ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1315

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), adopts an amendment to §353.1315, concerning the Rural Access to Primary and Preventive Services Program.

Section 353.1315 is adopted without change to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6688), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to pursue modifications to the Rural Access to Primary and Preventive Services (RAPPS) to simplify the program structure, provide additional details concerning certain enrollment-related processes and procedures, and reduce the administrative burden of operating the program for HHSC and participating providers.

HHSC sought and received authorization from the Centers for Medicare & Medicaid Services to create RAPPS for state fiscal year (SFY) 2022 as part of the financial and quality transition from the Delivery System Reform Incentive Payment program (DSRIP). HHSC has not made significant modifications to RAPPS since its inception in SFY 2022. Directed payment programs authorized under 42 C.F.R. §438.6(c), including RAPPS, are expected to continue to evolve over time so that the program can continue to advance the quality goal or objective the program is intended to impact.

HHSC has determined that RAPPS contains certain provisions that pose administrative complexity that may impede HHSC's and the participating providers' ability to use the program to advance a quality goal or strategy. HHSC, therefore, adopts certain clarifying amendments and other modifications with the intention of reducing administrative complexity and burden for participants. The adopted amendment also consolidates RAPPS into a single component paid via Component 1 only for SFY 2025 and after. All payments will be directed to be paid by the managed care organization (MCO) as a lump sum payment based on a scorecard issued by HHSC. This adopted rule amendment reduces the administrative burden on providers and MCOs, as the payments will no longer be made via the claim adjudication process and will be exclusively made via the monthly scorecard outside of the claims process.

The adopted amendment determines the network status of an enrolling provider for an entire program period based on the submission of supporting documentation at the time of enrollment.

HHSC adopts several other minor clarifying or grammatical amendments to improve the readability of the rule text.

COMMENTS

The 31-day comment period ended December 18, 2023.

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

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The amendment affects Texas Government Code, Chapters 531 and 533, and Texas Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 January 5, 2024.

TRD-202400057
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 25, 2024
Proposal publication date: November 17, 2023
For further information, please call: (512) 487-3480

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1 TAC §353.1320

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.1320, concerning the Directed Payment Program for Behavioral Health Services.

The amendment to §353.1320 is adopted with changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6691). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to pursue modifications to the Directed Payment Program for Behavioral Health Services (DPP BHS) to simplify the program structure, provide additional details concerning certain enrollment-related processes and procedures, and reduce the administrative burden of operating the program for HHSC and participating providers.

HHSC sought and received authorization from the Centers for Medicare and Medicaid Services to create DPP BHS for state fiscal year 2022 as part of the financial and quality transition from the Delivery System Reform Incentive Payment program. HHSC has not made significant modifications to DPP BHS since its inception in state fiscal year 2022.

Directed payment programs authorized under 42 C.F.R. §438.6(c), including DPP BHS, are expected to continue to evolve over time so that the program can continue to advance the quality goal or objective the program is intended to impact.

HHSC has determined that DPP BHS contains certain provisions that pose administrative complexity that may impede HHSC's and the participating providers' ability to use the program to advance a quality goal or strategy. HHSC, therefore, amends and modifies the program rule to reduce administrative complexity and burden for participants.

The rule amendment also consolidates DPP BHS into a single component to be paid via a scorecard, Component One only, for state fiscal year 2025 and after, so all payments will be paid by managed care organizations (MCOs) as a lump sum payment based on a scorecard issued by HHSC. This rule amendment reduces the administrative burden on providers and MCOs, as the payments will no longer be made via the claim adjudication process and will be exclusively made via the monthly scorecard outside of the claims process.

HHSC is changing the eligible provider classes to only have one eligible provider class now that all participating providers have achieved a Certified Community Behavioral Health Clinic (CCBHC) certification.

HHSC will determine the network status of an enrolling provider for an entire program period based on the submission of supporting documentation through the enrollment process.

HHSC included other minor clarifying or grammatical revisions to improve the readability of the rule text.

COMMENTS

The 31-day comment period ended December 18, 2023.

During this period, HHSC received feedback regarding the proposed rule amendment from two commenters, including the Texas Council of Community Centers and My Health My Resources of Tarrant County.

Comment: One commenter supports combining all funding into Component One and requiring participants to be CCBHC certified. They also support the new process to verify network status and would like more details about the process and responsibilities of providers and MCOs. They suggest continued consideration of the option to add CCBHC codes to the Medicaid fee schedule and eliminate the program.

Response: HHSC acknowledges the comment. HHSC is committed to allowing reasonable, flexible options for MCOs to verify network status and will keep the option of implementing CCBHC billing codes open for future consideration. No revision to the rule text was made in response to this comment.

Comment: One commenter supports changes to the payment structure but encourages HHSC to explore the use of CCBHC billing codes and a payment structure similar to Demonstration states, believing these actions will ease the transition to Demonstration and that use of standard CCBHC codes will assist the commenter's agency in using their electronic health record.

Response: HHSC acknowledges the comment. HHSC will keep the options of implementing CCBHC billing codes, as well as aligning to the payment structure of other states, open for future consideration. No revision to the rule text was made in response to this comment.

A minor editorial change was made to §353.1320(e)(1)(A) inserting "program" after "the" to clarify that participants may not join the program after the enrollment period closes.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The amendment implements Texas Government Code Chapter 531, Texas Government Code, Chapter 533, and Texas Human Resources Code Chapter 32.

§353.1320. Directed Payment Program for Behavioral Health Services.

(a) Introduction. This section establishes the Directed Payment Program for Behavioral Health Services (DPP BHS). DPP BHS is designed to incentivize behavioral health providers to improve quality, access, and innovation in the provision of medical and behavioral health services to Medicaid recipients through the use of metrics that are expected to advance at least one of the goals and objectives of the state's managed care quality strategy.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this section may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1322 of this subchapter (relating to Quality Metrics for the Directed Payment Program for Behavioral Health Services).

(1) Average Commercial Reimbursement (ACR) gap--The difference between what an average commercial payor is estimated to pay for the services and what Medicaid actually paid for the same services.

(2) Certified Community Behavioral Health Clinic (CCBHC)--A clinic certified by the state in accordance with federal

criteria and with the requirements of the Protecting Access to Medicare Act of 2014 (PAMA).

(3) CCBHC cost-reporting gap--The difference between what Medicaid pays for services and what the reimbursement would be based on the CCBHC cost-reporting methodology.

(4) Community Mental Health Center (CMHC)--An entity that is established under Texas Health and Safety Code §534.0015 and that:

(A) Provides outpatient services, including specialized outpatient services for children, the elderly, individuals with serious mental illness, and residents of its mental health service area who have been discharged from inpatient treatment at a mental health facility.

(B) Provides 24-hour-a-day emergency care services.

(C) Provides day treatment or other partial hospitalization services, or psychosocial rehabilitation services.

(D) Provides screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission.

(5) Intergovernmental transfer (IGT) notification--Notice and directions regarding how and when IGTs should be made in support of DPP BHS.

(6) Local Behavioral Health Authority (LBHA)--An entity that is designated under Texas Health and Safety Code §533.0356.

(7) Program period--A period of time for which the Texas Health and Human Services (HHSC) contracts with participating managed care organizations (MCOs) to pay increased capitation rates for the purpose of provider payments under this section. Each program period is equal to a state fiscal year beginning September 1 and ending August 31 of the following year.

(8) Providers--For program periods on or before August 31, 2022, an entity described in paragraph (4) of this subsection. For program periods on or after September 1, 2022, an entity described in paragraph (4) or (6) of this subsection.

(9) Suggested IGT responsibility--Notice of potential amounts that a sponsoring governmental entity may wish to consider transferring in support of DPP BHS.

(10) Total program value--The maximum amount available under the Directed Payment Program for Behavioral Health Services for a program period, as determined by HHSC.

(c) Classes of participating providers.

(1) HHSC may direct the MCOs to provide a uniform percentage rate increase or a uniform dollar increase to all providers within one or more of the following classes of providers with which the MCO contracts for services:

(A) For program periods beginning on or before September 1, 2023, providers that are certified CCBHCs and providers that are not certified CCBHCs.

(B) For program periods beginning on or after September 1, 2024, providers who are certified CCBHCs.

(2) If HHSC directs rate or dollar increases to more than one class of providers within the service delivery area, the rate or dollar increases directed by HHSC may vary between classes.

(d) Data sources for historical units of service. Historical units of service are used to determine a provider's eligibility status to receive the estimated distribution of program funds across enrolled providers.

(1) HHSC will use encounter data and will identify encounters based upon the billing provider's national provider identification (NPI) number.

(2) The most recently available Medicaid encounter data for a complete state fiscal year will be used to determine the distribution of program funds across eligible and enrolled providers.

(3) In the event that the historical data are not deemed appropriate for use by actuarial standards, HHSC may use data from a different state fiscal year at the discretion of the HHSC actuaries.

(4) The data used to estimate the distribution of funds will align to the extent possible with the data used for purposes of setting the capitation rates for MCOs for the same period.

(5) HHSC will calculate the estimated rate that an average commercial payor or Medicare would have paid for similar services or based on the CMS-approved CCBHC cost report rate methodology using either data from Medicare cost reports or collected from providers.

(6) Encounter data used to calculate DPP BHS payments must be designated as paid status with a reported paid amount greater than zero. Encounters reported as paid status, but with a reported paid amount of zero or negative dollars, will be excluded from the data used to calculate DPP BHS payments.

(e) Conditions of Participation. As a condition of participation, all providers participating in the program must allow for the following.

(1) The provider must submit a properly completed enrollment application by the due date determined by HHSC. The enrollment period must be no less than 21 calendar days, and the final date of the enrollment period will be at least nine calendar days prior to the release of suggested IGT responsibilities.

(A) Enrollment is conducted annually and participants may not join the program after the enrollment period closes. Any updates to enrollment information must be submitted prior to the publication of the IGT suggestion under subsection (j)(1) of this section.

(B) Network status for providers for the entire program period will be determined at the time of enrollment based on the submission of documentation through the enrollment process that shows an MCO has identified the provider as having a network agreement.

(2) The entity that bills on behalf of the provider must certify, on a form prescribed by HHSC, that no part of any payment made under the program will be used to pay a contingent fee and that the entity's agreement with the provider does not use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program, including the provider's receipt of program funds. The certification must be received by HHSC with the enrollment application described in paragraph (1) of this subsection.

(3) If a provider contracts with another entity to provide DPP BHS-eligible services on behalf of the provider, the provider must submit all claims to the MCO using an NPI assigned to the provider as the billing provider's NPI.

(4) If a provider has changed ownership in the past five years in a way that impacts eligibility for DPP BHS, the provider must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership or the management of the provider and which reference the administration of, or payment from, DPP BHS.

(5) Report all quality data denoted as required as a condition of participation in subsection (h) of this section.

(6) Failure to meet any conditions of participation described in this section will result in removal of the provider from the program and recoupment of all funds previously paid during the program period.

(f) Determination of percentage of rate and dollar increase.

(1) HHSC will determine the percentage of rate or dollar increase applicable to providers by program component.

(2) HHSC will consider the following factors when determining the rate increase:

(A) the estimated Medicare gap for providers, based upon the upper payment limit demonstration most recently submitted by HHSC to the Centers for Medicare and Medicaid Services (CMS);

(B) the estimated Average Commercial Reimbursement (ACR) gap for the class or individual providers, as indicated in data collected from providers;

(C) the estimated gap for providers, based on the CCBHC cost-reporting methodology that is consistent with the CMS guidelines;

(D) the percentage of Medicaid costs incurred by providers in providing care to Medicaid managed care clients that are reimbursed by Medicaid MCOs prior to any rate increase administered under this section; and

(E) the actuarial soundness of the capitation payment needed to support the rate increase.

(g) Services subject to rate and dollar increase. HHSC may direct the MCOs to increase rates or dollar amounts for all or a subset of provider services.

(h) Program capitation rate components. Program funds will be paid to MCOs through the managed care per member per month (PMPM) capitation rates. The MCOs' distribution of program funds to the enrolled providers will be based on each provider's performance related to the quality metrics as described in §353.1322 of this subchapter. The provider must have provided at least one Medicaid service to a Medicaid managed care client for each reporting period to be eligible for payments.

(1) Component One.

(A) The total value of Component One will be equal to 65 percent of the total program value for program periods beginning on or before September 1, 2023. For program periods beginning on or after September 1, 2024, Component One will be 100 percent of the total program value.

(B) Allocation of funds across all qualifying providers will be proportional, based upon historical Medicaid utilization.

(C) Monthly payments to providers will be a uniform rate increase.

(D) The interim allocation of funds across qualifying providers will be reconciled to the actual Medicaid utilization across these providers during the program period, as captured by Medicaid MCOs contracted with HHSC for managed care 120 days after the last day of the program period.

(i) Redistribution resulting from the reconciliation will be based on actual utilization of enrolled NPIs.

(ii) If a provider eligible for DPP BHS payments was not included in the monthly scorecards, the provider may be included in the reconciliation by HHSC.

(E) Providers must report quality data as described in §353.1322 of this subchapter as a condition of participation in the program.

(2) Component Two.

(A) The total value of Component Two will be equal to 35 percent of the total program value program periods beginning on or before September 1, 2023. For program periods beginning on or after September 1, 2024, the total value of Component Two will be equal to 0 percent of the total program value.

(B) Allocation of funds across all qualifying providers will be based upon historical Medicaid utilization.

(C) Payments to providers will be a uniform rate increase.

(D) Providers must report quality data as described in §353.1322 of this subchapter as a condition of participation in the program.

(i) Distribution of the Directed Payment Program for Behavioral Health Services payments.

(1) Prior to the beginning of the program period, HHSC will calculate the portion of each payment associated with each enrolled provider broken down by program capitation rate component and payment period. The model for scorecard payments and the reconciliation calculations will be based on the enrolled NPIs and the MCO network status at the time of the application under subsection (e)(1) of this section. For example, for a provider, HHSC will calculate the portion of each payment associated with that provider that would be paid from the MCO to the provider as follows.

(A) Monthly payments in the form of a uniform dollar increase for Component One will be equal to the total value of Component One attributed based upon historical utilization of the provider divided by twelve. An annual reconciliation will be performed for each provider based on actual utilization.

(B) For program periods beginning on or before September 1, 2023, rate increases from Component Two will be a uniform percentage rate increase on applicable services calculated based on the total value of Component Two for the providers divided by historical utilization of the respective services.

(C) For purposes of the calculation described in subparagraph (B) of this paragraph, a provider must achieve a minimum number of measures as identified in §353.1322 of this subchapter to be eligible for full payment.

(2) MCOs will distribute payments to enrolled providers based on criteria established under paragraph (1) of this subsection.

(j) Non-federal share of DPP BHS payments. The non-federal share of all DPP BHS payments is funded through IGTs from sponsoring governmental entities. No state general revenue that is not otherwise available to providers is available to support DPP BHS.

(1) HHSC will communicate suggested IGT responsibilities for the program period with all DPP BHS eligible and enrolled providers at least 10 calendar days prior to the IGT declaration of intent deadline. Suggested IGT responsibilities will be based on the maximum dollars available under DPP BHS for the program period as determined by HHSC, plus 10 percent; forecasted member months for the program period as determined by HHSC; and the distribution of historical Medicaid utilization across providers, for the program period. HHSC will also communicate estimated maximum revenues each eligible and enrolled provider could earn under DPP BHS for the program period with those estimates based on HHSC's suggested IGT respon-

sibilities and an assumption that all enrolled providers will meet 100 percent of their quality metrics.

(2) Sponsoring governmental entities will determine the amount of IGT they intend to transfer to HHSC for the entire program period and provide a declaration of intent to HHSC 21 business days before the first half of the IGT amount is transferred to HHSC.

(A) The declaration of intent is a form prescribed by HHSC that includes the total amount of IGT the sponsoring governmental entity intends to transfer to HHSC.

(B) The declaration of intent is certified to the best knowledge and belief of a person legally authorized to sign for the sponsoring governmental entity but does not bind the sponsoring governmental entity to transfer IGT.

(3) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred no fewer than 14 business days before IGT transfers are due. HHSC will instruct sponsoring governmental entities as to the IGT amounts necessary to fund the program at estimated levels. IGT amounts will include the non-federal share of all costs associated with the provider rate increase, including costs associated with MCO (Capitation) premium taxes, risk margin, and administration, plus 10 percent.

(4) Sponsoring governmental entities will transfer the first half of the IGT amount by a date determined by HHSC, but no later than June 1. Sponsoring governmental entities will transfer the second half of the IGT amount by a date determined by HHSC, but no later than December 1. HHSC will publish the IGT deadlines and all associated dates on its Internet website by March 15 of each year.

(k) Effective date of rate and dollar reimbursement increases. HHSC will direct MCOs to increase reimbursements under this section beginning the first day of the program period that includes the increased capitation rates paid by HHSC to each MCO pursuant to the contract between them.

(l) Changes in operation. If an enrolled provider closes voluntarily or ceases to provide Medicaid services, the provider must notify the HHSC Provider Finance Department by electronic mail to an address designated by HHSC, by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide Medicaid services. Notification is considered to have occurred when HHSC Provider Finance Department receives the notice.

(m) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during each program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter.

(n) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(j) - (k) of 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 January 5, 2024.

TRD-202400058
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 25, 2024
Proposal publication date: November 17, 2023
For further information, please call: (512) 707-6071

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.54

The Texas Health and Human Services Commission (HHSC) adopts new §133.54, concerning Hospital at Home Program Application and Operational Requirements.

New §133.54 is adopted with changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6171). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to implement House Bill (H.B.) 1890, 88th Legislature, Regular Session, 2023. H.B. 1890 amended Texas Health and Safety Code (HSC) Chapter 241 by adding new Subchapter M to allow a licensed hospital to operate a hospital at home program with approval from the Centers for Medicare and Medicaid Services (CMS) and HHSC.

HSC §241.403(a), as added by H.B. 1890, requires HHSC to adopt rules establishing minimum standards for operation of a hospital at home program by a hospital.

In March 2020, CMS created the Acute Hospital Care at Home program, originally called the Hospitals Without Walls program, to increase hospital capacity during the COVID-19 pandemic.

In response to state and federal state of disaster declarations relating to COVID-19, HHSC adopted an emergency rule in Texas Administrative Code, Title 26, Chapter 500 §500.4, relating to Participating in the Centers for Medicare and Medicaid Services Acute Hospital Care at Home Program During the COVID-19 Pandemic. This emergency rule expired July 28, 2023.

COMMENTS

The 31-day comment period ended November 20, 2023.

During this period, HHSC received comments regarding the proposed rule from two commenters: the Teaching Hospitals of Texas (THOT) and the Texas Hospital Association (THA). A summary of comments relating to the rule and HHSC's responses follows.

Comment: THOT appreciated HHSC's work to implement the new rule as required by H.B. 1890 to ensure the Acute Hospital Care at Home Program continues and expressed their overall support for the new section.

Response: HHSC acknowledges this comment.

Comment: THA said they appreciate HHSC's clear and concise rulemaking.

Response: HHSC acknowledges this comment.

Comment: THOT and THA recommended amending §133.54(e) to clarify whether the renewal application fee is based on the number of beds designated for the hospital at home program at the time of the application or a prediction of the number of beds

the hospital may designate to the program in the future. THOT noted it would be difficult to predict how many beds the hospital may use in the hospital at home program and administratively burdensome to submit a new payment each time a hospital adds a new bed after HHSC approves the initial application. THA additionally asked HHSC clarify how the 10 beds are calculated and the process for adding a group of 10 beds between renewal years. THA noted flexibility is important for a hospital at home program to succeed and hospitals would appreciate clear and simple policies for adding and removing beds.

