conducting the inspection.

(h) The facility must make all of its books, records, and other documents maintained by or on behalf of a facility accessible to HHSC [DHS] upon request.

(1) During an inspection, survey, or investigation, HHSC [DHS] is authorized to photocopy documents, photograph residents, and use any other available recordation devices to preserve all relevant evidence of conditions that HHSC [DHS] reasonably believes threaten the health and safety of a resident.

(2) Examples of records and documents which may be requested and photocopied or otherwise reproduced are resident medical records, including nursing notes, pharmacy records medication records, and physician's orders.

(3) When the facility is requested to furnish the copies, the facility may charge HHSC [DHS] at the rate not to exceed the rate charged by HHSC [DHS] for copies. The procedure of copying is [will be] the responsibility of the administrator or his designee. If copying requires the records be removed from the facility, a representative of the facility is [will be] expected to accompany the records and assure their order and preservation.

(4) HHSC protects [DHS will protect] the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and department policy.

(i) HHSC provides [DHS will provide] for a special team to conduct validation surveys or verify findings of previous licensure surveys.

(1) At HHSC's [DHS's] discretion, based on record review, random sample, or any other determination, HHSC [DHS] may assign a team to conduct a validation survey. HHSC [DHS] may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(2) Facilities are [will be] required to correct any additional deficiencies cited by the validation team but are [will] not [be] subject to any new or additional punitive action.

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

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## SUBCHAPTER V. ENFORCEMENT DIVISION 2. LICENSING REMEDIES

### 40 TAC §§19.2112, 19.2114, 19.2119

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendments implement Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

#### §19.2112. Administrative Penalties.

(a) HHSC [DHS] may assess an administrative penalty against a person who:

(1) violates Chapter 242, Health and Safety Code or a rule, standard or order adopted or license issued under Chapter 242;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by HHSC [DADS];

(3) refuses to allow a representative of HHSC [DADS] to inspect:

(A) a book, record, or file required to be maintained by a facility; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of, or retaliates against, a representative of HHSC [DADS] or the enforcement of this chapter;

(5) willfully interferes or retaliates against [with] a representative of HHSC [DADS] preserving evidence of a violation of a rule, standard, or order adopted or license issued under Chapter 242, Health and Safety Code;

(6) fails to pay a penalty assessed by HHSC [DADS] under Chapter 242, Health and Safety Code by the 10th day after the date the assessment of the penalty becomes final; [ø]

(7) fails to notify HHSC [DADS] of a change of ownership before the effective date of the change of ownership;[-]

(8) willfully interferes with the State Ombudsman, a certified ombudsman, or an ombudsman intern performing the functions of the Ombudsman Program as described in 26 TAC §88.2 (relating to Definitions); or

(9) retaliates against the State Ombudsman, a certified ombudsman, or an ombudsman intern:

(A) with respect to a resident, employee of a facility, or other person filing a complaint with, providing information to, or otherwise cooperating with the State Ombudsman, a certified ombudsman, or an ombudsman intern; or

(B) for performing the functions of the Ombudsman Program as described in 26 TAC Chapter 88 (relating to State Long-Term Care Ombudsman Program).

(b) The persons against whom HHSC [DADS] may impose an administrative penalty include:

(1) an applicant for a license;

(2) a license holder;

(3) a partner, officer, director, or managing employee of an applicant or a license holder; and

(4) a person who controls a nursing facility.

(c) HHSC [DADS] recognizes the limited immunity from civil liability granted to volunteers serving as officers, directors or trustees of charitable organizations, under the Charitable Immunity and Liability Act of 1987 (Texas Civil Practice and Remedies Code, Chapter 84).

(d) In determining whether a violation warrants an administrative penalty, HHSC [DADS] considers the facility's history of compliance and whether:

(1) a pattern or trend of violations exists; or

(2) the violation is recurrent in nature and type; or

(3) the violation presents danger to the health and safety of at least one resident; or

(4) the violation is of a magnitude or nature that constitutes a health and safety hazard having a direct or imminent adverse effect on resident health, safety, or security, or which presents even more serious danger or harm; or

(5) the violation is of a type established elsewhere in HHSC [DADS] rules concerning licensing standards for long term care facilities.

(e) In determining the amount of the penalty, HHSC [DADS] considers at a minimum:

(1) the gradations of penalties;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard to the health and safety of the residents;

(3) the history of previous violations;

(4) deterrence of future violations; and

(5) efforts to correct the violation.

(f) Administrative penalties may be levied for each violation found in a single survey. Each day of a continuing violation constitutes a separate violation. The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation that is the subject of a penalty is presumed to continue on each successive day until it is corrected. The date of correction alleged by the facility in its written plan of correction will be presumed to be the actual date of correction unless it is later determined by HHSC [DADS] that the correction was not made by that date or was not satisfactory.

(1) (No change.)

(2) Definitions. The following terms when used in this section have the following meanings, unless the context clearly indicates otherwise.

(A) Severity.

(i) No actual harm with a potential for minimal harm is a deficiency that has the potential for causing no more than [that] a minor negative impact on the resident(s).

(ii) No actual harm with a potential for more than minimal harm is noncompliance that results in minimal physical, mental and/or psychological discomfort to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental, and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care and provision of services.

(iii) Actual harm that is not immediate jeopardy is non-compliance that results in a negative outcome that has compromised the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care and provision of services. This does not include a deficient practice that only has limited consequence for the resident and would be included in (i) or (ii) above.

(iv) Immediate jeopardy to resident health and safety is a situation in which immediate corrective action is necessary because the facility's non-compliance with one or more requirements has caused, or likely to cause, serious injury, harm, impairment or death to a resident receiving care in the facility.

(B) Scope.

(i) Isolated means one or a very limited number of residents are affected and/or one or a very limited number of staff are

involved, or the situation has occurred only occasionally or in a very limited number of locations.

(ii) Pattern means more than a very limited number of residents are affected and/or more than a very limited number of staff are involved, or the situation has occurred in several locations, and/or the same residents have been affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive throughout the facility.

(iii) Widespread means the problems causing the deficiencies are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents.

(g) The penalties for a violation of the requirement to post notice of the suspension of admissions, additional reporting requirements found at §19.601(a) of this chapter (relating to Resident Behavior and Facility Practice), or residents' rights cannot exceed \$1,000 a day for each violation, unless the violation of a resident's right also violates a rule in Subchapter H of this chapter (relating to Quality of Life), or Subchapter J of this chapter (relating to Quality of Care).

(h) No facility will be penalized because of a physician's or consultant's nonperformance beyond the facility's control or if documentation clearly indicates the violation is beyond the facility's control.

(i) HHSC [~~DADS~~] may issue a preliminary report regarding an administrative penalty. Within 10 days of the issuance of the preliminary report, HHSC [~~DADS~~] will give the facility written notice of the recommendation for an administrative penalty. The notice will include:

- (1) a brief summary of the violations;
- (2) a statement of the amount of penalty recommended;
- (3) a statement of whether the violation is subject to correction under §19.2114 of this subchapter (relating to Right to Correct) and if the violation is subject to correction, a statement of:
  - (A) the date on which the facility must file a plan of correction (POC) to be approved by HHSC [~~DADS~~]; and
  - (B) the date on which the POC must be completed to avoid assessment of the penalty; and
- (4) a statement that the facility has a right to a hearing on the violation, the amount of the penalty, or both.

(j) Within 20 days after the date on which written notice of recommended assessment of a penalty is sent to a facility, the facility must give HHSC [~~DADS~~] written consent to the penalty, make a written request for a hearing, or if the violation is subject to correction, submit a plan of correction in accordance with §19.2114 of this subchapter (relating to Right to Correct). If the facility does not make a response within the 20-day period, HHSC [~~DADS~~] will assess the penalty.

(k) The procedures for notification of recommended assessment, opportunity for hearing, actual assessment, payment of penalty, judicial review, and remittance will be in accordance with Health and Safety Code, §§242.067 - 242.069. Hearings will be held in accordance with Health and Human Services Commission's rules at 1 TAC, Chapter 357, Subchapter I. Interest on penalties is governed by Health and Safety Code §242.069(g).

*§19.2114. Right To Correct.*

(a) HHSC [~~The Texas Department of Human Services (DHS)~~] may not collect an administrative penalty if, not later than the 45th day after the date the facility receives notice, the facility corrects the violation.

(b) If the facility reports to HHSC [~~DHS~~] that the violation has been corrected, HHSC [~~inspects~~] [~~DHS will inspect~~] the facility for the correction or takes [~~take~~] any other steps necessary to confirm that the violation has been corrected and notifies [~~notify~~] the facility that:

- (1) the correction is satisfactory and a penalty is not assessed; or
- (2) the correction is not satisfactory and a penalty is recommended.
- (c) The facility must request a hearing on the violation no later than the 20th day after the date on which the notice is sent.
- (d) Subsection (a) of this section does not apply to:
  - (1) [~~to~~] a violation that HHSC [~~DHS~~] determines:
    - (A) results in serious harm to or death of a resident;
    - (B) constitutes a serious threat to the health or safety of a resident; or
    - (C) substantially limits the facility's capacity to provide care;
  - (2) [~~to~~] the violations listed in §19.214(a)(2)-(6) of this title (relating to Criteria for Denying a License or Renewal of a License); [~~or~~]
  - (3) [~~to~~] the violation of a resident right; or [~~to~~]
  - (4) a violation listed in §19.2112(a)(8) or (9) of this chapter (relating to Administrative Penalties).

(e) A facility that corrects a violation under subsection (a) of this section must maintain the correction. If the facility fails to maintain the correction until the first anniversary of the date the correction was made, HHSC [~~DHS~~] may assess an administrative penalty equal to three times the amount of the original penalty assessed, but not collected. HHSC [~~DHS~~] does not provide a facility an opportunity to correct the subsequent violation.

*§19.2119. Open Hearing.*

(a) HHSC holds [~~The Texas Department of Human Services (DHS) will hold~~] an open hearing in a facility if HHSC [~~DHS~~]:

- (1) has taken a punitive action against the facility in the preceding 12 months; or
- (2) receives a complaint that HHSC [~~DHS~~] has reasonable cause to believe is valid from the State Ombudsman, a certified ombudsman, an ombudsman intern, an [~~an ombudsman~~], advocate, a resident, or a relative of a resident relating to a serious or potentially serious problem in the facility.

(b) Only one hearing regarding a specific facility is [~~will be~~] held each year unless HHSC [~~DHS~~] determines that, in the interest of resident health and safety, more should be held.

(c) HHSC mails notice [~~Notice~~] of the time, date, and place of the hearing at least [~~will be mailed not less than~~] ten days before the hearing to:

- (1) the facility;
- (2) the designated closest living relative or legal guardian of each resident; and
- (3) appropriate state and federal agencies that work with the facility.

(d) The facility is responsible for furnishing to HHSC [~~DHS~~] a listing of the name and current mailing address of each resident's designated closest living relative, legal guardian, or responsible party.

(e) HHSC [DHS] may exclude a facility's administrator and personnel from the hearing.

(f) HHSC confidentially notifies [DHS will notify, confidentially,] the complainant of the results of the investigation which followed the complaint.

(g) HHSC notifies [DHS will notify] the facility of any complaints [which are] received at the hearing and provides [provide] a summary of those complaints to the facility. HHSC does not identify [In providing this information to the facility,] the source of the complaints [will not be identified].

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4356



## SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

### 40 TAC §19.2310

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

*§19.2310. Nursing Facility Ceases to Participate.*

A nursing facility may voluntarily terminate or be involuntarily terminated from Medicaid participation. A facility must have policies and procedures in place to ensure that the administrator's duties and responsibilities include providing the appropriate notices in the event of a Medicaid termination.

(1) If a facility voluntarily closes and ceases providing nursing facility services, the facility must comply with this paragraph.

(A) The facility must close on the first day of a month.

(B) At least 75 days before closure, the administrator must submit to the HHSC [DADS] regional director a plan for relocation of all residents. The plan must:

(i) provide for the transfer and adequate relocation of the residents;

(ii) include assurances that residents are transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident; and

(iii) be revised as necessary to obtain HHSC [DADS] approval.

(C) At least 60 days before closure, the administrator must submit written notice of the closure that includes the approved closure plan and the closure date to:

(i) the secretary or the secretary's designee;

(ii) HHSC [DADS] Regulatory Services;

(iii) the State [Long-Term Care] Ombudsman;

(iv) each resident; and

(v) each resident's legal representative or responsible party.

(D) The notice to each resident and the resident's legal representative or responsible party must include the information required by §19.502(f) of this chapter (relating to Transfer and Discharge in Medicaid-certified Facilities).

(E) The facility must not admit any new residents on or after the date the written notice is submitted.

(F) The facility must have the resources to operate through the closure date.

(2) If HHSC [DADS] or CMS terminates a facility's Medicaid provider agreement, the facility must comply with this paragraph.

(A) At least 15 days before the notice date set by HHSC [DADS] or CMS, the administrator must submit to the HHSC [DADS] regional director a plan for relocation of all residents. The plan must:

(i) provide for the transfer and adequate relocation of the residents;

(ii) include assurances that residents are transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident; and

(iii) be revised as necessary to obtain HHSC [DADS] approval.

(B) By the date set by HHSC [DADS] or CMS, the administrator must submit written notice of the closure that includes the approved plan and the closure date to:

(i) the secretary or secretary's designee;

(ii) HHSC [DADS] Regulatory Services;

(iii) the State [Long-Term Care] Ombudsman;

(iv) each resident; and

(v) each resident's legal representative or responsible party.

(C) The notice to each resident and the resident's legal representative or responsible party must include the information required by §19.502(f) of this chapter.

(D) The facility must not admit any new residents on or after the date the notice is submitted.

(3) (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.

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4356



## SUBCHAPTER BB. NURSING FACILITY RESPONSIBILITIES RELATED TO PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

### DIVISION 2. NURSING FACILITY RESPONSIBILITIES

#### 40 TAC §19.2708

##### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

§19.2708. *Educational and Informational Activities for Residents.*

A nursing facility must:

(1) allow access to residents by the State Ombudsman, a certified ombudsman, an ombudsman intern, [representatives of the Office of the State Long Term Care Ombudsman] and representatives of the protection and advocacy system in the state for individuals with mental illness or individuals with intellectual or developmental disabilities [Disability Rights Texas] to educate and inform them of their rights and options related to PASRR;

(2) allow access to designated residents to support educational activities about community living options arranged by the LIDDA; and

(3) provide a designated resident with adequate notice and assistance to be prepared for and participate in scheduled community visits.

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4356



## CHAPTER 85. IMPLEMENTATION OF THE OLDER AMERICANS ACT

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously held by DADS that have transferred to HHSC. Texas Government Code, §531.0055, requires the executive commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the executive commissioner of HHSC proposes amendments to §85.2, concerning Definitions; §85.201, concerning AAA Administrative Responsibilities; §85.501, concerning AAA Funding Allocation Formula for Older Americans Act Programs; and §85.502, concerning Unspent Award Funds; and the repeal of Subchapter E, Long-Term Care Ombudsman Program, consisting of §85.401, concerning Long-Term Care Ombudsman Program, in Chapter 85, Implementation of the Older Americans Act.

### BACKGROUND AND PURPOSE

The proposed amendments and repeal remove requirements of the State Long-Term Care Ombudsman Program from Chapter 85. The deleted rules will be replaced by rules in new Title 26, Part 1, Chapter 88, State Long-Term Care Ombudsman Program, proposed elsewhere in this issue of the *Texas Register*.

The proposed amendments include some references to Title 26, Part 1, Chapter 88 because an area agency on aging that is part of a "host agency," as defined in Chapter 88, must comply with that chapter. The amendments also clarify that a representative of the Office of the State Long-Term Care Ombudsman is exempted from requirements regarding the reporting of allegations of abuse, neglect, and exploitation. The proposed amendments also make minor editorial changes.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §85.2 deletes the definitions of "certified ombudsman," "certified staff ombudsman," "certified volunteer ombudsman," "friendly visitor," "legally authorized representative," "local ombudsman entity," "LTC facility," "Office," "ombudsman intern," "resident," and "state long-term care ombudsman" because those terms are no longer used in Chapter 85. The proposed amendment revises the definition of "DADS" to reflect the transfer of DADS functions to HHSC, adds a definition of "HHSC," and revises the definition of "staff person" to remove the reference to an ombudsman intern.

The proposed amendment to §85.201 requires an area agency on aging (AAA), if the AAA is part of a host agency as defined in 26 TAC §88.2, to comply with Title 26, Part 1, Chapter 88, a new chapter proposed elsewhere in this issue of the *Texas Register*. The proposed amendment exempts a representative of the Office of the State Long-Term Care Ombudsman from the staff persons a AAA is required to instruct regarding allegations of abuse, neglect, and exploitation and from the staff persons a AAA is required to take correction action against for not properly

reporting an allegation of abuse, neglect, or exploitation because the reporting requirements for a representative of the Office of the State Long-Term Care Ombudsman are addressed in Title 26, Part 1, Chapter 88. The proposed amendment also makes minor corrections.

The proposed repeal of §85.401 deletes requirements regarding the Long-Term Care Ombudsman Program because those requirements are being replaced by proposed new Title 26, Part 1, Chapter 88, State Long-Term Care Ombudsman Program.

The proposed amendment to §85.501 deletes the description of how federal funds related to the Ombudsman Program are distributed because that description is included in proposed new 26 TAC §88.105. The proposed amendment also adds a reference to 26 TAC §88.105.

The proposed amendment to §85.502 requires a AAA, if the AAA is part of a host agency as defined in 26 TAC §88.2, to comply with 26 TAC §88.406 concerning expenditure requirements for the Ombudsman Program.

#### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed amendments and repeal are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not apply to small or micro-businesses, or rural communities.

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

There are no anticipated economic costs to persons who are required to comply with the proposed rules.

There is no anticipated negative impact on local employment.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT

Patty Ducayet, State Long-Term Care Ombudsman, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is the removal of duplicative rules from the HHSC rule base.

#### TAKINGS IMPACT ASSESSMENT

HHSC 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 Patty Ducayet at (512) 438-4356 in HHSC State Long-Term Care Ombudsman Program. Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to [HHSRulesCoordinationOffice@hhsc.state.tx.us](mailto:HHSRulesCoordinationOffice@hhsc.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 HHSC before 5:00 p.m. on the last working day of the comment period; or (3) emailed by midnight on the last day of the comment period. Please indicate "Comments on Proposed Rule 15R14."

## SUBCHAPTER A. DEFINITIONS

### 40 TAC §85.2

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

#### §85.2. Definitions.

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

(1) AAA--An area agency on aging (commonly referred to as a "triple A"). A public or private nonprofit agency or organization, designated by HHSC [DADS] in accordance with the Older Americans Act, §305(a)(2)(A), that develops and implements an area plan.

(2) Adult--A person who is 18 years of age or older.

(3) Alarm call--A signal transmitted from an electronic monitoring system to a service provider's response center indicating a program participant needs immediate assistance.

(4) Area plan--A plan developed and implemented by a AAA for its planning and service area that establishes a comprehensive and coordinated system of services in accordance with the Older Americans Act, §306(a).

(5) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.

~~[(6) Certified ombudsman--A certified staff ombudsman or a certified volunteer ombudsman.]~~

~~[(7) Certified staff ombudsman--A person who:]~~

~~[(A) meets the qualifications described in §85.401(g)(1) of this chapter (relating to Long-Term Care Ombudsman Program);]~~

~~[(B) is employed by or is contracting with a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter; and]~~

~~[(C) performs activities for the AAA or designated nonprofit organization to implement the Long-Term Care Ombudsman Program.]~~

~~[(8) Certified volunteer ombudsman--A person who:]~~

~~[(A) meets the qualifications described in §85.401(g)(1) of this chapter;]~~

~~[(B) is not employed by or contracting with a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter; and]~~

~~[(C) voluntarily performs activities for the AAA or designated nonprofit organization to implement the Long-Term Care Ombudsman Program.]~~

(6) [(9)] Contract--A binding agreement between a AAA and a subcontractor obligating the subcontractor to take responsibility for the complete implementation and administration of a service described in this chapter, including determining which individuals are eligible to receive such a service and providing the service to such individuals.

(7) [(40)] Child--A person who is under 18 years of age.

(8) [(44)] Cost reimbursement--Payment of actual costs incurred for goods or services.

(9) [(42)] DADS--HHSC [The Department of Aging and Disability Services. DADS is the sole state agency (also referred to as the "state unit on aging") designated in accordance with the Older Americans Act, §305(a)(1)].

(10) [(43)] Day--A calendar day, unless otherwise specified.

(11) [(44)] Direct purchase--When items or services are obtained from a vendor.

(12) [(45)] Disability (except when such term is used in the phrase "severe disability")--A disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity:

- (A) self-care;
- (B) receptive and expressive language;
- (C) learning;

(D) mobility;

(E) self-direction;

(F) capacity for independent living;

(G) economic self-sufficiency;

(H) cognitive functioning; and

(I) emotional adjustment.

(13) [(46)] Electric monitoring system--The equipment used to allow a program participant to call an ERS vendor for assistance in the event of an emergency. Such equipment includes an alert bracelet or necklace that can be activated by the program participant and the signal box to receive the call from the program participant.

(14) [(47)] ERS--Emergency response services.

(15) [(48)] Federal fiscal year--A 12-month period of time beginning the 1st of October through the 30th of September.

(16) [(49)] Fixed unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement, that remains the same until the contract or vendor agreement is renegotiated, regardless of the amount of services provided, the number of program participants served, or the number of events that occur.

