

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 63. PUBLIC INFORMATION

##### SUBCHAPTER C. ELECTRONIC

##### SUBMISSION OF REQUEST FOR ATTORNEY GENERAL OPEN RECORDS DECISION

###### 1 TAC §63.21, §63.22

The Office of the Attorney General (OAG) proposes adding new provisions to Subchapter C of Chapter 63, which pertains to electronic submission of requests for attorney general open records decision under the Public Information Act (the "Act"). First, the OAG proposes new subsections §63.21(6) and (7) to define the terms "impractical" and "impossible" for purposes of Texas Government Code §552.3031(a)(2). Second, the proposal adds subsection §63.22(g) to clarify that a governmental body is not permitted to include multiple decision requests in a single electronic submission. Third, the proposal adds subsection §63.22(h) to require a written explanation if a governmental body determines it is impossible or impractical to use the attorney general's designated electronic filing system. Fourth, the proposal adds subsection §63.22(i) to prescribe the standard that certain governmental bodies must use to determine if they fall under the population-based exception to mandatory electronic filing in Texas Government Code §552.3031(a)(1)(B).

###### EXPLANATION AND JUSTIFICATION OF RULES

The Legislature, in the 88th Regular Session (2023), added Texas Government Code §552.3031 (H.B. 3033), which requires certain Texas governmental bodies to electronically submit requests for OAG open records decisions under the Act. Additionally, subsection 552.3031(c) permits the OAG to adopt rules necessary to implement the new section, including rules that define the amount or type of formatting that would make use of the OAG's designated electronic filing system "impractical or impossible."

###### SECTION-BY-SECTION SUMMARY

Proposed new §63.21(6) defines the term "impractical" for purposes of Texas Government Code §552.3031(a)(2). The definition includes files that are in a format the attorney general's designated electronic filing system cannot accept at the time of filing and conversions of paper and physical material that would take more than one hour of labor. The definition also includes exclusions for circumstances where submission of a representative sample under Texas Government Code §552.301 would

comply with the Act and avoid the issue that made submission impractical.

Proposed new §63.21(7) defines the term "impossible" for purposes of Texas Government Code §552.3031(a)(2). The definition includes provisions to address file-sizes beyond the OAG's designated electronic filing system capacity at time of submission, formats the OAG's designated electronic filing system does not support at time of submission, electronic filing system outages, and technical outages by the governmental body. The definition also includes exclusions for circumstances where submission of a representative sample under Texas Government Code §552.301 would comply with the Act and avoid the issue that made submission impossible.

Proposed new §63.22(g) specifies that each submission to the OAG's designated electronic filing system must pertain to a single matter and multiple unrelated decision requests cannot be combined into a single submission.

Proposed new §63.22(h) prescribes that a governmental body that does not use the OAG's designated electronic filing system because it is impractical or impossible shall provide a statement in its decision request that explains why it was impractical or impossible to use the system.

Proposed new §63.22(i) prescribes that if a governmental body extends into more than one county, then the governmental body shall use the population of the county in which its central administrative office is located to determine if the exception in Texas Government Code §552.3031(a)(1)(B) is applicable to the governmental body.

###### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Tamara Smith, Division Chief for the Open Records Division, has determined that for the first five-year period the proposed rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

Texas Government Code §552.3031 mandates electronic submission for certain governmental bodies. Because there is a fee to electronically submit a record to the attorney general's designated electronic filing system, Texas Government Code §552.3031 will have a fiscal impact on governmental bodies that are required to electronically submit records. However, the proposed rules only clarify the requirements of Texas Government Code §552.3031 and do not expand or contract the applicability of the statute. Accordingly, the proposed rules do not have an impact beyond that of the statute.

###### PUBLIC BENEFIT AND COST NOTE

Ms. Tamara Smith has determined that for the first five-year period the proposed rules are in effect, the public will benefit

through clear procedures and standards for Texas governmental bodies that electronically submit records under the Act. The public can confirm compliance with these standards and use the procedures available in the Act to enforce them.

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

Texas Government Code §552.3031 mandates electronic submission for certain governmental bodies. Because there is a fee to electronically submit a record to the OAG's designated electronic filing system, Texas Government Code §552.3031 will have a cost impact on governmental bodies that are required to electronically submit records. However, the proposed rules only clarify the requirements of Texas Government Code §552.3031 and do not expand or contract the applicability of the statute. Accordingly, the proposed rules do not have an impact beyond that of the statute.

#### IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

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

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

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

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

#### TAKINGS IMPACT ASSESSMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- will not create a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not lead to an increase or decrease in fees paid to a state agency;

- will create a new regulation;
- will not repeal an existing regulation;
- will not result in an increase or decrease in the number of individuals subject to the rule; and
- will not positively or adversely affect the state's economy.

#### REQUEST FOR PUBLIC COMMENT

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

To request a public hearing on the proposal, submit a request before the end of the comment period by email to [openrecordsassistance@oag.texas.gov](mailto:openrecordsassistance@oag.texas.gov) or by mail to Open Records Division, Attn: Rule Comments, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

**STATUTORY AUTHORITY.** New 1 TAC §63.21(6), §63.21(7), §63.22(f), §63.22(g), §63.22(h), and §63.22(i) are proposed pursuant to Texas Government Code §552.3031(c), which permits the OAG to adopt rules necessary to implement Texas Government Code §552.3031.

**CROSS-REFERENCE TO STATUTE.** New 1 TAC §63.21(6), §63.21(7), §63.22(f), §63.22(g), and §63.22(h) clarify Texas Government Code §552.3031 and affect §§552.301, .302. New 1 TAC §63.22(g), §63.22(h) and §63.22(i) clarify Texas Government Code §552.301 and affect §552.3031.

#### §63.21. Definitions.

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

(1) "Governmental body" means a governmental body as defined in Texas Government Code §552.003(1).

(2) "Request for decision" means a request for an attorney general open records decision made by a governmental body pursuant to Texas Government Code §552.301 and §552.309.

(3) "Requestor" means a requestor as defined in Texas Government Code §552.003(6).

(4) "Interested third party" [Interested Third Party] means any third party who wishes to submit comments, documents, or other materials for consideration in the attorney general's open records decision process under Texas Government Code §552.304 or §552.305.

(5) "Attorney general's designated electronic filing system" [Attorney General's Designated Electronic Filing System] means the online, electronic filing system designated by the attorney general as the system for submitting documents and other materials to the attorney general under Texas Government Code §552.309.

(6) "Impractical" means:

(A) the responsive information is in a format the attorney general's designated electronic filing system cannot accept at the time of filing, and the governmental body cannot otherwise comply with its procedural submission requirements through use of a representative sample under Texas Government Code §552.301(e), or

(B) the responsive information is recorded on paper or physical material that would take more than one hour of labor to convert into an electronic format that is compatible with the attorney gen-

eral's designated electronic filing system, and the governmental body cannot otherwise comply with its procedural submission requirements through use of a representative sample under Texas Government Code §552.301(e).

(7) "Impossible" means:

(A) the size of the information attachment exceeds the attorney general's designated e-filing system's capacity at time of filing, and the governmental body cannot otherwise comply with its procedural submission requirements through use of a representative sample under Texas Government Code §552.301(e), or

(B) the format of the information is not compatible the attorney general's designated e-filing system at time of filing, cannot be converted without altering the character of the information in a manner that would prevent proper review by the attorney general, and the governmental body cannot otherwise comply with its procedural submission requirements through use of a representative sample under Texas Government Code §552.301(e), or

(C) the attorney general's designated e-filing system is down at the time the governmental body attempts to submit the filing, or

(D) the governmental body is experiencing a technical outage that prevents it from e-filing at the time of the attempted submission.

§63.22. *Electronic Submission of Request for Attorney General Decision.*

(a) A governmental body that requests a decision from the attorney general under Texas Government Code §552.301 about whether requested public information is excepted from public disclosure may submit that request for decision to the attorney general through the attorney general's designated electronic filing system.

(b) The governmental body's request for decision must comply with the requirements of Texas Government Code §552.301.

(c) The deadlines in Texas Government Code §552.301 and §552.303 are met if the governmental body timely submits the required documents and other materials through the attorney general's designated electronic filing system within the time prescribed.

(d) The governmental body must comply with the requirements of Texas Government Code §552.301(d) and (e-1), and §552.305 regardless of whether the request for attorney general decision is submitted electronically or through another permissible method of submission.