Response: HHSC revises §133.54(e) to clarify the renewal application fee is based on the number of beds a hospital designates for the hospital at home program in the hospital's renewal application. HHSC also adds new §133.54(f), and renumbers subsequent subsections accordingly, to clarify when a hospital increases the number of beds designated for its hospital at home program between license renewal periods, the hospital shall notify HHSC and pay a nonrefundable fee of $390 per block of 10 beds the hospital adds to their program.

Comment: THA recommended amending §133.54(f)(3)(A), renumbered to §133.54(g)(3)(A), to clarify the requirements for hospital policies and procedures to ensure patient health and safety. THA noted it was unclear whether the hospital's policies and procedures to ensure a patient's health and safety must address latent issues, such as mold, working smoke detectors within the patient's home, or neighborhood crime.

Response: HHSC declines to revise §133.54(f)(3)(A), renumbered to §133.54(g)(3)(A), because a hospital may determine the scope of its policies and procedures to ensure patient safety, provided the policies and procedures meet the minimum requirements under §133.54(g).

Comment: THOT and THA expressed concern about §133.54(f)(4)(A), renumbered to §133.54(g)(4)(A), precluding patients residing in assisted living facilities, group homes, hotels, or other non-traditional residential settings from qualifying for the hospitals at home program. THOT noted CMS allows patients residing in assisted living facilities to participate in the Acute Hospital Care at Home program and recommended amending §133.54(f)(4)(A) to either remove the word "residential" or allow additional home settings to improve flexibility and access. THA also noted that meeting federal qualifications should suffice for state regulatory purposes.

Response: HHSC revises §133.54(f)(4)(A), renumbered to §133.54(g)(4)(A), to remove the word "residential" from the requirement for a patient's home to be located at a physical address. HHSC notes a hospital is responsible for determining which home settings may participate in the hospital's program.

Comment: THOT and THA recommended amending §133.54(f)(4)(B) - (D), renumbered to §133.54(g)(4)(B) - (D), to require hospital policies to include how the hospital will address disruptions in electricity, water, and wastewater services at a participating patient's home in an emergency rather than disallowing disruptions and requiring hospitals assume responsibility for such services. THOT suggested HHSC use the following language: "maintain electricity service, water and wastewater with emergency policies and procedures in place in the event of a service loss that affects patient care. This may include transferring patients to a hospital setting if necessary."

Response: HHSC revises §133.54(f)(4)(B) - (D), renumbered to §133.54(g)(4)(B) - (D), to reorganize the subparagraphs under §133.54(g)(4)(B) and include a requirement for the hospital to identify how the hospital addresses any disruptions in electricity, water, and wastewater services in an emergency.

Comment: THOT and THA recommended amending §133.54(f)(4)(E), renumbered to §133.54(g)(4)(A)(ii), to remove the words "at designated times" to allow for hospital staff entry in emergency situations. THA noted times are generally consistent and designated in advance, but this wording could limit access in emergency situations outside of defined timelines. THOT noted hospital staff typically notify patients when they will arrive, but a hospital may interpret the phrase "designated times" as hospital staff being limited in ways that could be inconsistent with best practices for patient care and emergency situations.

Response: HHSC revises §133.54(f)(4)(E), renumbered to §133.54(g)(4)(A)(ii), to replace the phrase "at designated times" with "as needed."

Comment: THA asked if the requirements in §133.54(f)(4) and (5), renumbered to §133.54(g)(4), are exhaustive and requested HHSC include any additional requirements beyond those listed in §133.54(f)(4) and (5) or note if the requirements listed are minimum requirements.

Response: HHSC revises §133.54(f), renumbered to §133.54(g), to reorganize paragraphs (4) and (5) into subparagraphs under §133.54(g)(4) and renumbers the subsequent paragraphs in §133.54(g) accordingly. HHSC also clarifies that a hospital's policies and procedures must, at a minimum, require the patient and the patient's home to meet the requirements under that paragraph.

Comment: THOT and THA expressed concern with the requirement in §133.54(f)(6), renumbered to §133.54(g)(5), for a hospital to obtain patient consent for HHSC to enter the patient's home during a complaint investigation because this requirement may limit program participation. THOT and THA recommended removing this paragraph and following current hospital complaint investigation and survey procedures, which typically do not require entry into a patient's home. THOT alternatively suggested amending this paragraph to provide more details about the survey process when entering a patient's home.

Response: HHSC revises §133.54(f)(6), renumbered to §133.54(g)(5), to replace the requirement for a hospital to obtain consent to allow HHSC staff to enter the patient's home with a requirement that the informed consent must include a notice that HHSC may request to accompany hospital staff when entering the patient's home to ensure the hospital's compliance with §133.54.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals; and HSC §241.403, which requires HHSC to adopt rules establishing minimum standards for the operation of a hospital at home program by a hospital.

§133.54. Hospital at Home Program Application and Operational Requirements.

(a) As defined by Texas Health and Safety Code §241.401, and when used in this subchapter, the following words and terms have the following meanings.

(1) "Acute hospital care at home waiver program" means:

(A) the program established by the Centers for Medicare and Medicaid Services under United States Code Title 42 Section 1320b-5 that waives the requirements of 42 CFR Sections 482.23(b) and (b)(1); and

(B) a successor program to the program described by subparagraph (A) of this paragraph that is established by the United States Congress or the Centers for Medicare & Medicaid Services.

(2) "Hospital at home program" means a program operated by a hospital to provide in a home setting health care services that are considered to be acute hospital care for purposes of the acute hospital care at home waiver program.

(b) Notwithstanding hospital functions and services requirements in §133.41 of this subchapter (relating to Hospital Functions and Services) and hospital physical plant and construction requirements in Subchapter I of this chapter (relating to Physical Plant and Construction Requirements), a hospital may operate a hospital at home program and treat an eligible patient at that patient's home if the hospital:

(1) obtains approval from the Centers for Medicare & Medicaid Services (CMS) to participate in the acute hospital care at home waiver program; and

(2) receives written approval from the Texas Health and Human Services Commission (HHSC) to operate a hospital at home program.

(c) To apply for HHSC approval to operate a hospital at home program, an applicant shall submit the following to HHSC:

(1) a complete application to operate the program as indicated on the HHSC website;

(2) a nonrefundable application fee of $350;

(3) a copy of the CMS approval to participate in the acute hospital care at home waiver program; and

(4) any additional information requested by HHSC.

(d) A hospital shall reapply for HHSC approval to operate the hospital's hospital at home program when applying to renew the hospital's license under §133.23 of this chapter (relating to Application and Issuance of Renewal License).

(e) A hospital shall pay a nonrefundable renewal application fee of $390 per 10 beds the hospital designates for the hospital at home program in the renewal application. This fee is in addition to the hospital's license renewal fee.

(f) When a hospital increases the number of beds designated for its hospital at home program between license renewal periods, the hospital shall notify HHSC and pay a nonrefundable fee of $390 per block of 10 beds the hospital adds to their program.

(g) A hospital that is approved by HHSC to operate a hospital at home program shall:

(1) maintain CMS approval to participate in the acute hospital care at home waiver program;

(2) comply with the CMS acute hospital care at home waiver program requirements and all other applicable statutes and regulations;

(3) develop, implement, and enforce policies and procedures to ensure:

(A) the patient's health and safety;

(B) the safety of hospital staff entering the patient's home; and

(C) the safety of the patient's home;

(4) ensure the hospital's policies and procedures adopted under paragraph (3) of this subsection at a minimum:

(A) require the patient's home to:

(i) be located at a physical address;

(ii) allow hospital staff entry into the home as needed;

(iii) have animals separated securely away from the patient care area while hospital staff is on site, except for service animals as allowed by the Americans with Disabilities Act of 1990; and

(iv) maintain a safe route from the entrance and exit to the patient area within in the home;

(B) require the patient's home maintain electricity, water, and wastewater service and identify how the hospital addresses any disruptions in these services in an emergency; and

(C) require the patient maintain access to telephone service;

(5) obtain a patient's written and informed consent to participate before the patient participates in the hospital's hospital at home program, including notice that HHSC may request to accompany hospital staff when entering the patient's home to ensure a hospital's compliance with this rule; and

(6) notify HHSC in writing no later than five business days if the hospital:

(A) chooses to no longer operate a hospital at home program; or

(B) loses CMS approval to participate in the acute hospital care at home waiver program.

(h) At any time, HHSC may withdraw its approval for a hospital to operate a hospital at home program if HHSC finds a threat to patient health or safety. Any patient being treated under the hospital at home program at the time HHSC withdraws its approval shall be safely relocated as soon as practicable and according to the hospital's policies and procedures.

(i) To the extent this section may conflict with a requirement in §133.21(c)(4)(B) or (C) of this chapter (relating to General), this section controls.

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, 2023.

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (512) 834-4591

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 4. LIFE AND ANNUITY

The commissioner of insurance adopts the repeal of 28 TAC §4.1117. The commissioner of insurance adopts the amendments to 28 TAC §§4.201 - 4.206, 4.601 - 4.608, 4.611, 4.613 - 4.628, 4.1001, 4.1002, 4.1004, 4.1005, 4.1008, 4.1010, 4.1011, 4.1101 - 4.1104, 4.1106 - 4.1116, 4.1201, 4.1502 - 4.1509, 4.1602 - 4.1606, 4.1609 - 4.1613, 4.1703, 4.1705 - 4.1707, 4.2102 - 4.2106, 4.2302, 4.2304, 4.2306 - 4.2312, 4.2322, 4.2701, 4.2702, 4.2705, 4.2706, 4.2712 - 4.2716, 4.2721 - 4.2726, 4.2731 - 4.2734, 4.2801 - 4.2808, 4.2811, 4.2821 - 4.2823, 4.2825 - 4.2827, 4.2829, and 4.2831 - 4.2836 without changes to the proposed text published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5466). These sections will not be republished.

Sections 4.1510, 4.1702, 4.1704, and 4.2824 are adopted with nonsubstantive changes to the proposed text. In §4.1510, the Texas Department of Insurance (TDI) has removed an unnecessary reference to "Subchapter O" in a citation; in §4.1702 and §4.1704, TDI has revised an incorrect date in the title of two mortality tables by replacing "1908" with "1980"; and in §4.2824, TDI has corrected punctuation. In addition, TDI has revised the Subchapter BB, Division 2 title to replace "pursuant to" with "under." These sections will be republished.

REASONED JUSTIFICATION. On July 28, 2023, the Texas Register published notice (48 TexReg 4127) of the administrative transfer of certain subchapters concerning life insurance and annuity products from Chapter 3 to new Chapter 4 in Title 28 of the Texas Administrative Code.

The administrative transfer revised each subchapter and section designation included in the transfer to reflect its new location in Chapter 4, but no rule text was amended during the transfer. This adoption order updates internal section and figure citations made obsolete by the administrative transfer.

As part of the administrative transfer notice, a comparison table illustrating the new organization and designations of subchapters, divisions, and sections in Chapter 4 was published in the *Texas Register*. The transfer table is available on TDI's website at www.tdi.texas.gov/rules/2023/index.html.

In addition to amendments that correct citations, nonsubstantive changes include:

- adding or amending Insurance Code section titles and citations for accessibility and consistency with agency rule drafting style preferences;

- updating TDI contact information, including mailing, physical, and website addresses; and

- correcting punctuation, capitalization, and grammar to reflect current agency drafting style and plain language preferences, as appropriate.

Specifically, amendments to multiple sections include the deletion of "shall" or replacement of "shall" with "must" or another context-appropriate word. The purpose of changing the word "shall" is to provide plain language clarification of the rule text, consistent with current agency style and guidance on the TDI website. Resources TDI uses for plain language guidance include plainlanguage.gov, which provides federal plain language guidelines, and the National Archives guidelines for clear legal documents. Both sources advise using alternatives to the word "shall" to provide clarity for readers.

The adoption replaces "pursuant to" with "under" or "in accordance with," as appropriate; replaces "subchapter" or "chapter" with "title" in citations to other sections in Title 28 of the Texas Administrative Code; and removes "the" when not needed before "Insurance Code." These amendments, along with other nonsubstantive amendments discussed in the following paragraphs, reflect current agency drafting style, adhere to plain language practices, and promote consistency in TDI rule text.

In addition, the administrative transfer and adopted amendments (1) enhance accessibility through thoughtful reorganization, (2) promote readability through nonsubstantive plain language amendments, (3) preserve the capacity of Chapter 4 with deliberate organization, and (4) restore the capacity of Chapter 3 for future rulemaking projects.

This adoption also includes nonsubstantive amendments to provisions related to the National Association of Insurance Commissioners (NAIC) rules, regulations, directives, or standards. Because the rules relate to NAIC rules, regulations, directives, or standards, Insurance Code §36.004 requires TDI to consider whether authority exists to enforce or adopt the provisions. TDI has determined that §36.004 does not prohibit the amendments because they are nonsubstantive updates that do not change or expand previously adopted requirements.

The adopted repeal and amendments to the sections are described in detail in the following paragraphs, organized by subchapter.

Subchapter C. Consumer Notices for Life Insurance Policy and Annuity Contract Replacements.

Section 4.201. Purpose. The amendments add the title to the Insurance Code §1114.006 citation and remove "the" before "Insurance Code."

Section 4.202. Definitions. The amendments add the title to the Insurance Code Chapter 4054 citation and remove the word "shall."

Section 4.203. Consumer Notice Content and Format Requirements. The amendments update section and figure citations made obsolete after the administrative transfer. The amendments also update the TDI mailing address where persons may request forms specified in the subchapter, amend punctuation, and replace "pursuant to" with "under."

Section 4.204. Consumer Notice Regarding Replacement for Insurers Using Agents. The amendments update figure citations made obsolete after the administrative transfer and replace "shall" with "must." No amendments are adopted to the content of the figure.

Section 4.205. Direct Response Consumer Notices. The amendments update figure citations made obsolete after the administrative transfer and replace "shall" with "must." No amendments are adopted to the contents of the figures.

Section 4.206. Filing Procedures for Substantially Similar Consumer Notices. The amendments remove previous §4.206(a), which provided the filing procedure for an insurer subject to Insurance Code Chapter 1114 beginning on December 27, 2007, and ending January 31, 2008, because it is obsolete. The

adopted amendments redesignate the remaining subsections and remove the other effective dates in the section.

The amendments also update figure citations made obsolete after the administrative transfer and add or correct titles to the Insurance Code Chapter 1114 and §1701.054 citations. The adoption also replaces multiple citations to filing requirements found in 28 TAC Chapter 3, Subchapter A, with a general citation to 28 TAC Chapter 3, Subchapter A. The amendments also replace "shall" with "must" and "prior to" with "before" and correct grammar by adding "been" to §4.206(a)(1).

Subchapter F. Individual Life Insurance Policy Form Checklist and Affirmative Requirements.

Section 4.601. Payment of Premiums. The amendments replace "which" with "that," "shall" with "will," "thereof to" with "at," and "his" with "the."

Section 4.602. Grace Period. The amendment replaces "shall" with "must."

Section 4.603. Entire Contract. The amendments remove the word "shall" and replace "which" with "that."

Section 4.604. Incontestable Clause. The amendments add the title to the Insurance Code §1101.006 citation, replace the citation and title of §3.118(e) with §4.621(e), replace "which" with "that," and remove "whatsoever."

Section 4.605. Statements of the Insured. The amendments add the title to the Insurance Code §705.004 citation and replace "which" with "that."

Section 4.606. Misstatement of Age. The amendments replace "shall be such as" with "is the amount that" and amend punctuation.

Section 4.607. Policy Loans. The amendments add the title to the Insurance Code Chapter 1110 citation; amend punctuation; remove "of," "herein," and one instance of "thereon"; replace "which" with "that," "thereto" with "to the policy," "therefor" with "for the loan," and "thereon" with "on the loan"; and add "of the policy" and "in this subchapter" to clarify the sentence given the removal of "thereon" and "herein" from the subsection.

Section 4.608. Automatic Nonforfeiture Benefits. The amendment adds the title to the Insurance Code Chapter 1105 citation.

Section 4.611. Reinstatement. The amendments replace "which" with "that," "shall" with "must," "shall be" with "is," and "shall not have" with "has not."

Section 4.613. Family Group Special Requirements. The amendments replace "shall" with "must" and "which" with "that."

Section 4.614. Dependent Child Riders and Family Term Riders. The amendments add the corresponding titles to the Insurance Code §1101.006 and §1105.007 citations, amend punctuation, and replace "prior to" with "before."

Section 4.615. Requirements for a Package Consisting of a Deferred Life Policy with an Accidental Death Rider Attached. The amendments add the title to the Insurance Code Chapter 1701 citation and replace "which" with "that."

Section 4.616. Substitute or Change of Insured Riders. The amendments add the word "and" at the end of §4.616(d)(3) to clarify that all elements in §4.616(d) must be clearly described. The adoption also replaces the word "shall" with "must" and amends punctuation.

Section 4.617. Preliminary Term Life Insurance. The amendments add "and" after §4.617(1) to clarify that both requirements apply to a contract of life insurance containing a preliminary term insurance rider. The amendments also correct the spelling of "contestability."

Section 4.618. Conversion Provision. The amendments add "and" after §4.618(3) to clarify that a conversion provision in a policy must comply with the requirements in the section. The adoption also replaces "shall" with "must."

Section 4.619. Limitations of Lawsuits. The amendment replaces "shall accrue" with "accrues."

Section 4.620. Backdating Policies. The amendments replace "which" with "that," "that which" with "what," "his" with "their," and "prior to" with "before" and remove "thereby."

Section 4.621. Settlement at Maturity. The amendments remove "either of" to reflect that §4.621(c) contains more than two paragraphs, amend punctuation, and replace "which would" with "that."

Section 4.622. Tontine Provisions. The amendments replace "which" with "that."

Section 4.623. Assignment Provisions. The amendments replace "which" with "that."

Section 4.624. Provisions Relating to Dividends, Coupon Benefits, or Other Guaranteed Returns. The amendments add the title to the Insurance Code §841.253 citation and replace "which" with "that."

Section 4.625. Premiums Paid in Advance. The amendments amend punctuation and replace "which" with "that" and "therein" with "in the policy."

Section 4.626. Annuity Contracts. The amendments update section citations made obsolete after the administrative transfer by replacing "Sections 3.101 - 3.128" with "All sections in Subchapter F" and replacing the word "title" with "chapter." The adoption also replaces "which" with "that."

Section 4.627. Certain Prohibited Provisions. The amendments replace "which" with "that."

Section 4.628. Renewal Premium on Term Policies. The amendment replaces "shall" with "must."

Subchapter J. Life - Indeterminate Premium Reduction Policies.

The adoption adds "Life -" to the title of Subchapter J to clarify the applicability of the subchapter.

Section 4.1001. Purpose and Scope. The amendments add the title to the Insurance Code Chapter 541 citation and replace "which" with "that" and "subsequent to" with "after." The adoption also adds "and" after §4.1001(a)(1) to clarify that the subchapter applies to life insurance policies that have both characteristics in §4.1001(a).

Section 4.1002. Policy Form Submission. The amendments replace "its" with "the insurer's" to clarify the subject of §4.1002(a)(1), amend punctuation, and replace "which" with "that."

Section 4.1004. Summary of Provisions. The amendments replace "which" with "that" and "subsequent to" with "after."

Section 4.1005. Relation of Initial to Later Premium Charge. The amendment replaces "which" with "that."

Section 4.1008. Minimum Nonforfeiture Values. The amendments add the title to the Insurance Code Chapter 1105 citation and replace "code" with "Insurance Code." The adoption also removes "wherein" and "are required" and adds "which requires" for clarity.

Section 4.1010. Artificial Maximum Premiums Prohibited. The amendments add the titles to the Insurance Code Chapters 1105 and 425, Subchapter B, citations. The adoption also replaces "subsequent to" with "after" and amends punctuation.

Section 4.1011. General Enforcement. The amendment adds the title to the Insurance Code Chapter 541 citation.

Subchapter K. Life - Standards for Acceleration-of-Life-Insurance Benefits for Individual and Group Policies and Riders.