(17) HHSC--Health and Human Services Commission. HHSC is the sole state agency (also referred to as the "state unit on aging") designated in accordance with the Older Americans Act, §305(a)(1).

(20) Friendly visitor--A volunteer for a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter who:]

[(A) is not a certified ombudsman or ombudsman intern;]

[(B) meets the qualifications described in §85.401(g)(2) of this chapter; and]

[(C) performs activities to further the mission of the Long-Term Care Ombudsman Program such as visiting residents and coordinating social activities.]

(21) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include:]

[(A) a parent, guardian, or managing conservator of a minor;]

[(B) the guardian of an adult;]

[(C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or]

[(D) the representative of a deceased person.]

(22) Local ombudsman entity--A AAA or other entity designated by DADS to provide services in the Long-Term Care Ombudsman Program in accordance with the Older Americans Act, §712(a)(5)(A).]

(23) LTC facility--Long-term care facility. A nursing facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 242, and Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification) or an assisted living facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter

247, and Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities).]

(18) [(24)] Means testing--Using a person's income and resource data.

[(25) Office--The Office of the State Long-Term Care Ombudsman. A division of DADS established to oversee the statewide implementation of the Long-Term Care Ombudsman Program.]

(19) [(26)] Older Americans Act--A federal law enacted to establish and fund a comprehensive service system for persons 60 years of age or older.

(20) [(27)] Older individual -- A person who is 60 years of age or older.

[(28) Ombudsman intern--A person who is being trained to be a certified volunteer ombudsman in accordance with DADS Ombudsman Certification Training Manual but has not been approved by the Office to be a certified volunteer ombudsman.]

(21) [(29)] Planning and service area--A geographical area, consisting of one or more counties, for which HHSC [DADS] designates one AAA to develop and implement an area plan.

(22) [(30)] Program participant--A person receiving a service described in this chapter.

[(31) Resident--A person who resides in an LTC facility.]

(23) [(32)] Responder--A person identified by the program participant or designated by the AAA who will respond to an alarm call by a program participant.

(24) [(33)] Service provider--A subcontractor or a vendor.

(25) [(34)] Severe disability--A severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(A) is likely to continue indefinitely; and

(B) results in substantial functional limitation in three or more of the major life activities specified in paragraph (15)(A) - (I) of this section.

(26) [(35)] Staff person--Personnel, including a full-time and part-time employee or [s] contractor, and intern [other than an ombudsman intern,] but excluding a volunteer.

(27) [(36)] Statewide carryover pool--An account established and managed by [DADS] HHSC that contains award funds not spent by a AAA at the end of a federal fiscal year as described in §85.502(c)(1)(B) of this chapter (relating to Unspent Award Funds).

[(37) State Long-Term Care Ombudsman--The person designated by DADS to be the administrator of the Office.]

(28) [(38)] Subcontractor--The party with whom a AAA enters into a contract.

(29) [(39)] System check--Activating the call button of an electronic monitoring system to test the system.

(30) [(40)] Variable unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement that may change depending on the criteria and conditions set forth in the contract or vendor agreement.

(31) [(41)] Vendor agreement--A binding agreement between a AAA and a vendor obligating the vendor to provide goods or services to individuals determined eligible by the AAA for such goods

or services as part of the AAA's implementation and administration of a service described in this chapter.

(32) [(42)] Vendor--The party with whom a AAA enters into a vendor agreement.

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4356

## SUBCHAPTER C. AAA ADMINISTRATIVE REQUIREMENTS

### 40 TAC §85.201

#### 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; and Texas Human Resources Code, §101A.051, which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

§85.201. *AAA Administrative Responsibilities.*

(a) Purpose. This section:

(1) establishes the responsibilities of a AAA in developing and maintaining an organized and efficient system of administration that demonstrates accountability and compliance with state and federal law and with all terms and conditions of the contract it enters into with HHSC [DADS]; and

(2) applies to a service under the Older Americans Act provided to a program participant that is funded, in whole or in part, by HHSC [DADS].

(b) Structure of a AAA.

(1) A AAA must:

(A) reflect its organizational structure through job descriptions, staffing plans, area plans, and organizational charts that demonstrate its ability to effectively administer Older Americans Act programs and other programs funded by HHSC [DADS];

(B) - (E) (No change.)

(F) comply with the *Service Definitions for Area Agencies on Aging* available on the HHSC website [at [www.dads.state.tx.us](http://www.dads.state.tx.us)] for all services funded by HHSC [DADS].

(2) In accordance with the Older Americans Act, §306(a)(6)(D), a AAA must establish an advisory council that:



(A) continually advises the AAA on all matters relating to the development and administration of and operations conducted under the area plan; and

(B) consists of persons who are 60 years of age or older (including minority persons and persons residing in rural areas) who are program participants or who are eligible to participate in programs under the Older Americans Act, family caregivers of such individuals, representatives of persons 60 years of age or older, service providers, representatives of the business community, local elected officials, providers of veterans' health care, if appropriate, and the general public.

(3) A AAA must ensure that its board members, employees, advisory committee members, and volunteers are not subject to a conflict of interest, as described in subparagraph (A) of this paragraph, in fact or perception, and notify HHSC [DADS] in accordance with HHSC [DADS] Program Instruction AAA- PI 500 Conflicts of Interest, when potential conflicts of interest occur.

(A) A conflict of interest includes:

(i) having a substantial financial interest, directly or indirectly, in the profits of any entity from which services or goods are contracted or otherwise procured by the AAA; and

(ii) deriving a personal profit, directly or indirectly, from any entity that would conflict in any manner or degree with the performance of responsibilities of the board member, employee, advisory committee member, or volunteer.

(B) If a AAA is part of a host agency as defined in 26 TAC §88.2 (relating to Definitions), the AAA must comply with Title 26, Part 1, Chapter 88 (relating to State Long-Term Care Ombudsman Program) [A AAA must comply with §85.401(i) of this chapter (relating to Long-Term Care Ombudsman Program)].

(C) A AAA must include a requirement in a request for proposal (RFP) for services for older persons and requests for vendor enrollment that any potential conflicts of interest be identified in the RFP or vendor enrollment response. The notification of potential conflicts of interest must include:

(i) the person and the nature for which a potential conflict of interest exists; and

(ii) the relationship to any current or former board member, current or former aging advisory committee member, or current or former employee.

(c) Compliance with laws, rules, regulations, and other requirements. A AAA must comply with applicable federal and state laws, rules, and regulations, standards, and instructions, including:

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

(7) HHSC [DADS] Program Instructions.

(d) Accountability.

(1) A AAA must:

(A) maintain financial and programmatic systems capable of producing expenditure reports, cost center analyses, budgets, and state and federal reports;

(B) develop and implement written policies and procedures to back up automated information systems and continually update virus protection software to prevent the loss or corruption of program and financial data;

(C) meet programmatic and fiscal performance targets as outlined in the approved budget, as amended, within a five percent variance; and

(D) submit fiscal and programmatic reports required by HHSC [DADS] in a timely, complete, and accurate manner.

(2) A request for an extension to submit fiscal and programmatic reports must be submitted in writing to the AAA Help Desk at HHSC [DADS] on or before the date and time the reports are due.

(3) HHSC [DADS] may grant up to two requests for an extension per report per federal fiscal year. A AAA may be granted no more than a total of eight extensions per federal fiscal year. The length of an extension is negotiated, as much as possible, but HHSC [DADS] makes the final decision regarding extensions.

(4) A AAA must comply with the terms of all applicable interagency agreements, including those agreements legislatively mandated or to which HHSC [DADS] and the AAA are parties.

(e) Review of subcontractors.

(1) A AAA must review a subcontractor's programs and fiscal activities on a regular and systematic basis. Reviews must be conducted through a desk audit or by on-site review. A AAA must conduct a risk assessment annually to determine the necessity of an on-site review if it conducts an on-site review less than annually for all subcontractors.

(2) A AAA must conduct an annual customer satisfaction survey of program participants utilizing the process furnished by HHSC [DADS].

(3) A AAA must comply with the requirements specified in §81.13 of this title (relating to Compliance with Contractor Responsibilities, Rewards and Sanctions) when imposing sanctions against a subcontractor for noncompliance with a contract.

(4) A AAA may develop requirements for a subcontractor in addition to those listed in paragraphs (1) - (3) of this subsection.

(f) - (o) (No change.)

(p) Records. A AAA:

(1) must develop, maintain, and retain records in accordance with the Uniform Grant Management Standards, Subpart C;

(2) must establish written procedures to adequately ensure proper development, maintenance and retention of all financial records, supporting documents, statistical records and all other records relating to its performance;

(3) must maintain all records for a minimum of five years following the end of the federal fiscal year to which the record pertains and until any pending litigation, claim or audit findings, issuance or proposed disallowed costs or other disputes have been resolved;

(4) must maintain all records at a designated central location regardless of whether the AAA has one or multiple locations; and

(5) must give HHSC [DADS], the Comptroller General of the United States, and the State of Texas, through any authorized representatives, access to its records, including:

(A) financial records such as contracts, general ledgers, invoices, accounts payable, and accounts receivable;

(B) program participant records unless specifically prohibited by law;

(C) other documents related to HHSC [DADS] funded programs; and

(D) any other records not directly related to the AAA if the purpose of such access is to review charges to any indirect costs pool.

(q) - (s) (No change.)

(t) Visibility.

(1) A AAA must use the logo designed by HHSC [DADS] (illustrated in paragraph (2) of this subsection) to ensure a uniform, statewide symbol for AAAs.

(2) (No change.)

(u) AAA contact information.

(1) A AAA must publicize its contact information through a variety of media such as telephone directories, resource directories, the Internet, and other outreach tools for persons who reside in any geographical area that lies in whole or in part in the planning and service area served by the AAA.

(2) Contact information must begin with the words "area agency on aging" and must include the host agency, as applicable. A AAA must ensure that a telephone call to the AAA is answered "area agency on aging."

(v) Phrase for printed material. A AAA must cite HHSC [DADS] as the primary funding source using the phrase "Funded by the Texas Health and Human Services Commission [Department of Aging and Disability Services]" or "Funded in part by Texas Health and Human Services Commission [Department of Aging and Disability Services]" on all printed material.

(w) Identification of a AAA facility. A AAA must prominently display a sign outside its primary place of business that:

(1) adheres to local ordinances concerning signs; and

(2) conforms to the requirements in subsection (t) of this section.

(x) Emergency management.

(1) When a disaster occurs, a AAA must notify HHSC [DADS] of its need to provide for emergency management activities, provide information to HHSC [DADS] regarding the impact of the disaster on the older population in its service area, provide emergency management services in accordance with current Administration on Aging disaster relief guidelines, and collect pertinent data necessary to submit reimbursement requests for disaster services.

(2) A AAA must consult with the appropriate agencies that have an interest or role in meeting the needs of persons 60 years of age or older to plan for the occurrence and aftermath of natural, civil defense, or man-made disasters. To accomplish this, a AAA must:

(A) develop an emergency disaster plan in accordance with HHSC [DADS] requirements;

(B) require by contract or vendor agreement that a service provider develop plans for emergency management; and

(C) provide technical assistance as necessary to service provider staff persons regarding emergency management activities.

(y) Reporting abuse, neglect, or exploitation.

(1) A AAA must instruct its staff persons and representatives, other than a representative of the Office as defined in 26 TAC §88.2, to report allegations of abuse, neglect, or exploitation of a program participant to the Department of Family and Protective Services

(DFPS) in accordance with Texas Human Resources Code, Chapter 48. A report must be made by calling 1-800-252-5400 or by following the instructions available at [www.txabusehotline.org](http://www.txabusehotline.org).

(2) The AAA must take appropriate corrective action if:

(A) a staff person, other than a representative of the Office as defined in 26 TAC §88.2, does not report an allegation of abuse, neglect, or exploitation of a program participant in accordance with Texas Human Resources Code, Chapter 48; or

(B) DFPS confirms abuse, neglect, or exploitation of a program participant by a staff person of the AAA.

(z) Emergency services. A AAA must instruct all of its staff persons to call 911 or another local emergency hotline for fire-fighting, police, medical, or other emergency services, as appropriate, in the event of an emergency involving a program participant.

(aa) Reporting waste, abuse, or fraud.

(1) A AAA must instruct its staff persons and representatives to report allegations of waste, abuse, or fraud, as defined in 1 TAC §371.1601 (relating to Definitions), regarding a service described in subsection (a)(2) of this section. A report must be made to:

(A) the Texas Health and Human Services Commission (HHSC), Office of the Inspector General, in accordance with the HHSC instructions available at [www.hhs.state.tx.us](http://www.hhs.state.tx.us); and

(B) HHSC [DADS] by calling 1-800-436-6184.

(2) The Office of the Inspector General investigates reports of waste, abuse, or fraud in accordance with 1 TAC, Chapter 371, Subchapter G.

(bb) Ethical conduct.

(1) A AAA must ensure that its staff persons and representatives conduct themselves in an ethical manner.

(2) A AAA staff person may not:

(A) engage in inappropriate treatment of a program participant or person seeking services;

(B) withhold or suppress a complaint or report against the AAA or HHSC [DADS];

(C) retain or distribute program participant information for personal gain;

(D) obtain a certification by fraud or deceit; or

(E) knowingly participate in the preparation of false or misleading program participant information.

(3) A AAA must instruct all staff persons and representatives to report allegations of unethical conduct, as described in paragraph (2) of this subsection, to HHSC's [DADS'] AAA Section Manager.

(cc) - (dd) (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.

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Karen Ray  
Chief Counsel  
Department of Aging and Disability Services  
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For further information, please call: (512) 438-4356



## SUBCHAPTER E. LONG-TERM CARE OMBUDSMAN PROGRAM

### 40 TAC §85.401

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The repeal implements Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

#### §85.401. *Long-Term Care Ombudsman Program.*

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

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Karen Ray  
Chief Counsel

Department of Aging and Disability Services  
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## SUBCHAPTER F. MANAGEMENT AND OVERSIGHT

### 40 TAC §85.501, §85.502

#### 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; and Texas Human Resources Code, §101A.051 which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendments implement Texas Government Code, §531.0055 and Texas Human Resources Code, §101A.051.

#### §85.501. *AAA Funding Allocation Formula for Older Americans Act Programs.*

(a) - (f) (No change.)

(g) Allocation of Remaining Funds. All remaining funds, except the funds allocated for the Ombudsman Program as described in 26 TAC §88.105 (relating to Fiscal Management and Monitoring of a

Local Ombudsman Entity) [Title VII Ombudsman Activity Grant], are allocated in accordance with the following formula of weighted factors:

(1) the total AAA region's population 60 years of age and older, weighted at 40 percent;

(2) the total AAA region's population 60 years of age and older who are minorities, weighted at 10 percent; and

(3) the total AAA region's population 60 years of age and older who are living on incomes below the poverty level, weighted at 50 percent.

{(h) Allocation of Title VII Ombudsman Activity Grant. A AAA will be allocated a base amount of \$3,000. Remaining funds are allocated based on the following factors:}

{(1) the number of licensed nursing facility beds based upon the most recent DADS Long-term Care Regulatory Facility Report for the prior state fiscal year, weighted at 50 percent;}

{(2) the number of licensed assisted living facilities based upon the most recent DADS Long-term Care Regulatory Facility Report for the prior state fiscal year, weighted at 25 percent; and}

{(3) the number of certified volunteer Ombudsmen based upon the DADS Active Volunteer Ombudsman Report for the prior state fiscal year, weighted at 25 percent.}

#### §85.502. *Unspent Award Funds.*

(a) Purpose. This section describes the process for handling award funds that are not spent by a AAA at the end of a federal fiscal year, including the process for distributing funds in the statewide carryover pool.

(b) Award funds. HHSC [DADS] allocates to a AAA federal funds awarded under the Older Americans Act to spend in implementing its area plan during a federal fiscal year. These funds are referred to in this section as "award funds."

(c) Unspent award funds.

(1) If, at the end of a federal fiscal year, a AAA has unspent award funds that were received in the first six-month period of the federal fiscal year, the unspent funds are handled as follows:

(A) the AAA may spend up to five percent of the unspent award funds in the next federal fiscal year to implement its area plan; and

(B) HHSC [DADS] places any unspent award funds that are more than five percent in the statewide carryover pool.

(2) The AAA may spend any unspent award funds received in the second six-month period of the fiscal year in the next federal fiscal year to implement its area plan.

(d) Distribution of statewide carryover pool. The funds placed in the statewide carryover pool, as described in subsection (c)(1)(B) of this section, are distributed by HHSC [DADS]:

(1) in accordance with the formula described in subsection (e) of this section; and

(2) to a AAA for the fiscal year before the distribution will occur if the following criteria are met:

(A) the AAA has submitted to HHSC [DADS] all reports listed in the *AAA Report Due Date Schedule* by the time and date listed on such schedule or by the time and date of an extension granted by HHSC [DADS] in accordance with §85.201(d)(3) of this chapter (relating to AAA Administrative Responsibilities);

(B) as determined by HHSC [DADS], the AAA meets all performance measures set by HHSC [DADS] under the contract or is above or below such measures within five percent;

(C) HHSC [DADS] did not place unspent award funds of the AAA in the statewide carryover pool in accordance with subsection (c)(1)(B) of this section;

(D) the AAA has not had a Level Three Sanction or Level Four Sanction imposed by HHSC [DADS] in accordance with §81.13 of this title (relating to Compliance with Contractor Responsibilities, Rewards and Sanctions);

(E) if unallowable costs have been identified for the AAA in accordance with §85.202(e) of this chapter (relating to AAA Fiscal Responsibilities), the AAA has either refunded the amount of such costs to HHSC [DADS] or is current under a payment agreement approved by HHSC [DADS] to refund the amount of such costs;

(F) the AAA has met the adequate proportion requirement, which may include a waiver granted by HHSC [DADS], in accordance with §85.202(k) of this chapter; and

(G) if the AAA is part of a host agency as defined in 26 TAC §88.2 (relating to Definitions), the AAA has complied with 26 TAC §88.406 (relating to Requirements Regarding Expenditures for the Ombudsman Program) [the AAA has met the requirement of ombudsman maintenance of effort, as required by §85.401(t)(1) of this chapter (relating to Long-Term Care Ombudsman Program), unless a waiver was granted by DADS under §85.401(t)(3) of this chapter].

(e) Formula for distribution of statewide carryover pool. HHSC [DADS] distributes funds from the statewide carryover pool to AAAs that meet the criteria described in subsection (d) of this section as follows:

(1) 50 percent of the funds are distributed in equal amounts to the qualifying AAAs; and

(2) 50 percent of the funds are distributed to the qualifying AAAs in accordance with §85.501(g) and (h)(1) - (3) of this chapter (relating to the AAA Funding Allocation Formula for Older Americans Act Programs).

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4356



## CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40,

Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1, govern functions previously held by DADS that have transferred to HHSC. Texas Government Code, §531.0055, requires the executive commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the executive commissioner of HHSC proposes amendments to §92.2, concerning Definitions; §92.125, concerning Resident's Bill of Rights and Provider Bill of Rights; §92.127, concerning Required Postings; and §92.551, concerning Administrative Penalties; and the repealed and new §92.801, concerning Access to Residents and Records by the Long-Term Care Ombudsman Program, in Chapter 92, Licensing Standards for Assisted Living Facilities.

### BACKGROUND AND PURPOSE

HHSC proposes changes to 40 TAC, Chapter 92, governing Assisted Living Facilities, to make HHSC rules consistent with federal rules governing the Office of the State Long-Term Care Ombudsman (the Office) by requiring nursing facilities (NFs) and assisted living facilities (ALFs) to allow the Office access to the facilities. The proposed changes will also allow HHSC to impose administrative penalties if a facility does not grant access in accordance with the rules.

### SECTION-BY-SECTION SUMMARY

Proposed §92.2 adds new definitions for "Certified Ombudsman," "CFR," "Managing local ombudsman," "Ombudsman intern," "Ombudsman Program," "Private and unimpeded access," "State Ombudsman," and "Willfully interfere." Proposed §92.2 deletes the definition for "Ombudsman." Multiple definitions are amended to reflect the change from DADS or DHS to HHSC.

Proposed §92.125 and §92.127 update terms related to the Ombudsman Program.

Proposed §92.551(a)(4)-(5) adds that HHSC may assess an administrative penalty against a license holder who retaliates against a representative of HHSC completing the work required to enforce this chapter or preserving evidence of a violation or a rule, standard, or order adopted or a term of a license issued under Chapter 247, Texas Health and Safety Code.

Proposed §92.551(a)(8)-(9) adds that HHSC may assess an administrative penalty against a license holder who willfully interferes with or retaliates against the State Ombudsman, certified ombudsman or an ombudsman intern performing the functions of the Ombudsman Program as described in Title 26, Part 1, Chapter 88, relating to State Long-Term Care Ombudsman Program. Proposed §92.551(g)(2)(B) changes a cross reference to subsection (a) of this section based on the addition of paragraphs (8) and (9).

Proposed new §92.801(a) requires an ALF to provide immediate access to any resident by the State Ombudsman, certified ombudsman or an ombudsman intern. Proposed §92.801(b) outlines the assisted living facility requirements to allow access to a facility and a resident by the State Ombudsman, certified ombudsman and an ombudsman intern during regular visiting hours and for the State Ombudsman and a certified ombudsman at a time other than regular business hours to complete an investigation. Proposed §92.801(a)(c) sets forth the conditions that must be met to allow the State Ombudsman or a certified ombudsman access to all files, records and other information concerning an

incident, as well as the administrative records, policies and documents available to the residents and general public. Proposed §92.801(d) adds requirements related to the release of HIPPA information to the State Ombudsman or a certified ombudsman.

#### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed amendments, new rule, and repeal are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

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

There are no anticipated economic costs to persons who are required to comply with the proposed rules.

There is no anticipated negative impact on local employment.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Associate Commissioner of HHSC Long-Term Care Regulatory, has determined that, for each year of the first five years the amendments, new rule, and repeal are in effect, the public benefit expected as a result of enforcing the amendments, new rule, and repeal is the removal of duplicative rules from the HHSC rule base.

#### TAKINGS IMPACT ASSESSMENT

HHSC 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 Josie Esparza at (512) 438-4077 in HHSC Long-Term Care Regulatory Services Division. Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to [HHSRulesCoordinationOffice@hhsc.state.tx.us](mailto:HHSRulesCoordinationOffice@hhsc.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 HHSC before 5:00 p.m. on the last working day of the comment period; or (3) emailed by midnight on the last day of the comment period. Please indicate "Comments on Proposed Rule 16R12."

### SUBCHAPTER A. INTRODUCTION

#### 40 TAC §92.2

##### 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; and Texas Human Resources Code, §101A.051, which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §101A.051.

##### §92.2. Definitions.

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

(1) - (4) (No change.)

(5) Alzheimer's Assisted Living Disclosure Statement form--The HHSC-prescribed [~~DAAS-prescribed~~] form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(6) - (11) (No change.)

(12) Certified ombudsman--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(13) CFR--Code of Federal Regulations.

(14) [(+2)] Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(15) [(+3)] Commingles--The laundering of apparel or linens of two or more individuals together.

(16) [(+4)] Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or

policies of an assisted living facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(17) [(45)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and HHSC [DADS] have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(18) [(46)] DADS--Prior to September 1, 2017, the [The] Department of Aging and Disability Services. September 1, 2017, and after, the Texas Health and Human Services Commission (HHSC).

(19) [(47)] DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to HHSC [DADS].

(20) [(48)] Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(21) [(49)] Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(22) [(20)] Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(23) [(21)] Disclosure statement--An HHSC [A DADS] form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(24) [(22)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(25) [(23)] Exploitation--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family

Code §261.401(2), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(26) [(24)] Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(27) [(25)] Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(28) [(26)] Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(29) [(27)] Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(30) [(28)] Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(31) [(29)] Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's non-compliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(32) [(30)] Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(33) [(31)] Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(34) [(32)] Large facility--A facility licensed for 17 or more residents.

(35) [(33)] Legally authorized representative--A person authorized by law to act on behalf of a person 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.

(36) [(34)] License holder--A person that holds a license to operate a facility.

(37) [(35)] Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of produc-

tion of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC [DAADS] or any other state, federal or local authority.

(38) [(36)] Local code--A model building code adopted by the local building authority where the assisted living facility is constructed or located.

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

(40) [(38)] Manager--The individual in charge of the day-to-day operation of the facility.

(41) Managing local ombudsman--Has the meaning given in 26 TAC §88.2.

(42) [(39)] Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(43) [(40)] Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(44) [(41)] Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(45) [(42)] Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(46) [(43)] Neglect--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code, §261.401(3), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(47) [(44)] NFPA 101--The 2000 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(48) Ombudsman intern--Has the meaning given in 26 TAC §88.2.

(49) Ombudsman program--Has the meaning given in 26 TAC §88.2.

[(45) Ombudsman--Has the meaning given in §85.2 of this title (relating to Definitions).]

(50) [(46)] Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(51) [(47)] Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(52) [(48)] Physician--A practitioner licensed by the Texas Medical Board.

(53) [(49)] Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(54) Private and unimpeded access--Access to enter a facility, or communicate with a resident outside of the hearing and view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(55) [(50)] Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(56) [(51)] Resident--An individual accepted for care in a facility.

(57) [(52)] Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(58) [(53)] Restraint hold--

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

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

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

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

## SUBCHAPTER G. MISCELLANEOUS PROVISIONS

### 40 TAC §92.125, §92.127

#### 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; and Texas Human Resources Code, §101A.051, which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendments implement Texas Government Code, §531.0055, and Texas Human Resources Code, §101A.051.

§92.125. *Resident's Bill of Rights and Provider Bill of Rights.*

(a) Resident's bill of rights.

(1) Each assisted living facility must post the resident's bill of rights, as provided by the department, in a prominent place in the facility and written in the primary language of each resident. A copy of the Resident's Bill of Rights must be given to each resident.

(2) A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(3) Each resident in the assisted living facility has the right to:

(A) - (Z) (No change.)

(AA) have access to the State Ombudsman and a certified ombudsman [~~service of a representative of the State Long Term Care Ombudsman Program, Texas Department on Aging~~]; and

(BB) execute an advance directive, under the Advance Directives Act (Chapter 166, Health and Safety Code), or designate a guardian in advance of need to make decisions regarding the resident's health care should the resident become incapacitated.

(b) Provider's bill of rights.

(1) Each assisted living facility must post a providers' bill of rights in a prominent place in the facility.

(2) The providers' bill of rights must provide that a provider of assisted living services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and assisted living facility;

(B) terminate a resident's contract for just cause after a written 30-day notice;

(C) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility. During evening hours and on weekends or holidays, notice to HHSC [DHS] must be made to 1-800-458-9858;

(D) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(59) [(54)] Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(60) [(55)] Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(61) [(56)] Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(62) [(57)] Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(63) [(58)] Short-term acute episode--An illness of less than 30 days duration.

(64) [(59)] Small facility--A facility licensed for 16 or fewer residents.

(65) [(60)] Staff--Employees of an assisted living facility.

(66) [(61)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(67) State Ombudsman--Has the meaning given in 26 TAC §88.2.

(68) [(62)] Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(69) [(63)] Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(70) [(64)] Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(71) illfully interfere--To act or not act to intentionally prevent, interfere with, or impeded or to attempt to intentionally prevent, interfere with, or impede.

(72) [(65)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

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Department of Aging and Disability Services

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(E) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(F) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(G) access patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(H) refuse a person referred to the facility if the referral is inappropriate;

(I) maintain an environment free of weapons and drugs; and

(J) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

*§92.127. Required Postings.*

An assisted living facility must prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by HHSC [DADS] that specifies complaint procedures established under these rules and specifies how complaints may be filed with HHSC [DADS];

(3) a notice in the form prescribed by HHSC [DADS] stating that inspection and related reports are available at the facility for public inspection and providing HHSC [DADS] toll-free telephone number that may be used to obtain information concerning the facility;

(4) a copy of the most recent inspection report relating to the facility;

(5) Resident Bill of Rights;

(6) Provider Bill of Rights;

(7) the telephone number of the managing local ombudsman and the toll-free number of the [Office of the State Long Term Care] Ombudsman Program, 1-800-252-2412;

(8) the facility's normal 24-hour staffing patterns; and

(9) a sign stating: "Cases of Suspected Abuse, Neglect, or Exploitation must be reported to the Texas Department of Aging and Disability Services by calling 1-800-458-9858".

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SUBCHAPTER H. ENFORCEMENT  
DIVISION 9. ADMINISTRATIVE PENALTIES

**40 TAC §92.551**

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; and Texas Human Resources Code, §101A.051, which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §101A.051.

*§92.551. Administrative Penalties.*

(a) Assessment of an administrative penalty. HHSC [DADS] may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247;

(2) makes a false statement of material fact that the license holder knows or should know is false:

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

(C) with respect to a matter under investigation by HHSC [DADS];

(3) refuses to allow an HHSC [a DADS] representative to inspect:

(A) a book, record, or file that a facility must maintain; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of, or retaliates against, an HHSC [a DADS] representative or the enforcement of this chapter;

(5) willfully interferes with, or retaliates against, an HHSC [a DADS] representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final; [or]

(7) fails to notify HHSC [DADS] of a change of ownership before the effective date of the change of ownership; [-]

(8) willfully interferes with the State Ombudsman, a certified ombudsman, or an ombudsman intern performing the functions of the Ombudsman Program as described in 26 TAC Chapter 88 (relating to State Long-Term Care Ombudsman Program); or

(9) retaliates against the State Ombudsman, a certified ombudsman, or an ombudsman intern:

(A) with respect to a resident, employee of a facility, or other person filing a complaint with, providing information to, or other-

wise cooperating with the State Ombudsman, a certified ombudsman, or an ombudsman intern; or

(B) for performing the functions of the Ombudsman Program as described in 26 TAC Chapter 88.

(b) Criteria for assessing an administrative penalty. HHSC [DADS] considers the following in determining the amount of an administrative penalty:

(1) - (7) (No change.)

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, HHSC [DADS] may assess an administrative penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. HHSC [DADS] uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty.

Figure: 40 TAC §92.551(d)  
[Figure: 40 TAC §92.551(4)]

(e) Administrative penalty assessed against a resident. HHSC [DADS] does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) HHSC [DADS] issues a preliminary report stating the facts on which HHSC [DADS] concludes that a violation has occurred after HHSC [DADS] has:

(A) examined the possible violation and facts surrounding the possible violation; and

(B) concluded that a violation has occurred.

(2) HHSC [DADS] may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) HHSC [DADS] provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

(A) a brief summary of the violation;

(B) the amount of the recommended administrative penalty;

(C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

(i) the date on which the license holder must file with HHSC [DADS] a plan of correction for approval by HHSC [DADS]; and

(ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and

(D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:

(A) give HHSC [DADS] written consent to the preliminary report, including the recommended administrative penalty; or

(B) make a written request to the Texas Health and Human Services Commission (HHSC) for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to HHSC [DADS] for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to HHSC [DADS] that the violation has been corrected, HHSC [DADS] inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:

(A) the correction is satisfactory and HHSC [DADS] will not assess an administrative penalty; or

(B) the correction is not satisfactory and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice under paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty), the license holder may:

(A) give HHSC [DADS] written consent to HHSC [DADS] report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):

(A) the commissioner or the commissioner's designee assesses the recommended administrative penalty;

(B) HHSC [DADS] gives written notice of the decision to the license holder; and

(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Opportunity to correct.

(1) A license holder has an opportunity to correct a violation, except a violation described in paragraph (2) of this subsection, and to avoid paying an administrative penalty, if the license holder corrects the violation not later than 45 calendar days after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) A license holder does not have an opportunity to correct a violation:

(A) that HHSC [DADS] determines results in serious harm to or death of a resident;

(B) described by subsection (a)(2) - (9) [(7)] of this section;

(C) related to advance directives as described in §92.41(g);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §92.125 of this chapter (relating to Advance Directives); or

(ii) the same right of all residents under §92.125 of this chapter; or

(E) a violation that is written because of an inappropriately placed resident, except as described in §92.41(f) of this chapter (relating to Inappropriate Placement).

(3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, HHSC [DADS] may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.

(C) HHSC [DADS] is not required to offer the license holder an opportunity to correct the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (f)(7) of this section, the administrative hearing is held in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) HHSC [DADS] may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code, §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under HHSC [DADS] supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that HHSC [DADS] determines constitutes immediate jeopardy to the health or safety of a resident.

(3) HHSC [DADS] offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

(A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from HHSC [DADS]; and

(B) agree to waive the license holder's right to an administrative hearing if HHSC [DADS] approves the plan for amelioration.

(5) - (6) (No change.)

(7) HHSC [DADS] may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) HHSC [DADS] approves or denies a license holder's amelioration plan not later than 45 calendar days after the date HHSC [DADS] receives the plan. If HHSC [DADS] approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) HHSC [DADS] does not offer amelioration to a license holder:

(A) more than three times in a two-year period; or

(B) more than one time in a two-year period for the same or a similar violation.

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

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## SUBCHAPTER I. ACCESS TO RESIDENTS AND RECORDS BY THE LONG-TERM CARE OMBUDSMAN PROGRAM

### 40 TAC §92.801

#### 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; and Texas Human Resources Code, §101A.051, which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §101A.051.

§92.801. *Access to Residents and Records by the Long-Term Care Ombudsman Program.*

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

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#### 40 TAC §92.801

##### STATUTORY AUTHORITY

The new rule 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; and Texas Human Resources Code, §101A.051, which provides that the HHSC executive commissioner shall adopt rules regarding the administration by HHSC programs and services for older individuals.

The new rule implements Texas Government Code, §531.0055, and Texas Human Resources Code, §101A.051.

§92.801. Access to Residents and Records by the State Long-Term Care Ombudsman Program.

(a) A resident has the right to be visited by the State Ombudsman, a certified ombudsman, or an ombudsman intern.

(b) In accordance with the Older Americans Act, §712(b)(1)(A), and 45 CFR §1324.11(e)(2), a facility must allow:

(1) the State Ombudsman, a certified ombudsman, and an ombudsman intern to have:

(A) immediate, private, and unimpeded access to enter the facility at any time during the facility's regular business hours or regular visiting hours;

(B) immediate, private, and unimpeded access to a resident; and

(C) immediate and unimpeded access to the name and contact information of the resident's legally authorized representative, if the State Ombudsman, a certified ombudsman, or an ombudsman intern determines the information is needed to perform a function of the Ombudsman Program; and

(2) the State Ombudsman and a certified ombudsman to have immediate, private, and unimpeded access to enter the facility at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated.

(c) A facility, in accordance with the Older Americans Act, §712(b)(1)(B) and 45 CFR §1324.11(e)(2), must allow the State Ombudsman and a certified ombudsman to have immediate access to:

(1) all files, records, and other information concerning a resident, including an incident report involving the resident, if:

(A) the State Ombudsman or certified ombudsman has the consent of the resident or legally authorized representative;

(B) the resident is unable to communicate consent to access and has no legally authorized representative; or

(C) such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access to the records, files, and other information;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and

(iii) if it is the certified ombudsman seeking access to the records, files, or other information, the certified ombudsman obtains the approval of the State Ombudsman to access the records, files, or other information without the legally authorized representative's consent; and

(2) the administrative records, policies, and documents of the facility to which the residents or general public have access.

(d) The rules adopted under the Health Insurance Portability and Accountability Act of 1996, 45 CFR part 164, subparts A and E, do not preclude a facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (b)(1)(C) and (c)(1) of this section are otherwise met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

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, 2017.

TRD-201705431

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 11, 2018

For further information, please call: (512) 438-4356



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 8. TEXAS JUDICIAL COUNCIL

#### CHAPTER 174. INDIGENT DEFENSE POLICIES AND STANDARDS

##### SUBCHAPTER A. MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENTS

###### 1 TAC §174.1

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts an amendment to §174.1, concerning Minimum Continuing Legal Education Requirements. The rule is adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5755), and will not be republished. The amendment is adopted to update a reference to one of the Commission's grant administration rules.

In addition to amending the rule to reflect the recent legislative change, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed change to the current rule is appropriate.

No comments were received regarding the adoption of the amendment.

The amended rule is adopted under the Texas Government Code §79.034(a)(2), which authorizes the Commission to develop policies and standards related to minimum education requirements for attorneys providing legal representation to indigent defendants.

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

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

Filed with the Office of the Secretary of State on December 21, 2017.

TRD-201705367

Wesley Shackelford

Deputy Director

Texas Judicial Council

Effective date: January 10, 2018

Proposal publication date: October 20, 2017

For further information, please call: (512) 936-6994

### SUBCHAPTER B. CONTRACT DEFENDER PROGRAM REQUIREMENTS

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts amendments to Subchapter B, concerning Contract Defender Program Requirements, §§174.10 - 174.12, 174.16, and 174.21. The rules are adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5755), and will not be republished. The amendments are adopted to correct references to the Commission, limit applicability of the rules to contracts of more than one week in duration, exclude the application of the rules to managed assigned counsel programs, require at least 30 days for attorneys to respond to a notification of the opportunity to apply for a contract unless it is an emergency, change the reference of extension to renewal of a contract, and refer to caseload guidelines published by the Commission.

In addition to amending the rule to reflect the recent legislative change, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed change to the current rule is appropriate.

No comments were received regarding the adoption of the amendment.

#### DIVISION 1. DEFINITIONS

##### 1 TAC §174.10

The amendments are adopted under the Texas Government Code §79.034(a)(7), which authorizes the Commission to develop policies and standards for providing legal representation to indigent defendants under a contract defender program.

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

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

Filed with the Office of the Secretary of State on December 21, 2017.

TRD-201705368

Wesley Shackelford

Deputy Director

Texas Judicial Council

Effective date: January 10, 2018

Proposal publication date: October 20, 2017

For further information, please call: (512) 936-6994

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## DIVISION 2. APPLICATION OF STANDARDS AND CONTRACTING PROCEDURES

### 1 TAC §174.11, §174.12

The amendments are adopted under the Texas Government Code §79.034(a)(7), which authorizes the Commission to develop policies and standards for providing legal representation to indigent defendants under a contract defender program.

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

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

Filed with the Office of the Secretary of State on December 21, 2017.

TRD-201705371  
Wesley Shackelford  
Deputy Director

Texas Judicial Council

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Proposal publication date: October 20, 2017

For further information, please call: (512) 936-6994

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## DIVISION 3. REQUIRED ELEMENTS OF A CONTRACT FOR INDIGENT DEFENSE SERVICES (EACH COMPONENT BELOW SHALL BE INCLUDED IN A CONTRACT FOR INDIGENT DEFENSE SERVICES AND SHALL SERVE AS THE BASIS FOR THE NOA)

### 1 TAC §174.16, §174.21

The amendments are adopted under the Texas Government Code §79.034(a)(7), which authorizes the Commission to develop policies and standards for providing legal representation to indigent defendants under a contract defender program.

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

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

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Wesley Shackelford  
Deputy Director

Texas Judicial Council

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For further information, please call: (512) 936-6994

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## SUBCHAPTER C. POLICY MONITORING REQUIREMENTS

### DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS

#### 1 TAC §174.28

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts amendments to Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapter A, §174.28, concerning policy monitoring requirements. The amendments to §174.28 are adopted with changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5757). The adopted revision deletes a reference to §173.303 because the proposed amendment to that section was not adopted by the Commission. The rule as adopted provides that attorneys appointed to represent indigent defendants must be on an approved for an appointment list. The adopted amendments also provide that in analyzing the distribution of appointments among qualified attorneys, the Commission will not consider appointments to attorneys who are added to the list during the year, removed from the list during the year, or permanently removed themselves from the list.

No comments were received regarding the adoption of the amendment.

The amendments are adopted under the Texas Government Code §79.037(a) and (b), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense.

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

§174.28. *On-Site Monitoring Process.*

(a) Purpose. The process promotes local compliance with the requirements of the Fair Defense Act and Commission rules and provides technical assistance to improve processes where needed.

(b) Monitoring Process. The policy monitor examines the local indigent defense plans and local procedures and processes to determine if the jurisdiction meets the statutory requirements and rules adopted by the Commission. The policy monitor also attempts to randomly select samples of actual cases from the period of review by using a 15% confidence interval for a population at a 95% confidence level.

(c) Core Requirements. On-site policy monitoring focuses on the six core requirements of the Fair Defense Act and related rules. Policy monitoring may also include a review of statutorily required reports to the Office of Court Administration and Commission. This rule establishes the process for evaluating policy compliance with a requirement and sets benchmarks for determining whether a county is in substantial policy compliance with the requirement. For each of these elements, the policy monitor shall review the local indigent defense plans and determine if the plans are in compliance with each element.

(1) Prompt and Accurate Magistration.

(A) The policy monitor shall check for documentation indicating that the magistrate or county has:

(i) Informed and explained to an arrestee the rights listed in Article 15.17(a), Code of Criminal Procedure, including the right to counsel;

(ii) Maintained a process to magistrate arrestees within 48 hours of arrest;

(iii) Maintained a process for magistrates not authorized to appoint counsel to transmit requests for counsel to the appointing authority within 24 hours of the request; and

(iv) Maintained magistrate processing records required by Article 15.17(a), (e), and (f), Code of Criminal Procedure, and records documenting the time of arrest, time of magistration, whether the person requested counsel, and time for transferring requests for counsel to the appointing authority.

(B) A county is presumed to be in substantial compliance with the prompt magistration requirement if magistration in at least 98% of the policy monitor's sample is conducted within 48 hours of arrest.

(2) Indigence Determination. The policy monitor checks to see if procedures are in place that comply with the indigent defense plan and the Fair Defense Act.

(3) Minimum Attorney Qualifications. The policy monitor shall check that attorney appointment lists are maintained according to the requirements set in the indigent defense plans. Only attorneys approved for an appointment list are eligible to receive appointments.

(4) Prompt Appointment of Counsel.

(A) The policy monitor shall check for documentation of timely appointment of counsel in criminal and juvenile cases.

(i) Criminal Cases. The policy monitor shall determine if counsel was appointed or denied for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties. If the policy monitor cannot determine the date the appointing authority received a request for counsel, then the timeliness of appointment will be based upon the date the request for counsel was made plus 24 hours for the transmittal of the request to the appointing authority plus the time allowed to make the appointment of counsel.

(ii) Juvenile Cases. The policy monitor shall determine if counsel was appointed prior to the initial detention hearing for eligible in-custody juveniles. If counsel was not appointed, the policy monitor shall determine if the court made a finding that appointment of counsel was not feasible due to exigent circumstances. If exigent circumstances were found by the court and the court made a determination to detain the child, then the policy monitor shall determine if counsel was appointed for eligible juveniles immediately upon making this determination. For out-of-custody juveniles, the policy monitor shall determine if counsel was appointed within five working days of service of the petition on the juvenile.