(e) To use the attorney general's designated electronic filing system, the governmental body must agree to and comply with the terms and conditions of use as outlined on the attorney general's designated electronic filing system website.

(f) The confidentiality of Texas Government Code §552.3035 applies to information submitted under Texas Government Code §552.301(e)(1)(D) through the attorney general's designated electronic filing system.

(g) Each submission to the attorney general's designated electronic filing system must pertain to one decision request matter. A governmental body may not combine multiple unrelated decision requests into a single submission through the attorney general's designated electronic filing system. However, a governmental body may submit a single request for decision for multiple written requests for information if the written requests for information seek information that is identical, is based on some or all of the same facts or fact pattern, or is directly related.

(h) A governmental body who, pursuant to Texas Government Code §552.3031(a)(2), does not use the attorney general's designated electronic filing system because it is impractical or impossible shall provide a statement in its request for decision that explains why it was impractical or impossible to use the attorney general's designated electronic filing system, including the date and approximate time the governmental body attempted submission.

(i) If a governmental body extends into more than one county, then the governmental body shall use the population of the county in which its central administrative office is located to determine if Texas Government Code §552.3031(a)(1)(B) is applicable to the governmental body.

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

Filed with the Office of the Secretary of State on January 29, 2024.

TRD-202400321

Justin Gordon

General Counsel

Office of the Attorney General

Earliest possible date of adoption: March 10, 2024

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



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 354. MEDICAID HEALTH SERVICES

#### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 18. MATERNITY CLINIC SERVICES 1 TAC §354.1271

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §354.1271, concerning Benefits and Limitations.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 12, 88th Texas Legislature, Regular Session, 2023, which requires HHSC to provide 12 months of postpartum Medicaid coverage to all women receiving Medicaid at the time their pregnancy ends in accordance with Section 1902(e)(16) of the Social Security Act, which is a state option. If the option is elected under Medicaid, states are required to provide the same 12-month postpartum coverage to targeted low-income pregnant children in the Children's Health Insurance Program (CHIP).

#### SECTION-BY-SECTION SUMMARY

Subchapter A, Purchased Health Services; Division 18, Maternity Clinic Services

The proposed amendment to §354.1271 removes the reference to a 60-day timeframe for postpartum services. This change removes the 60-day clinical postpartum timeframe and specifies

that women are eligible for maternity clinic services in the postpartum period. The proposed amendment also changes the term "department" to "HHSC."

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$77,594,484 in fiscal year (FY) 2024, \$333,481,844 in FY 2025, \$240,633,175 in FY 2026, \$222,167,509 in FY 2027, and \$235,754,886 in FY 2028.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) HHS has insufficient amount of information to determine the effect of the proposed rule.

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses, micro-businesses, or rural communities. HHSC has insufficient amount of information to determine the number of small businesses, micro-businesses or rural communities impacted.

This rule implements required state statute and therefore HHSC has no regulatory flexibility in the implementation.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be additional months of Medicaid and CHIP coverage increasing access to health care in the postpartum pe-

riod, potentially resulting in improved health outcomes for the women and better birth outcomes in subsequent pregnancies. There could potentially be cost savings to the state if women have access to Medicaid or CHIP rather than being uninsured.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rule may incur economic costs to come into compliance with policy, procedure, training, and record-keeping requirements. HHSC lacks sufficient data to estimate costs to persons required to comply with the rules as proposed.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R001" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021(c), which provides the executive commissioner the authority to administer the federal medical assistance program in Texas and to establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

The amendment affects Texas Government Code §531.0055, Texas Government Code §531.033, and Texas Human Resources Code §32.024.

§354.1271. *Benefits and Limitations.*

(a) Subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission (HHSC) [the department] or its designee, maternity clinic services are those clinic services determined by a licensed physician (MD or DO) to be reasonable and medically necessary for the care of a pregnant female (patient) during the patient's prenatal period and [subsequent 60-day] postpartum period. The physician prescribing the services must be employed by or have a contractual agreement/formal arrangement with the clinic to assume professional responsibility for the services provided to the clinic's patients.