The adoption adds "Life -" to the title of Subchapter K to clarify the applicability of the subchapter.

Section 4.1101. Purpose; Severability. The amendments remove the capitalization of the first word of paragraphs (1) through (5) of §4.1101(a) to reflect the punctuation of the subsection. The adoption also amends punctuation, removes "shall," and replaces "shall remain" with "remains."

Section 4.1102. Acceleration-of-Life-Insurance: Scope of Benefits. The amendments update section citations made obsolete after the administrative transfer, amend punctuation, and remove "shall" and "either." The adoption also replaces "which" with "that," "Acceleration-of-life-insurance" with "Acceleration-of-Life-Insurance," "that" with "That," and "shall" with "must" or "will."

Section 4.1103. Required Policy Definitions; Evidence of Total and Permanent Disability. The amendments update a section citation made obsolete after the administrative transfer and add the titles to the Insurance Code §1111.052 and §1201.003 citations. The adoption also removes "the" before "Insurance Code" and replaces "shall" with "must." The adoption also clarifies §4.1103(a) by removing "either" and amending punctuation throughout the section.

Section 4.1104. Standards for Medical Diagnoses. The amendments replace "shall" with "must."

Section 4.1106. Methods for Determining Benefits and Allowable Charges and Fees. The amendments replace the capitalized catchlines with lowercased catchlines and amend punctuation. The adoption also replaces "shall" with "must" or "may," "which" with "that," "annum" with "year," "one percent" with "1%," "90 day" with "90-day," "Commissioner" with "commissioner," and "regards" with "regard."

Section 4.1107. Limitations on Reduction of Cash Values. The amendments update a section citation made obsolete after the administrative transfer and replace "Lien Method " with "lien method" and "shall" with "may." The adoption also removes "the" before "Insurance Code," amends punctuation, and adds the title to the Insurance Code Chapter 1105 citation.

Section 4.1108. Pro Rata Reduction of Loan upon Acceleration of Benefits. The amendments update a section citation made obsolete after the administrative transfer and replace "Lien Method" with "lien method."

Section 4.1109. Effect of Acceleration of Benefits on Nonforfeiture Calculations. The amendments add the title to the Insurance Code Chapter 1105 citation, replace "shall" with "must," and remove "the" before "Insurance Code."

Section 4.1110. Calculation of Reserves. The amendments update a section citation made obsolete after the administrative transfer, remove "the" before "Insurance Code," and add titles to the citations for Insurance Code Chapter 425, §425.058, and §425.069. The adoption also replaces "shall" with "must," "which" with "that," and "Lien Method" with "lien method."

Section 4.1111. Unfair, Discriminatory, or Deceptive Practices Prohibited. The amendments add a comma after "Discriminatory" in the section title and add commas in §4.1111(b) for consistency with the amendment to the section title.

The adoption also removes the parentheses around the title to Insurance Code Chapter 541, removes "the" before "Insurance Code," and replaces "shall" with "may."

Section 4.1112. Notice and Disclosure Requirements for Life Insurance Contracts Containing Acceleration-of-Life-Insurance Benefits. The amendments capitalize "Acceleration-of-Life-Insurance" in the section title and update section citations made obsolete after the administrative transfer.

The adoption also corrects punctuational errors and replaces "shall" with "must," "which" with "that," "section" with "subsection," and "shall be" with "is."

Section 4.1113. Notice and Disclosure Requirements for Marketing Materials. The amendments update section citations made obsolete after the administrative transfer, amend punctuation, and replace "shall" with "must" and "which" with "that." The adoption also adds an "and" at the end of §4.1113(a)(2) to clarify that a disclosure required under the section must include information in §4.1113(a)(1) - (3).

Section 4.1114. Requirements for Acceleration-of-Life-Insurance Benefits That Fund Long-Term Care Expenses. The amendments update section citations made obsolete after the administrative transfer, capitalize "Acceleration-of-Life-Insurance" in the section title, clarify that the citation to Subchapter Y is found in Chapter 3 of Title 28, and correct the title for Chapter 3, Subchapter Y.

The amendments also replace "To" with "to" in the title citation to §4.1115 and "chapter" with "title" and correct capitalization throughout the section for consistency with the punctuation used.

Section 4.1115. Requirements for Benefits Represented to Be Qualified for Favorable Federal Tax Treatment. The amendments update section citations made obsolete after the administrative transfer and correct cited section titles in the rule text. The adoption also replaces "To" with "to" in the title of §4.1115; replaces "his or her" with "their," "shall" with "must" or "may," "long term" with "long-term," "prior to" with "before," and "which" with "that"; removes "shall"; adds "of this paragraph" in §4.1115(b)(2)(B); and amends punctuation.

Section 4.1116. Disclosure Related to Tax Qualification of Benefits and Benefits' Effect on Public Assistance. The amendments update section citations made obsolete after the administrative transfer and remove redundant citations to a section title previously cited in §4.1116. The adoption removes the phrase "a life insurance contract" in §4.1116(b) because it is redundant and amends punctuation throughout the section.

The amendments also replace "back-slashes" with "slashes," "acceleration-of-life insurance" with "acceleration-of-life-insurance," and "regards" with "regard."

Section 4.1117. Effective Date. Section 4.1117 is repealed because the section states the amendments become effective 20

days after the date the adopted rule is filed with the Office of the Secretary of State. This is standard practice for rules under Government Code §2001.036(a) and, as a result, the section is unnecessary.

Subchapter L. Life - Insurance Sold in Connection with Prepaid Funeral Contracts.

The adoption adds "Life -" to the title of Subchapter L to clarify the applicability of the subchapter.

Section 4.1201. Introduction to Joint Memorandum of Understanding. The amendments add the title to the Occupations Code §651.159 citation and update a section citation made obsolete after the administrative transfer.

Subchapter O. Life - Variable Life Insurance.

The adoption adds "Life -" to the title of Subchapter O to clarify the applicability of the subchapter.

Section 4.1502. Definitions. The amendments add a title to the Insurance Code Chapter 1152 citation, add "with" in §4.1502(10), amend punctuation, and replace "which" with "that" and "pursuant to" with "under."

Section 4.1503. Qualifications of Insurer to Issue Variable Life Insurance. The amendments update section citations made obsolete after the administrative transfer, add a title to the Insurance Code Chapter 1152 citation, and correct a title and citation to Chapter 21, Subchapter B, Division 1.

The amendments also remove "concerning notice and hearing" because that citation is outdated and remove "a" before the phrase "life insurance business in this state" to correct the grammar of the sentence. The amendments amend punctuation and replace "subsection" with "section," "which" with "that," "prior to" with "before," "pursuant to" with "under," and "contractholder" with "contract holder."

Section 4.1504. Insurance Contract and Filing Requirements. The amendments add titles to the citations for Insurance Code Chapters 1105 and 1110 and "Chapter 3" to a citation in §4.1504(1)(A). The amendments also replace "chapter" with "title" in relation to the citation to Chapter 3, Subchapter A, and remove a redundant reference to the title of §4.1509.

The amendments also add "and" at the end of §4.1504(3)(P)(v) and §4.1504(4)(A)(iii) to reflect that all the elements listed in those paragraphs must be included under §4.1504(3)(P) and §4.1504(4)(A), and add "or" at the end of §4.1504(5)(C)(iv) to reflect that contracts may offer the dividend options in §4.1504(5)(C)(i) - (v).

The amendments also update section citations made obsolete after the administrative transfer and replace multiple outdated words or terms with language that conforms to current agency drafting style and plain language preferences. These changes remove "of" and "therefor"; amend punctuation; and replace "which" with "that," "contractholder" with "contract holder," "his or her" with "the insured's," "which result" with "that results," "pursuant to" with "under," "prior to" with "before," "thereof" with "of those provisions," "thereon" with "on the contract," and "subsequent to" with "after."

Section 4.1505. Reserve Liabilities for Variable Life Insurance. The amendments add a title to the Insurance Code Chapter 425, Subchapter B, citation and replace "paid up" with "paid-up" and "which" with "that."

Section 4.1506. Separate Accounts. The amendments add titles to the Insurance Code Chapters 1105 and 1152 citations, update section citations made obsolete after the administrative transfer, and correct a reference to the title of a cited administrative code citation.

The adoption adds "and" at the end of §4.1506(7)(F) to clarify that the insurer must disclose in writing all charges that may be made against the separate account including, but not limited to, the elements in §4.1506(7). The adoption also adds "and" at the end of §4.1506(10)(C)(iii) to clarify the information to be included under §4.1506(10)(C). The adoption also removes an "or" at the end of §4.1506(1)(B)(i) because it is redundant. These amendments clarify the rule requirements but are nonsubstantive in nature and do not change the requirements under the rule.

The adoption also amends punctuation and replaces "pursuant to" with "under," "prior to" with "before," "which" with "that," "thereunder" with "under the contract" or "adopted under that section," "which evidences" with "evidencing," and "contractholders" with "contract holders."

Section 4.1507. Information Furnished to Applicants. The amendments update a section citation made obsolete after the administrative transfer and amend punctuation. The adoption also replaces "which" with "that," "contractholder" with "contract holder," "the manner in which" with "how," "prior to" with "before," and "shall" with "must," "may," or "will."

Section 4.1508. Application. The amendments add "and" after §4.1508(2) to clarify that the application for a variable life contract must contain all the elements in the section and replace "shall" with "must" and "which" with "that."

Section 4.1509. Reports to Contract Holders. The amendments update a section citation made obsolete after the administrative transfer and add an "and" at the end of §4.1509(2)(D) to clarify that a statement or statements provided annually to contract holders must contain the elements listed in the paragraph.

The adoption also replaces "contractholder" with "contract holder" in the section title and in rule text and replaces "shall" with "must," "pursuant to" with "under," "of" with "or," which" with "that," "prior to" with "before," "therein" with "in the statement" and "his or her" with "their."

Section 4.1510. Separability. The amendments replace the range of section citations with the corresponding citation to Subchapter O and change "title" to chapter." The adoption also removes "thereby," amends the title of Subchapter O for consistency with adopted changes to the subchapter's title, and replaces "thereof" with "of such provisions" and "shall" with "will."

The text as proposed has been changed to correct an error in §4.1510 by removing "of Subchapter O" in a citation because it is unnecessary.

Subchapter P. Life - Required Reinstatement Relating to Mental Incapacity of the Insured for Individual Life Policies Without Nonforfeiture Benefits.

The adoption adds "Life -" to the title of Subchapter P to clarify the applicability of the subchapter.

Section 4.1602. Applicability. The amendments update a section citation made obsolete after the administrative transfer, remove punctuation, and replace "which" with "that."

Section 4.1603. Severability. The amendment removes "shall."

Section 4.1604. Definitions. The amendments remove "shall"; amend punctuation; and replace "Incapacity" with "incapacity" and "Commissioner of Insurance" with "commissioner of insurance."

Section 4.1605. Eligibility Requirements. The amendments remove the language "set forth in paragraphs (1) - (4) of this subsection" at the end of the first sentence in §4.1605 to simplify and clarify the provision. The section is not broken into subsections and there are only four paragraphs in the section, so it is not necessary to list each paragraph. The amendments add the word "following" to clarify the sentence given the removal and replace "shall" with "must" and "prior to" with "before."

Section 4.1606. Payment of Past Due Premiums. The amendment replaces "annum" with "year."

Section 4.1609. Notification and Disclosure Requirements. The amendments update section citations made obsolete after the administrative transfer, remove a cited section title that is redundant, amend punctuation, and replace "thereto" with "to the policy" and "which" with "that."

Section 4.1610. Reinstatement Procedures. The amendment replaces "shall" with "must."

Section 4.1611. Reduced Benefits. The amendments replace "shall" with "must."

Section 4.1612. Form Filing Procedures. The amendments update section citations made obsolete after the administrative transfer and remove two redundant section title citations. The amendments also add "Chapter 3" to the citation in §4.1612(c) and amend the title of Subchapter A in §4.1612(c).

Section 4.1613. Notice and Disclosure Form. The amendments update section and figure citations made obsolete after the administrative transfer. The amendments also remove a redundant title citation and replace "shall" with "must." No amendments are adopted to the contents in the figures.

Subchapter Q. Life - Nonforfeiture Standards for Individual Life Insurance in Employer Pension Plans.

The adoption adds "Life -" to the title of Subchapter Q to clarify the applicability of the subchapter.

Section 4.1702. Definitions. The amendments remove "shall," correct punctuation, and replace "National Association of Insurance Commissioners" with "NAIC" for consistency. The amendments also correct the case law citation in §4.1702(8) by italicizing the names of the parties for consistency with §4.1703.

The text as proposed has been changed to correct an error in §4.1702(3) by replacing "1908 CET Table (M)" with "1980 CET Table (M)."

Section 4.1703. Standard. The amendments change the *Norris* case law citation in §4.1703(d) to reflect the same case law citation used in §4.1702(8) for consistency. The amendments also remove an unnecessary reference to a list of insurance code sections, update the TDI mailing address; add the titles to the citations for Insurance Code Chapter 425, Subchapter B, and Chapter 1105, Subchapter B; remove "herein"; and replace "paid up" with "paid-up" and "which" with "that."

Section 4.1704. Alternate Rule. The amendments update a section citation made obsolete after the administrative transfer, remove an unnecessary reference to a list of insurance code sections, and add titles to the citations for Insurance Code Chapter 425, Subchapter B, and Chapter 1105, Subchapter B. The amendments also update the TDI mailing address and replace "which" with "that."

The text as proposed has been changed to correct an error in §4.1704(a)(1) by replacing "1908 CSO Table" with "1980 CSO Table."

Section 4.1705. Unfair Discrimination. The amendment adds a title to the Insurance Code §541.057 citation.

Section 4.1706. Severability. The amendments remove "thereby" and replace "shall" with "will" and "thereof" with "of these provisions."

Section 4.1707. 2001 CSO Mortality Table. The amendments replace the sections cited with a citation to "Subchapter AA, Division 3" and replace "shall" with "must," "pursuant to" with "under," and "title" with "chapter."

Subchapter U. Variable Annuities.

Section 4.2102. Definitions. The amendments add a title to the Insurance Code Chapter 1152 citation, amend punctuation, and replace "which" with "that," "pursuant to" with "under," and "contractholder" with "contract holder."

Section 4.2103. Qualifications of Insurer to Issue Variable Annuities. The amendments replace "To" with "to" in the section title and update a section citation made obsolete after the administrative transfer.

The amendments also amend punctuation and replace "he or she" with "the commissioner"; "State Board of Insurance" with "Department of Insurance"; "which" with "that"; and "shall" with "must," "may," or "will."

Section 4.2104. Separate Accounts. The amendments add a title to the Insurance Code Chapter 1152 citation and update section citations made obsolete after the administrative transfer. The amendments also remove redundant instances of "or" at the end of §4.2104(a)(2)(A) and §4.2104(j)(1) and add "and" at the end of §4.2104(j)(3)(C) to clarify that the insurer must include all the information in paragraph (3), if applicable.

The amendments also replace "To" with "to" in a title citation, amend punctuation, and replace "which" with "that," "contractholders" with "contract holders," "prior to" with "before," "pursuant to" with "under," and "thereunder" with "adopted under that section" or "under the contract," as appropriate.

Section 4.2105. Contract Requirements. The amendments replace outdated Insurance Article citations with current Insurance Code citations and their corresponding titles. The amendments also replace a citation and title to "Board Order 40701" with "Chapter 3, Subchapter A" and its corresponding title citation.

The amendments also amend punctuation throughout, remove "thereunder" and "the" before "Internal Revenue Code," and replace "which," "as of which," or "of which" with "that"; "him or her" or "his or her" with "the commissioner" or "the contract holder," as appropriate; "chapter" with "title"; "prior to" with "before"; "contractholder" with "contract holder"; "pursuant to" with "under"; "shall have" with "has"; "previous to" with "before"; "subparagraph" with "subparagraphs"; and "shall" with "must," "may," "will," or "do."

Section 4.2106. Separability. The amendments remove "thereby" and replace "thereof" with "of these sections" and "shall" with "will."

Subchapter W. Annuity Disclosures.

Division 1. Annuity Contract Disclosures.

Section 4.2302. Applicability and Scope. The amendments remove "the" before Insurance Code and Finance Code for consistency, add titles to the Insurance Chapter 102 citation and the Finance Code Chapter 154 citation, and amend punctuation.

Section 4.2304. Definitions. The amendments update a section citation made obsolete after the administrative transfer and add titles to the Insurance Code Chapter 102 and 4054 citations. The amendments also remove "the" before Insurance Code and "shall" throughout the section and replace "subchapter" with "title."

Section 4.2306. Guaranteed and Non-Guaranteed Elements. The amendments update section citations made obsolete after the administrative transfer, replace "Non-guaranteed" with "Non-Guaranteed" in the section title, and replace "subchapter" with "title."

Section 4.2307. Effect on Other Law. The amendments replace "pursuant to" with "under."

Section 4.2308. Required Consumer Notices. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code §1152.110 citation. The amendments remove "the" before Insurance Code, amend punctuation, and replace "subchapter" with "title," "Internet" with "internet," "which" with "and," "prior to" with "before," and "shall" with "must" or "will."

Section 4.2309. Disclosure Document. The amendment replaces "shall" with "must."

Section 4.2310. Buyer's Guide. The amendments correct punctuation and replace "NAIC" with "National Association of Insurance Commissioners (NAIC)" and "SEC's" with "Securities and Exchange Commission (SEC)."

Section 4.2311. Free Look Period. The amendments replace "shall" with "must" and "shall mean" with "means."

Section 4.2312. Report to Contract Owners. The amendment replaces "shall" with "must."

Division 2. Annuity Suitability Disclosures.

Section 4.2322. Required Forms. The amendments add "(NAIC)" at the end of the first use of "National Association of Insurance Commissioners" and then replace all instances of "National Association of Insurance Commissioners" with "NAIC." The adoption also removes "Texas" before "Insurance Code" for consistency with current agency rule drafting style.

Subchapter AA. Mortality Tables.

Division 1. Annuity Mortality Tables.

Section 4.2701. Purpose. The amendments update section and figure citations made obsolete after the administrative transfer. No amendments are adopted to the contents in the figures.

Section 4.2702. Definitions. The amendments update a section citation made obsolete after the administrative transfer, replace "Actuaries'" with "Actuaries" and "table" with "Table," and amend punctuation. The amendments also add "(NAIC)" at the end of the first use of "National Association of Insurance Commissioners" and then replace all instances of "National Association of Insurance Commissioners" with "NAIC."

Section 4.2705. Application of the 1994 GAR Table. The amendments update a figure citation made obsolete after the administrative transfer. No amendments are adopted to the content in the figure.

Section 4.2706. Application of the 2012 IAR Mortality Table. The amendments update figure citations made obsolete after the administrative transfer. Amendments to figure citations are adopted in both the rule text and the text of Figure: 28 TAC §4.2706.

Division 2. Smoker-Nonsmoker Composite Mortality Tables.

Section 4.2712. Definitions. The amendments update punctuation and remove "shall."

Section 4.2713. Alternate Tables. The amendments update section citations made obsolete after the administrative transfer, remove an unnecessary reference to a list of insurance code sections in two places, and add the title to the Insurance Code, Chapter 1105, Subchapter B, citation. The amendments also remove a redundant title to a section cited earlier in §4.2713, amend punctuation, update a TDI mailing address, remove "herein," and replace "paid up" with "paid-up."

Section 4.2714. Conditions. The amendment adds the title to the Insurance Code §425.068 citation.

Section 4.2715. Severability. The amendments remove "thereby" and replace "thereof" with "of these sections" and "shall" with "will."

Section 4.2716. 2001 CSO Mortality Table. The amendments update section citations made obsolete after the administrative transfer and replace "shall" with "must," "pursuant to" with "under," and "title" with "chapter."

Division 3. 2001 CSO Mortality Table.