(B) A county is presumed to be in substantial compliance with the prompt appointment of counsel requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of indigence determinations in the policy monitor's sample are timely.

(5) Attorney Selection Process. The policy monitor shall check for documentation indicating:

(A) In the case of a contract defender program, that all requirements of §§174.10 - 174.25 of this title are met;

(B) In the case of a managed assigned counsel program, that counsel is appointed according to the entity's plan of operation;

(C) That attorney selection process actually used matches what is stated in the indigent defense plans; and

(D) For assigned counsel and managed assigned counsel systems, the number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review and the percentage share of appointments represented by the top 10% of attorneys accepting appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list. For this analysis, the monitor will include attorneys who may have been temporarily unavailable for part of the year but will exclude attorneys who were not on an appointment list for any part of the time period under review.

(6) Payment Process. The policy monitor shall check for documentation indicating that the county has established a process for collecting and reporting itemized indigent defense expense and case information.

(d) Report.

(1) Report Issuance. The policy monitor shall issue a report to the authorized official within 60 days of the on-site monitoring visit to a county, unless a documented exception is provided by the director, with an alternative deadline provided, not later than 120 days from the on-site monitoring visit. The report shall contain recommendations to address areas of noncompliance.

(2) County Response. Within 60 days of the date the report is issued by the policy monitor, the authorized official shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 60 days.

(3) Follow-up Reviews. The policy monitor shall conduct follow-up reviews of counties where the report included noncompliance findings. The follow-up review shall occur within a reasonable time but not more than two years following receipt of a county's response to the report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and to the Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the authorized official shall respond in writing to each recommendation, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days.

(4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further payments will be withheld if no response to the report is received by the Commission within 10 days of receipt of the letter. If funds are withheld under this section, then the funds will not be reinstated until the Commission or the Policies and Standards Committee approves the release of the funds.

(5) Noncompliance. If a county fails to correct any noncompliance findings, the Commission may impose a remedy under §173.307 of this title.

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

Filed with the Office of the Secretary of State on December 21, 2017.

TRD-201705373

Wesley Shackelford

Deputy Director

Texas Judicial Council

Effective date: January 10, 2018

Proposal publication date: October 20, 2017

For further information, please call: (512) 936-6994

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**TITLE 22. EXAMINING BOARDS**

**PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

**CHAPTER 72. APPLICATIONS AND APPLICANTS**

**22 TAC §72.9**

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 72, §72.9, concerning Reexaminations, without changes to the proposed text as published in the September 29, 2017, issue of the *Texas Register* (42 TexReg 5210); the amendment will not be republished.

The rule amendment proposal reflects a 2017 Sunset Commission recommendation to allow applicants an unlimited number of times, within a calendar year, to take the Board's jurisprudence exam in order to achieve a passing score.

This rule was proposed for publication at the Board's quarterly meeting on August 17, 2017. The proposed language was published in the Rules Committee and Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meeting prior to this publication in the Register. No comments were received.

**GOVERNMENT GROWTH IMPACT:** Board staff has determined that the proposed new sections do not have a government growth impact pursuant to Texas Government Code, §2001.0221.

This amended rule is adopted under Texas Occupations Code §201.152, relating to rules and Subchapter G of the Chiropractic Act, License Requirements. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect public health and safety. Subchapter L provides the framework to authorize the Board to impose administrative penalties.

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

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

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705409

Courtney L. Ebeier

General Counsel

Texas Board of Chiropractic Examiners

Effective date: January 18, 2018

Proposal publication date: September 29, 2017

For further information, please call: (512) 305-6715

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**CHAPTER 73. CHIROPRACTIC FACILITIES**

**22 TAC §§73.1 - 73.5**

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of Chapter 73, §§73.1 - 73.5, concerning Chiropractic Facilities, without changes to the proposed text as published in the September 29, 2017, issue of the *Texas Register* (42 TexReg 5211) and will not be republished.

Chapter 73 established requirements and procedures related to the regulation of chiropractic facilities. The Chapter is repealed to reflect implementation of 2017 Sunset legislation, SB 304, which ceases the Board's statutory requirement to register chiropractic facilities, effective of September 1, 2017.

**GOVERNMENT GROWTH IMPACT STATEMENT:** Board staff has determined that the repeal of this chapter, affecting the Board's requirement to regulate chiropractic facilities, will result in a reduction of fees paid to the state, reduce the Board's staff by one-half of a full time employee (FTE) and reduce the Board's requirement to regulate non-chiropractor facility owners. Repeal of Chapter 73 does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Board received stakeholder comments at a meeting held on June 28, 2017, to discuss the statutory change which necessitated the proposed repeal. No additional comments were received after publication of the proposed repeal of these sections in the *Texas Register*.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect the public health and safety.

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

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705410

Courtney L. Ebeier

General Counsel

Texas Board of Chiropractic Examiners

Effective date: January 18, 2018

Proposal publication date: September 29, 2017

For further information, please call: (512) 305-6715

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**CHAPTER 75. LICENSES AND RENEWAL**

**22 TAC §75.2**

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 75, §75.2, concerning Renewal of



Chiropractic License, without changes to the proposed text as published in the September 29, 2017, issue of the *Texas Register* (42 TexReg 5211); the amendment will not be republished.

The rule amendment proposal reflects a 2017 Sunset Commission recommendation to extend the annual license renewal period to a two-year cycle, which reflects the license period of other similar health professional licensing agencies.

GOVERNMENT GROWTH IMPACT: Board staff has determined that the proposed new sections do not have a government growth impact pursuant to Texas Government Code, §2001.0221.

This rule was proposed for publication at the Board's quarterly meeting on August 17, 2017. The proposed language was published in the Rules Committee and Board agenda. Comment on the proposal was sought during the Rules Committee and Board meeting prior to this publication in the Texas Register. No comments were received.

This amended rule is adopted under Texas Occupations Code §201.152, relating to rules and Subchapter G of the Chiropractic Act, License Requirements. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect the public health and safety. Subchapter L provides the framework to authorize the Board to impose administrative penalties.

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

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

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705411  
Courtney L. Ebeier  
General Counsel  
Texas Board of Chiropractic Examiners  
Effective date: March 1, 2018  
Proposal publication date: September 29, 2017  
For further information, please call: (512) 305-6715



## 22 TAC §75.4

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 75, §75.4, concerning Inactive Chiropractic License Status, without changes to the proposed text as published in the September 29, 2017, issue of the *Texas Register* (42 TexReg 5213); the amendment will not be republished.

The rule amendment proposal reflects a 2017 Sunset Commission recommendation to change the annual license renewal period to a two-year cycle, which reflects the license period of other similar health professional licensing agencies.

This rule was proposed for publication at the Board's meeting on August 17, 2017. The proposed language was published in the Rules Committee and Board agenda. Comment on the proposal was sought during the Rules Committee and Board meetings prior to this publication in the Register. No comments were received.

GOVERNMENT GROWTH IMPACT: Board staff has determined that the proposed new sections do not have a government growth impact, pursuant to Texas Government Code, §2001.0221.

This amended rule is adopted under Texas Occupations Code §201.152, relating to rules and Subchapter G of the Chiropractic Act, License Requirements. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect the public health and safety. Subchapter L provides the framework to authorize the Board to impose administrative penalties.

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

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

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705412  
Courtney L. Ebeier  
General Counsel  
Texas Board of Chiropractic Examiners  
Effective date: March 1, 2018  
Proposal publication date: September 29, 2017  
For further information, please call: (512) 305-6715



## PART 9. TEXAS MEDICAL BOARD

### CHAPTER 182. USE OF EXPERTS

#### 22 TAC §182.8

The Texas Medical Board (Board) adopts an amendment to §182.8, concerning Expert Physician Reviewers, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6113) and will not be republished.

The amendment removes language from subsection (c) which requires that a report, prepared by an expert reviewer, include the expert's general qualifications; the rule is further amended to add language requiring the expert's specialty areas be included in such reports.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 27, 2017.

TRD-201705388

Scott Freshour  
Interim Executive Director  
Texas Medical Board  
Effective date: January 16, 2018  
Proposal publication date: November 3, 2017  
For further information, please call: (512) 305-7016



## CHAPTER 188. PERFUSIONISTS

### 22 TAC §188.5, §188.9

The Texas Medical Board (Board) adopts amendments to §188.5, concerning Procedural Rules for Licensure Applicants, and §188.9, concerning License Renewal, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6114) and will not be republished.

The amendment to §188.5 removes language from subsection (a)(6) requiring a "sworn" application. This change is in accordance with and pursuant to the passage of SB 674 (85th Regular Session), which amended §603.252 of the Texas Occupations Code.

The amendment to §188.9 removes the reference to "affidavit" which infers that an application for renewal is a "sworn" application. This change is in accordance with and pursuant to the passage of SB 674 (85th Regular Session), which amended §603.252 of the Texas Occupations Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §§603.151, 603.152 and 603.252, which provide authority for the Board to adopt rules as necessary to: regulate the practice of perfusion; enforce Chapter 603 of the Texas Occupations Code; and perform its duties under Chapter 603 of the Texas Occupations Code.

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

Filed with the Office of the Secretary of State on December 27, 2017.

TRD-201705389  
Scott Freshour  
Interim Executive Director  
Texas Medical Board  
Effective date: January 16, 2018  
Proposal publication date: November 3, 2017  
For further information, please call: (512) 305-7016



## CHAPTER 189. COMPLIANCE PROGRAM

### 22 TAC §189.15

The Texas Medical Board (Board) adopts amendment to §189.15, concerning Determination of Successful Completion of an Order, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6115) and will not be republished.

The adoption amends the language in subsection (d) to clarify the provisions related to tolling and extension of an Order's time period resulting from tolling. The amendments also add a new subsection (e) to include a description of "partial tolling" and new subsection (f) to delineate the terms, requirements or conditions that may not be tolled.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 27, 2017.

TRD-201705390  
Scott Freshour  
Interim Executive Director  
Texas Medical Board  
Effective date: January 16, 2018  
Proposal publication date: November 3, 2017  
For further information, please call: (512) 305-7016



## CHAPTER 193. STANDING DELEGATION ORDERS

### 22 TAC §193.8

The Texas Medical Board (Board) adopts an amendment to §193.8, concerning Prescriptive Authority Agreements: Minimum Requirements, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6115) and will not be republished.

The amendment changes the requirements set forth in paragraphs (9) - (11) and adds a new paragraph (12), relating to the frequency physicians must meet with physician assistants to whom they delegate and supervise. These changes are in accordance with, and pursuant to, the passage of SB 1625 (85th Regular Session), which amended §157.0512 of the Texas Occupations Code.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 27, 2017.

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Scott Freshour  
Interim Executive Director  
Texas Medical Board  
Effective date: January 16, 2018  
Proposal publication date: November 3, 2017  
For further information, please call: (512) 305-7016



CHAPTER 194. MEDICAL RADIOLOGIC  
TECHNOLOGY  
SUBCHAPTER B. NON-CERTIFIED  
TECHNICIANS SUPERVISED BY PHYSICIANS

**22 TAC §§194.34 - 194.43**

The Texas Medical Board (Board) adopts the repeal of Chapter 194, Subchapter B, §§194.34 - 194.43, concerning Medical Radiologic Technology, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6117) and will not be republished.

The repeal of Chapter 194, Subchapter B is adopted in accordance with Senate Bill No. 674, which repealed requirements under §601.252 of the Texas Occupations Code related to the Medical Board's registration of non-certified technicians (NCT) who are employed by physicians. The Medical Board provides agency resources to support the general registry for NCTs performing radiologic procedures in Texas. The repeal will eliminate inefficiencies related to Medical Board's resources allocated to supporting a second registry for a subset of NCTs working for physicians, which creates inefficiencies and potential duplication across the agency's departments and provides no benefit to the agency, NCT profession or the public.

No comments were received regarding adoption of the rules.

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The repeal are further adopted under the authority of Texas Occupations Code Annotated, Chapter 601, as amended by Senate Bill 674 (85th Legislature Regular Session) (2017).

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 27, 2017.

TRD-201705387  
Scott Freshour  
Interim Executive Director  
Texas Medical Board  
Effective date: January 16, 2018  
Proposal publication date: November 3, 2017  
For further information, please call: (512) 305-7016



**TITLE 25. HEALTH SERVICES**

**PART 1. DEPARTMENT OF STATE  
HEALTH SERVICES**

**CHAPTER 97. COMMUNICABLE DISEASES  
SUBCHAPTER G. VACCINATION STAMPS**

**25 TAC §§97.151 - 97.156**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts amendments to §97.151, concerning Purpose and Scope; §97.152, concerning Definitions; §97.153, concerning Criteria for Issuing Uniform Stamps to Physicians; §97.154, concerning Criteria for Operating as a Vaccination Center; §97.155, concerning Format of the Uniform Stamp; and §97.156, concerning Denial, Suspension, or Revocation of a Uniform Stamp. The amendments are adopted without changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5370), and therefore will not be republished.

**BACKGROUND AND JUSTIFICATION**

The purpose of the adopted amendments is to update the protocols for providers who administer yellow fever vaccine and issue vaccination certificates for persons who travel to countries outside the United States, and to clarify the rules. Sections 97.151 - 97.156 have been reviewed and DSHS has determined that reasons for adopting the sections continue to exist because rules on this subject are required by federal law and provide guidance for the ongoing vaccination stamp program (program).

**COMMENTS**

The 30-day comment period ended on November 6, 2017. During this period, DSHS did not receive any comments regarding the proposed vaccination stamp rules.

**STATUTORY AUTHORITY**

The adopted amendments are informed by U.S. Public Health Services (PHS) requirements: Code of Federal Regulations, Title 42-Public Health, Part 71-Foreign Quarantine, §71.3, Designation of Yellow Fever Vaccination Centers; Validation Stamps; and PHS publications entitled, Division of Quarantine Circular No. 106; Advisory Memorandum No. 66; and Advisory Memorandum No. 72. The amendments are authorized by Texas Government Code, §531.0055, and Texas 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 DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705444

Barbara Klein  
Interim General Counsel  
Department of State Health Services  
Effective date: January 18, 2018  
Proposal publication date: October 6, 2017  
For further information, please call: (512) 776-6972



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER V. FRANCHISE TAX

###### 34 TAC §3.595

The Comptroller of Public Accounts adopts the repeal of §3.595, concerning margin: transition, without changes to the proposed text as published in the November 17, 2017, issue of the *Texas Register* (42 TexReg 6483). This section is being repealed because it covers the transition from using taxable capital and earned surplus as the basis for calculating the franchise tax to calculating the franchise tax based on taxable margin. The section specifically addresses franchise tax reports originally due on May 15, 2008. This report year is now outside the four-year statute of limitations for assessments and refund claims. See Tax Code, §111.107(a) (When Refund or Credit Is Permitted) and §111.201 (Assessment Limitation).

The repeal is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

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 21, 2017.

TRD-201705360  
Lita Gonzalez  
General Counsel  
Comptroller of Public Accounts  
Effective date: January 10, 2018  
Proposal publication date: November 17, 2017  
For further information, please call: (512) 475-2220



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 6. LICENSE TO CARRY HANDGUNS

## SUBCHAPTER A. GENERAL PROVISIONS

### 37 TAC §6.1

The Texas Department of Public Safety (the department) adopts amendments to §6.1, concerning Definitions. This rule is adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5991) and will not be republished.

The changes to §6.1 are intended to clarify the meaning of terms used in the administrative rules.

No comments were received regarding the adoption of this rule.

This rule 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 §411.197 which authorizes the director to adopt rules to administer this subchapter.

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, 2017.

TRD-201705378  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 11, 2018  
Proposal publication date: October 27, 2017  
For further information, please call: (512) 424-5848



## SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

### 37 TAC §6.14, §6.16

The Texas Department of Public Safety (the department) adopts amendments to §6.14 and §6.16, concerning Eligibility and Application Procedures for a License to Carry a Handgun without changes to the proposed text as published in the October 27, 2017 issue of the *Texas Register* (42 TexReg 5992) and will not be republished.

Amendments to §6.14 and §6.16 are made as a result of 85th Legislative Session, HB 3784 and SB 16 respectively. Additional changes have been made to §6.14 to clarify proficiency requirements.

No comments were received regarding the adoption of these rules.

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 §411.197, which authorizes the director to adopt rules to administer this subchapter.

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, 2017.

TRD-201705379  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



### SUBCHAPTER C. QUALIFIED HANDGUN INSTRUCTOR LICENSE

#### 37 TAC §§6.32, 6.40, 6.42

The Texas Department of Public Safety (the department) adopts amendments to §§6.32, 6.40, and 6.42, concerning Qualified Handgun Instructor License. These rules are adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5992) and will not be republished.

Amendments to §6.32 and §6.40 are made as a result of 85th Legislative Session, HB 3784. The amendment to §6.42 is made to clarify a record retention obligation of instructors.

No comments were received regarding the adoption of these rules.

These rules 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 §411.197, which authorizes the director to adopt rules to administer this subchapter.

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

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TRD-201705380  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



#### 37 TAC §6.39

The Texas Department of Public Safety (the department) adopts the repeal of §6.39, concerning Prior Notice of Training Required. This repeal is adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5993) and will not be republished.

The department has determined the requirement imposed by this rule is unnecessary to the effective administration of the statute.

No comments were received regarding the adoption of 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 §411.197, which authorizes the director to adopt rules to administer this subchapter.

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

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TRD-201705381  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: January 11, 2018  
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For further information, please call: (512) 424-5848



### SUBCHAPTER E. APPROVED ONLINE COURSE PROVIDERS

#### 37 TAC §§6.81 - 6.92

The Texas Department of Public Safety (the department) adopts new §§6.81 - 6.92, concerning Approved Online Course Providers without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5994) and will not be republished.

The proposal of new §§6.81 - 6.92 is necessary to implement the requirements of the 85th Legislative Session, HB 3784, which adds approved online course providers for the classroom instruction part of the handgun proficiency course.

No comments were received regarding the adoption of these rules.

These new rules 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 §411.197, which authorizes the director to adopt rules to administer this subchapter.

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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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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Proposal publication date: October 27, 2017  
For further information, please call: (512) 424-5848



### CHAPTER 15. DRIVER LICENSE RULES

**SUBCHAPTER B. APPLICATION  
REQUIREMENTS--ORIGINAL, RENEWAL,  
DUPLICATE, IDENTIFICATION CERTIFICATES**

**37 TAC §15.44**

The Texas Department of Public Safety (the department) adopts amendments to §15.44, concerning Driver License Photograph. This rule is adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5996) and will not be republished.

This amendment strikes the word color according to House Bill 1345 and House Bill 3050 enacted by the 85th Texas Legislature.

No comments were received regarding the adoption of this rule.

This rule 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, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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

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TRD-201705383

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General Counsel

Texas Department of Public Safety

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**SUBCHAPTER K. INTERAGENCY  
AGREEMENTS**

**37 TAC §15.172**

The Texas Department of Public Safety (the department) adopts amendments to §15.172, concerning Issuance by Counties and Municipalities. This rule is adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5996) and will not be republished.

These amendments add municipalities as authorized entities to issue certain renewal and duplicate driver licenses and identification cards according to House Bill 3050 enacted by the 85th Texas Legislature.

No comments were received regarding the adoption of this rule.

This rule 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, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

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

**CHAPTER 97. LICENSING STANDARDS  
FOR HOME AND COMMUNITY SUPPORT  
SERVICES AGENCIES**

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1, govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the executive commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1.

Therefore, the executive commissioner of HHSC adopts amendments to §97.2, concerning Definitions; §97.13, concerning Application Procedures for an Initial License; §97.17, concerning Application Procedures for a Renewal License; and new §97.30, concerning Operation of an Inpatient Unit at Parent Agency. The amendment to §97.2 is adopted with changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5393). The amendments to §97.13 and §97.17, and new §97.30 are adopted without changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5393), and therefore will not be republished.

**BACKGROUND AND JUSTIFICATION**

The adoption amends Title 40, Chapter 97, Licensing Standards for Home and Community Support Services Agencies, by adding §97.30, which states the requirements that a home and community support services agency (HCSSA) or an applicant for a HCSSA license must meet to operate an inpatient unit at its parent agency. Specifically, the adopted rules require a HCSSA or an applicant for a HCSSA license to notify HHSC of its intent to operate the inpatient unit; request and allow a Life Safety Code inspection; obtain verification from HHSC that the inpatient unit

is in compliance with all requirements; and, unless the applicant is exempt from a health survey, request a health survey after providing services to one client. This new section is adopted in response to inquiries from HCSSAs about the requirements for operating an inpatient unit at a parent agency.

The adoption also amends definitions in §97.2, including the definition of "parent agency," a term currently used in Chapter 97 and adopted new §97.30. The adoption amends §97.13 and §97.17 to require an applicant for an initial or renewal license to comply with new §97.30 to operate an inpatient unit at its parent agency.

Other amendments to §§97.2, 97.13, and 97.17 are adopted to improve their accuracy and readability, and to use consistent terminology.

#### COMMENTS

The 30-day comment period ended November 5, 2017.

During this period, HHSC received one comment regarding the proposed rules from Texas Association for Homecare and Hospice. The commenter expressed agreement with the rule amendments. HHSC appreciates the positive feedback.

A minor edit was made to §97.2(125) to reflect the correct agency acronym.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 40 TAC §97.2

##### STATUTORY AUTHORITY

The amendment is adopted 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 and Texas Health and Safety Code, §142.012, which requires the HHSC executive commissioner to adopt rules related to the licensure of a HCSSA.