(b) The physician must see each patient and prescribe or approve each patient's plan of care. The physician must base the plan of care on a risk assessment completed by the physician or by licensed, professional clinic staff. The assessment must be based on findings obtained through a health history, laboratory/screening services, and a physical examination. HHSC [The department] or its designee establishes the criteria for assessing the patient's risk. The level of services provided to the patient must be commensurate with the risk assessment. Services must be provided on site or through referral or other formal arrangement to patients experiencing a normal pregnancy and to patients whose pregnancy places them at risk.

(c) Covered services must be furnished on an outpatient basis by the physician or by licensed, professional clinic staff under the direction of the physician. The physician and professional clinic staff must be licensed by the state in which the services are rendered. Services provided by the professional clinic staff must be within staff's scope of practice or licensure as defined by state law.

(d) Covered clinic services include, but are not necessarily limited to, risk assessment, medical services, laboratory/screening services, case coordination/outreach, nutritional counseling, psychosocial counseling, family planning counseling, and patient education regarding maternal and child health.

(e) Although the physician does not necessarily have to be present at the clinic when covered services are provided, the physician must assume professional responsibility for the services provided at the clinic and must ensure through approval of the plan of care that the services are medically appropriate. The physician must spend as much time in the clinic as is necessary to ensure that patients are receiving services in a safe and efficient manner in accordance with accepted standards of medical practice.

(f) Clinics must have arrangements for referral of non-stress test (NST), sonography, and amniocentesis for high-risk patients.

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

Filed with the Office of the Secretary of State on January 25, 2024.

TRD-202400258

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 10, 2024

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



## CHAPTER 366. MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §366.303, concerning Definitions, §366.325, concerning Medicaid Eligibility Effective Date, §366.827, concerning Medicaid Eligibility Effective Date, §366.1011, concerning Eligible Group, §366.1025, concerning Medicaid Eligibility Effective Dates, and §366.1031, concerning Eligibility Renewal.

### BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 12, 88th Texas Legislature, Regular Session, 2023, which requires HHSC to provide 12 months of postpartum Medicaid coverage to all women receiving Medicaid at the time their pregnancy ends in accordance with Section 1902(e)(16) of the Social Security Act, which is a state option. If the option is elected under Medicaid, states are required to provide the same 12-month postpartum coverage to targeted low-income pregnant children in the Children's Health Insurance Program (CHIP).

### SECTION-BY-SECTION SUMMARY

#### Subchapter C, Pregnant Women's Medicaid

The proposed amendment to §366.303 aligns HHSC rule and policy with H.B. 12 by adding a new term, "change in circumstance," to the definitions and amending the definition of "continuous coverage." As amended, the end of a recipient's pregnancy no longer qualifies as an exception to continuous coverage and is removed from the definition. The "*Texas Works Handbook*" term is also amended to update the website address. Additionally, the "Medicaid" term is amended to capitalize the word "Chapter." The subparagraphs are renumbered to account for the addition of a term.

The proposed amendment to §366.325 aligns HHSC rule and policy with H.B. 12 by modifying §366.325(3). As amended, a Medicaid recipient will receive continuous Medicaid coverage for 12-months after the pregnancy ends. Additionally, "date" is pluralized in the rule and the title.

#### Subchapter H, Medically Needy Program

The proposed amendment to §366.827 pluralizes "date" in the rule title, adds "effective" in the first sentence of the rule, and adds paragraph (4) which provides that once a pregnant woman meets spend down, the pregnant woman is continuously eligible through her pregnancy and the end of the month in which the 12-month postpartum period ends and is not required to meet spend down again until the end of the 12-month postpartum period. This amendment aligns HHSC rule and policy with H.B. 12 requirements to provide continuous postpartum Medicaid coverage 12-months following the end of the woman's pregnancy. Additionally, this amendment aligns with federal requirements that an individual who attained Medicaid eligibility through a spend-down while pregnant is eligible for the extended postpartum coverage even if the individual does not have sufficient incurred medical or remedial care expenses to meet their spenddown in any subsequent budget period during the pregnancy or extended postpartum period.

#### Subchapter J, Former Foster Care Children's Program

The proposed amendment to §366.1011 modifies the eligibility requirement that a Former Foster Care Children's Program recipient must have been under the conservatorship of "this State" to "a State" to comply with Section 1002 of Public Law 115-271.