Section 4.2721. Purpose. The amendments update a section citation made obsolete after the administrative transfer and add titles to the citations for Insurance Code Chapter 425, Subchapter B; §425.058; and §1105.055.

Section 4.2722. Definitions. The amendments update punctuation, remove "shall," and capitalize "Mortality."

Section 4.2723. 2001 CSO Mortality Table. The amendments update section citations made obsolete after the administrative transfer and add titles to the citations for Insurance Code Chapter 425, Subchapter B; §425.058; and §1105.055. The adoption also corrects a citation from Insurance Code "§1055.055(h)" to "§1105.055(h)" in §4.2723(b).

The amendments also remove a redundant title to a section cited earlier in §4.2723; replace "Commissioner of Insurance" with "commissioner," "title" with "chapter," and "pursuant to" with "under"; and update a TDI mailing address and the TDI website where the 2001 CSO Mortality Table may be accessed.

Section 4.2724. Conditions. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code §425.068 citation. The amendments also replace "Chapter 3, Subchapter EE" with "Chapter 4, Subchapter BB, Division 3" in a title citation and correct inconsistent capitalization in §4.2724(a)(1) - (3) to reflect the punctuation used in the section.

Section 4.2725. Applicability of the 2001 CSO Mortality Table to Chapter 4, Subchapter BB, Division 3 of this Title. The amendments update section citations made obsolete after the administrative transfer and replace "Chapter 3, Subchapter EE" with "Chapter 4, Subchapter BB, Division 3" in the section title and

rule text. The amendments also amend punctuation, replace "shall be" with "is" and "shall" with "may," and remove "shall," as appropriate.

Section 4.2726. Gender-Blended Tables. The amendments add titles to the citations for Insurance Code Chapter 541 and Chapter 425, Subchapter B; and update the TDI mailing address and the TDI website where the blended tables developed by the American Academy of Actuaries CSO Task Force may be accessed.

Division 4. Preferred Mortality Tables.

Section 4.2731. Purpose. The amendments update a section citation made obsolete after the administrative transfer and add titles to the Insurance Code Chapter 425, Subchapter B and §425.058 citations.

Section 4.2732. Definitions. The amendments remove "shall" and amend punctuation.

Section 4.2733. 2001 CSO Preferred Class Structure Table. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code Chapter 425, Subchapter B citation. The amendments also replace "pursuant to" with "under" and "prior to" with "before" and update the TDI mailing address and the TDI website where the 2001 CSO Preferred Class Structure Mortality Table may be accessed.

Section 4.2734. Conditions. The amendments update punctuation and replace "NAIC" with "National Association of Insurance Commissioners (NAIC)," "prior to" with "before," and "shall" with "must" or "will."

Subchapter BB. Life and Annuity Reserves.

Division 1. Actuarial Opinion and Memorandum Regulation.

Section 4.2801. Purpose. The amendments remove the language "described in paragraphs (1) - (3) of this section" at the end of the first sentence in §4.2801 to simplify and clarify the provision. The section is not broken into subsections and there are only three paragraphs in the section, so it is not necessary to list out each paragraph. The amendments also add the word "following" to clarify the sentence given the removal and add the title to the Insurance Code §425.054 citation.

Section 4.2802. Scope and Applicability. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code Chapter 425, Subchapter B citation. The amendments also replace "thereof" with "of the statement of opinion," "shall apply" with "applies," "shall have" with "has," "shall be" with "is," "which" with "that," "his or her" with "their," and "shall" with "must."

Section 4.2803. Commissioner Discretion. The amendments update section citations made obsolete after the administrative transfer and replace "which" with "that."

Section 4.2804. Definitions. The amendments update section citations made obsolete after the administrative transfer and add titles to the Insurance Code §884.307 and §884.402 citations. The adoption also amends punctuation; removes "shall"; and replaces "pursuant to" with "under," "his or her" with "their," and "which includes" with "including."

Section 4.2805. General Requirements. The amendments update a section citation made obsolete after the administrative transfer and add titles to the Insurance Code §§425.054, 425.064, 425.065, 425.068, and 425.069 citations.

Section 4.2806. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis. The amendments update figure and section citations made obsolete after the administrative transfer and add the title to the Insurance Code Chapter 425, Subchapter B citation. The adoption also updates section citations in Figure: 28 TAC §4.2806(b)(2). No other amendments were proposed or are adopted to the contents in the figures.

The amendments replace "be at least" with "include the following" in §4.2806(f)(1)(C)(ii) for clarity and amend punctuation. The adoption also capitalizes the words beginning each paragraph in §4.2806(f)(1) to reflect the amended punctuation and replaces "subsequent to" with "before" and "being" with "may be" in §4.2806(f)(1)(B) to clarify that before an alternative statement may be issued, the company must file certain requirements.

The amendments also correct a reference to the title of 28 TAC §7.18 and replaces "NAIC" with "National Association of Insurance Commissioners," "that which" with "what," "which" with "that," and "he or she" or "his or her" with "the appointed actuary" or "their."

Section 4.2807. Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary. The amendments update section citations made obsolete after the administrative transfer and add titles to the citations for Insurance Code Chapters 401 and 425, Subchapter B. The adoption replaces citations to Insurance Code §§425.054 - 425.057 with Chapter 425, Subchapter B.

The amendments replace a colon at the end of a statement with "the following" and a period and correct capitalization for consistency with the subsection's organization.

The adoption also updates a TDI mailing address; removes "the" before Insurance Code; amends punctuation; and replaces "which" with "that," "his or her" with "the appointed actuary's," and "their" with "the other actuaries.'"

Section 4.2808. Asset Adequacy Analysis Exemption. The amendments update section citations made obsolete after the administrative transfer, capitalize "Commissioner" as it appears in the title for §4.2803, and replace "pursuant to" with "under" and "shall" with "must."

Division 2. Strengthened Reserves Under Insurance Code §425.067. The text as proposed has been changed by replacing "Pursuant to" with "Under."

Section 4.2811. Strengthened Reserves Under Insurance Code §425.067. The amendments add titles to the Insurance Code §425.053 and §425.067 citations and replace "pursuant to" with "under" in the section title.

Division 3. Valuation of Life Insurance Policies.

Section 4.2821. Purpose. The amendments revise capitalization to reflect current agency drafting style.

Section 4.2822. Adoption of Tables of Select Mortality Factors. The amendments update a figure citation made obsolete after the administrative transfer and replace "age last birthday" with "age-last-birthday," "age nearest birthday" with "age-nearest-birthday," and "which" with "that." No amendments are adopted to the content in the figure.

Section 4.2823. Applicability. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code Chapter 425, Subchapter B cita-

tion. The adoption also amends punctuation and replaces "Nonlevel" with "nonlevel" and "shall" with "does" or "must."

Section 4.2824. Definitions. The amendments update section and figure citations made obsolete after the administrative transfer; remove a redundant title already cited; update punctuation; and replace "subchapter" with "title," "shall" with "must" or "may," and "one percent" with "1%." These amendments are made in the rule text and in the text of Figure: 28 TAC §4.2824(2).

Amendments also add or correct titles to the citations for Insurance Code Chapter 425, Subchapter B and §§425.061, 425.064, and 425.068; remove "shall" and instances of "the" before Insurance Code; replace "one year" with "one-year"; and correct capitalization throughout the section. These nonsubstantive amendments are meant to align the section with other similar sections.

The text of §4.2824(9)(B) as proposed has been changed to insert a missing closing parenthesis.

Section 4.2825. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves. The amendments update section citations made obsolete after the administrative transfer; correct a title citing to Insurance Code Chapter 425, Subchapter B; and remove a redundant title already cited.

The amendments correct capitalization and add "or" at the end of §4.2825(b)(3)(G)(iii) to reflect that, if select mortality factors are elected, it may be those found in §4.2825(b).

The amendments also remove "the" before "Insurance Code"; amend punctuation; and replace "shall" with "must, "percent" with "%," "prior to" with "before," and "subchapter" or "chapter" with "title."

Section 4.2826. Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums of Guaranteed Nonlevel Benefits (Other than Universal Life Policies). The amendments update section citations made obsolete after the administrative transfer; add the title to the Insurance Code Chapter 425, Subchapter B citation; and remove a redundant title already cited. The amendments also update punctuation and replace "prior to" with "before," "subsequent to" with "after," "twenty-four" with "24," and "twenty-five" with "25."

Section 4.2827. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyholder to Keep a Policy in Force Over a Secondary Guarantee Period. The amendments update section citations made obsolete after the administrative transfer; correct capitalization in §4.2827(d) to reflect the subsection organization; amend punctuation; and replace "one year" with "one-year," "which" with "that," and "shall" with "must."

Section 4.2829. 2001 CSO Mortality Table. The amendments update section citations made obsolete after the administrative transfer by replacing "§§3.9101 - 3.9106" with "Subchapter AA, Division 3" and replace "shall" with "must," "title" with "chapter," and "pursuant to" with "under."

Division 4. Preneed Life Insurance Minimum Mortality Standards for Determining Reserve Liabilities and Nonforfeiture Values.

Section 4.2831. Purpose and Applicability. The amendments update a section citation made obsolete after the administrative transfer and replace "of the Insurance Code" with titles to the Insurance Code §425.058 and §1105.055 citations. The amendments also replace "chapter" with "title" and add "Insurance Code" before the Insurance Code citations.

Section 4.2832. Definitions. The amendments add titles to the Finance Code Chapter 541 and §541.002 citations, remove "shall" and "the" before Finance Code, amend punctuation, and replace "which" with "that."

Section 4.2833. Minimum Valuation Mortality Standards. The amendments update a section citation made obsolete after the administrative transfer and replace "subchapter" with "title" and "shall be" with "is."

Section 4.2834. Minimum Valuation Interest Rate Standards. The amendments correct the title for the Insurance Code Chapter 425, Subchapter B and Chapter 1105 citations; remove "the" before Insurance Code; and replace "shall be" with "are."

Section 4.2835. Minimum Valuation Method Standards. The amendments update the titles for the Insurance Code Chapter 425, Subchapter B and Chapter 1105 citations; update punctuations; replace "shall be" with "is"; and remove "the" before "Insurance Code."

Section 4.2836. Transitional Use of the 2001 CSO Mortality Table. The amendments update section citations made obsolete after the administrative transfer by replacing "§§3.9101 - 3.9106" with "Subchapter AA, Division 3." The adoption also replaces "shall" with "must."

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed repeal and amendments.

SUBCHAPTER C. CONSUMER NOTICES FOR LIFE INSURANCE POLICY AND ANNUITY CONTRACT REPLACEMENTS

28 TAC §§4.201 - 4.206

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.201 - 4.206 under Insurance Code §§1114.006, 1114.007, and 36.001.

Insurance Code §1114.006 provides that the commissioner by rule adopt or approve model documents to be used for consumer notices under Insurance Code Chapter 1114.

Insurance Code §1114.007 authorizes the commissioner to adopt reasonable rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A, to accomplish and enforce the purposes of Insurance Code Chapter 1114.

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.

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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Jessica Barta
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SUBCHAPTER F. INDIVIDUAL LIFE INSURANCE POLICY FORM CHECKLIST AND AFFIRMATIVE REQUIREMENTS

28 TAC §§4.601 - 4.608, 4.611, 4.613 - 4.628

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.601 - 4.608, 4.611, and 4.613 - 4.628 under Insurance Code §§541.401, 543.001(c), 1701.060 and 36.001.

Insurance Code §541.401 provides that the commissioner may adopt and enforce reasonable rules necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §543.001(c) provides that the commissioner may adopt and enforce rules as provided by Insurance Code Chapter 541, Subchapter I to accomplish the purposes of §543.001(b)(1), prohibiting misrepresentation, as those purposes relate to life insurance companies.

Insurance Code §1701.060 authorizes the commissioner to adopt reasonable rule necessary to implement the purposes of Insurance Code Chapter 1701.

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.

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SUBCHAPTER J. INDETERMINATE PREMIUM REDUCTION POLICIES

28 TAC §§4.1001, 4.1002, 4.1004, 4.1005, 4.1008, 4.1010, 4.1011

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1001, 4.1002, 4.1004, 4.1005, 4.1008, 4.1010, and 4.1011 under Insurance Code §§543.001(c), 1701.060, and 36.001.

Insurance Code §543.001(c) provides that the commissioner may adopt and enforce reasonable rules as provided by Insurance Code Chapter 541, Subchapter I to accomplish the purposes of §543.001(b)(1), prohibiting misrepresentation, as those purposes relate to life insurance companies.

Insurance Code §1701.060 specifies that the commissioner may adopt rules necessary to implement the purpose of Insurance Code Chapter 1701.

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.

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SUBCHAPTER K. STANDARDS FOR ACCELERATION-OF-LIFE-INSURANCE BENEFITS FOR INDIVIDUAL AND GROUP POLICIES AND RIDERS

28 TAC §§4.1101 - 4.1104, 4.1106 - 4.1116

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1101 - 4.1104 and 4.1106 - 4.1116 under Insurance Code §§1111.053, 1701.060, and 36.001.

Insurance Code §1111.053 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111, Subchapter B.

Insurance Code §1701.060 specifies that the commissioner may adopt rules necessary to implement the purpose of Insurance Code Chapter 1701.

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.

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28 TAC §4.1117

STATUTORY AUTHORITY. The commissioner adopts the repeal of §4.1117 under Insurance Code §§1111.053, 1701.060, and 36.001.

Insurance Code §1111.053 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111, Subchapter B.

Insurance Code §1701.060 specifies that the commissioner may adopt rules necessary to implement the purpose of Insurance Code Chapter 1701.

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.

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SUBCHAPTER L. INSURANCE SOLD IN CONNECTION WITH PREPAID FUNERAL CONTRACTS

28 TAC §4.1201

STATUTORY AUTHORITY. The commissioner adopts amendments to §4.1201 under Occupations Code §651.159 and Insurance Code §36.001.

Occupations Code §651.159 provides the commissioner adopt a memorandum of understanding with the Texas Funeral Service Commission and the Texas Department of Banking.

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.

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

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SUBCHAPTER O. VARIABLE LIFE INSURANCE

28 TAC §§4.1502 - 4.1510

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1502 - 4.1510 under Insurance Code §1152.002 and §36.001.

Insurance Code §1152.002 authorizes the commissioner to adopt rules that are fair, reasonable, and appropriate to augment and implement Insurance Code Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

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.

§4.1510. Separability.

If any provision of this chapter (relating to Life - Variable Life Insurance) or the application of such provisions to any person or circumstance is for any reason held to be invalid, the remainder of the sections and the application of such provision to other persons or circumstances will not be affected.

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

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SUBCHAPTER P. REQUIRED REINSTATEMENT RELATING TO MENTAL INCAPACITY OF THE INSURED FOR INDIVIDUAL LIFE POLICIES WITHOUT NONFORFEITURE BENEFITS

28 TAC §§4.1602 - 4.1606, 4.1609 - 4.1613

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1602 - 4.1606 and 4.1609 - 4.1613 under Insurance Code §1106.010 and §36.001.

Insurance Code §1106.010 provides the commissioner adopt reasonable rules to implement Insurance Code Chapter 1106.

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.

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SUBCHAPTER Q. NONFORFEITURE STANDARDS FOR INDIVIDUAL LIFE INSURANCE IN EMPLOYER PENSION PLANS

28 TAC §§4.1702 - 4.1707

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1702 - 4.1707 under Insurance Code §§36.004, 541.057, 541.401, 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §541.057 prohibits unfair discrimination in the rates, dividends, or any other contract terms and conditions for individuals of the same class and life expectancy in life insurance and annuity contracts.

Insurance Code §541.401 provides that the commissioner may adopt and enforce reasonable rules necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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.

§4.1702. Definitions.

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

(1) 1980 CET Table--That mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 National Association of Insurance Commissioners (NAIC) amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

(2) 1980 CET Table (F)--That mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.

(3) 1980 CET Table (M)--That mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.

(4) 1980 CSO Table, with or without Ten-Year Select Mortality Factors--That mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors.

(5) 1980 CSO Table (F), with or without Ten-Year Select Mortality Factors--That mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

(6) 1980 CSO Table (M), with or without Ten-Year Select Mortality Factors--That mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

(7) 1980 CSO and 1980 CET smoker and nonsmoker mortality tables--The mortality tables derived from the 1980 CSO and 1980 CET mortality tables by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality and adopted by the NAIC in December 1983.

(8) *Norris* decision--The decision of the United States Supreme Court in the case of *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris,* 463 U.S. 1073 (1983).

§4.1704. Alternate Rule.

(a) In determining minimum cash surrender value and amounts of paid-up nonforfeiture benefits for any policy of insurance on either a male or a female insured on a form of insurance with separate rates for smokers and nonsmokers delivered or issued for delivery in this state after the operative date of former Insurance Code Article 3.44a, §8 (recodified in Insurance Code Chapter 1105, Subchapter B, concerning Computation of Adjusted Premiums Using Nonforfeiture Net Level Premium Method), and before January 1, 2017, for that policy form, in addition to the mortality tables that may be used according to §4.1703 of this title (relating to Standard), the tables in paragraphs (1) and (2) of this subsection may be used. For policies issued on or after January 1, 2017, the valuation manual, adopted under Insurance Code Chapter 425, Subchapter B, concerning Standard Valuation Law, provides the tables to be used.

(1) A mortality table that is a blend of the male and female rates of mortality according to the 1980 CSO Smoker Mortality Table, in the case of lives classified as smokers, or the 1980 CSO Nonsmoker Mortality Table, in the case of lives classified as nonsmokers, with or without 10-year select mortality factors, may, at the option of the company, be substituted for the 1980 CSO Table, with or without 10-year select mortality factors.

(2) A mortality table that is of the same blend as used in paragraph (1) of this subsection but applied to form a blend of the male and female rates of mortality according to the corresponding 1980 CET Smoker Mortality Table or 1980 CET Nonsmoker Mortality Table or 1980 CET Nonsmoker Mortality Table may, at the option of the company, be substituted for the 1980 CET Table.

(b) The following blended mortality tables are considered as the basis for acceptable tables according to subsection (a) of this section:

(1) 100% male, 0% female for smoker tables to be designated as the 1980 CSO-SA and 1980 CET-SA Tables;

(2) 80% male, 20% female for smoker tables to be designated as the 1980 CSO-SB and 1980 CET-SB Tables;

(3) 60% male, 40% female for smoker tables to be designated as the 1980 CSO-SC and 1980 CET-SC Tables;

(4) 50% male, 50% female for smoker tables to be designated as the 1980 CSO-SD and 1980 CET-SD Tables;

(5) 40% male, 60% female for smoker tables to be designated as the 1980 CSO-SE and 1980 CET-SE Tables;

(6) 20% male, 80% female for smoker tables to be designated as the 1980 CSO-SF and 1980 CET-SF Tables;

(7) 0% male, 100% female for smoker tables to be designated as the 1980 CSO-SG and 1980 CET-SG Tables;

(8) 100% male, 0% female for nonsmoker tables to be designated as the 1980 CSO-NA and 1980 CET-NA Tables;

(9) 80% male, 20% female for nonsmoker tables to be designated as the 1980 CSO-NB and 1980 CET-NB Tables;

(10) 60% male, 40% female for nonsmoker tables to be designated as the 1980 CSO-NC and 1980 CET-NC Tables;

(11) 50% male, 50% female for nonsmoker tables to be designated as the 1980 CSO-ND and CET-ND Tables;

(12) 40% male, 60% female for nonsmoker tables to be designated as the 1980 CSO-NE and 1980 CET-NE Tables;

(13) 20% male, 80% female for nonsmoker tables to be designated as the 1980 CSO-NF and 1980 CET-NF Tables; and

(14) 0% male, 100% female for nonsmoker tables to be designated as the 1980 CSO-NG and 1980 CET-NG Tables.