##### §97.2. Definitions.

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

(1) Accessible and flexible services--Services that are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for implementing and supervising the administrative policies and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(5) ADS--Alternate delivery site. A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's parent agency;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(6) Advanced practice nurse--An advanced practice registered nurse.

(7) Advanced practice registered nurse--A person licensed by the Texas Board of Nursing as an advanced practice registered nurse. The term is synonymous with "advanced practice nurse."

(8) Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(9) Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0 percent, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(10) Agency--A home and community support services agency.

(11) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.

(12) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(13) Association--A partnership, limited liability company, or other business entity that is not a corporation.

(14) **Audiologist**--A person who is currently licensed under the Texas Occupations Code, Chapter 401, as an audiologist.

(15) **Bereavement**--The process by which a survivor of a deceased person mourns and experiences grief.

(16) **Bereavement services**--Support services offered to a family during bereavement. Services may be provided to persons other than family members, including residents of a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, when appropriate and identified in a bereavement plan of care.

(17) **Biologicals**--A medicinal preparation made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(18) **Boarding home facility**--An establishment defined in Texas Health and Safety Code §260.001(2).

(19) **Branch office**--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(20) **Care plan**--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(21) **Case conference**--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

(22) **Certified agency**--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).

(23) **Certified home health services**--Home health services that are provided by a certified agency.

(24) **CFR**--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.

(25) **Change of ownership**--An event that results in a change to the federal taxpayer identification number of the license holder of an agency. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(26) **CHAP**--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.

(27) **Chief financial officer**--An individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(28) **Client**--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (for example, vaccination) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(29) **Clinical note**--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(30) **CMS**--Centers for Medicare & Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(31) **Complaint**--An allegation against an agency regulated by HHSC or against an employee of an agency regulated by HHSC that involves a violation of this chapter or the statute.

(32) **Community disaster resources**--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(33) **Controlling person**--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(34) **Conviction**--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(35) **Counselor**--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(36) **DADS**--HHSC.

(37) **Day**--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(38) **Deficiency**--A finding of noncompliance with federal requirements resulting from a survey.



(39) Designated survey office--An HHSC Home and Community Support Services Agencies Program office located in an agency's geographic region.

(40) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(41) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(42) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(43) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(44) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(45) ESRD--End stage renal disease. For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(46) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(47) Habilitation--Habilitation services, as defined by Texas Government Code §534.001, provided by an agency licensed under this chapter.

(48) Health assessment--A determination of a client's physical and mental status through inventory of systems.

(49) HHSC--Texas Health and Human Services Commission or its designee.

(50) Home and community support services agency--A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(51) Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home Health Aides).

(52) Home health medication aide--An unlicensed person issued a permit by HHSC to administer medication to a client under the Texas Health and Safety Code, Chapter 142, Subchapter B.

(53) Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(54) Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(55) Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide as described in §97.843 of this chapter (relating to Hospice Aide Qualifications).

(56) Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §97.845 of this chapter (relating to Hospice Homemaker Qualifications).

(57) Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(58) IDR--Informal dispute resolution. An informal process that allows an agency to refute a violation or condition-level deficiency cited during a survey.

(59) Independent living environment--A client's residence, which may include a group home, foster home, or boarding home facility, or other settings where a client participates in activities, including school, work, or church.

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

(61) Individual and family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(62) Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(63) Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or

nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

(64) JCAHO--The Joint Commission, previously known as the Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(65) Joint training--Training provided by HHSC at least semi-annually for home and community support services agencies and HHSC surveyors on subjects that address the 10 most commonly cited violations of federal or state law by home and community support services agencies as published in HHSC annual reports.

(66) LAR--Legally authorized representative. A person authorized by law to act on behalf of a client with regard to a matter described in this chapter, and may include a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code, §313.004.

(67) License holder--A person that holds a license to operate an agency.

(68) Licensed vocational nurse--A person who is currently licensed under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(69) Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(70) Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(71) Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(72) Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(73) Medication administration record--A record used to document the administration of a client's medications.

(74) Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(75) Mitigation--An action taken to eliminate or reduce the probability of a disaster, or reduce a disaster's severity or consequences.

(76) Multiple location--A Medicare-approved alternate delivery site that meets the definition in 42 CFR §418.3.

(77) Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(78) Nursing facility--An institution licensed as a nursing home under the Texas Health and Safety Code, Chapter 242.

(79) Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(80) Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Texas Occupations Code, Chapter 454, as an occupational therapist.

(81) Operating hours--The days of the week and the hours of day an agency's place of business is open as identified in an agency's written policy as required by §97.210 of this chapter (relating to Agency Operating Hours).

(82) Original active client record--A record composed first-hand for a client currently receiving services.

(83) Palliative care-- Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness. It is client and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating client autonomy, access to information, and choice.

(84) Parent agency--An agency's principal place of business; the location where an agency develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(85) Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of an agency.

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

(87) Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(88) Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

- (A) bathing;
- (B) dressing;
- (C) grooming;
- (D) feeding;
- (E) exercising;
- (F) toileting;
- (G) positioning;
- (H) assisting with self-administered medications;
- (I) routine hair and skin care; and
- (J) transfer or ambulation.

(89) Pharmacist--A person who is licensed to practice pharmacy under the Texas Pharmacy Act, Texas Occupations Code, Chapter 558.

(90) Pharmacy--A facility defined in the Texas Occupations Code, §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed.

(91) Physical therapist--A person who is currently licensed under Texas Occupations Code, Chapter 453, as a physical therapist.

(92) Physician--This term includes a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(93) Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204, as a physician assistant.

(94) Physician-delegated task--A task performed in accordance with the Texas Occupations Code, Chapter 157, including orders signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(95) Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(96) Plan of care--The written orders of a practitioner for a client who requires skilled services.

(97) Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Texas Board of Nursing as an advanced practice nurse.

(98) Preparedness--Actions taken in anticipation of a disaster.

(99) Presurvey conference--A conference held with HHSC staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide information regarding the survey process.

(100) Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(101) Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

- (A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;
- (B) teaching coping mechanisms or skills;
- (C) counseling activities; or
- (D) evaluation of the plan of care.

(102) Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

(103) Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(104) Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(105) Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Health and Safety Code, Chapter 142.

(106) Respiratory therapist--A person who is currently licensed under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(107) Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(108) Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(109) Restraint--A restraint is:

(A) a manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in a hospice inpatient unit to move his or her arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

(i) conducting a routine physical examination or test;

(ii) protecting the client from falling out of bed; or

(iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) a drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in a hospice inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(110) RN--Registered nurse. A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.

(111) Seclusion--The involuntary confinement of a client alone in a room or an area in a hospice inpatient unit from which the client is physically prevented from leaving.

(112) Section--A reference to a specific rule in this chapter.

(113) Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(114) Skilled services--Services in accordance with a plan of care that require the skills of:

(A) a registered nurse;

(B) a licensed vocational nurse;

(C) a physical therapist;

(D) an occupational therapist;

(E) a respiratory therapist;

(F) a speech-language pathologist;

(G) an audiologist;

(H) a social worker; or

(I) a dietitian.

(115) Social worker--A person who is currently licensed as a social worker under Texas Occupations Code, Chapter 505.

(116) Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code, Chapter 401.

(117) Statute--The Texas Health and Safety Code, Chapter 142.

(118) Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(119) Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual. The training is supervised by a registered nurse or by a licensed vocational nurse who works under the direction of a registered nurse.

(120) Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(121) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with

initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(122) Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(123) Survey--An on-site inspection or complaint investigation conducted by an HHSC representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(124) Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(125) Unlicensed person--A person not licensed as a health care provider. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by HHSC, and other unlicensed individuals providing personal care or assistance in health services.

(126) Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(127) Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(128) Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(129) Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

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 28, 2017.

TRD-201705406

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: January 17, 2018

Proposal publication date: October 6, 2017

For further information, please call: (512) 438-3791



## SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE

### 40 TAC §§97.13, 97.17, 97.30

#### STATUTORY AUTHORITY

The amendments and new section are adopted 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 and Texas Health and Safety Code, §142.012, which requires the HHSC executive commissioner to adopt rules related to the licensure of a HCSSA.

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 28,  
2017.

TRD-201705407

Karen Ray

Chief Counsel

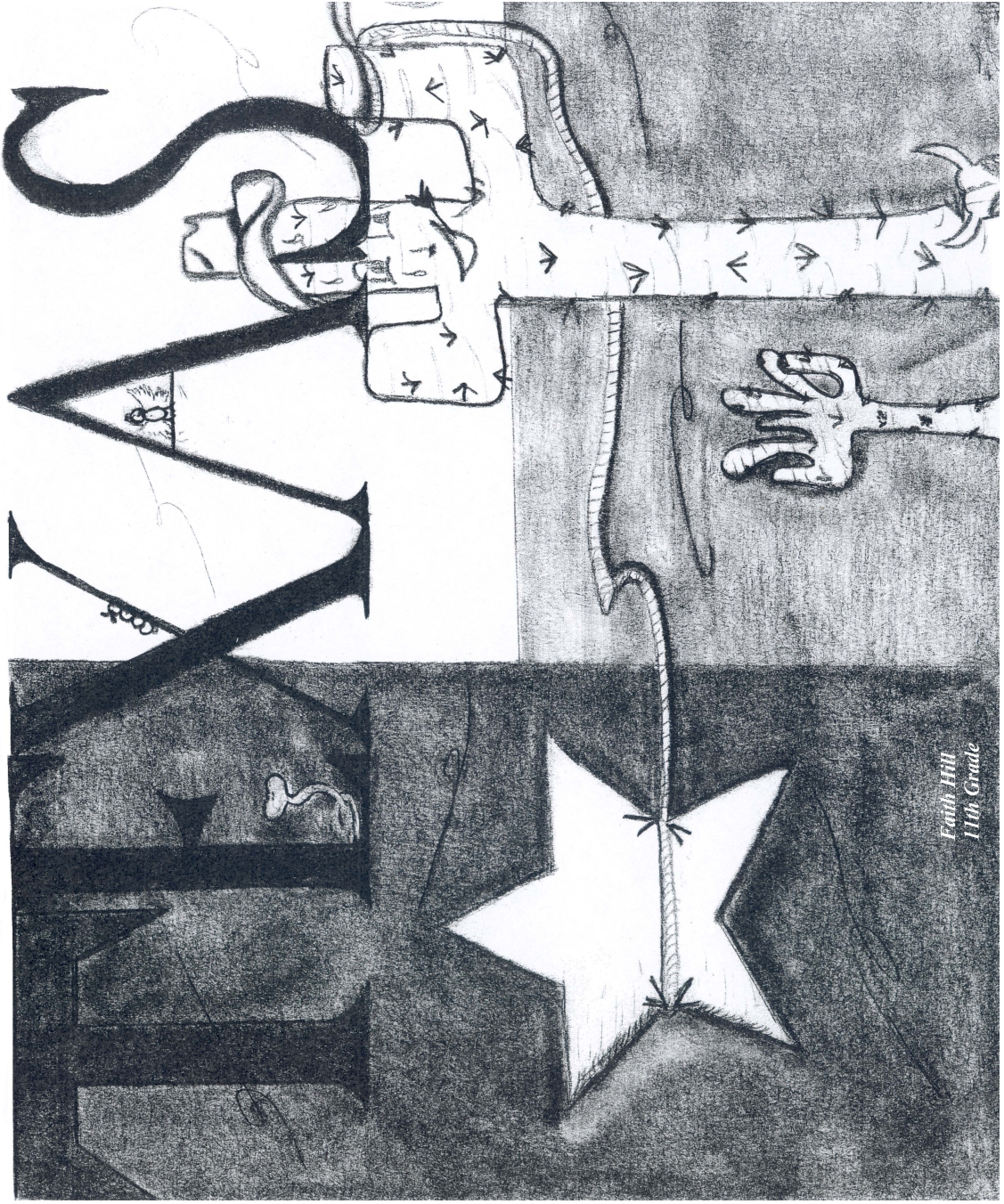
Department of Aging and Disability Services

Effective date: January 17, 2018

Proposal publication date: October 6, 2017

For further information, please call: (512) 438-3791





Faith Hill  
11th Grade

# TABLES &

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# GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 22 TAC §78.6(a)

<b>SCHEDULE OF FEES</b>	
<b>Fee Description</b>	<b>Fee</b>
DC License – Application (includes \$50 transcript verification and online jurisprudence course)	\$200
DC License – Repeat Jurisprudence Examination	\$100
DC License – Initial (Prorated)	\$120
DC License – Renewal, On Time	\$ <del>300</del> [ <del>150</del> ]
DC License – Renewal, Late under 90 days	\$ <del>425</del> [ <del>217.50</del> ]
DC License – Renewal, Late 90 days to 1 year	\$ <del>570</del> [ <del>285</del> ]
DC License – Renewal, Late up to 3 years for good cause	Calculated
DC License – Reinstatement (practiced in another state)	\$145
DC License – Inactive License Processing	\$0
DC License – Reactivate from Inactive	\$ <del>300</del> [ <del>150</del> ]
DC License – Duplicate copy of wall certificate	\$25
DC License – Duplicate copy of pocket-sized certificate	\$10
College Faculty DC License – Application and Initial	\$75
College Faculty DC License – Renewal	\$75
<del>[Facility Registration – Application and Initial Registration]</del>	<del>[\$55]</del>
<del>[Facility Registration – Renewal, On-Time]</del>	<del>[\$65]</del>
<del>[Facility Registration – Renewal, Late under 90 days]</del>	<del>[\$117]</del>
<del>[Facility Registration – Renewal, Late 90 days to 1 year]</del>	<del>[\$168]</del>
<del>[Facility Registration – Duplicate copy of wall certificate]</del>	<del>[\$25]</del>
Radiologic Technician Registration – Initial	\$35
Radiologic Technician Registration – Renewal	\$36
Radiologic Technician Registration – Renewal, Late	\$61
Continuing Education Course Annual Approval	\$100
Compliance Study Course and Test	\$175
DC License Online Jurisprudence Examination	\$150



Online Jurisprudence Continuing Education Course (Jurisprudence Study Course) – 3 hours Continuing Education	\$55
Certification of DC license to another state board (Letter of Good Standing)	\$25
Criminal history letter fee (Declaratory Order of Eligibility)	\$150
Printed copy of statutes and rules	\$10
Returned check fee	\$25

Figure: 40 TAC §92.551(d)

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
§92.3. Types of Assisted Living Facilities	\$300	\$450	\$500	\$650
§92.4. License Fees	\$300	\$400	\$500	\$600
§92.11. Criteria for Licensing	\$300	\$450	\$500	\$650
§92.16. Change of Ownership	\$300	\$400	\$500	\$600
§92.18. Increase in Capacity	\$300	\$400	\$500	\$600
§92.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing				
(g) health inspection disclosure	\$500	\$600	\$700	\$800
§92.22. Initial License for a Type B Facility with Alzheimer's Certification for an Applicant in Good Standing				
(i) health inspection disclosure	\$500	\$600	\$700	\$800
§92.41. Standards for Type A and Type B Assisted Living Facilities				
(a) employees	\$350	\$550	\$750	\$950
(b) social services	\$200	\$300	\$400	\$500
(c) resident assessment	\$400	\$550	\$600	\$750
(d) resident policies	\$250	\$350	\$450	\$550
(e) admission policies	\$300	\$400	\$500	\$600
(f) inappropriate placement in Type A or Type B facilities	\$700	\$800	\$900	\$1,000
(g) advance directives	\$500	\$500	\$500	\$500
(h) resident records	\$200	\$300	\$400	\$500
(i) personnel records	\$200	\$300	\$400	\$500
(j) medications	\$400	\$500	\$600	\$700

(k) accident, injury, or acute illness	\$400	\$500	\$600	\$700
(l) resident finances	\$200	\$300	\$400	\$500
(m) food and nutrition services	\$400	\$550	\$700	\$850
(n) infection control	\$400	\$550	\$700	\$850
(o) access to residents	\$150	\$200	\$250	\$300
(p) restraints	\$700	\$800	\$900	\$1,000
(q) accreditation status	\$700	\$800	\$900	\$1,000
§92.51. Licensure of Facilities for Persons with Alzheimer's Disease	\$200	\$300	\$400	\$500
§92.53. Standards for Certified Alzheimer's Assisted Living Facilities	\$400	\$500	\$600	\$700
§92.54. Advertisements, Solicitations, and Promotional Material	\$250	\$350	\$450	\$550
§92.61. Facility Construction-Introduction and Application	\$300	\$400	\$500	\$600
§92.62. General Requirements	\$350	\$450	\$550	\$650
§92.81. Inspections and Surveys	\$300	\$400	\$500	\$600
§92.82. Determinations and Actions Pursuant to Inspections	\$200	\$300	\$400	\$500
§92.102. Abuse, Neglect, Exploitation Reportable to <u>HHSC</u> [ <del>DADS</del> ] by Facilities	\$700	\$800	\$900	\$1,000
§92.123. Investigation of Facility Employees	\$450	\$550	\$650	\$750
§92.125. Resident's Bill of Rights and Provider Bill of Rights				
(a) resident's bill of rights	--	--	--	--
(1) post and provide copy of bill	\$100	\$150	\$200	\$250
(2) right to exercise civil rights	\$150	\$200	\$250	\$300
(3) each resident has the right to:	--	--	--	--
(A) be free from physical, mental abuse, corporal punishment, physical,	\$700	\$800	\$900	\$1,000

chemical restraints for discipline/convenience				
(B) participate in activities	\$150	\$200	\$250	\$300
(C) religion of choice	\$150	\$200	\$250	\$300
(D) if MR, participate in behavior modification with guardian consent	\$150	\$200	\$250	\$300
(E)(i)-(iii) be treated with respect, consideration, dignity	\$200	\$250	\$300	\$350
(F) safe, decent living environment	\$100	\$150	\$200	\$250
(G) communicate in native language	\$100	\$150	\$200	\$250
(H) complain about care, treatment	\$200	\$250	\$300	\$350
(I) receive and send mail	\$100	\$150	\$200	\$250
(J) unrestricted communication	\$150	\$200	\$250	\$300
(K) make community contacts	\$100	\$150	\$200	\$250
(L) manage financial affairs	\$100	\$150	\$200	\$250
(M)(i)-(ii) access resident records	\$100	\$150	\$200	\$250
(N) choose physician and be informed about treatment and care	\$100	\$150	\$200	\$250
(O) help develop individual service plan	\$100	\$150	\$200	\$250
(P)(i)-(ii) opportunity to refuse medical treatment or services	\$100	\$150	\$200	\$250
(Q) unaccompanied access to telephone	\$100	\$150	\$200	\$250
(R) privacy	\$100	\$150	\$200	\$250
(S) retain and use personal possessions	\$100	\$150	\$200	\$250
(T) determine personal preference in dress, hair style, personal effects	\$100	\$150	\$200	\$250
(U) retain and use personal property	\$100	\$150	\$200	\$250
(V) refuse to perform services	\$100	\$150	\$200	\$250

(W)(i)-(ii) be informed about Medicare, Medicaid, and covered items/services	\$100	\$150	\$200	\$250
(X)(i)-(v) not be transferred/discharged except under specific conditions	\$300	\$350	\$400	\$450
(Y)(i)-(v) not be transferred/discharged except in an emergency without specific written notice	\$300	\$350	\$400	\$450
(Z) leave facility temporarily or permanently	\$100	\$150	\$200	\$250
(AA) access the Ombudsman program	\$100	\$150	\$200	\$250
(BB) execute an advance directive or designate a guardian for decisions	\$200	\$250	\$300	\$350
§92.127. Required Posting	\$250	\$350	\$450	\$550
§92.129. Authorized Electronic Monitoring (AEM)	\$100	\$150	\$200	\$250
§§92.351-92.374. Emergency License Suspension and Closing Order	\$150	\$250	\$350	\$450
§§92.551-92.595. Administrative Penalties	\$400	\$500	\$600	\$700



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Settlement of Claims for Federal Clean Air Act, Texas Clean Air Act, and Texas Water Code Violations

Notice is hereby given by the State of Texas of the proposed resolution of claims under the federal Clean Air Act, the Texas Clean Air Act, and the Texas Water Code. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of applicable laws.

Case Title and Court: *United States of America, the Louisiana Department of Environmental Quality, and State of Texas v. Sid Richardson Carbon, Ltd.*, Cause No. 3:17-cv-01792-SDD-RLB, in the United States District Court for the Middle District of Louisiana.

Nature of Defendant's Operations: Defendant operates carbon black manufacturing plants in Texas and Louisiana, including facilities in Big Spring and Borger, Texas. In the joint Complaint, the United States, the State of Louisiana, and the State of Texas allege that Defendant made modifications to the plants to increase production without obtaining the necessary permits and installing necessary controls to reduce the emission of sulfur dioxide, nitrogen oxides, and particulate matter. Plaintiffs allege violations of (1) the federal Clean Air Act ("the Act"), 42 U.S.C. §§7412, 7413(b) and 7477; (2) the Texas Clean Air Act, Tex. Health and Safety Code Chapter 382, (3) Texas Water Code Chapter 7 (4), the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§7470-7492; (5) the nonattainment New Source Review provisions of the Act, 42 U.S.C. §§7501-7515; (6) the federally approved and enforceable PSD and New Source Review regulations set forth in the Louisiana and Texas State Implementation Plans, 40 C.F.R. §§52.21, 52.2299, 52.2303, 52.970, 52.999; LAC 33:III.504, 33:III.509.B; 30 Tex. Admin. Code §§116.12, 116.110, 116.111, 116.160; (7) Title V of the Act, 42 U.S.C. §§7661-7661f and the federally approved Texas Title V program, 30 Tex. Admin. Code, Subchapter B, Division 3, including certain operating permit requirements; (8) the National Emission Standards for Hazardous Air Pollutants ("NESHAP") provisions of the Act, 42 U.S.C. §7412, 40 C.F.R. Part 63, Subpart YY and related Texas regulations including 30 Tex. Admin. Code §§101.20, 113.560, 122.142; and (9) the Borger, Texas plant's operating permit issued by the Texas Commission on Environmental Quality, including unpermitted NO<sub>x</sub> emissions violating the terms of the permit and 30 Tex. Admin. Code §§116.115.