(c) The Texas Department of Insurance adopts and incorporates into this subchapter by reference the tables to which subsection (b) of this section refers as tables to be used in conjunction with the section adopted under this subchapter. Copies of these tables can be obtained from the Life and Health Division, Life and Health Actuarial, MC: LH-ACT, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

(d) The tables specified in subsection (b)(1), (7), (8), and (14) of this section may not be used except where the proportion of persons insured is anticipated to be 90% or more of one sex or the other.

(e) Notwithstanding any other provision of this subchapter, an insurer may not use the blended mortality tables in subsection (b) of this section unless the *Norris* decision is known to apply to the policies involved, or unless there exists a bona fide concern on the part of the insurer that the *Norris* decision might reasonably be construed to apply by a court having jurisdiction.

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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Jessica Barta
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SUBCHAPTER U. VARIABLE ANNUITIES

28 TAC §§4.2102 - 4.2106

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2102 - 4.2106 under Insurance Code §§1152.002, 1152.101, and 36.001.

Insurance Code §1152.002 specifies that the commissioner may adopt rules that are fair, reasonable, and appropriate to augment and implement Insurance Code Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

Insurance Code §1152.101 states that the commissioner has sole authority to regulate the issuance and sale of a variable contract under Insurance Code Chapter 1152 and rules adopted under Insurance Code §1152.002.

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.

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SUBCHAPTER W. ANNUITY DISCLOSURES
DIVISION 1. ANNUITY CONTRACT DISCLOSURES

28 TAC §§4.2302, 4.2304, 4.2306 - 4.2312

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2302, 4.2304, and 4.2306 - 4.2312 under Insurance Code §§31.002, 101.051, 1108.002, 1114.007, 1152.002, and 36.001.

Insurance Code §31.002 specifies that in addition to other required duties, TDI will regulate the business of insurance in this state; administer the workers' compensation system of this state as provided by Labor Code, Title 5; and ensure that the Insurance Code and other laws regarding insurance and insurance companies are executed.

Insurance Code §101.051 specifies that acts that constitute the business of insurance in this state include making or proposing to make, as an insurer, an insurance contract; taking or receiving an insurance application; or issuing or delivering an insurance contract to a resident of this state.

Insurance Code §1108.002 specifies that for the purpose of regulation under the Insurance Code, an annuity contract is considered an insurance policy or contract if the annuity contract is issued by a life, health, or accident insurance company, including a mutual company or fraternal benefit society, or if it is issued under an annuity or benefit plan used by an employer or individual.

Insurance Code §1114.007 authorizes the commissioner to adopt reasonable rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A, to accomplish and enforce the purpose of Insurance Code Chapter 1114.

Insurance Code §1152.002 authorizes the commissioner to adopt rules that are fair, reasonable, and appropriate to augment and implement Insurance Code Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

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.

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DIVISION 2. ANNUITY SUITABILITY DISCLOSURES

28 TAC §4.2322

STATUTORY AUTHORITY. The commissioner adopts amendments to §4.2322 under Insurance Code §§36.004, 1115.005, 1115.0514, 1115.0516, and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §1115.005 provides that the commissioner may adopt reasonable rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A, to accomplish and enforce the purpose of Chapter 1115.

Insurance Code §1115.0514 requires that an agent, before the recommendation or sale of an annuity, provide a disclosure to the consumer on a form prescribed by the commissioner by rule.

Insurance Code §1115.0516 requires agent use, at specified times, of disclosure forms prescribed by the commissioner by rule.

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.

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SUBCHAPTER AA. MORTALITY TABLES

DIVISION 1. ANNUITY MORTALITY TABLES

28 TAC §§4.2701, 4.2702, 4.2705, 4.2706

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2701, 4.2702, 4.2705, and 4.2706 under Insurance Code §§36.004, 425.053, 425.059(d), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.053 authorizes TDI to annually value or cause to be valued the reserves for all outstanding annuity and pure endowment contracts before the operative date of the valuation manual required under Insurance Chapter 425.

Insurance Code §425.059(d) provides that the commissioner may approve by rule a mortality table adopted after 1980 by the National Association of Insurance Commissioners or a modification of one of the tables provided in the section.

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.

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DIVISION 2. SMOKER-NONSMOKER COMPOSITE MORTALITY TABLES

28 TAC §§4.2712 - 4.2716

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2712 - 4.2716 under Insurance Code §§36.004, 541.057, 541.401, 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §541.057 prohibits unfair discrimination in the rates, dividends, or any other contract terms and conditions for individuals of the same class and life expectancy in life insurance and annuity contracts.

Insurance Code §541.401 provides that the commissioner may adopt and enforce reasonable rules necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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.

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DIVISION 3. 2001 CSO MORTALITY TABLE

28 TAC §§4.2721 - 4.2726

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2721 - 4.2726 under Insurance Code §§36.004, 425.058(c)(3), 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Insurance Code Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard values under Insurance Code Chapter 425, Subchapter B.

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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.

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DIVISION 4. PREFERRED MORTALITY TABLES

28 TAC §§4.2731 - 4.2734

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2731 - 4.2734 under Insurance Code §§36.004, 425.058(c)(3), 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Insurance Code Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard values under Insurance Code Chapter 425, Subchapter B.

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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.

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SUBCHAPTER BB. LIFE AND ANNUITY RESERVES

DIVISION 1. ACTUARIAL OPINION AND MEMORANDUM REGULATION

28 TAC §§4.2801 - 4.2808

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2801 - 4.2808 under Insurance Code §§36.004, 425.054, and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.054 provides that the commissioner specify by rule the requirements of an actuarial opinion under §425.064(b), including any matters considered necessary to the opinion's scope.

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.

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DIVISION 2. STRENGTHENED RESERVES UNDER INSURANCE CODE §425.067

28 TAC §4.2811

STATUTORY AUTHORITY. The commissioner adopts amendments to §4.2811 under Insurance Code §425.067 and §36.001.

Insurance Code §425.067 authorizes the commissioner to establish categories of necessary reserves for certain policies, benefits, or contracts issued by life insurance companies.

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.

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DIVISION 3. VALUATION OF LIFE INSURANCE POLICIES

28 TAC §§4.2821 - 4.2827, 4.2829

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2821 - 4.2827 and 4.2829 under Insurance Code §§36.004, 425.058(c)(3), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Insurance Code Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard values under Insurance Code Chapter 425, Subchapter B.

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.

§4.2824. Definitions.

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

(1) Basic reserves--Reserves calculated in accordance with the principles of Insurance Code §425.064, concerning Commissioners Reserve Valuation Method for Life Insurance and Endowment Benefits.

(2) Contract segmentation method--The method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in this section, (or any other valuation mortality table adopted by the NAIC after the effective date of this subchapter and promulgated by regulation by the commissioner for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in §4.2825(b) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves). Figure: 28 TAC §4.2824(2)

(3) Deficiency reserves--The excess, if greater than zero, of the minimum reserves calculated in accordance with the principles of Insurance Code §425.068, concerning Reserve Computation: Gross Premium Charged Less Than Valuation Net Premium, over the basic reserves.

(4) Guaranteed gross premiums--The premiums under a policy of life insurance that are guaranteed and determined at issue.

(5) Maximum valuation interest rates--The interest rates defined in Insurance Code §425.061, concerning Computation of Calendar Year Statutory Valuation Interest Rate: General Rule, that are to be used in determining the minimum standard for the valuation of life insurance policies.

(6) NAIC--National Association of Insurance Commissioners.

(7) 1980 CSO valuation tables--The Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

(8) Scheduled gross premium--The smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in §4.2827(a)(3) of this title (relating to Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period) if any, or else the minimum premium described in §4.2827(a)(4) of this title.

(9) Segmented reserves--Reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the

respective guaranteed gross premiums within the segment. The length of each segment is determined by the "contract segmentation method," as defined in this section. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy. For both basic reserves and deficiency reserves computed by the segmented method, present values must include future benefits and net premiums in the current segment and in all subsequent segments. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

(A) the present value of the death benefits and endowment benefits within the segment, plus

(B) the present value of any unusual guaranteed cash value (see §4.2826(d) of this title (relating to Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies))) occurring at the end of the segment, less

(C) any unusual guaranteed cash value occurring at the start of the segment, plus

(D) for the first segment only, the excess of clause (i) of this paragraph over clause (ii) of this paragraph, as follows.

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium may not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one-year term premium for the benefits provided for in the first policy year.

(10) Tabular cost of insurance--The net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

(11) Ten-year select factors--The select factors in Insurance Code Chapter 425, Subchapter B, concerning Standard Valuation Law.

(12) Unitary reserves--The present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

(A) guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

(B) modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of clause (i) of this subparagraph over clause (ii) of this subparagraph, as follows.

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium may not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one-year term premium for the benefits provided for in the first policy year.

(C) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

(13) Universal life insurance policy--Any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

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

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DIVISION 4. PRENEED LIFE INSURANCE MINIMUM MORTALITY STANDARDS FOR DETERMINING RESERVE LIABILITIES AND NONFORFEITURE VALUES

28 TAC §§4.2831 - 4.2836

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2831 - 4.2836 under Insurance Code §§36.004, 425.058(c)(3), 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Insurance Code Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard values under Insurance Code Chapter 425, Subchapter B.

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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.

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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES

28 TAC §5.4211

The commissioner of insurance adopts amendments to 28 TAC §5.4211, concerning the establishment of a time period for the Texas Windstorm Insurance Association (TWIA) appraisal process. The amendments to §5.4211 implement House Bill 3310, 88th Legislature, 2023. The amendments are adopted without changes to the proposed text published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6567) and will not be republished.

REASONED JUSTIFICATION. HB 3310 requires the commissioner to adopt rules that establish a time period for an appraisal demanded under Insurance Code §2210.574. Amendments to §5.4211 are necessary to establish the required deadline.

Amendments to subsections (a)(2) and (b)(1) insert the titles of cited Insurance Code sections.

The amendments also add new subsections (e), (f), (j), (k), and (m). The other subsections are redesignated as appropriate to reflect the addition of these new subsections.

New subsection (e) sets a deadline by which appraisers must disclose their projected fees to the parties and agree on an umpire. The deadline helps ensure that appraisers begin their involvement with the appraisal in a timely manner, and it helps claimants evaluate the anticipated cost of the appraisal.

New subsection (f) establishes a deadline by which the appraisers must agree on the amount of loss. One way to complete an appraisal is for the appraisers to agree on the amount of loss, so subsection (f) establishes a deadline to complete that effort. The deadline is longer for commercial claims because losses are frequently larger or more complex than the losses in residential claims.

The amendment to redesignated subsection (i) provides for an umpire to become involved if the appraisers do not agree on the amount of loss by the applicable deadline in adopted subsection (f). The amendment does not prevent an umpire from becoming involved before the deadline.

If the appraisers do not agree on the amount of loss, the way to complete the appraisal is for the appraisal panel to decide on the amount of loss. The appraisal panel consists of the two appraisers and the umpire. Accordingly, new subsection (j) establishes a deadline for the appraisal panel to decide on the amount of loss. The deadline is based on when the umpire becomes involved in the appraisal. The deadline is longer for commercial claims because losses are frequently larger or more complex than losses in residential claims.

New subsection (k) provides that TWIA and the claimant may extend the deadlines in subsections (f) or (j) by written agreement. Giving the parties the ability to extend the deadlines adds flexibility to provide more time for the appraisal when both parties agree it is appropriate. The subsection also recognizes that the commissioner may extend deadlines under 28 TAC §5.4222.

The amendment to redesignated subsection (l) provides that when the appraisers--rather than the parties--cannot agree on the amount of loss, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties. In an appraisal, decisions about the amount of loss are made by appraisers and umpires, not the parties. The amendment clarifies that distinction.

New subsection (m) allows the appraisers to select a new umpire if a decision is not issued within the deadlines. Allowing the appraisers to select a new umpire helps ensure the appraisal is completed in a timely manner. If the appraisers cannot agree on a new umpire, either of the appraisers may ask TDI to select one. This subsection follows the same process used to select an umpire at the outset of an appraisal.

The amendment to redesignated subsection (n) removes an obsolete applicability date. The subsection's applicability remains the same.

Other amendments add articles "the" or "an" before "appraisal" as appropriate to conform with current agency drafting style.

As required by HB 3310, TDI developed the amendments in consultation with TWIA.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

Commenters: TDI received one comment on the proposal, from the Office of Public Insurance Counsel, in support of it.

Comment on §5.4211

Comment. One commenter broadly expressed support for the proposal.

Agency Response. TDI appreciates the support.

STATUTORY AUTHORITY. TDI adopts amendments to §5.4211 under Insurance Code §§2210.008, 2210.574(d-1), 2210.580, and 36.001.

Insurance Code §2210.008 provides that the commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.574(d-1) requires the commissioner to adopt rules establishing the period in which an appraisal demand must be completed.

Insurance Code §2210.580 requires the commissioner to adopt rules regarding procedures and deadlines for payment and handling of claims.

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.

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 January 2, 2024.

TRD-202400019
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: January 22, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 676-6555

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 2, 2023, adopted amendments to 31 TAC §§65.91, 65.92, 65.95, 65.97, and 65.98, concerning Disease Detection and Response, and 65.605, 65.608, and 65.611, concerning Deer Breeder Permits. Sections 65.95, 65.98, 65.608, and 65.611 are adopted with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5626) and will be republished. Sections 65.91, 65.92, 65.97, and 65.605 are adopted without change to the proposed text and will not be republished.

The change to §65.95, concerning Movement of Breeder Deer, removes proposed subsection (b)(1)(C). The provision would have established a six-month residency requirement for breeder deer as a condition for eventual transfer to another breeding facility or release facility. The commission during its deliberations determined that further investigation of residency requirements is necessary. The change also alters proposed subsection (d)(2)(A) to increase the number of days allowed for landowners of trace-out release sites to submit test samples, from one day to seven days following mortality of trace deer. The commission during its deliberations considered that one day was an insufficient amount of time for persons to reasonably dispatch a trace deer, collect a test sample, and submit it. Finally, the change eliminates proposed new subsection (f), which would have prohibited the release of breeder deer prior to April 1 of the year following the year in which the breeder deer was born. The provision was intended to function in concert with a proposed amendment to §65.611 to eliminate the possibility of breeder deer being released without permanent identification. The commission voted to table provisions related to permanent identification; therefore, the provision is being removed.

The change to §65.98, concerning Transition Provisions, alters subsection (b) as proposed to remove provisions that mirror the provisions of current §65.99(e), concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities. The commission was persuaded, based on public comment, that confusion as to the rationale for reproducing current language in the proposed amendment could be avoided simply by referencing the contents of current §65.99(c) and providing for the resolution of any conflict between the sections by making the provisions of subsection (c) as adopted take precedence.

The change to §65.608, concerning Annual Reports and Records, eliminates an unnecessary comma in subsection (b). The change is nonsubstantive.

The change to §65.611, concerning Prohibited Acts, removes proposed new subsections (l) and (m), which reproduced the provisions of Parks and Wildlife Code, §43.3561, and provided for a defense to prosecution for persons who remove ear tags from deer following lawful hunting. As noted earlier in this preamble in the discussion of the changes to §65.95, the commission decided to table actions regarding the permanent identification of breeder deer.

The rules as adopted will function collectively to refine surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, scientific evidence suggests that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid

populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are critical to containing it on the landscape.

As noted previously in this preamble, the department has been engaged in a long-term effort to stem the spread of CWD; however, by 2021 it was apparent that more robust measures were warranted because CWD was still being detected in additional deer breeding facilities, as well as on multiple release sites associated with CWD-positive deer breeding facilities. The commission adopted those rules, which require higher rates of testing, ante-mortem (live-animal) testing of breeder deer prior to release, and enhanced recordkeeping and reporting measures, in December of 2021 (46 TexReg 8724).

The last nine months have seen an unprecedented increase in CWD detections, which is directly attributable to the regulatory actions taken in December 2021 to tighten and refine the agency's CWD surveillance measures. Since that time, CWD has been detected in an additional 15 deer breeding facilities, three release sites associated with CWD-positive deer breeding facilities, the Kerr Wildlife Management Deer Research facility, and two free-ranging deer in new areas where CWD had not been previously detected. Department records indicate that within the last five years those breeding facilities transferred over 4,500 unique deer to other breeding facilities, release sites, and Deer Management Permit (DMP) sites. All those locations are therefore directly connected to the CWD-positive facilities and are subsequently of epidemiological concern. Additionally, 287 deer breeding facilities received deer from one or more of the directly connected breeding facilities, which means those facilities (referred to as "Tier 1" facilities) are indirectly connected to the positive facilities and are also of epidemiological concern because they have received exposed deer that were in a trace-out breeding facility.

The amendment to §65.91, concerning General Provisions, eliminates an exception for nursery facilities. The rules as adopted eliminate the practice of moving breeder deer from deer breeding facilities to external facilities for nursing purposes and the amendment is therefore necessary to eliminate all provisions relating to that practice.

The amendment to §65.92, concerning CWD Testing, conforms an internal citation in subsection (b) of that section to comport it with the provisions of the amendment to §65.95, concerning Movement of Breeder Deer.

The amendment to §65.95, concerning Movement of Breeder Deer, alters the section to provide an internal reference, remove provisions applicable to nursery facilities, implements provisions regarding the testing of breeder deer being transferred between breeding facilities, removes an internal three-year limitation on the effectiveness of provisions governing the release of breeder deer, strengthens provisions governing the obligations of release-site owners in the event that a release site is epidemiologically linked by trace-out to a positive breeding facility, and provides for the suspension of participation in Managed Lands Deer Program activities for landowners who fail to comply with provisions applicable to trace-out release sites.

Current rules require a breeder deer to be the subject of an ante-mortem test (a live-animal test) before it can be transferred elsewhere for purposes of release. The amendment expands this requirement to include transfers between deer breeding facilities. The department has determined that in light of the spate of recent detections of CWD in multiple deer breeding facilities, it is not only prudent, but imperative to require all breeder deer to be tested as a condition of authorizing transfer between deer breeding facilities, which is intended to impose a testing protocol capable of providing an acceptable probability of detecting CWD if it exists in any given breeding facility and possibly preventing the transfer of CWD positive deer.

For similar reasons, the amendment eliminates the practice of transferring fawn deer from deer breeding facilities to external facilities for nursing purposes. The practice was considered to be an acceptable risk prior to the emergence of CWD; however, given the steady and increasing discoveries of CWD in deer breeding facilities across the state, the department has determined that the practice should be stopped.

The amendment also imposes new requirements for release sites that are epidemiologically connected to deer breeding facilities where CWD has been detected. Under current rule, the landowner of a release site that is epidemiologically connected to a positive deer breeding facility is required to test either 100 percent of all hunter-harvested deer at the release site property or one hunter-harvested deer per released deer (if authorized by a herd plan), whichever value is greater. Release site owners are also required by rule to maintain a harvest log. The department has determined that regulatory compliance at release sites has been problematic, as some release site owners have failed to conduct the required testing or maintain harvest logs as required. Although the department prohibits additional releases of deer at such sites unless approved by a herd plan, the epidemiological value of the animals at a trace-out release site is significant. The recent detections mark a dramatic increase in number and distribution of CWD-positive facilities across the state since 2020. Records indicate 367 trace release sites have received deer from these positive facilities and are of epidemiological concern. Although the owners of trace release sites are provided herd plans and placed under a hold order, herd plans do not require harvest on that property, only that if a deer is harvested a CWD sample must be collected and tested. The lack of harvest leaves the department in a precarious situation to mitigate potential spread of CWD to areas where the disease is currently undetected. Timely removal of trace animals is critically important for CWD management. Therefore, the department has determined that it is necessary to require all trace deer at trace-out release sites to be removed and tested within 60 days of notification by the department that the site has been confirmed as a trace-out release site. In addition, the amendment eliminates the current provision providing an alternative to 100 percent testing of hunter-harvested deer on trace-out release sites and instead requires testing of all hunter-harvested deer until the number and distribution of samples is sufficient to provide statistical confidence that if CWD were present at a certain prevalence on the release site, it would be detected. The amendment enhances the department's ability to more quickly assess whether exposed deer transferred from CWD-positive deer breeding facilities have spread CWD to trace-out release sites.

The amendment also eliminates current subsection (c)(6)(E), which imposed a three-year period of effectiveness for the provisions of paragraph (6). In a rulemaking in 2021 (46

TexReg 8724), the commission imposed a three-year period of effectiveness for ante-mortem testing of breeder deer prior to release, with the understanding that should continuation of the requirement be determined to be necessary, that decision would be made as needed in the future. As noted previously in this preamble, there has been an unprecedented significant increase in the detection of CWD within deer breeding facilities as well as release sites associated with deer breeding facilities recently, which not only necessitates the continuation of the provisions of paragraph (6), but to do so indefinitely.

Additionally, the amendment provides that the owner of a release site that is not in compliance with the applicable provisions of Chapter 65, Subchapter B, Division 2, is ineligible for enrollment or continued participation in the Managed Lands Deer Program (MLDP) under Chapter 65, Subchapter A. The MLDP is a conservation program that offers special privileges to participants in exchange for conducting beneficial management actions. The department reasons that the owner of a trace-out release site who is unwilling to comply with CWD management provisions should not be afforded the privilege of participation in the program.

Finally, the amendment does not include a proposed provision to prohibit the release of breeder deer prior to April 1 of the year following the year in which the breeder deer is born. As noted previously in this preamble, the commission decided to table all proposed provisions regarding the removal of required permanent identification of breeder deer.

The amendment to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, requires tissue samples collected for the issuance of a TTP (Trap, Transfer, and Process) permit to be submitted within seven days of collection. One of the recent detections of CWD occurred in a deer that was trapped in Bexar County under the provisions of a TTP permit. The TTP permit is used to remove surplus deer in situations in which hunting is impractical or unfeasible, such as in urban areas where discharge of firearms is prohibited. Typically, a TTP permit allows trapping activities between October 1 and March 31, and current rules require CWD test results to be submitted by May 1 following completion of permitted activities; however, there are no requirements on how quickly those CWD samples must be submitted to the lab for testing. The department has determined that in light of the detection of CWD in TTP deer, it is necessary to require tissue samples to be submitted within seven days of collection, which will provide for quicker department response in the event of detection.

The amendment to §65.98, concerning Transition Provisions, alters the timeframes for tissue sample collection at deer breeding facilities designated by the department as Category B facilities (facilities in which not all deer of epidemiological concern are available). Effective epidemiological investigations depend on specificity of time and place. Trace herds should be evaluated in a timely fashion, and, historically, whole-herd testing requirements have been inconsistent with the timeliness of testing. Furthermore, some breeding facilities in which the date of last known exposure occurred within the 18 months prior to epidemiological connection have either not conducted tests or not submitted test results. The amendment creates a more efficacious timeline (60 days) for compliance with collection and submission of required ante-mortem testing samples for Category B breeding facilities, which is necessary to clear epidemiologically linked herds in a timelier fashion. In addition, the amendment causes the provisions of §65.99(i), which apply to nursing facilities, to cease effect for reasons discussed elsewhere in this preamble.

The amendments to §65.605, concerning Holding Facility Standards and Care of Deer, and §65.608, concerning Annual Reports and Records, remove references to nursing facilities for reasons discussed elsewhere in this preamble.

The amendment to §65.611, concerning Prohibited Acts, removes provisions applicable to nursing facilities for reasons discussed elsewhere in this preamble and corrects an error in citation style in current subsection (j). The rule as adopted does not include proposed provisions to prohibit the removal of identification tags on breeder deer except as specifically authorized by statute, for reasons discussed earlier in this preamble.

The department received 2,772 opposing adoption of the rules as proposed. Of those comments, 311 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response, follow. The department notes that many comments addressed multiple provisions or contained many reasons for opposition; therefore, the department has organized this response in an itemized fashion. Therefore, the number of department responses is greater than the total number of comments.

One-hundred thirty-seven commenters opposed adoption of the rules as proposed and stated displeasure with the rules, describing them, variously, as onerous, overkill, out of control, excessive regulation, government overreach, witch hunt, or some other similar descriptive language meant to illustrate the department's actions as being egregious and unnecessary. The department disagrees with the comments and responds that CWD continues to be detected in deer breeding facilities and release sites associated with breeding facilities across the state; additional testing requirements for deer being transferred between deer breeders are necessary, as well as measures to enhance the department's ability to quickly test deer at release sites that have been epidemiologically linked to a positive deer breeding facility or facilities. The department believes the rules as adopted are sensible, appropriate, and reasonable. No changes were made as a result of the comments.

Fifty-six commenters opposed adoption of the rules as proposed and stated that the rules are reflective or representative of a preexisting condition of department antipathy towards deer breeders, describing the rules as discriminatory, bullying, crippling, "war on breeders," trying to put breeders out of business, punishing breeders, and other unflattering adjectives and phrases with negative connotations. The department disagrees with the comments and responds that the rules as adopted are not and are not intended to be punitive or as a demonstration of wanton disregard for the regulated community; rather, they represent the earnest desire of the department to discharge its statutory duty to protect and conserve the wildlife resources of the state from the apparently increasing threat of CWD in captive breeding facilities and to do so in a manner that is conscientious and respectful of the interests of the regulated community. No changes were made as a result of the comments.

Thirty-nine commenters opposed adoption and stated that the rules will harm, kill, destroy, or otherwise negatively impact deer hunting or the "white tail industry," and 41 commenters stated in various ways that the rules hurt small businesses, the hunting industry, businesses associated with the hunting industry, the state economy, and local economies, and other general assertions of financial hardship or harm. The department disagrees

with the comments and responds that the rules as adopted do not directly regulate any person other than those who hold a deer breeder permit and those who purchase deer from deer breeders for purposes of release and whose release sites are subsequently linked epidemiologically to a deer breeding facility where CWD has been detected ("positive facility"), imposing testing requirements as a condition for the transfer of breeder deer between deer breeders and at release sites that become epidemiologically linked to positive deer breeding facilities ("trace-out release site"). The department notes that captive-bred deer represent an extremely small percentage (less than five percent) of the total number of deer harvested annually in Texas and in that context, whatever ancillary, indirect economic impact of the rules as adopted is exceedingly minor, if it exists at all. The department also notes that if CWD is allowed to become widespread, the economic impacts and the impacts to hunting and to the regulated community itself will be significant. No changes were made as a result of the comments.

Thirty-eight commenters opposed adoption of the rules as proposed and expressed some sort of doubt with respect to the threat or even existence of CWD, claiming the disease has been around forever, isn't fatal, has no effect on deer populations, only affects small portions of the deer population, hasn't caused "die-offs," isn't prevalent, has never killed a deer, is a scam, or some other, similar expression of disbelief, and that the department's response to CWD is therefore a waste of time and money because it is not warranted. The department disagrees with the comments and responds that although much is unknown about CWD there is no scientific debate as to whether it is real, that it is without question invariably fatal, and that the disease can have population level effects. Further, the absence of large-scale die-offs isn't an appropriate metric because CWD can take years to reach a high prevalence in free-ranging deer populations, at which point it becomes impossible to eradicate. The department's management efforts are intended to prevent this outcome from occurring. No changes were made as a result of the comments.

Thirty commenters opposed adoption of the rules as proposed and stated in some form or fashion that the department and commission are engaging in a conspiracy with or acting in the interests of wealthy landowners to eliminate deer breeders because they do not want market competition for hunting opportunity. The department disagrees with the comments and responds that not only is there no merit whatsoever to the accusation, it is difficult to conceive that, given the extremely small percentage of breeder deer in the deer population or the total harvest, there would be sufficient economic incentive for anyone, wealthy or not, to eliminate deer breeding. No changes were made as a result of the comments.

Twenty-seven commenters opposed adoption of the rules as proposed and stated in various ways that the rules are unsupported by science generally or peer-reviewed science in particular, or that the science upon which the department bases the rules is flawed. The department disagrees with the comments and responds that its CWD management policy and regulatory stance are driven by the best available science. No changes were made as a result of the comments.

Twenty-three commenters opposed adoption of the rules as proposed and stated the rules constituted a violation of private property rights and were unfair to property owners. The department disagrees with the comments and responds that the rules do not affect private property rights in any way. No changes were made as a result of the comments.

Eighteen commenters opposed adoption of the rules as proposed and stated that they are unnecessary because the current rules are working. The department disagrees with the comment and responds that through slow but steady improvements in the department's rules over the last five years, the department's ability to expeditiously and reliably detect the disease has increased; however, the continued detection and transfer of CWD positive animals within and between deer breeding facilities and release sites associated with such facilities indicate a continuing need for improvement and adaptive management of the disease. No changes were made as a result of the comments.

Eighteen commenters opposed adoption of the rules on the basis that the severity of the threat of CWD justifies the prohibition of deer breeding altogether. The department responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department must issue a deer breeding permit to a qualified person; thus, the commission cannot prohibit deer breeding. No changes were made as a result of the comments.

Seventeen commenters opposed adoption of the rules as proposed and made vague accusations of monetary gain providing the incentive for the rules ("follow the money," "it's all about the money," "just a money grab"). The department disagrees with the comments and responds that such allegations are unjustified. The department operates within a budget that is appropriated by the legislature, with numerous oversight features designed to prevent and detect misuse of public funds. In addition, agency revenues and expenditures are a matter of public record, available for inspection at any time. No changes were made as a result of the comments.

Seventeen commenters opposed adoption of the rules as proposed and stated that the commission is corrupt. The department disagrees with the comments and responds that such accusations are untrue. No changes were made as a result of the comments.

Sixteen commenters opposed adoption of the rules as proposed on the basis that the department and the commission are engaging in a smear campaign, propaganda, fear-mongering, or scare tactics to influence the general public. The department disagrees that the rules as proposed or adopted are based on anything less than valid science, the facts, and the department's statutory duty to protect and conserve the state's wildlife resources. No changes were made as a result of the comments.

Sixteen commenters opposed adoption of the rules as proposed and stated that CWD doesn't or cannot harm and poses no risk to humans. The department disagrees with the comments and responds that certain spongiform encephalopathies (the family of diseases including CWD) are known to have become interspecifically transmissible, including spillover to humans. Recent research suggests that CWD may have zoonotic potential and the Centers for Disease Control as well as the World Health Organization recommend that humans avoid consumption of CWD-positive animals. In any case, the rules as adopted are intended to address the management of CWD in deer populations; the protection of human health and safety is an ancillary benefit. No changes were made as a result of the comments.

Fourteen commenters opposed adoption of the rules as proposed and stated displeasure with provisions repeating statutory language regarding permanent, visible identification on breeder deer at release sites. The department disagrees with the com-

ments and responds that by statute, the required ear tags cannot be removed except to replace a damaged ear tag. Nevertheless, the commission has directed the removal of language regarding permanent identification from the rules as adopted.

Thirteen commenters opposed adoption of the rules as proposed and stated that CWD cannot be eradicated and hasn't been eradicated in free range herds. The department disagrees with the comments and responds that there are examples where the rapid detection and intensive management of CWD in free-range herds appears to have prevented further detections. Even within Texas, no further detections have been found in Del Rio (three free-ranging positives) and Lubbock (one free-ranging positive) for at least two hunting seasons following the timely, intensive efforts to remove native deer. The department does recognize, though, that in areas where CWD has become established (in animals, the environment, or both), efficient eradication of the disease may not be possible; however, it is precisely because it is difficult if not impossible to eradicate CWD once it is established that it is imperative to keep the disease from spreading. No changes were made as a result of the comments.

Thirteen commenters opposed adoption of the rules as proposed because the rules do not require all hunter-harvested deer to be tested/do not require testing of free-range deer at the same rate as breeder deer. The department disagrees with the comments and responds that because the department has implemented a statewide risk-based surveillance strategy, it is unnecessary to require the testing of all hunter-harvested deer. Captive populations (of any organism, and especially those that can be relocated in ways other than natural movement or dispersion) and free-ranging populations (of that organism) with limited natural ranges of movement present entirely different disease management realities that cannot be conflated or compared. The rules as adopted implement demonstrably necessary and scientifically defensible measures to reduce the likelihood of disease transmission between deer breeding facilities and release sites. No changes were made as a result of the comments.

Eleven commenters opposed adoption of the rules as proposed and stated that in various ways that the department's surveillance efforts with respect to free-ranging populations are intentionally inadequate or insufficient because the department does not want to acknowledge the existence or prevalence of CWD in free-ranging populations, which would prove the department's animus towards deer breeders and defeat the premise that CWD surveillance in breeding facilities is necessary. The department disagrees with the comments and responds that such assertions are objectively false, as is the inference that deer breeders are being unfairly regulated. No changes were made as a result of the comments.

Eleven commenters opposed adoption of the rules as proposed and stated that EHD (Epizootic Hemorrhagic Disease) is a bigger threat than CWD and the department doesn't do/isn't doing anything about it. The department disagrees with the comment and responds that EHD and CWD are completely different diseases with different transmission pathways. EHD is spread via insects, which the department has no ability to control, while a known major pathway for spread of CWD is the transfer of infected deer by unnatural means (such as haulage), which the department does have the ability to influence in a way that mitigates disease transmission risk. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated the rules as proposed would hurt property values. The department disagrees with the comment and responds that the rules prescribe testing requirements for the transfer of breeder deer between deer breeders and enhances surveillance requirements at trace-out release sites, neither which can be demonstrated to affect property values. No changes were made as a result of the comments.

Ten commenters opposed adoption of the rules as proposed and stated that one day is not enough for test sample submission from release sites epidemiologically linked to positive breeding facilities. The department agrees with the comment and has made changes accordingly.

Nine commenters opposed adoption of the rules as proposed and stated that the rules are unnecessary because deer breeders are breeding CWD out of deer, and six commenters stated that the department should be working with breeders in that effort. The department disagrees with the comments and responds that CWD continues to be detected in deer breeding facilities and at the present time there is no indication that there are breeder deer incapable of contracting CWD; thus, it is imperative to use the tools available now to try to slow or stop the spread of CWD instead of waiting for techniques that have yet to be developed or proven. The department also notes that it is funding research projects to investigate genetic approaches to combating CWD. No changes were made as a result of the comments.

Nine commenters opposed adoption of the rules as proposed and stated that deer breeders already test every deer. The department disagrees with the comments and responds that because some deer breeders were unable for whatever reason to comply with rules requiring 100 percent of deer mortalities occurring within the facility to be tested (post-mortem testing is considered to be the definitive standard), the department implemented rules allowing ante-mortem testing at sufficient intensity to substitute for missing mortalities. Nevertheless, breeder deer are not currently tested frequently enough with respect to the volume and frequency at which breeder deer are transferred between deer breeders on even a monthly basis. In fact, the rules as adopted are not ideal in this regard and represent a minimum standard for achieving confidence that CWD is not being spread. The department has repeatedly explained that ante-mortem testing is less reliable at ascertaining whether an individual animal is truly uninfected with CWD, but it has significant value as a screening test for ascertaining the CWD status of a herd. No changes were made as a result of the comments.

Nine commenters opposed adoption of the rules as proposed and stated that CWD is scrapie and therefore no response is warranted. Thirteen commenters opposed adoption of the rules as proposed and stated in some form or fashion that CWD is the same thing as scrapie and indicated that this should alter the department's approach to CWD management. The department disagrees with the comments and responds that CWD is a cervid disease that is without question related to scrapie, a similar disease found in sheep, but in any case, this distinction is irrelevant in the context of disease surveillance, response, and management actions as scrapie is itself another disease justifying state and federal regulatory action, including depopulation of flocks infected with scrapie. No changes were made as a result of the comments.

Eight commenters opposed adoption of the rules as proposed and stated that the rules are unnecessary because CWD can be spread in many ways and deer are far more likely to die from

other causes anyway. The department disagrees with the comments and responds that CWD is an existential threat to captive and free-ranging deer populations and although CWD can be spread in many ways, the majority of CWD detections thus far have occurred in deer breeding facilities, increasing the probability of spreading the disease by the movement of breeder deer through human agency. Regardless of how CWD spreads, the department has an obligation to mitigate the spread of the disease and manage the disease through appropriate regulations. The department also notes that a deer infected by CWD is highly likely to die from some other cause because of the debilitating, disorienting nature of the disease. No changes were made as a result of the comments.

Eight commenters opposed adoption of the rules as proposed and stated that the commission doesn't or likely doesn't consider public comment. The department disagrees with the comments and responds that each commissioner received a verbatim copy of all public comments. Additionally, staff provided a summary of public comment at the time of the commission meeting, which included a synopsis of the content of public comment. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the legislature is the appropriate body to manage CWD response and regulate deer breeders, eight commenters opposed adoption and stated that regulation should be left up to local officials, three commenters opposed adoption and stated that the department is engaging in extra-legislative action, and three commenters opposed adoption and stated that the rules should be subject to a vote by the public. The department disagrees with the comments and responds that the legislature has delegated to the Parks and Wildlife Commission the authority to promulgate rules governing white-tailed deer held in captivity by persons with a deer breeders permit, that local officials do not enjoy that authority, and that under the Administrative Procedure Act, department rules are implemented by vote of the Parks and Wildlife Commission after the opportunity is provided for public comment, as provided by statute. No changes were made as a result of the comments.

Six commenters opposed adoption of the rules as proposed and stated in various ways that the department is overreacting, blowing things out of proportion, or otherwise reacting with inappropriate alarm. The department disagrees with the comments and responds that the rules as adopted are necessary in light of the continuing detection of CWD in deer breeding facilities. The department also responds that it is similarly necessary to enhance the department's ability to quickly test deer at release sites that have been epidemiologically linked to a positive deer breeding facility or facilities. No changes were made as a result of the comments.

Six commenters opposed adoption of the rules as proposed and stated that transfer/transport of breeder deer should be prohibited. The department disagrees with the comment and responds that although the department is charged with protecting and conserving wildlife, deer breeders have a statutory permit privilege to transfer deer in a healthy condition for purposes of release; therefore, the department is reluctant to prohibit the movement of all deer by haulage. No changes were made as a result of the comments.

Six commenters opposed adoption of the rules as proposed and stated that the rules are unconstitutional or a violation of constitutional rights. The department disagrees with the comments and responds that the rules are not violative of any provision of the state or federal constitutions. No changes were made as a result of the comments.

Six commenters opposed adoption of the rules as proposed and stated that the rules hurt, are unfair to, or put high-fence ranches out of business. The department disagrees with the comments and responds that the rules as adopted do not affect the presence, absence, or dimensions of any fence erected by any landowner. If the comments refer to negative impacts resulting from epidemiological linkage of release sites to positive deer breeding facilities, the department responds that it is a landowner's decision to release breeder deer on their property and the department's rules are clear as to what a release site owner's obligations are in the event that a property becomes epidemiologically connected to a positive facility. No changes were made as a result of the comments.

Five commenters opposed adoption of the rules as proposed and stated that the rules "give too much authority to the department." The department disagrees that the rules give any authority to the department. The department's authority is derived from the legislature as codified in the Parks and Wildlife Code, and the rules as adopted are within that authority. No changes were made as a result of the comments.

Five commenters opposed adoption of the rules as proposed and stated in various ways that the rules are not justified because of the low positivity and prevalence rates for CWD in captive deer populations and there is no evidence that CWD is more common in breeder pens than in the wild. The department disagrees with the comments and responds that comparative positivity and prevalence rates in captive versus free-ranging populations is of little value in the context of the rules as adopted. CWD is and has been spread via the transfer of breeder deer to other locations. The rules as adopted address that fact. No changes were made as a result of the comments.