Nature of Settlement: The lawsuit will be settled by a consent decree in federal court.

Proposed Settlement: The proposed settlement agreement orders Defendant to pay \$999,000 in civil penalties, to be equally divided between the United States, Louisiana, and Texas; and \$10,000 in attorney's fees to the State of Texas. In addition, the settlement requires Defendant to implement a range of injunctive relief measures, including: (1) installation and operation of selective catalytic reduction, dry and wet flue gas desulfurization, nitrogen oxide continuous emissions monitors, and sulfur dioxide continuous emissions monitors; and compliance with all emissions limits; (2) compliance with a fugitive emis-

sions best management practices control plan; (3) operation of an early warning particulate matter detection system; (4) cessation of operation of flares at all plants; and (5) commissioning a third party mechanical and structural "integrity assessment" at its Borger facility to find, fix and replace tail gas release points.

For a complete description of the proposed settlement, the complete proposed consent decree should be reviewed. Requests for copies of the consent decree and written comments on the proposed settlement should be directed to Phillip Ledbetter, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201705408

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: December 28, 2017

## Comptroller of Public Accounts

### Notice of Contract Amendment

The Texas Comptroller of Public Accounts announces this notice of amendment of two (2) contracts for financial advisor services awarded under Request for Proposals No. 213a. The amendments extend the term of the contracts through December 31, 2018. The RFP was published in the October 30, 2016, issue of the *Texas Register* (40 TexReg 7711). The Notice of Award was published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1524).

The contracts awarded are:

1. George K. Baum & Company, 8115 Preston Road, Suite 650, Dallas, Texas 75225. The total amount of the contract is not to exceed \$25,000.00. The term of the contract is January 29, 2016, through December 31, 2018, with option to renew for one (1) additional one-year period.

2. PFM Financial Advisors, LLC, 221 W. 6th Street, Ste. 1900, Austin, Texas 78701. The total amount of the contract is not to exceed \$25,000.00. The term of the contract is February 10, 2016, through December 31, 2018, with option to renew for one (1) additional one-year period.

TRD-201705421

Cynthia Stapper

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: December 29, 2017

### Notice of Contract Amendment

The Texas Comptroller of Public Accounts announces the amendment of a financial advisor services contract with George K. Baum & Com-

pany, 8115 Preston Road, Suite 650, Dallas, Texas 75225 ("Contractor"), awarded under Request for Proposals No. 215a ("RFP"). The Amendment extends the term of the contract through December 31, 2018. The total amount of the contract is \$58,398.00 per Note issuance plus approved out-of-state travel. The term of the contract is May 19, 2016, through December 31, 2018, with option to renew for one (1) additional one-year period.

The RFP was published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 998). The Notice of Award was published in the June 3, 2016, issue of the *Texas Register* (41 TexReg 4067).

TRD-201705422

Cynthia Stapper

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: December 29, 2017



### Notice of Contract Amendment

The Texas Comptroller of Public Accounts announces the amendment of legal counsel services contracts awarded under Request for Proposals No. 215b ("RFP") for bond counsel for the issuance of Tax and Revenue Anticipation Notes, Commercial Paper Notes, or other debt instruments authorized under Chapter 404, Subchapter H, of the Texas Government Code ("Note"). The amendments extend the term of the contracts through December 31, 2018.

The two contracts awarded are:

Andrews Kurth LLP, 111 Congress Avenue, Suite 1700, Austin, Texas 78701. The amount of the contract is \$100,000 per Note issuance. The term of the contract is June 6, 2016, through December 31, 2018.

Bracewell LLP, 111 Congress Avenue, Suite 2300, Austin, Texas 78701-4061. The amount of the contract is \$100,000 per Note issuance. The term of the contract is June 10, 2016, through December 31, 2018.

The RFP was published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1270). The Notice of Award was published in the July 22, 2016, issue of *Texas Register* (41 TexReg 5455).

TRD-201705454

Cynthia Stapper

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: December 29, 2017



### Notice of Request for Proposals

Pursuant to Section 403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 219n ("RFP 219n") for Endangered Species Research Projects for Effects of Coastal Habitat from Beach Access and Use on Species of Interest. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 23, 2018.

Contact: Parties interested in submitting a proposal should contact Cindy Stapper, Assistant General Counsel, Contracts Section, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm. 201, Austin, Texas, 78774 ("Issuing Office"), telephone number: (512) 305-8673. Comptroller will make the entire RFP available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://www.txsmart-buy.com/sp> on Friday, January 12, 2018, after 10:00 a.m. Central

Time. The times stated in this notice refer to Central Time, Austin, Texas.

Questions: All written questions must be received in the Issuing Office not later than 2:00 p.m. on Friday, February 2, 2018. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov) to ensure timely receipt. On or about Friday, February 16, 2018, Comptroller expects to post responses to questions on the ESBD. **Respondents are solely responsible for verifying timely receipt of Questions in the Issuing Office. Late questions will not be considered under any circumstances.**

Closing Date: Proposals must be delivered to the Issuing Office no later than **2:00 p.m., on Thursday, March 1, 2018. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.**

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP- January 12, 2018, after 10:00 a.m.; Questions Due- February 2, 2018, 2:00 p.m.; Official Responses to Questions post - February 16, 2018, or as soon thereafter as practical; Proposals Due - **March 1, 2018, 2:00 p.m. CT**; Contract Execution - March 23, 2018, or as soon thereafter as practical; and Commencement of Work - on or after March 23, 2018. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201705419

Cindy Stapper

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: December 29, 2017



### Notice of Request for Proposals

Pursuant to Section 403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 219o ("RFP 219o") for Endangered Species Research Projects for Effects of Coastal Habitat Alteration from Dredging on Species of Interest. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 23, 2018.

Contact: Parties interested in submitting a proposal should contact Cindy Stapper, Assistant General Counsel, Contracts Section, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm. 201, Austin, Texas, 78774 ("Issuing Office"), telephone number: (512) 305-8673. Comptroller will make the entire RFP available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://www.txsmart-buy.com/sp> on Friday, January 12, 2018, after 10:00 a.m. Central Time. The times stated in this notice refer to Central Time, Austin, Texas.

Questions: All written questions must be received in the Issuing Office not later than 2:00 p.m. on Friday, February 2, 2018. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669



or [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov) to ensure timely receipt. On or about Friday, February 16, 2018, Comptroller expects to post responses to questions on the ESBD. **Respondents are solely responsible for verifying timely receipt of Questions in the Issuing Office. Late questions will not be considered under any circumstances.**

**Closing Date:** Proposals must be delivered to the Issuing Office no later than **2:00 p.m., on Thursday, March 1, 2018. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.**

**Evaluation Criteria:** Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 12, 2018, after 10:00 a.m.; Questions Due - February 2, 2018, 2:00 p.m.; Official Responses to Questions post - February 16, 2018, or as soon thereafter as practical; Proposals Due - **March 1, 2018, 2:00 p.m. CT**; Contract Execution - March 23, 2018, or as soon thereafter as practical; and Commencement of Work - on or after March 23, 2018. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201705420

Cindy Stapper

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: December 29, 2017



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/01/18 - 01/07/18 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/01/18 - 01/07/18 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201705396

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 27, 2017



### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/08/18 - 01/14/18 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/08/18 - 01/14/18 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009<sup>3</sup> for the period of 01/01/18 - 01/31/18 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 01/01/18 - 01/31/18 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

TRD-201800006

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 2, 2018



## Texas Education Agency

### Request for Applications Concerning the 2018-2019 Grow Your Own

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under RFA #701-18-106 from eligible applicants, which include local educational agencies (LEAs) and institutions of higher education (IHEs). Education service centers (ESCs) and IHEs may apply as fiscal agents.

**Description.** The purpose of the Grow Your Own grant program is to increase the quality and diversity of the teaching force, especially for small and/or rural districts. Applicants may select one or more pathways to achieve this goal. Pathway 1 focuses on the recruitment of future educators beginning in high school by offering education and training courses with the future potential of dual credit opportunities to current high school students. In order to teach the identified dual credit courses, teachers are required to have a master's degree. Pathway 2 focuses on the recruitment and support of paraprofessionals, instructional aides, and substitutes currently employed by the LEA to transition to certified, full-time teaching roles within the LEA. Pathway 3 focuses on developing well-qualified teacher candidates through a year-long clinical teaching assignment.

**Dates of Project.** The 2018-2019 Grow Your Own grant program will be implemented during the 2018-2019 and 2019-2020 school years for Pathways 1 and 2. Pathway 3 grants will be implemented during the 2018-2019 school year. All applicants should plan for a starting date of no earlier than April 13, 2018. Applicants for Pathways 1 and 2 should plan for an ending date of no later than May 31, 2020. Applicants for Pathway 3 should plan for an ending date of no later than June 30, 2019.

**Project Amount.** Approximately \$3.04 million is available for funding the 2018-2019 Grow Your Own grant program. It is anticipated that approximately 100 grants will be awarded. Please see the Program Guidelines for additional information about the range of awards. The Program Guidelines will be posted on the TEA Grant Opportunities web page at <http://tea4avoswald.tea.state.tx.us/GrantOpportuni>

ties/forms/GrantProgramSearch.aspx. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA. This project is funded 100 percent with state funds.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Applicants' Conference.** A pre-recorded webinar will be posted on Thursday, February 1, 2018. The webinar will be posted on the TEA Grant Opportunities web page. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA. Questions relevant to the RFA may be emailed to Grace Wu at [grace.wu@tea.texas.gov](mailto:grace.wu@tea.texas.gov) prior to Monday, January 29, 2018. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be available to all potential applicants and will provide general and clarifying information about the grant program and RFA.

**Requesting the Application.** The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

**Further Information.** To make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to [grace.wu@tea.texas.gov](mailto:grace.wu@tea.texas.gov), the TEA email address identified in the program guidelines of the RFA, no later than Monday, February 12, 2018. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Monday, February 26, 2018. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Deadline for Receipt of Applications.** Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, March 13, 2018, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Division of Grants Administration, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201800018

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: January 3, 2018



## Request for Applications Concerning the 2018-2019 Principal Preparation Grant

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under RFA #701-18-105 from eligible applicants, which include local educational agencies (LEAs) that are eligible for 2017-2018 Title II, Part A funding. Education service centers (ESCs) may apply as fiscal agents.

**Description.** The purpose of the 2018-2019 Principal Preparation Grant is to provide eligible LEAs funding to build strong campus leaders through principal residencies. LEAs that are awarded this grant will have the opportunity to identify strong principal candidates from among their current staff; partner with an effective principal preparation program that provides training focused on best practices in campus leadership, including a concentrated focus in instructional leadership; and offer candidates authentic campus-based leadership experiences throughout their residency year.

**Dates of Project.** The 2018-2019 Principal Preparation Grant will be implemented during the 2018-2019 school year. Applicants should plan for a starting date of no earlier than April 13, 2018, and an ending date of no later than June 30, 2019.

**Project Amount.** Approximately \$4.67 million is available for funding the 2018-2019 Principal Preparation Grant. It is anticipated that approximately 120 grants will be awarded ranging in amounts from \$13,000 to \$130,000. Funding will be determined by the number of residents per LEA.

LEAs will receive \$13,000 per resident. LEAs will receive funding for a maximum of 10 residents. This project is funded 100 percent with federal funds.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Applicants' Conference.** A pre-recorded webinar will be posted on Thursday, February 1, 2018. The webinar will be posted on the TEA Grant Opportunities web page at <http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/Grant-ProgramSearch.aspx>. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA. Questions relevant to the RFA may be emailed to Brenda Garcia at [brenda.garcia@tea.texas.gov](mailto:brenda.garcia@tea.texas.gov) prior to Monday, January 29, 2018. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar

will be available to all potential applicants and will provide general and clarifying information about the grant program and RFA.

**Requesting the Application.** The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

**Further Information.** To make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to [brenda.garcia@tea.texas.gov](mailto:brenda.garcia@tea.texas.gov), the TEA email address identified in the program guidelines of the RFA, no later than Monday, February 12, 2018. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Monday, February 26, 2018. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Deadline for Receipt of Applications.** Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, March 13, 2018, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Division of Grants Administration, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Issued in Austin, Texas, on January 3, 2018.

TRD-201800019

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: January 3, 2018



## State Board for Educator Certification

### Notice of Correction of Error

The State Board for Educator Certification proposed new §§235.13, 235.15, 235.21, and 235.25 in the January 5, 2018, issue of the *Texas Register* (43 TexReg 25).

Due to error by the Texas Education Agency, the title for Chapter 235 was submitted incorrectly. The correct chapter title for proposed new Chapter 235 should read "Classroom Teacher Certification Standards."

TRD-201800020



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes,

which in this case is February 12, 2018. 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 12, 2018. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ARNOLD TRUCKING, INCORPORATED; DOCKET NUMBER: 2017-1015-WQ-E; IDENTIFIER: RN109813758; LOCATION: Hallsville, Harrison County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of sediment into or adjacent to water of the state; and 30 TAC §342.25(b), by failing to register the site as an APO no later than the tenth business day before the beginning of the date of regulated activities; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-4935; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Barry W. Blanton dba Thorp Springs Water; DOCKET NUMBER: 2017-1184-PWS-E; IDENTIFIER: RN102681640; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 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: \$157; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Bryan's Convenience & Food Store, LLC dba Bryan Food Stop; DOCKET NUMBER: 2017-1350-PST-E; IDENTIFIER: RN101726644; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,687; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Charles A. Leonard; DOCKET NUMBER: 2017-1278-PWS-E; IDENTIFIER: RN102671278; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine throughout the distribution system at all times; PENALTY: \$176; ENFORCEMENT COORDINATOR: Michaele Garza, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: CIRCLE K STORES INCORPORATED Circle K 2706342/Facility Number 1, Circle K 2704051/Facility Number 2, Circle K 2704045/Facility 3, and Circle K 2704043/Facility 4; DOCKET NUMBER: 2016-1051-PST-E; IDENTIFIERS: RN102004868/Facility 1, RN102346343/Facility 2, RN102347671/Facility 3, and RN102020179/Facility 4; LOCATIONS: Terrell, Kaufman County (Facility 1); Nixon, Gonzales County (Facility 2); Cuero, Dewitt County (Facility 3); Shiner, Lavaca County (Facility 4); TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (Facilities 1, 2, 3, and 4); 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery (Facilities 1, 2, 3, and 4); 30 TAC §334.72, by failing to report a suspected release of regulated substance within 24 hours of discovery (Facilities 2, 3, and 4); PENALTY: \$138,150; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800; 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: City of Ackerly; DOCKET NUMBER: 2017-1086-PWS-E; IDENTIFIER: RN101174985; LOCATION: Ackerly, Dawson County; TYPE OF FACILITY: public water system; 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 repeat coliform monitoring; and 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: \$374; ENFORCEMENT COORDINATOR: Paige Bond, (512) 239-2678; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: City of Garland; DOCKET NUMBER: 2017-1179-PST-E; IDENTIFIER: RN100796499; LOCATION: Garland, Dallas County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least one every month; 30 TAC §334.602(a)(3), by failing to comply with UST Class C operator training requirements for the facility; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of the protection at a frequency of at least once every three years; PENALTY: \$8,251; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Goldsmith; DOCKET NUMBER: 2017-1334-PWS-E; IDENTIFIER: RN101387553; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director along with certification that the consumer notification has been distributed for the January 1, 2015 - December 31, 2015, monitoring period; PENALTY: \$50; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(9) COMPANY: City of Jacksboro; DOCKET NUMBER: 2017-0540-WQ-E; IDENTIFIER: RN102917184; LOCATION: Jacksboro, Jack County; TYPE OF FACILITY: water treatment plant; RULE VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: City of Mineral Wells; DOCKET NUMBER: 2017-1296-PST-E; IDENTIFIER: RN102449147; LOCATION: Mineral Wells, Palo Pinto County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$2,813; Supplemental Environmental Project offset amount of \$2,251; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: City of Wilmer; DOCKET NUMBER: 2017-1071-PWS-E; IDENTIFIER: RN101414332; LOCATION: Wilmer, Dallas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 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 1st of each year, and failing to submit to the TCEQ by July 1st 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; and 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 ED regarding the failure to conduct increased coliform monitoring and regarding the failure to submit the Disinfectant Level Quarterly Operating Report; PENALTY: \$1,512; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-2537; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: City of Yorktown; DOCKET NUMBER: 2017-1112-PWS-E; IDENTIFIER: RN101386225; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards and is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.46(e)(4)(C) and TCEQ Agreed Order Docket Number

2014-1338-PWS-E, Ordering Provision Number 2.a.i., by failing to operate a groundwater system serving more than 1,000 connections under the direct supervision of at least two operators who hold a Class C or higher groundwater license, and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities; 30 TAC §290.46(m)(6), by failing to maintain pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.44(h)(4)(C), by failing to ensure that any backflow prevention assembly test report form which varies from the format specified in Commission Form 20700 is approved by the executive director prior to being placed in use; and 30 TAC §290.110(f)(1)(A), by failing to include all samples collected at sites designated in the monitoring plan as microbiological and disinfectant residual monitoring sites in the compliance determination calculations; PENALTY: \$3,216; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2537; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: Daisy Farms, LLC; DOCKET NUMBER: 2017-1360-AGR-E; IDENTIFIER: RN105670905; LOCATION: Paris, Lamar County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §321.31(a) and §321.40(e), and Texas Pollutant Discharge Elimination System General Permit Number TXG921106, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements Number 12(c)(6), by failing to prevent the discharge of wastewater from a concentrated animal feeding operation into or adjacent to water in the state; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Farhaudd Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: Dallas County Schools; DOCKET NUMBER: 2017-0918-PST-E; IDENTIFIER: RN100710037 (Facility 1), RN102248135 (Facility 2), and RN102245214 (Facility 3); LOCATION: Lancaster, Dallas County (Facility 2) Dallas, Dallas County (Facilities 1 and 3); TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (Facilities 1, 2, and 3); 30 TAC §334.72 and §334.50(d)(9)(A)(v), by failing to report a suspected release to the TCEQ within 72 hours of discovery (Facilities 1 and 2); and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery (Facilities 1 and 2); PENALTY: \$43,750; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Gary Hall; DOCKET NUMBER: 2017-1172-EAQ-E; IDENTIFIER: RN109756304; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: commercial development; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$7,188; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(16) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2017-0236-IHW-E; IDENTIFIER: RN102663671; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: chemical refinery; RULES VIOLATED: 30 TAC §305.125(1) and §335.152(a)(8), 40 Code of Federal Regulations (CFR) §264.195(c) and §265.195(b), and Hazardous Waste (HW) Permit Number 50393, Permit Provision (PP)

Number III.D., by failing to conduct daily inspections of permitted HW tanks and less than 90-day HW tanks; 30 TAC §305.125(1) and §335.152(a)(1), 40 CFR §264.15(d) and §265.15(d), and HW Permit Number 50393, PP Number III.D., by failing to properly record inspections in an inspection log or summary; 30 TAC §305.125(1) and §335.152(a)(7), 40 CFR §264.171, and HW Permit Number 50393, PP Number V.B.2., by failing to properly manage containers holding HW; 30 TAC §335.69(a)(1)(B) and 40 CFR §265.193(e)(1)(iii), by failing to maintain the external liners of secondary containment systems free of cracks and gaps; 30 TAC §335.112(a)(9) and 40 CFR §265.193(e)(3)(ii), by failing to protect double-walled tanks, if constructed of metal, from both corrosion of the primary tank interior and the external surface of the outer shell; 30 TAC §335.69(a)(3) and (d)(2) and 40 CFR §262.34(a)(3) and (c)(1)(ii), by failing to clearly label all HW containers with the words "Hazardous Waste"; 30 TAC §335.69(d)(1) and 40 CFR §262.34(c)(1)(i) and §265.173(a), by failing to keep a container storing HW closed except when adding or removing waste; 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; and 30 TAC §335.10(a) and 40 CFR §262.20(a)(1), by failing to properly complete an HW manifest; PENALTY: \$64,997; Supplemental Environmental Project offset amount of \$25,999; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(17) COMPANY: J&S Water Company, L.L.C.; DOCKET NUMBER: 2017-1183-PWS-E; IDENTIFIER: RN101270080; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.46(q)(1), by failing to issue a boil water notice to the customers of the facility within 24 hours of a low chlorine residual using the prescribed notification format as specified in 30 TAC §290.47(c)(1); PENALTY: \$650; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Land Restoration, LLC; DOCKET NUMBER: 2017-1325-LII-E; IDENTIFIER: RN109752808; LOCATION: Austin, Travis County; TYPE OF FACILITY: landscape business; RULES VIOLATED: 30 TAC §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, or servicing an irrigation system; and 30 TAC §344.70(b), by failing to display in all forms of written and electronic advertisements for irrigation services, the irrigator's license number in the form of LI \_\_\_\_\_.; PENALTY: \$608; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(19) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2017-1202-AIR-E; IDENTIFIER: 102523107; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 9395, Special Conditions Number 1, Federal Operating Permit Number O1421, General Terms and Conditions and Special Terms and Conditions Number 24, by failing to prevent unauthorized emissions; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Robyn Babyak, 512-239-1853; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Marie Ybarra dba Toledo Bend Trading Post; DOCKET NUMBER: 2017-1397-PST-E; IDENTIFIER: RN101851475; LOCATION: Burkeville, Newton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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 underground storage tanks (USTs); and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: \$1,642; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(21) COMPANY: Michael Bennett dba Magic Touch Cleaners; DOCKET NUMBER: 2017-1128-DCL-E; IDENTIFIER: RN104262746; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning drop station facility; and 30 TAC §337.14(a) and TWC, §5.702, by failing to pay outstanding dry cleaner fees for TCEQ Financial Account Number 24007588 for fiscal years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: John Paul Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: NW Austin Office Partners LLC; DOCKET NUMBER: 2017-0938-MLM-E; IDENTIFIER: RN102133238; LOCATION: Austin, Williamson County; TYPE OF FACILITY: corporate office; RULES VIOLATED: 30 TAC §213.4(a)(1) and Water Pollution Abatement Plan (WPAP) Number 98071001, Standard Conditions Number 2, by failing to obtain approval of a modification to an approved WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System Construction General Permit; PENALTY: \$6,053; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(23) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2017-1092-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petrochemical processing and manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O2166, General Terms and Conditions (GTC) and Special Terms and Conditions Number 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a Permit Compliance Certification (PCC) no later than 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(A) and (C), FOP Number O2166, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period, and failing to include all instances of deviations; PENALTY: \$13,688; Supplemental Environmental Project offset amount of \$5,475; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: Randeep Singh dba Kountry Kwik and Charanjit Sandhu dba Kountry Kwik; DOCKET NUMBER: 2017-1087-PWS-E; IDENTIFIER: RN100927888; LOCATION: Huffman, Harris County;

TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.46(f)(4), 290.106(e), and 290.122(c)(2)(A) and (f), by failing to provide the results for nitrate sampling to the executive director (ED) for the January 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods, and failing to issue public notification and provide a copy to the ED regarding the failure to provide the results for nitrate sampling for the January 1, 2015 - December 31, 2015, monitoring period; and 30 TAC §290.46(f)(4) and §290.118(e), by failing to provide the results for secondary constituents sampling to the ED for the January 1, 2013 - December 31, 2015, monitoring period; PENALTY: \$172; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: SUPER PETROLEUM, INCORPORATED dba Speedy Mart; DOCKET NUMBER: 2017-1260-PST-E; IDENTIFIER: RN100539212; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201800002  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: January 2, 2018



#### Enforcement Orders

An agreed order was adopted regarding TAAS Corporation, Docket No. 2016-1374-PST-E on January 2, 2018, assessing \$7,254 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AMPM ENTERPRISES, INC. and Point Target Enterprises Inc dba Super Stop, Docket No. 2016-1773-PST-E on January 2, 2018, assessing \$6,975 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Eric Grady, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201800017  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: January 3, 2018



#### Notice of Hearing

DENALI WATER SOLUTIONS LLC

SOAH Docket No. 582-18-1343

TCEQ Docket No. 2017-1148-SLG

Permit No. WQ0005210000

#### APPLICATION

Denali Water Solutions LLC, 3308 Bernice Avenue, Russellville, Arkansas 72802, has applied to the Texas Commission on Environmental Quality (TCEQ) for new TCEQ Permit No. WQ0005210000 to authorize the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use on 302.9 acres. The anticipated date of the first application of sludge, subject to the issuance of the permit, is April 4, 2017. This permit will not authorize a discharge of pollutants into water in the state. TCEQ received this application on August 30, 2016.

The sludge land application site will be located approximately 4.7 miles west of the intersection of Mile 16 Road and Farm-to-Market Road 2058, in Hidalgo and Starr Counties, Texas 78541.

The sludge land application site will be located within the drainage basin of the Rio Grande below Falcon Reservoir in Segment No. 2302 of the Rio Grande Basin.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Dustin Michael Sekula Memorial Library, 1906 South Closner Boulevard, Edinburg, Texas, and the Rio Grande City Public Library, 591 East Canales Street, Rio Grande City, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=26.475277&lng=-98.47&zoom=13&type=r>. For the exact location, refer to the application.

#### CONTESTED CASE HEARING

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

**10:00 a.m. - February 14, 2018**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on October 9, 2017. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code (TAC) Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

#### INFORMATION

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687 4040. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>.

Further information may also be obtained from Denali Water Solutions LLC at the address stated above or by calling Mr. Mike Cook at (479) 970-8408.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: December 21, 2017

TRD-201705398

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 27, 2017



#### Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 12, 2018**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 12, 2018**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on the AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Danbury; DOCKET NUMBER: 2015-1767-PWS-E; TCEQ ID NUMBER: RN101253607; LOCATION: on Spur 28, east of Highway 35 South, Danbury, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect lead and copper samples at approved sample sites, have the samples

analyzed at a TCEQ approved laboratory, and submit the results to the ED; 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 ED; 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect lead and copper samples at approved sample sites, have the samples analyzed at a TCEQ approved laboratory, and submit the results to the ED; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide the public notification and submit a copy of the public notification to the ED regarding the failure to submit DLQORs; PENALTY: \$1,057; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201800003

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 2, 2018



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 12, 2018**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 12, 2018**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Cheri McCoy; DOCKET NUMBER: 2017-0289-MLM-E; TCEQ ID NUMBER: RN109243741; LOCATION: 406 County Road 243, Angleton, Brazoria County; TYPE OF FACILITY: private residence; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering,

allowing, or permitting outdoor burning within the state of Texas; and 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: \$2,638; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Dario Jaime Gonzalez dba Darios Tire Shop; DOCKET NUMBER: 2017-0137-MSW-E; TCEQ ID NUMBER: RN109537613; LOCATION: 1724 East Business Highway 83, Westlaco, Hidalgo County; TYPE OF FACILITY: tire shop; RULES VIOLATED: 30 TAC §328.56(a)(1) and (d)(2) and §326.60(a), by failing to register as a used or scrap tire generator and storage site while storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed or lockable containers; PENALTY: \$11,250; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: PETRO-TECH ENVIRONMENTAL, LLC; DOCKET NUMBER: 2016-2108-IHW-E; TCEQ ID NUMBER: RN105198527; LOCATION: 8502 Cypress Street, Building 3, Houston, Harris County; TYPE OF FACILITY: commercial industrial solid waste (ISW) storage and processing facility; RULES VIOLATED: 30 TAC §335.6(c) and ISW Permit Number 88379, Permit Provision (PP) II. C.1.h., by failing to update the facility's notice of registration; 30 TAC §305.125(1) and ISW Permit Number 88379, PP III. F.1, by failing to immediately cease the receipt of wastes authorized for storage and processing as listed in Table III.B. of the Permit, as amended on February 6, 2013, upon the loss of authorization to discharge to a Publicly Owned Treatment Works (POTW) facility; 30 TAC §305.125(1) and ISW Permit Number 88379, PP III. F.2, by failing to notify the executive director and the TCEQ Region 12 Office of the loss of authorization to discharge to a POTW facility within ten calendar days of the date of the termination notification from the POTW; 30 TAC §305.125(1) and ISW Permit Number 88379, PP V. B.1, by failing to operate the container storage area for storage and processing within the permit limitations listed in Table IV.A. of the Permit; 30 TAC §305.125(1) and ISW Permit Number 88379, PP III. E.3, by failing to promptly remove collected ISW, spills, leaks, clean-up residues, and contaminated rainfall runoff after the spillage and/or rainfall event occurred; 30 TAC §305.125(1) and ISW Permit Number 88379, PP III. D., Table II.B., by failing to conduct inspections and tests for all facility units and basic elements at the frequency listed in Table II.B. of the Permit, and failing to conduct the five-year hydrostatic test and grounding on the receiving tanks; 30 TAC §305.69(b)(1)(A) and §305.125(1) and ISW Permit Number 88379, PP II. A.1, by failing to amend or modify the permit; and TWC, §5.702(a), by failing to pay outstanding fees for TCEQ Financial Account Number 23708505; PENALTY: \$9,597; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Rainbow Landscape Materials, LLC; DOCKET NUMBER: 2017-0771-WQ-E; TCEQ ID NUMBER: RN105695563; LOCATION: 3916 East Highway 87, Rainbow, Somervell County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), and TCEQ AO Docket Number 2014-1523-WQ-E, Ordering Provisions Numbers 2.a.i. and 2.a.ii., failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: \$26,250; STAFF ATTORNEY:



Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201800005

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 2, 2018



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Albert Anthony Jamail

SOAH Docket No. 582-18-1582

TCEQ Docket No. 2016-1452-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 25, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition, mailed December 1, 2017, concerning assessing administrative penalties against and requiring certain actions of Albert Anthony Jamail, for violations in Kinney County, Texas, of: 30 Tex. Admin. Code §330.15(a) and (c).

The hearing will allow Albert Anthony Jamail, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Albert Anthony Jamail, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **Albert Anthony Jamail** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's First Amended Report and Petition, attached hereto and incorporated herein for all purposes. Albert Anthony Jamail, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361, and 30 Tex. Admin. Code chs. 70 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Isaac Ta, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concern-

ing your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201800011

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 3, 2018



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of City of Palmhurst

SOAH Docket No. 582-18-1580

TCEQ Docket No. 2017-0371-WQ-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - January 25, 2018**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 25, 2017 concerning assessing administrative penalties against and requiring certain actions of the City of Palmhurst, for violations in Hidalgo County, Texas, of: 30 Tex. Admin. Code §281.25(a)(4) and 40 C.F.R. §122.26(a)(9)(i)(A).

The hearing will allow the City of Palmhurst, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford the City of Palmhurst, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of

this preliminary hearing. **Upon failure of the City of Palmhurst to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** The City of Palmhurst, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, 30 Tex. Admin. Code chs. 70 and 281, and 40 C.F.R. pt. 122; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Audrey Litter, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 27, 2017

TRD-201800012

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 3, 2018



## Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Sandra Ortega

SOAH Docket No. 582-18-1617

TCEQ Docket No. 2017-0937-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative

Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - February 1, 2018**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed August 29, 2017, concerning assessing administrative penalties against and requiring certain actions of Sandra Ortega, for violations in Irion County, Texas, of: Texas Health & Safety Code §366.004 and §366.051, Texas Water Code §26.121(a)(1), 30 Texas Administrative Code §285.3(a)(1), and TCEQ Default Order Docket No. 2013-0757-MLM-E, Ordering Provision Nos. 3.d.i. and 3.d.ii.

The hearing will allow Sandra Ortega, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Sandra Ortega, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Sandra Ortega to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Sandra Ortega, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and ch. 26, Texas Health & Safety Code ch. 366, and 30 Texas Administrative Code chs. 70 and 285; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ian Groetsch, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney**

**may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: January 3, 2018

TRD-201800025

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 3, 2018



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of DSJS Management, LLC

SOAH Docket No. 582-18-1583

TCEQ Docket No. 2016-1035-MWD-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 25, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 6, 2017, concerning assessing administrative penalties against and requiring certain actions of DSJS Management, LLC, for violations in Bexar County, Texas, of: Tex. Water Code §§26.039(b) and 26.121(a)(1) and 30 Tex. Admin. Code §305.42(a).

The hearing will allow DSJS Management, LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford DSJS Management, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **DSJS Management, LLC**, to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. DSJS Management, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and Tex. Water Code chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 305; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings,

including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jake Marx, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201800013

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 3, 2018



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of First Yeti Inc. dba Classic Mart

SOAH Docket No. 582-18-1581

TCEQ Docket No. 2017-0512-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - January 25, 2018**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 5, 2017, concerning assessing administrative penalties against and requiring certain actions of First Yeti Inc dba Classic Mart, for violations in Lubbock County, Texas, of: Texas Water Code §26.3475(c)(1) and (d) and 30 Texas Administrative Code §334.49(c)(4)(C) and §334.50(b)(1)(A).

The hearing will allow First Yeti Inc dba Classic Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative

penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford First Yeti Inc dba Classic Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of First Yeti Inc dba Classic Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** First Yeti Inc dba Classic Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Isaac Ta, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 27, 2017

TRD-201800014

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 3, 2018



### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality

on December 22, 2017, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. 4B GROUP LLC d/b/a Elmo Food Shop; SOAH Docket No. 582-17-3214; TCEQ Docket No. 2016-1226-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against 4B GROUP LLC d/b/a Elmo Food Shop on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201800015

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 3, 2018



## 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 November 6, 2017 to November 22, 2017. 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 5, 2018. The public comment period for this project will close at 5:00 p.m. on Monday, February 5, 2018.

#### FEDERAL AGENCY ACTIONS:

**Applicant:** City of Galveston

**Location:** The project site is located in wetlands adjacent to Galveston Ship Channel, in Galveston, Galveston County, Texas.

**LATITUDE & LONGITUDE (NAD 83):** 29.29312 -94.839

**Project Description:** The applicant proposes to excavate 1.64 acres (est. 2,650 cubic yards) of fill materials, which will include 1.26 acres (est. 2,032 cubic yards) from wetlands and waters. With respect to the deposition of the fill materials, 0.91 acres (~1,475 cubic yards) of in-situ material will be relocated on-site; 0.73 acres (~1,175 cubic yards) of off-site material will be placed and graded on-site; and, 0.91 acres (~1,475 cubic yards) of limestone aggregate will be deposited on-site to provide base for the tanks. The end goal will be to replace the Hurricane Ike damaged 59th Street Pump Station (a 7.5 million gallon aboveground potable water storage tank) via funding from the federal Hazard Mitigation Grant Program and Texas General Land Office's Disaster Recovery Division CDBG program.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2016-00959. 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 (CWA).

**CMP Project No:** 18-1089-F1

**Applicant:** CenterPoint Energy Natural Gas Operations

**Location:** The project site is located in the San Jacinto Waste Pits Superfund Site Area of Concern, in wetlands adjacent to the San Jacinto River, approximately 0.44-mile east of the intersection of Market and Woodleigh Streets, in Channelview, Harris County, Texas.

**LATITUDE & LONGITUDE (NAD 83):** 29.793549 -95.064816

**Project Description:** The applicant proposes to perform maintenance to two, natural gas pipelines. Proposed activities include cutting and capping of existing 4-inch-diameter and 2-inch-diameter natural gas pipelines at three locations on Market Street. In addition, approximately 1,000 feet of existing 4-inch-diameter steel pipeline will be abandoned and replaced, and approximately 565 feet of existing 4-inch-diameter steel pipeline will be abandoned in place. Cut and cap activities will take place within temporary workspaces measuring approximately 5-foot-wide by 5-foot-long by 5-foot-deep. Installation activities will be completed using the horizontal bore method. Approximately, 9.26 cubic yards of native soil will be excavated and returned upon project completion. All project activities will be temporary in nature, and the project workspaces will be backfilled and returned to pre-construction conditions upon project completion.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2017-00505. 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 (CWA).

**CMP Project No:** 18-1096-F1

**Applicant:** USA Rail Terminals, LLC

**Location:** The project site is located near the Neches River, within Spindletop Park, approximately 0.45-mile north-northeast of the intersection of South Martin Luther King, Jr. Parkway and Sulphur Plant Road, in Beaumont, Jefferson County, Texas.

**LATITUDE & LONGITUDE (NAD 83):** 30.034849 -94.055740

**Project Description:** The applicant proposes to construct a railroad spur and side rails that will connect to an existing railroad. The newly constructed facilities will include 21 rail siding lines, varying from 2,580 to 3,507 feet in length and a 1.03-mile emergency vehicle access road, at the project site. Fill will be permanently placed in jurisdictional waters to build the railway and access-road beds. A total of 1.25 acres of jurisdictional wetlands will be permanently impacted by this project. Two types of waters will be affected, palustrine shrub/scrub wetland (0.16 acres) and palustrine emergent wetland (1.09 acres).

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2017-00078. This application will be reviewed pursuant to Section 404 of the Clean Water Act (CWA).

**CMP Project No:** 17-1210-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien, P.O. Box 12873, Austin, Texas 78711-2873, or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201800024

Mark A. Havens  
Chief Clerk, Deputy Land Commissioner  
General Land Office  
Filed: January 3, 2018



## Notice of Request for Proposal for Financial Management - Internal Auditing Consulting Services

The Texas General Land Office ("GLO") invites consultants to submit proposals to provide consulting services to the GLO's Financial Management division.

The proposed project is to make recommendations to the GLO for efficiency, effectiveness, compliance, and best practices related to its Financial Management division's organization and processes. The consultant will develop findings, conclusions, and recommendations for management's consideration and decisions based on an operational review and improvement study of the GLO's Financial Management division.

The GLO intends to award a single contract for consulting services to review and make recommendations related to the GLO's transaction processing, accounting/reporting (i.e. general ledger activities, journal entries, account reconciliations, financial statements, account analysis, and account research), and budgeting (i.e. grant administration, appropriations, reporting, analysis, and monitoring).

Pursuant to Texas Government Code Chapter 2102 and related rules and the GLO's Internal Audit Charter, the GLO is seeking to contract for consulting services relating to Internal Audit to the GLO's Financial Management division beginning February 1, 2018, through August 31, 2018.

Persons interested in a copy of the Request for Proposals No. X0013990-DF should contact Debby French, Procurement Division, Texas General Land Office at 800-998-4456 or (512) 463-5309 or [Debby.French@GLO.Texas.Gov](mailto:Debby.French@GLO.Texas.Gov) to request a copy. The closing date for receipt of proposals is January 17, 2018. The GLO shall award any contract in accordance with the criteria and procedures set out in Request for Proposals No. X0013990-DF. The date of award is anticipated to be on or after February 12, 2018.

Further information may be obtained by contacting Kelly McBride, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701-1495, telephone (512) 305-9108.

TRD-201800023  
Mark A. Havens  
Chief Clerk, Deputy Land Commissioner  
General Land Office  
Filed: January 3, 2018



## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) for an update to the Texas Managed Care Quality Strategy.

### Proposed Updates

The Texas Managed Care Quality Strategy will be updated to include new requirements as outlined in the Code of Federal Regulations (CFR) Title 42, Chapter IV, Subchapter C, Part 438, Subpart E, Quality Measurement and Improvement; External Quality Review.

Additional updates reflect changes made during the 1115 Texas Health-care Transformation Quality Improvement Program Waiver (THTQIP) Amendment 14. Amendment 14 was approved by CMS on August 24, 2017, and on September 1, 2017, recipients of the Medicaid for Breast and Cervical program and Adoption Assistance and Permanency Care Assistance programs transitioned to managed care.

An individual may obtain a free copy of the proposed update, or ask questions, obtain additional information, or submit comments regarding this update by contacting Sallie Allen by U.S. mail, telephone, fax, or email. The addresses are as follows:

#### U.S. Mail

Texas Health and Human Services Commission

Attention: Sallie Allen, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

#### Telephone

(512) 424-6969

#### Fax

Attention: Sallie Allen, Waiver Coordinator, at (512) 487-3403

#### Email

[TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us)

TRD-201705453

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 29, 2017

## Department of State Health Services

### Certification Limitation Liability Report

The Hospital Survey Program in the Center for Health Statistics, Texas Department of State Health Services, has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability in accordance with Texas Health and Safety Code, §311.0456. Eleven hospitals requested certification. In accordance with §311.0456, each of the requesting hospitals will be notified, by mail, on the determination of whether certification requirements were met. The certification issued under Texas Health and Safety Code, §311.0456 to a nonprofit hospital or hospital system took effect on December 31, 2017, and expires on the anniversary of that date.

*Certified:* One non-profit hospital system (6 hospitals) and one non-profit hospital were determined to be eligible for certification based on information that they provided, i.e., charity care in an amount equal to or greater than 8 percent of their net patient revenue and that they provided 40 percent or more of the charity care in their counties.

1. Seton Healthcare System (Travis County only)
  - a. Dell Children's Medical Center in Travis County
  - b. Seton Medical Center Austin in Travis County
  - c. Seton Northwest Hospital in Travis County
  - d. Seton Shoal Creek Hospital in Travis County

- e. Seton Southwest Hospital in Travis County
  - f. University Medical Center at Brackenridge in Travis County
2. Seton Edgar B Davis in Caldwell County

*Not Certified:* Four non-profit hospitals were not certified because, based on their survey data, they did not provide charity care in an amount equal to or greater than 8 percent of their net patient revenue and/or did they provide 40 percent of the charity care in their counties.

1. Seton Highland Lakes in Burnet County
2. Seton Medical Center Hays in Hays County
3. Seton Medical Center Williamson in Williamson County
4. Seton Smithville Regional Hospital in Bastrop County

For further information about this report, please contact Dwayne Collins or Andria Orbach in the Center for Health Statistics at (512) 776-7261.

TRD-201705404

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: December 28, 2017

## Texas Department of Insurance

### Company Licensing

Application for AMERICAN HEALTHCARE INDEMNITY COMPANY, a foreign fire and/or casualty company, to change its name to SERVICE AMERICAN INDEMNITY COMPANY. The home office is in Oklahoma City, Oklahoma.

Application for PARTNERRE INSURANCE COMPANY OF NEW YORK, a foreign fire and/or casualty company, to change its name to EMPLOYERS INSURANCE COMPANY OF NEW YORK. The home office is in New York City, New York.