Five commenters opposed adoption of the rules as proposed and stated that the department should not be or has no business being involved in animal health issues, which should be left to TAHC. Another commenter stated that the department is not a disease control authority. The department disagrees with the comments and responds that the department has a statutory duty to conserve wildlife populations and with respect to breeder deer, a statutory duty to ensure that only deer in a healthy condition are sold by deer breeders. Additionally, TAHC has authority to regulate diseases that affect livestock and wildlife populations; thus, the department and TAHC are in a partnership to protect both livestock and wildlife from CWD. No changes were made as a result of the comments.

Five commenters opposed adoption of the rules as proposed, stating displeasure with management zones and offering suggested alternatives. The department disagrees that CWD zone designations were the subject of the rules as proposed or adopted; therefore, the comments are not germane to the rules as proposed or adopted. No changes were made as a result of the comments.

Four commenters opposed adoption of the rules as proposed and stated that CWD can be bred out of deer in the same fashion that scrapie was bred out of sheep. The department disagrees that scrapie has been bred out of sheep, for scrapie cases continue to occur and be reported, but more importantly, sheep are livestock, not wildlife. Humans have a long history of utilizing linebreeding to improve disease resistance in livestock, but it is nearly impossible with free-ranging populations because the an-

imals are not domesticated or confined. In any case, the comment is not germane to the rules as proposed or adopted. No changes were made as a result of the comments.

Four commenters opposed adoption of the rules as proposed and stated that there is no scientific support for the proposed residency requirements and the rules do not consider the transfer of breeder deer between facilities under common ownership on one tract of land. The department, while disagreeing that the proposed residency requirements are not scientifically defensible or appropriate, agrees that further refinement of such requirements is warranted, and has made changes accordingly.

Four commenters opposed adoption of the rules as proposed and stated that deer breeders are the solution to CWD because "they do more and test more." The department disagrees with the comments and responds that the task of constraining CWD and preventing its spread presents challenges to everyone involved, from deer breeders to land managers to hunters to scientists and ultimately, to every citizen. No changes were made as a result of the comments.

Four commenters opposed adoption of the rules as proposed and stated because CWD can be acquired by deer in a variety of ways, deer breeders cannot be blamed. The department disagrees with the comment and responds that the rules as adopted do not and are not intended to constitute blame or imply culpability for anything; they are intended to curb and if possible stop the spread of CWD to additional deer populations. It cannot be refuted that a pathway for CWD transmission in Texas is via the movement of captive cervids. No changes were made as a result of the comments.

Four commenters opposed adoption of the rules as proposed and stated either that breeder deer are not the property of the state or that breeder deer are private property and the department does not possesses the authority to regulate their possession. The department disagrees with the comments and responds that all white-tailed deer are the property of the people of the state by statute and the Texas Constitution, which has been affirmed on more than one occasion by courts at various levels, including the Texas Supreme Court. The department further responds that Parks and Wildlife Code, Chapter 43, expressly requires the department to regulate the possession of breeder deer held under a deer breeders permit. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated disapproval of depopulation orders, and 18 commenters stated that depopulation events killing thousands of deer achieve nothing. The department disagrees that the depopulation of CWD positive facilities "achieves nothing" as it is especially critical for CWD management in contexts where such measures can result in effective containment, compared with response options to detections in free-ranging populations. Nonetheless, the topic of depopulation activities is not germane to the rules as proposed or adopted. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the department's motivation was simply to obtain money from the federal government. The department disagrees with the comment and responds that the only incentive affecting the department is the desire to protect wildlife resources for the enjoyment of present and future generations, and, further, that federal funds for CWD management in Texas are a negligible proportion of the department's budget for wildlife resource management. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the department has no statutory authority to require tags for free-ranging deer. The department disagrees with the comment and responds that the commission has the authority to require identification of deer held in possession under a variety of permits, and to require that identification to remain with the deer following release. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the provisions requiring permanent visible identification to remain with breeder deer following release was onerous because hunters don't want to shoot deer with a tag in its ear. The department disagrees with the comments and responds that although identification of deer formerly held under a deer breeder's permit is critical for the quick location of trace deer in the event that a release site becomes epidemiologically linked to a positive deer breeding facility, the commission voted to table provisions related to permanent identification and directed the removal of language regarding permanent identification from the rules as adopted.

Three commenters opposed adoption and stated that the rules relating to trace deer at release sites were not fair because breeder deer are tested prior to release. The department disagrees with the comment and responds that because of the intricate connectivity of breeding facilities, the long incubation time before CWD is detectable, and the fact that ante-mortem testing should not be understood to be a way to definitively clear individual animals, when CWD is detected in a captive population that was the source for released deer, it is necessary to quickly locate, dispatch, and test the released deer to gain a definitive understanding of the disease status at the release site. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the rules are not valid because the commission isn't elected. The department disagrees with the comments and responds that the commission is appointed by the Governor in compliance with the applicable provisions of the Texas Constitution and applicable statutory law and the rules were validly promulgated. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed on the basis that breeders "test exponentially more deer." The department disagrees with the comments for the reasons stated in an earlier discussion of why testing protocols for captive deer are different from routine monitoring protocols for free-ranging populations. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the department should "let the market decide." The department is unable to determine the meaning of the comment, as the rules as adopted impose disease testing requirements on a small number of permit holders and enhances surveillance at trace-out release sites and will not affect the supply of nor demand for captive deer. No changes were made as a result of the comments.

Two commenters opposed adoption of the rules as proposed because of the removal of the "sunset" provision requiring ante-mortem CWD testing of breeder deer prior to transfer to release sites. The department disagrees with the comment and responds that the continued detection of CWD at breeding

facilities and associate release sites warrants the continued screening of breeder deer prior to transfer to release sites. No changes were made as a result of the comments.

Two commenters opposed adoption of the rules as proposed and disagreed with the 60-day time period within which trace deer must be removed from a trace-out release site. One commenter stated that each release site presents a unique combination of size, habitat, hunting frequency and pressure, and elapsed time since the release of breeder deer. The commenter also stated that the proposed provision is unconstitutional and grossly subjective. The department disagrees with the commenters and responds that it is up to the individual landowner to be aware of and consider the matrix of possibilities with respect to CWD rules and the current epidemiological reality of CWD in Texas when purchasing breeder deer for release. No changes were made as a result of the comments.

Two commenters opposed adoption of the rules as proposed on the basis that the department does not have an epidemiologist on staff. While the department does have an epidemiologist on staff, the department disagrees that an epidemiologist must be on staff as a condition of rulemaking. The department notes that it works closely with and utilizes the expertise of epidemiologists and wildlife disease specialists at a number of state and federal entities, universities, and the department's CWD Task Force, and is confident that the disease management protocols represent the best available science. No changes were made as a result of the comments.

Two commenters opposed adoption of the rules as proposed on the basis that disease surveillance efforts in free-range populations are not adequate or insufficient, which indicates that the department is not interested in determining disease prevalence in populations other than captive populations and is afraid to acknowledge that CWD is in fact widespread in free-ranging populations. The department disagrees with the comments and responds, as noted in discussions elsewhere in this preamble, that surveillance of free-ranging populations is in fact sufficient for the department to conclude that CWD would be more broadly detected in free-ranging populations if it were widespread. No changes were made as a result of the comments.

One commenter opposed adoption of the rules as proposed and stated that deer don't live long enough for CWD to kill them. The department disagrees with the comment and responds that there is abundant evidence that deer die from CWD. In addition, deer infected with CWD are four times more likely to die from other causes than deer that are not infected with CWD. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that there is no proof that breeder deer are the problem. The department disagrees with the comment and responds that the problem at hand is CWD and there is no question that it has been spread by the transfer of captive cervids. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that CWD originated in wild deer and did not come from farmed deer. The department neither agrees nor disagrees with the comment and responds that neither the threat posed by CWD nor the department's response to that threat are reliant upon a specific determination of pathogenesis; however, the movement of deer by humans via vehicles is a significant factor in the spread of CWD in captive cervid populations in Texas and elsewhere. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that there is no evidence that CWD is spread by deer breeders. The department disagrees with the comment and responds that numerous epidemiological investigations have conclusively shown that CWD has been spread by the movement of captive cervids in Texas. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that predators and scavengers spread CWD more than deer breeders. The department neither agrees nor disagrees with the comment and responds that the rules as adopted impose additional testing measures for deer breeders who transfer deer to other breeders and imposes enhanced surveillance measures at trace-out release sites because the department has determined that CWD is and has been spread by the transfer of breeder deer. The department also notes that the spread of CWD by predators and scavengers is a natural process that cannot be regulated. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed as being "anti-hunting." The department disagrees with the comment and responds that the department has a statutory duty to protect game species for the enjoyment of the public, which includes the hunting public. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that helicopter services will be hurt. The department neither agrees nor disagrees with the comment and responds that the rules as adopted do not and are not intended to regulate helicopter services. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would result in "high cost to ranchers." The department disagrees with the comment and responds that although the commenter did not explain the rationale for the comment, the rules as adopted do not affect landowners other than those who own deer breeding facilities and those who own trace-out release sites. The department has for many years cautioned the public about the dangers of CWD, and the current rules are clear about the obligations of release-site owners in the event that a property is implicated in an epidemiological investigation. The department further notes that the rules are actually intended to benefit landowners by containing and if possible preventing the spread of CWD to additional properties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "all deer should be tested." By this the department understands the commenter to be referring to the testing of all deer harvested by hunters. The department disagrees with the comment for reasons stated in a response earlier in this preamble regarding surveillance protocols in captive versus free-ranging populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the "Montage" [sic] for testing in captive deer should be 18 months of age." The department believes the commenter is referring to the minimum age at which a breeder deer becomes eligible for testing. In any case, the rules as proposed and adopted did not contemplate any changes with respect to the age at which breeder deer

can be tested; therefore, the comment is not germane to the rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the rules will jeopardize food security and food supply. The department disagrees with the comment and responds that there is no apparent connection between the rules as adopted and threats to the food chain, although as noted in a previous response, spongiform encephalopathies can be transmitted interspecifically, so it is prudent to attempt to contain and manage CWD to the greatest extent possible. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the rules would prevent hunters from feeding their families. The department disagrees with the comment and responds that because breeder deer constitute less than five percent of the total deer harvest and nothing in the rules as adopted imposes limitations on any person's ability to hunt deer, there is little chance that families will suffer from a lack of venison as a result of the rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the department was engaging in "a propaganda campaign to kill hunting." The department disagrees with the comment and responds that the department is a vigorous advocate for hunters and hunting heritage. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the rules violate the constitutional right to hunt. The department disagrees with the comment and responds the rules do not affect any person's constitutional right to hunt. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that deer breeders "monitor better and more successfully than TPWD." The department disagrees with the comment and responds that deer breeders must monitor for CWD because it is a condition of department rules for holding a deer breeding permit. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that deer breeders "test continuously" and "no sick deer get in or out." The department disagrees with the comment and responds that the value of testing frequency by itself is not as valuable as testing frequency as it relates to the number of deer that enter and/or leave a facility, the number of facilities involved, and the transfer volumes of those facilities. The statement that sick deer do not get in or out is objectively not true, because CWD is spreading in the state, and detections are predominantly occurring within captive deer populations. No changes were made as a result of the comments.

One commenter opposed adoption of the rules as proposed because the rules do not require persons who participate in the department's Managed Lands Deer Program (MLDP) to test all deer harvested on MLDP properties. The department disagrees with the comment and responds once again that it is not necessary to require the testing of all hunter-harvested deer. No changes were made as a result of the comment.

One commenter opposed the rules as proposed and stated that they are impossible to enforce. The department disagrees with the comment and responds that it is confident the rules as adopted are enforceable. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed on the basis that the rules apply only to deer, not other farm animals known to carry or that are susceptible to the disease. The department disagrees with the comment and responds that white-tailed deer and mule deer are species of wildlife authorized to be regulated by the department, while livestock, exotic livestock, and domesticated animals are regulated by TAHC. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that "money should be spent on research and testing, not surveillance and monitoring." The department disagrees with the comment and responds that surveillance and monitoring are the practical endpoints of research and testing; it is pointless to do research and develop testing techniques if they are not going to be used. Therefore, the department engages in and funds research, and the fruits of that research then inform surveillance and monitoring protocols. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that technically all rights belong to the landowner. The department neither agrees nor disagrees with the commenter and responds that the intended point of the comment cannot be determined and it does not appear to have any connection to the rules as adopted, unless it is meant to apply to provisions applicable to trace-out release sites, in which case the department's response has been stated elsewhere.

One commenter opposed adoption of the rules as proposed and stated, "If you test enough you will find it." The department neither agrees nor disagrees with the comment and responds that the intended point of the comment cannot be determined. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that "Information was not provided to the public." The department disagrees with the comment and responds the rules were lawfully promulgated in compliance with all requirements regarding timely public notice, were published on the department's website, and were the subject of department press releases. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that breeders should be "left alone to test deer prior to release." The department agrees with the comment and responds that the rules as adopted do not require a representative of the department to be present or involved in any way with testing activities conducted in compliance with the rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that TPWD personnel are spreading CWD. The department understands the comment to be an accusation that the department is intentionally causing CWD to spread, disagrees with the comment, and responds that in the absence of credible evidence to the contrary, the possibility is to be dismissed out of hand. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the state should create a laboratory capable of testing high volumes of samples quickly. The department agrees with the commenter and responds that the Texas A&M Veterinary Medical Diagnostic Laboratory has the capability of testing a high volume of CWD samples. New technologies are being explored and will be implemented as quickly as possible, contingent upon the budgetary realities of the various agencies involved. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed on the basis that the department "uses the wrong test for CWD." The department disagrees with the comment and responds that the department's rules require the use of testing protocols that have been approved by the United States Department of Agriculture, but hastens to add that as new, more efficient, less expensive, or less invasive testing protocols and methodologies are approved, the department will recognize and allow their use. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated "that they should not be adopted as emergency rules." The department disagrees with the commenter and responds that the rules as adopted are not emergency rules, but replace, in part, an identical emergency rule that was adopted with a limited duration as provided by law for instances in which a species regulated by the department faces an immediate threat. The department additionally responds that these rules were proposed and adopted in accordance with all applicable statutes regarding agency rulemaking, including public notice requirements. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that they violate the constitutionally guaranteed right to farm. The department disagrees with the comment and responds that Parks and Wildlife Code, Chapter 43, Subchapter L, requires the department to regulate the possession of deer held under a deer breeder's permit. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed because they did not "address deer overpopulations in million-dollar subdivisions." The department disagrees with the comment and responds that the rules do not contemplate issues of deer overpopulation, but rather impose testing requirements on deer breeders and landowners of trace-out release sites. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that all deer killed under a TTP should be tested before being used as a food source. The department disagrees with the comment insofar as the department does not regulate food safety; nonetheless, the rules as adopted require the timely submission of test results from TTP trap sites, which will function to provide additional surveillance of CWD in free-ranging populations. The department agrees that testing harvested deer for CWD is prudent and that if CWD is detected, consumption of meat from the animal is not recommended. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that "there was no economic impact study." The department disagrees with the comment and responds that the rules were promulgated in compliance with all applicable provisions of the Administrative Procedure Act, including all required economic analyses. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated the department's estimates of the cost of veterinary services was inaccurate because it did not include travel time to and from ranch calls. The department disagrees with the comment and responds that the notice of proposed rulemaking acknowledged the fluidity of prices across the state, based on the variety of practice models and service competition. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the provisions requiring testing of deer at trace-out release sites are problematic because "there is no definitive metric for epidemiological clearance and the testing of trace deer with negative results should clear a release site and absolve the landowner from testing hunter-harvested deer." The commenter stated that the procedure for clearing an epidemiologically linked release site should be the same as that for clearing a trace-out breeding facility that received deer from an index facility, where a facility is cleared if trace-out deer test "negative." The department disagrees that there is "no definitive metric" for a release site to be cleared; in fact, if a trace release site were to receive "not detected" results for every trace deer on the release site, it would be promptly released, exactly like a breeding facility in instances where all trace animals are tested with results of "not detected." The department notes that without some method of quickly locating trace deer on a trace release site, epidemiological clearance becomes difficult. In such situations, a clear, definitive metric of CWD testing is identified in the trace-out release site herd plan, which includes CWD testing of hunter-harvested animals, which is warranted until sufficient confidence that CWD is not present has been attained. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that owners of epidemiologically linked release sites should be given the option to live-test trace deer and quarantine them until test results are obtained. The commenter stated that requiring post-mortem testing of animals that were ante-mortem tested prior to release creates a hardship. The department disagrees with the comment and responds that the proposal does not address ante-mortem testing of free-ranging trace deer on release sites and in any case is not germane to the proposed or adopted rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated objections to the provisions requiring the removal and post-mortem testing of trace deer from release sites epidemiologically linked to a positive deer breeding facility or facilities. The commenter stated that the termination of released deer "without regard to contact tracing or further testing is irrational and serves no legitimate public interest" and will result in the loss of thousands of healthy deer and the associated investments by landowners. The department disagrees with the comment and responds that contact tracing is the central component of epidemiological investigation and the quickest and most effective way to clear a release site linked to a positive breeding facility is to remove every trace deer and subject them to post-mortem testing. The department asserts that the rules as adopted serve a significant public interest, which is the protection of free-ranging and captive deer populations from CWD. The department again notes it is up to the individual landowner to be aware of and consider the matrix of possibilities with respect to CWD rules and the current epidemiological reality of CWD in Texas when purchasing breeder deer for release. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the current administration of "herd plans" is unworkable because current "herd plans" are "generic," do not treat small acreages differently than large acreages and are not "tailored" to properties in question. The department disagrees with the comment and responds that herd plans are absolutely tailored to individual properties and thus are not generic. The department further responds that from an epidemiological perspec-

tive, the size of a property is irrelevant, since herd plans are based on statistical models that dictate the particular goals for achieving confidence that CWD is not present. No changes were made as a result of the comment.