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 Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201800001

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: January 2, 2018

### Company Licensing

Application for MAPFRE TEPEYAC, S.A., an alien fire and/or casualty company, to change its name to MAPFR MEXICO, S.A. The home office is in Huixquilucan, Mexico.

Application for 1ST CHOICE AUTO INSURANCE COMPANY, INC., a foreign fire and/or casualty company, to change its name to 1ST CHOICE ADVANTAGE INSURANCE COMPANY, INC. The home office is in Everett, Pennsylvania.

Application to do business in the state of Texas for CHA HMO, INC., a foreign health maintenance organization. The home office is in Louisville, Kentucky.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of publication in the *Texas Register*, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201800010

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: January 3, 2018



## **Texas Lottery Commission**

### **Scratch Ticket Game Number 2029 "Numbers Game"**

#### **1.0 Name and Style of Scratch Ticket Game.**

A. The name of Scratch Ticket Game No. 2029 is "NUMBERS GAME". The play style is "key symbol match".

#### **1.1 Price of Scratch Ticket Game.**

A. Tickets for Scratch Ticket Game No. 2029 shall be \$5.00 per Scratch Ticket.

#### **1.2 Definitions in Scratch Ticket Game No. 2029.**

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$250, \$500, \$1,000, \$100,000, 01, 03, 04, 06, 07, 08, 09, 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, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, STAR SYMBOL, 2X SYMBOL, 5X SYMBOL and 10X SYMBOL.

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. 2029 - 1.2D

PLAY SYMBOL	CAPTION
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$250	TOFF
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
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	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
STAR SYMBOL	WIN
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2029), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2029-0000001-001.

H. Pack - A Pack of "NUMBERS GAME" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse

order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "NUMBERS GAME" Scratch Ticket Game No. 2029.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "NUMBERS GAME" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 40 (forty) Play Symbols. If the player reveals a "Star" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "5X" Play Symbol, the player wins

5 TIMES the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 40 (forty) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly 40 (forty) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 40 (forty) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, except on Tickets winning twenty (20) times.

D. On winning and Non-Winning Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

E. A Ticket can win up to twenty (20) times.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. No matching non-winning Play Symbols will appear on a Ticket.

H. The "STAR" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

I. The "STAR" (WIN) Play Symbol will win as per the prize structure.

J. The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

K. The "2X" (DBL) Play Symbol will win DOUBLE the PRIZE and will win as per the prize structure.

L. The "2X" (DBL) Play Symbol will never appear more than once on a winning Ticket.

M. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

N. The "5X" (WINX5) Play Symbol will win 5 TIMES the PRIZE and will win as per the prize structure.

O. The "5X" (WINX5) Play Symbol will never appear more than once on a winning Ticket.

P. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

Q. The "10X" (WINX10) Play Symbol will win 10 TIMES the PRIZE and will win as per the prize structure.

R. The "10X" (WINX10) Play Symbol will never appear more than once on a winning Ticket.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "NUMBERS GAME" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "NUMBERS GAME" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "NUMBERS GAME" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

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 Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "NUMBERS GAME" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "NUMBERS GAME" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

### 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,200,000 Scratch Tickets in the Scratch Ticket Game No. 2029. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2029 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	720,000	10.00
\$10	656,000	10.98
\$15	240,000	30.00
\$20	128,000	56.25
\$25	30,000	240.00
\$50	52,000	138.46
\$100	11,080	649.82
\$250	2,700	2,666.67
\$500	4,740	1,518.99
\$1,000	70	102,857.14
\$100,000	6	1,200,000.00

\*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 3.90. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2029 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2029, 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-201800022  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: January 3, 2018



**Public Utility Commission of Texas**

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 22, 2017, in accordance with the Texas Water Code.

Docket Style and Number: Application of Joe C. Desmit dba Knob Hill Water System and Knob Hill Water Utility Corp. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County, Docket Number 47899.

The Application: Joe C. Desmit dba Knob Hill Water System and Knob Hill Water Utility Corp. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County filed an application for the sale, transfer, or merger of facilities and certificate rights in Denton County. Specifically, Joe C. Desmit seeks approval to transfer all of its water service area under certificate of convenience and necessity No. 11414 to Knob Hill Water Utility Corp. The total area being requested includes approximately 40 acres and serves 76 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection 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 47899.

TRD-201800007  
 Adriana Gonzales  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: January 2, 2018



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on December 27, 2017, with the Public Utility Commission of Texas for waiver from the requirements in 16 Texas Administrative Code §26.420(f)(3)(B)(iii).

Docket Style and Number: Application of Tello LLC for Waiver to Apply Safe Harbor Percentage to Calculate Texas Universal Service Fund Assessment, Docket Number 47911.

The Application: Tello requests a permanent waiver under 16 TAC §26.420(f)(3)(B)(ii) because currently there is no means available to measure actual traffic and segregate the jurisdiction of the traffic. Tello proposes to use, for CMRS providers, a safe-harbor percentage of 69% (intrastate). The rate of 69% will be applied to all telecommunications traffic originating in Texas in order to determine intrastate receipts subject to TUSF assessment.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47911.

TRD-201705455  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 29, 2017



### Notice of Application to Transfer Load into the Electric Reliability Council of Texas

Notice is given to the public of an application by East Texas Electric Cooperative, Inc. (ETEC) filed with the Public Utility Commission of Texas (commission) on December 21, 2017, under Public Utility Regulatory Act §§14.001, 35.004(d), and 39.151(d).

Docket Style and Number: Petition of East Texas Electric Cooperative, Inc. for Authority to Transfer 35 Megawatts of Load into the Electric Reliability Council of Texas, Docket Number 47898.

The Application: ETEC filed a petition for authority to transfer two wholesale delivery points, totaling 35 megawatts (MW) of load, into the Electric Reliability Council of Texas (ERCOT) from the Southwest Power Pool (SPP). ETEC stated that the proposed transfer would increase its load in ERCOT to about 185 MW in total and that it has acquired the approvals and made notifications concerning the load transfer to ERCOT, the SPP, and the Federal Energy Regulatory Commission.

Persons who wish to intervene in or comment upon this application should notify the commission as an intervention deadline will be established. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47898.

TRD-201705456  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 29, 2017



### **Supreme Court of Texas**

In the Supreme Court of Texas

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 17-9163

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## ORDER ADOPTING TEXAS RULE OF CIVIL PROCEDURE 308b AND AMENDING TEXAS RULE OF EVIDENCE 203

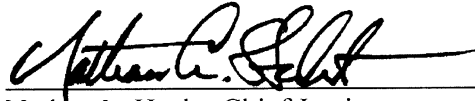
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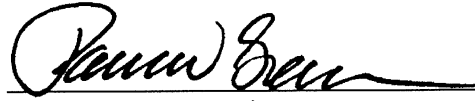
**ORDERED** that:

1. The Supreme Court adopts Texas Rule of Civil Procedure 308b and amends Texas Rule of Evidence 203. *See* TEX. GOV'T CODE §§ 22.004(b), 22.0041.
2. In compliance with the Section 3 of the Act of May 22, 2017, 85th Leg., R.S., ch. 771 (HB 45, codified at TEX. GOV'T CODE § 22.0041), the rule and amendments are effective January 1, 2018. But they may be changed later in response to public comments. Any person may submit written comments to [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov). The Court requests that comments be sent by April 2, 2018.
3. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

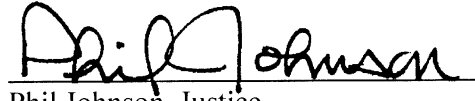
Dated: December 28, 2017.



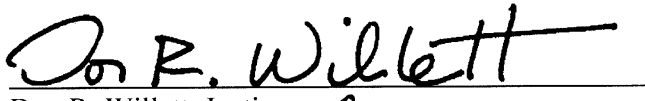
Nathan L. Hecht, Chief Justice



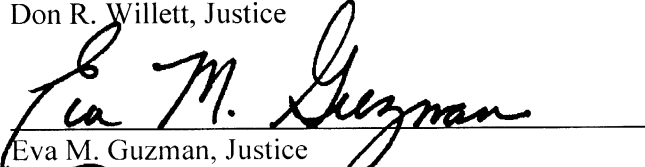
Paul W. Green, Justice



Phil Johnson, Justice




Don R. Willett, Justice



Eva M. Guzman, Justice




Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

**Rule 308b. Determining the Enforceability of a Judgment or Arbitration Award Based on Foreign Law in Certain Suits Under the Family Code**

- (a) *Definitions.* In this rule:
- (1) *Comity* means the recognition by a court of one jurisdiction of the laws and judicial decisions of another jurisdiction.
  - (2) *Foreign law* means a law, rule, or code of a jurisdiction outside of the states and territories of the United States.
- (b) *Applicability of This Rule.*
- (1) Except as provided in (2) and (3), this rule applies to the recognition or enforcement of a judgment or arbitration award based on foreign law in a suit involving a marriage relationship or a parent-child relationship under the Family Code.
  - (2) This rule does not apply to an action brought under the International Child Abduction Remedies Act (22 U.S.C. § 9001 *et seq.*) concerning rights under the Hague Convention on the Civil Aspects of International Child Abduction.
  - (3) In the event of a conflict between this rule and any federal or state law, the federal or state law will prevail.
- (c) *Applicability of Texas Rule of Evidence 203.*
- (1) Paragraphs (c) and (d) of Rule 203, Texas Rules of Evidence, apply to an action under this rule.
  - (2) Paragraphs (a) and (b) of Rule 203, Texas Rules of Evidence, do not apply to an action under this rule.
- (d) *Notice.*
- (1) *Party Seeking Enforcement of a Judgment or Arbitration Award Based on Foreign Law.* Within 60 days of filing an original pleading, the party seeking enforcement must give written notice to the court and all parties that describes the court's authority to enforce or decide to enforce the judgment or award.
  - (2) *Party Opposing Enforcement of a Judgment or Arbitration Award Based on Foreign Law.* Within 30 days of the date that a notice under (1) is served, a



party opposing enforcement must give written notice to the court and all parties that explains the basis for the party's opposition and states whether the party asserts that the judgment or award violates constitutional rights or public policy.

(e) *Pretrial Conference.* Within 75 days of the date that a notice under (d)(1) is served, the court must conduct a pretrial conference to set deadlines and make other appropriate orders regarding:

- (1) the submission of materials for the court to consider in determining foreign law;
- (2) the translation of foreign-language documents; and
- (3) the designation of expert witnesses.

(f) *Determination Hearing and Order.*

- (1) At least 30 days before trial, the court must conduct a hearing on the record to determine whether to enforce the judgment or award. The parties must have timely notice of the hearing.
- (2) Within 15 days of the hearing, the Court must issue a written order on the determination that includes findings of fact and conclusions of law. This deadline must not be altered absent extraordinary circumstances.
- (3) The court may issue any order necessary to preserve the principles of comity or the freedom to contract for arbitration while protecting against violations of constitutional rights and public policy.
- (4) The court must comply with all requirements of this paragraph and make an independent determination whether to enforce the judgment or award even if no party opposes enforcement of the judgment or award.

(g) *Temporary Orders.* Notwithstanding any other provision of this rule, the court may set filing deadlines and conduct the determination hearing to accommodate the circumstances of the case in connection with issuing temporary orders.

## Amendment Rule 203, Texas Rules of Evidence

### Rule 203. Determining Foreign Law

- (a) **Raising a Foreign Law Issue.** A party who intends to raise an issue about a foreign country's law must:
- (1) give reasonable notice by a pleading or other writing; and
  - (2) at least 30 days before trial, supply all parties a copy of any written materials or sources the party intends to use to prove the foreign law.
- (b) **Translations.** If the materials or sources were originally written in a language other than English, the party intending to rely on them must, at least 30 days before trial, supply all parties both a copy of the foreign language text and an English translation.
- (c) **Materials the Court May Consider; Notice.** In determining foreign law, the court may consider any material or source, whether or not admissible. If the court considers any material or source not submitted by a party, it must give all parties notice and a reasonable opportunity to comment and submit additional materials.
- (d) **Determination and Review.** The court—not the jury—must determine foreign law. The court's determination must be treated as a ruling on a question of law.
- (e) **Suits Brought Under the Family Code Involving a Marriage Relationship or Parent-Child Relationship.** Subsections (a) and (b) of this rule do not apply to an action to which Rule 308b, Texas Rules of Civil Procedure, applies.

TRD-201705402  
Jaclyn Lynch  
Rules Attorney  
Supreme Court of Texas  
Filed: December 28, 2017

◆ ◆ ◆  
In the Supreme Court of Texas

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 17-9164

## ORDER ON JUDICIAL INSTRUCTION RELATING TO FAMILY VIOLENCE, SEXUAL ASSAULT, TRAFFICKING OF PERSONS, CHILD ABUSE, SEX OFFENDER CHARACTERISTICS, GUARDIANSHIP ISSUES, AND ISSUES REGARDING FOREIGN LAW IN ACTIONS UNDER THE FAMILY CODE

Miscellaneous Docket No. 15-9157 is withdrawn, and this order is substituted.

### I.

Pursuant to the provisions of Government Code section 22.011, which directs the Supreme Court to provide judicial training related to the problems of family violence, sexual assault, trafficking of persons, and child abuse and to issues concerning sex offender characteristics, the Supreme Court directs each district judge and each judge of a statutory county court to complete within the judge's first term of office at least eight hours of training that includes information about:

- (1) statutory and case law relating to videotaping a child's testimony and relating to competency of children to testify;
- (2) methods for eliminating the trauma to the child caused by the court process;
- (3) case law, statutory law, and procedural rules relating to family violence, sexual assault, trafficking of persons, and child abuse;
- (4) methods for providing protection for victims of family violence, sexual assault, trafficking of persons, or child abuse;
- (5) available community and state resources for counseling and other aid to victims and to offenders;
- (6) gender bias in the judicial process; and
- (7) dynamics and effects of being a victim of family violence, sexual assault, trafficking of persons, or child abuse; and
- (8) issues concerning sex offender characteristics.

At least six hours of the training must be dedicated to the training described by items (5), (6), (7), and (8), above. Each judge who files an affidavit with the Office of Court Administration stating that the judge does not hear any cases involving family violence, sexual assault, trafficking of persons, or child abuse is exempt from this training.

## II.

Pursuant to the provisions of Government Code section 22.013, which directs the Supreme Court to provide judicial training relating to the issues that arise in guardianship cases, the Supreme Court directs each judge involved in guardianship cases to complete a course of instruction that includes information about:

- (1) statutory and case law relating to guardianships;
- (2) the aging process and the nature of disabilities;
- (3) the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and related case and statutory law, rules, and compliance methods;
- (4) the principles of equal access and accommodation;
- (5) the use of community resources for the disabled; and
- (6) avoidance of stereotypes through a focus on people's individual abilities, support needs, and inherent individual value.

The instruction may include information about:

- (1) substantive areas of law concerning the needs of elderly persons and persons with disabilities;
- (2) barriers to physical access and methods to overcome those barriers;
- (3) communication needs of elderly persons and persons with disabilities and the technology available to provide access to communication;
- (4) duties and responsibilities of guardians, guardians ad litem, attorneys, and court personnel in guardianship proceedings;
- (5) standard definitions and procedures for determining incapacity;
- (6) standards for surrogate decision-making;
- (7) the doctrine of least-restrictive alternative;

- (8) the dispute resolution process, especially its application to elderly persons and persons with disabilities; and
- (9) successful programs and funding efforts for addressing the court-related needs of elderly persons and persons with disabilities.

### III.

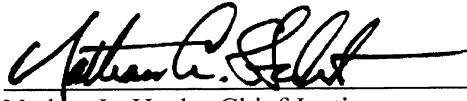
Pursuant to the provisions of Government Code section 22.022, which directs the Supreme Court to provide judicial training relating to issues regarding foreign law, foreign judgments, and arbitration awards in relation to foreign law that arise in actions under the Family Code involving the marriage relationship and the parent-child relationship, the Supreme Court directs judges involved in those actions to complete a course of instruction that includes information about:

- (1) the limits of comity and the freedom to contract for arbitration that protect against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards in actions brought under the Family Code; and
- (2) the rules of evidence and procedure adopted under section 22.0041.

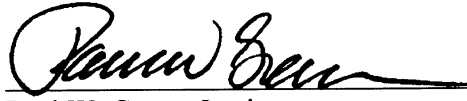
### IV.

Senate Bill 947, enacted by the 73rd Legislature in 1993, transferred the authority and responsibility for judicial education funds from the Supreme Court to the Court of Criminal Appeals. This Court therefore requests that the Court of Criminal Appeals direct all entities receiving funds for education of judges who are affected by Government Code sections 22.011, 22.013, and 22.022 to provide courses of instruction that meet the requirements of those sections.

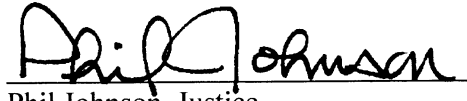
Dated: December 28, 2017.



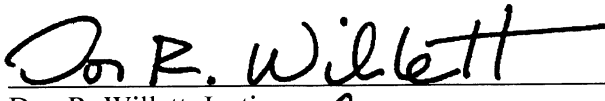
Nathan L. Hecht, Chief Justice



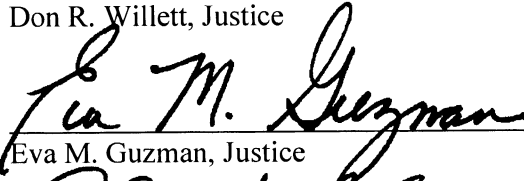
Paul W. Green, Justice



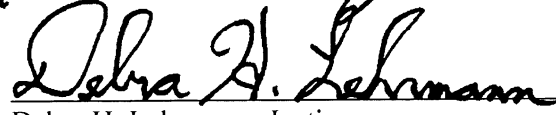
Phil Johnson, Justice



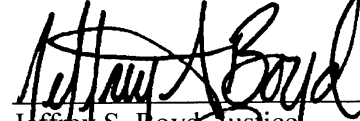
Don R. Willett, Justice



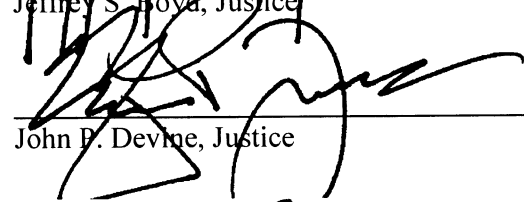
Eva M. Guzman, Justice



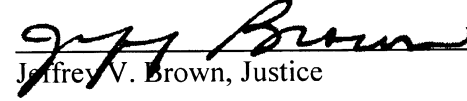
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

TRD-201705403  
Jaclyn Lynch  
Rules Attorney  
Supreme Court of Texas  
Filed: December 28, 2017



**Texas Department of Transportation**

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

[www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html](http://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html)

Or visit [www.txdot.gov](http://www.txdot.gov), and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or (800) 68-PI-LOT.

TRD-201800016  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: January 3, 2018



## Workforce Solutions Brazos Valley Board

### Public Notice - Correction

Notice of Request for Quotes (RFQ) for Available Commercial Space to Lease in Caldwell, Texas

On January 8, 2018, the Workforce Solutions Brazos Valley Board (WSBVB) is releasing a request for quotes for lease of available commercial space in Caldwell, Texas for their workforce center. This space shall be used to assist individuals with securing and maintaining employment, training, child care, and employment services for Burleson County. Space should be centrally located in Caldwell, Texas. Space to be considered shall be an open environment and measure approximately 1,000 square feet to 1,800 square feet. Space should have adequate heating and cooling systems. Space must be able to be secure and allow for internet connectivity. Space must be ADA compliant

per Texas Workforce Commission expectations with sufficient parking. The initial term of the lease will be one year with the option to renew yearly up to 10 years depending upon performance and funds availability.

The deadline for quotes to Workforce Solutions Brazos Valley Board is Friday, February 23, 2018, by 4:00 p.m. (CST). Bidders will have the opportunity to ask questions during the bidder's conference call on January 17, 2018, at 10:00 a.m. (CST). The number to call in on is (979) 595-2802. Bidders can submit questions concerning this RFQ to Barbara Clemmons at [Barbara.clemmons@bvcog.org](mailto:Barbara.clemmons@bvcog.org) no later than January 16, 2018, 5:00 p.m. (CST). Attendance at the bidder's conference is not mandatory. Bidders may attend the bidder's conference call at the Center for Regional Services, 3991 East 29th Street in Bryan, Texas 77802. All answers to questions will be posted at [www.bvjobs.org](http://www.bvjobs.org) by close of business on January 22, 2018.

This RFQ can be accessed at the Board's web page at [www.bvjobs.org](http://www.bvjobs.org) or by request to Barbara Clemmons via email at [Barbara.Clemmons@bvcog.org](mailto:Barbara.Clemmons@bvcog.org) or via phone at (979) 595-2801 ext. 2061. The contact person for this RFQ is Barbara Clemmons, Board Program Specialist, (979) 595-2801 ext. 2061 or [Barbara.clemmons@bvcog.org](mailto:Barbara.clemmons@bvcog.org).

TRD-201705397  
Patricia Buck  
Program Manager  
Workforce Solutions Brazos Valley Board  
Filed: December 27, 2017



*Angel Banda  
6th Grade*





## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 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 “43 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 43 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

**TITLE 1. ADMINISTRATION**  
**Part 4. Office of the Secretary of State**  
**Chapter 91. Texas Register**  
1 TAC §91.1.....950 (P)

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