The department received a form letter from 179 individuals expressing opposition to adoption of the rules as proposed. The commenters stated that current rules are working as intended, implying but not explicitly stating that the rules as proposed are not warranted. The department disagrees with the comments and responds that through slow but steady improvements in the department's rules over the last five years, the likelihood of expeditiously and reliably detecting CWD in captive deer populations before it can be spread has increased; however, the continued detection of positives in additional deer breeding facilities and release sites associated with such facilities indicate a continuing need for improvement. No changes were made as a result of the comments. The commenters stated opposition to proposed provisions regarding permanent identification of breeder deer upon release. The department disagrees with the comments and responds that by statute, the required ear tags cannot be removed except to replace a damaged ear tag. Nevertheless, the commission has directed the removal of language regarding permanent identification from the rules as adopted. The commenters stated that the matter of permanent identification is "clearly" a matter for the Texas Legislature to address and that the department has not requested or been granted the authority to regulate the identification of free-ranging deer. The department disagrees with the comment and responds that Parks and Wildlife Code, Chapter 43, Subchapter L, clearly and explicitly requires breeder deer to be identified with an ear tag by March 31 of the year following birth and clearly and explicitly provides one and only one condition under which the ear tags may be removed, which is to replace an ear tag that does not comply with the requirements. The department further responds it is unnecessary to seek legislative approval to enforce the statute as written, and that in any case, the provision in question does not require permanent identification of free-ranging deer, but the permanent identification of breeder deer, as breeder deer do not become free-ranging deer until they are no longer in possession of the deer breeder, who is also the only person authorized to attach or remove ear tags in accordance with law. The commission has directed staff to remove the proposed provisions, but as noted previously in this preamble, the statutory bar to removal of the ear tags remains. The commenters also state opposition to the proposed residency requirement for deer prior to being transferred elsewhere and stated that the department "failed to articulate a scientific need for the requirement." The department disagrees with the comments and responds that the department has repeatedly explained the scientific basis and need for the provision in question, which is to create a mechanism to reduce the number of breeding facilities and release sites made vulnerable to CWD because of the high frequency with which deer are transferred between breeders, which makes it possible for an exposed deer, if infected, to then infect multiple facilities in a short period of time before the disease becomes detectable, thus involving multiple facilities in epidemiological investigations that could have been avoided. In any case, as explained earlier in this preamble, the commission was persuaded that additional refinement of residency requirements, primarily to address scenarios in which breeder deer are transferred between facilities under common ownership in the same location, is warranted, and the residency provisions were not adopted. The commenters stated opposition to the proposed requirement for test samples to be submitted within one day of collection at release sites epidemiologically connected to positive deer breeding facilities. The commission agreed with the comment and changes have been made accordingly. The commenters also opposed the proposed requirement for breeder deer to be subjected to ante-mortem testing as a condition of transfer to another deer breeder, stating "This portion of the proposal lacks merit that should be given for not-detected results on ante-mortem tests. If adopted, this needs to include a provision removing all language from the rules related to tier facilities or tier deer. The Texas Animal Health Commission rules do not recognize tiers as a disease threat. The tier terminology in the current rules was created by TPWD staff and places an unreasonable burden on lawfully permitted deer breeders who are already required to provide not-detected test results of 100% of mortalities and 100% ante-mortem tests prior to release." The department disagrees with the comments and responds that the provision in question is in response to the detection of CWD in deer breeding facilities, which continues in spite of recent rule changes to improve surveillance effectiveness. The provision in question mimics current rules requiring ante-mortem testing of breeder deer prior to release, and will provide an additional layer of surveillance protection. With respect to "tier" status, the department recognizes that TAHC rules do not extend to that level of epidemiological connectivity, which does not mean "tier" designation is not useful or necessary. A breeding facility that has received an exposed deer that was in a trace-out facility is of epidemiological concern and value. TAHC regulates livestock; the department conserves and protects wildlife, which live in a state of nature and are not domesticated, and once released from a breeding facility, breeder deer become free-ranging wildlife. Therefore, what suits the management of wildlife isn't necessarily something that TAHC, as a regulator of livestock, considers necessary. The department does not believe the "tier" category places an undue burden on the regulated community, especially when due diligence is performed with respect to provenance and quantity of deer, and sources of deer by a prospective purchaser, and in any case, the rules as proposed do not impose or alter any current provision related to "tier" status. The department also responds that compliance with current rules does not affect the necessity for the rules as adopted. The commenters also stated that if the provisions regarding ante-mortem testing prior to transfer between breeders is adopted, "then containment zones and surveillance zones should be immediately abolished." The department disagrees with the comment and responds that the rules as proposed did not contemplate the department's system of CWD management zones and such a change is beyond the scope of this rulemaking. No changes were made as a result of the comments. The commenters stated opposition to the proposed provisions to impose a seven-day deadline for submission of CWD test samples for Trap, Transport and Process permits, stating that it would not mitigate disease risk at all and stating that all TTP deer should be tested before being distributed to food banks. The department disagrees with the comment and responds that the rule as adopted mitigates disease risk, as the current rules require only the annual submission of test results. By expediting the process, the department is able to react more quickly in the event CWD is detected. The department agrees that testing harvested deer for CWD is prudent, and recommends not consuming meat from infected animals. No changes were made as a result of the comments.

The department received a letter from Senator Juan Hinojosa expressing concerns over the timeline to adopt the proposed rules, noting that there has not been enough time to review and provide detailed responses to public comment and any needed revisions to proposed rules. Senator Hinojosa requested delay of

consideration or adoption only of a portion of the rules such as ante-mortem testing requirements for breeder-to-breeder movement. The department respectfully disagrees with the comments and responds that the rules were proposed and adopted in accordance with all applicable statutes regarding agency rulemaking, including public notice requirements. The department also notes the rules were developed with the knowledge, presence and participation of all components of the regulated community, including deer breeders and the department's CWD Task Force. No changes were made as a result of the comments.

The department also received a letter signed by Senator Bob Hall, Senator Charles Perry, Senator Mayes Middleton, Senator Angela Paxton, Senator Tan Parker, and Senator Drew Springer asking the commission to delay consideration and adoption of the rules. The letter expressed concern that the department did not prepare a detailed economic impact statement concerning the proposed rules or allow sufficient time for adequate public input and comments or legislative oversight. The department respectfully disagrees with the comments and responds that the rules were proposed and adopted in accordance with all applicable statutes regarding agency rulemaking, including public notice requirements and economic impact analyses. The department also notes the rules were developed with the knowledge, presence, and participation of all components of the regulated community, including deer breeders and the department's CWD Task Force. No changes were made as a result of the comments.

The Texas Deer Association and the Deer Breeders Corporation commented in opposition to adoption of the rules as proposed.

The Texas Wildlife Association, the Texas and Southwestern Cattle Raisers Association, the Texas Sheep and Goat Raisers Association, the Texas Farm Bureau, the Archery Trade Association, the Boone and Crockett Club, the Mule Deer Foundation, the National Deer Association, the National Wildlife Federation, the Pope and Yong Club, the Rocky Mountain Elk Foundation, The Wildlife Society, the Theodore Roosevelt Conservation Partnership, the Texas Foundation for Conservation, Plateau Land and Water, the Texas Nature Conservancy, and the Backcountry Hunters and Anglers commented in support of adoption of the rules as proposed.

The department received 1,378 comments supporting adoption of the rules as proposed.

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §§65.91, 65.92, 65.95, 65.97, 65.98

The amendments are adopted under the authority of Parks and Wildlife Code, §42.0177, 42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

§65.95. Movement of Breeder Deer.

(a) General. Except as otherwise provided in this division, a breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department to:

(1) another breeding facility as provided in subsection (b) of this section;

(2) an approved release site as provided in subsection (c) of this section; or

(3) a DMP facility (however, deer transferred to DMP facilities cannot be recaptured and must be released as provided in the deer management plan)

(b) Transfer From Breeding Facility to Breeding Facility.

(1) A breeder deer may be transferred from one breeding facility to another breeding facility only if:

(A) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the transfer has been returned with test results of "not detected"; and

(B) the deer is at least six months of age at the time the test sample required by this subsection is collected.

(2) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title (relating to CWD Testing) may be utilized a second time to satisfy the requirements of this subsection, provided the test sample was collected as provided in paragraph (1) of this subsection.

(3) A facility from which deer are transferred in violation of this subsection is automatically NMQ and any further transfers are prohibited until the permittee and the owner of the destination facility have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

(c) Release Sites; Release of Breeder Deer.

(1) An approved release site consists solely of the specific tract of land to which deer are released and the acreage is designated as a release site in TWIMS. A release site owner may modify the acreage registered as the release site to recognize changes in acreage (such as the removal of cross-fencing or the purchase of adjoining land), so long as the release site owner notifies the department of such modifications prior to the acreage modification. The release site requirements set forth in this division apply to the entire acreage modified under the provisions of this paragraph.

(2) Liberated breeder deer must have complete, unrestricted access to the entirety of the release site; provided, however, deer may be excluded from areas for safety reasons (such as airstrips) or for the purpose of protecting areas such as crops, orchards, ornamental plants, and lawns from depredation.

(3) All release sites onto which breeder deer are liberated must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times under reasonable and ordinary circumstances. The owner of the release site is responsible for ensuring

that the fence and associated infrastructure retain deer under reasonable and ordinary circumstances.

(4) No person may intentionally cause or allow any live deer to leave or escape from a release site onto which breeder deer have been liberated.

(5) The owner of a release site where deer from a facility subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD) or deer from a CWD-positive facility have been released shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(6) No person may transfer a breeder deer to a release facility or cause or allow a breeder deer to be transferred to a release facility unless:

(A) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the release has been returned with test results of "not detected"; and

(B) the deer is at least six months of age at the time the test sample required by this paragraph is collected.

(C) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title may be utilized a second time to satisfy the requirements of this paragraph, provided the test sample was collected as provided in subparagraph (A) of this paragraph.

(D) A facility from which deer are transferred in violation of this paragraph becomes automatically NMQ and any further transfers are prohibited until the permittee and the owner of the release site have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

(d) Trace-out Release Site.

(1) A release site is a trace-out release site if it has:

(A) received deer directly or indirectly from a positive breeding facility; and

(B) it has not been released from a hold order or quarantine related to activity described in subparagraph (A) of this paragraph.

(2) The landowner of a trace-out release site must:

(A) within 60 days of notification by the department that trace-out release status has been confirmed, remove every trace deer at the release site, either by lawful hunting or as specifically authorized in writing by the department (or both), and submit post-mortem CWD samples for each deer within seven days of mortality; and

(B) submit post-mortem CWD test results for 100 percent of all hunter-harvested deer until the department is confident that CWD is not present at the release site or as prescribed in a herd plan.

(3) No breeder deer may be transferred to a trace-out release site unless the deer has been tagged in one ear with a button-type RFID tag approved by the department.

(e) The owner of a release site that is not in compliance with applicable provisions of this division is ineligible for enrollment or continued participation in the Managed Lands Deer Program under Subchapter A of this chapter.

§65.98. Transition Provisions.

(a) A release site that was not in compliance with the applicable testing requirements of this division in effect between August 15, 2016 and the effective date of this section shall be:

(1) required to comply with the applicable provisions of this division regarding CWD testing with respect to release facilities; and

(2) ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit or DMP until the release site has complied with paragraph (1) of this section.

(b) To the extent that any provision of this subsection conflicts with the provisions of §65.99(e) of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Breeding Facilities), this section controls. Tissue samples required by §65.99(e)(2)(E) of this title shall be submitted within 60 days of notification by the department of Category B status.

(c) As of the effective date of this subsection, the provisions of §65.99(i) of this title cease effect.

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, 2023.

TRD-202400001
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: January 18, 2024
Proposal publication date: September 29, 2023
For further information, please call: (512) 389-4775

SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §§65.605, 65.608, 65.611

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter.

§65.608. Annual Reports and Records.

(a) Each deer breeder shall file a completed annual report by not later than May 15 of each year.

(b) A person other than a deer breeder holding breeder deer for breeding or health care purposes shall maintain and, upon request, provide copies of transfer permits indicating the source of all breeder deer in the possession of that person.

§65.611. Prohibited Acts.

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, or R shall not be commingled with deer held in a permitted deer breeding facility.

(b) A person commits an offense if that person places or holds breeder deer in captivity at any place or in any facility for which the herd inventory on file with the department does not account for those breeder deer, except for fawn breeder deer that are not yet required to be reported to the department.

(c) No breeder deer shall be held in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another.

(d) No person may hold more than one cervid species at any time in a deer breeding facility except as provided by §65.602(e) of this title (relating to Application and Permit Issuance), or cause or allow the interbreeding by any means of white-tailed deer and mule deer.

(e) Possession of a deer breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(f) No deer breeder shall exceed the number of breeder deer allowable for the permitted facility, as specified by the department on the deer breeder's permit.

(g) This subsection does not apply to breeder deer lawfully obtained prior to June 21, 2005. Except as provided in this subsection, no person may:

(1) possess a deer acquired from an out-of-state source; or

(2) import or attempt to import deer from an out-of-state source.

(h) It is an offense for any person the department has authorized as a facility inspector to submit the checklist or letter of endorsement required by §65.603(a)(2) of this title (relating to Application and Permit Issuance) if the person has not personally conducted an onsite inspection at the facility.

(i) It is an offense for any person to violate or fail to comply with the provisions a disease-testing plan created under the provisions of §65.605(d) of this title (relating to Holding Facility Standards and Care of Deer).

(j) No person may clone or authorize or participate in the cloning of a white-tailed deer or mule deer unless specifically authorized to do so by a permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C. For the purposes of this subsection, cloning is the creation or attempted creation of a white-tailed or mule deer from a single progenitor cell.

(k) Except as provided under §65.602(e) of this title, no person may possess deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow deer, livestock, exotic livestock, or similar animals to access a deer breeding facility other than:

(1) the deer identified in the reconciled herd inventory for the facility; and

(2) offspring that are not required to be identified and reported to the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L.

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, 2023.

TRD-202400002
James Murphy
General Counsel
Texas Parks and Wildlife Department
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Proposal publication date: September 29, 2023
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

34 TAC §31.5, §31.6

The Teacher Retirement System of Texas (TRS) adopts amendments to §31.5 (relating to Notice and Forfeiture Requirements for Certain Service Retirees) and §31.6 (relating to Second EAR Warning Payments) under Subchapter A (relating to General Provisions and Procedures) of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code without changes to the text as proposed in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6350). The rules will not be republished.

REASONED JUSTIFICATION

TRS amends §31.5 and §31.6, so that they conform with statutory changes made to TRS' employment after retirement ("EAR") notice requirements under Government Code § 824.601.

In 2021, the Texas Legislature passed House Bill 1585 which added, among other provisions, an EAR notice procedure (also called a "three strikes" procedure) that ensured TRS would issue at least two warnings to a TRS service retiree before that retiree would forfeit his or her entire annuity for a month because the retiree exceeded the limits on employment after retirement during that month.

Importantly, this notice procedure, which is under Government Code §824.601(b-3), requires that a TRS service retiree cannot be subject to a second warning (and the possible dollar-for-dollar partial forfeiture associated with a second warning) until the month after the month TRS issues a first warning to a TRS retiree for exceeding the limits on EAR. Further, a TRS retiree cannot be subject to mandatory full forfeiture of his or her annuity until the month after the month TRS issues the second warning letter. These requirements are clear in the statute.

However, §31.5 and §31.6 currently provide, at least in part, that a TRS service retiree is not subject to a second warning until the retiree receives, rather than TRS issues, a first warning. Further, the rules provide that a TRS retiree is not subject to a mandatory forfeiture until the retiree receives, rather than TRS issues, both required notices.

By requiring that the retiree receive, rather than TRS issue, these EAR notices before the retiree can be subject to the next level of EAR forfeiture, §31.5 and §31.6 are in conflict with Government Code §824.601(b-3). In addition, the receipt, rather than issue, standard creates a substantial administrative hurdle for TRS in administering the EAR "three strikes" procedure.

Specifically, TRS sends EAR notices to service retirees by both first class and certified mail to the retiree's current mailing address on file with TRS to ensure that the retirees timely receive their EAR notices. However, if a retiree did not maintain an accurate current mailing address with TRS, and TRS was unable to locate (or at least was delayed in locating) the retiree, the retiree could arguably not be subject to the next EAR notice and potentially full forfeiture until TRS receives a current mailing address for the member.

In addition, because the month TRS issues an EAR notice can be different from the month a TRS service retiree receives that notice, the month in which a TRS retiree is subject to the next level of EAR forfeiture could, in some cases, be ambiguous even if the retiree receives the EAR notice.

For these reasons, TRS has amended §31.5 and §31.6, so that each provision conforms with the statutory language under Government Code §824.601 that triggers the next stage of notice or forfeiture for a retiree when TRS issues, rather than when the retiree receives, a warning. Amended §31.5 and §31.6 will become effective on February 1, 2024.

COMMENTS

No comments on the proposed adoption of the amendments were received.

STATUTORY AUTHORITY

The amended rules are adopted under the authority of Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board; Section 2 of House Bill 1585 as enrolled by the 87th Texas Legislature, Regular Session, on May 26, 2021, which established the EAR notice procedure for TRS; and Section 1 of Senate Bill 288 as enrolled by the 87th Legislature, Regular Session, on May 31, 2021, which also provides the same EAR notice procedure for TRS.

CROSS-REFERENCE TO STATUTE

The adopted amendments implement Government Code §824.601, which relates to loss of monthly benefits; Government Code § 824.602, which relates to exceptions; and Government Code §824.6021, relating to temporary exception to mitigate learning loss attributable to COVID-19 pandemic.

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 January 5, 2024.

TRD-202400059
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: February 1, 2024
Proposal publication date: October 27, 2023
For further information, please call: (512) 542-6506

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 4. TEXAS MILITARY DEPARTMENT

CHAPTER 138. HAZARDOUS PROFESSION DEATH BENEFITS

37 TAC §§138.1 - 138.3

The Texas Military Department (Department) adopts new Texas Administrative Code, Title 37, Part 4, Chapter 138. Specifically, the Department adopts new rules §138.1 regarding Applicability, §138.2 regarding Eligibility Determination, and §138.3 regarding Filing the Claim. New §138.1 is adopted with nonsubstantive formatting changes to the proposed text as published in the October 20, 2023, *Texas Register* (48 TexReg 6194), and will be republished. New §138.2 and §138.3 are adopted without changes and will not be republished.

The Department received no comments in response to the proposed new rules.

The new rules are adopted under Texas Government Code §615.024(c) that provides the Department shall adopt rules providing the circumstances under which the death of an individual described in §615.024(b) entitles an eligible survivor to payment of assistance under Government Code Chapter 615. The new rules establish procedures for confirming eligibility for payment of survivor benefits, verifying to whom benefits are to be paid, and how benefits will be processed under Chapter 615 claim process.

§138.1. Applicability.

(a) This rule applies to a member of the Texas Military Forces whose death occurs on or after September 1, 2023. For purposes of this rule, a death that occurs before September 1, 2023, is governed by the law in effect on the date the death occurred, and the former law is continued in effect for that purpose.

(b) A survivor of an individual who is a member of the Texas Military Forces is eligible to receive a lump sum payment under Texas Government Code Section 615.022 and monthly assistance under Section 615.023, as applicable, if:

(1) the individual died while on state active duty;

(2) the Texas Military Department certifies to the Employees Retirement System of Texas (ERS) that the circumstances of the individual's death entitle an eligible survivor to the payment of assistance under Chapter 615 of the Texas Government Code; and

(3) the survivor is:

(A) a beneficiary designated by the individual on the individual's United States Department of Defense Form DD-93; or

(B) a beneficiary designated by the individual on the Texas Military Department Record of Emergency Data form; or

(4) if there is no beneficiary described by Paragraph (3)(a) or (3)(b) of this section:

(A) the surviving spouse of the decedent;

(B) a surviving child of the decedent if there is no surviving spouse; or

(C) the surviving parent of the decedent if there is no surviving spouse or child.

(c) For purposes of this rule, a death on state active duty means the individual died because of a personal injury sustained in the line of duty in connection with the performance of military or emergency service for this state at the call of the governor or the governor's designee.

(1) "Personal injury" means an injury resulting from an external force, an activity, or a medical condition caused by or resulting from:

(A) a line-of-duty accident; or

(B) a medical condition caused by line-of-duty work under hazardous conditions.

(2) "Line of duty" means an action the individual is required or authorized by rule, condition of employment, or law to perform. The term includes, but is not limited to:

(A) an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer; and

(B) an action performed as part of a training program the individual is required or authorized by rule, condition of employment, or law to undertake.

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 January 8, 2024.

TRD-202400060
Shelia Bailey Taylor
Director of State Administration
Texas Military Department
Effective date: January 28, 2024
Proposal publication date: October 20, 2023
For further information, please call: (512) 782-3390

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §§421.1, 421.3, 421.17

The Texas Commission on Fire Protection (Commission) adopts amendments to 37 Texas Administrative Code Chapter 421, Standards for Certification, concerning §421.1 Procedures for Meetings, §421.3, Minimum Standards Set by the Commission, and §421.17 Requirement to Maintain Certification.

The purpose of the proposed amendments to rule §421.1 is to provide information regarding the appointment of advisory committees as mentioned in 37 Texas Administrative Code, Chapter 463, Advisory Committees, Practice and Procedures. Proposed amendments to §421.3 include the following functional descriptions: Plans Examiner, Fire and Safety Educator I, Fire and Safety Educator II, and Fire Marshal. Proposed amendments to §421.17 outlines new guidelines for expired certifications from one year to greater than one year but no longer than five years.

Chapter 421, Standards for Certification, concerning §421.1 Procedures for Meetings, §421.3, Minimum Standards Set by the Commission, and §421.17 Requirement to Maintain Certification, is adopted without changes to the text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7013). These rules will not be republished.

No comments were received from the public regarding the adoption of the new rule.

The rule is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

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 January 8, 2024.

TRD-202400062
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: January 28, 2024
Proposal publication date: December 1, 2023
For further information, please call: (512) 936-3812

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