The proposed amendment to §366.1025 adds subsection (c) providing that a pregnant Former Foster Care Children's Program recipient remains continuously eligible through the end of the 12-month postpartum period. This amendment aligns this section with H.B. 12.

The proposed amendment to §366.1031 adds that a renewal will be conducted at the end of the 12-month postpartum period if the Former Foster Care Children's Program recipient is pregnant. This amendment aligns HHSC rule and policy with H.B.

12. Additionally, the organization of the rule is amended to include subsections.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$77,594,484 in fiscal year (FY) 2024, \$333,481,844 in FY 2025, \$240,633,175 in FY 2026, \$222,167,509 in FY 2027, and \$235,754,886 in FY 2028.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses, micro-businesses, or rural communities. HHSC has insufficient amount of information to determine the number of small businesses, micro-businesses or rural communities impacted.

This rule implements required state statute and therefore HHSC has no regulatory flexibility in the implementation.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rules are in effect, the public benefit will be additional months of Medicaid and CHIP coverage increasing access to health care in the post-partum period, potentially resulting in improved health outcomes

for the women and better birth outcomes in subsequent pregnancies. There could potentially be cost savings to the state if women have access to Medicaid or CHIP rather than being uninsured.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs to come into compliance with policy, procedure, training, and record-keeping requirements. HHSC lacks sufficient data to estimate costs to persons required to comply with the rules as proposed.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R001" in the subject line.

## SUBCHAPTER C. PREGNANT WOMEN'S MEDICAID

### 1 TAC §366.303, §366.325

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021(c), which provides the executive commissioner the authority to administer the federal medical assistance program in Texas and to establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

The amendments affect Texas Government Code §531.0055, Texas Government Code §531.033, and Texas Human Resources Code §32.024.

#### §366.303. Definitions.

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

(1) Applicant--A person seeking assistance under Pregnant Women's Medicaid who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) CFR--Code of Federal Regulations.

(4) Change in circumstance--A change in circumstance that may affect eligibility including:

(A) a change in household composition; or

(B) a change in categorical eligibility (e.g., aging out, eligibility conferred through the receipt of other program benefits).

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

(6) [(5)] Continuous coverage--Uninterrupted eligibility for the extent of the certification period regardless of any changes in circumstances, unless:

[(A) the recipient's pregnancy ends];

(A) [(B)] the recipient dies;

(B) [(C)] the recipient disenrolls voluntarily;

(C) [(D)] the recipient changes state residence;

(D) [(E)] the state has erred in the eligibility determination; or

(E) [(F)] the recipient or [the] recipient's authorized representative has committed fraud, [abuse, or] perjury, or abuse.

(7) [(6)] Eligible group--A category of people who are eligible for Pregnant Women's Medicaid.

(8) [(7)] Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

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

(10) [(9)] Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household."

(11) [(10)] Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code Chapter [chapter] 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(12) [(11)] Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(13) [(12)] Recipient--A person receiving Pregnant Women's Medicaid services.

(14) [(13)] Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(15) [(14)] *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for

Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at <https://www.hhs.texas.gov/handbooks/texas-works-handbook> [[www.dads.state.tx.us/handbooks/TexasWorks](http://www.dads.state.tx.us/handbooks/TexasWorks)].

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

(17) [(16)] U.S.C.--United States Code.

§366.325. *Medical Eligibility Effective Dates* [Date].

HHSC determines the Medicaid eligibility effective dates [date] for an applicant as follows.[:]

(1) Medicaid coverage begins on the earliest day of the application month on which the applicant meets all eligibility criteria.

(2) Retroactive coverage may begin as early as three months before the application month.

(3) A recipient's [recipient has continuous] coverage for Medicaid remains effective through the twelfth [second] month after the pregnancy ends [terminates].

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

Filed with the Office of the Secretary of State on January 25, 2024.

TRD-202400259

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



## SUBCHAPTER H. MEDICALLY NEEDY PROGRAM

### 1 TAC §366.827

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021(c), which provides the executive commissioner the authority to administer the federal medical assistance program in Texas and to establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

The amendment affects Texas Government Code §531.0055, Texas Government Code §531.033, and Texas Human Resources Code §32.024.

§366.827. *Medicaid Eligibility Effective Dates* [Date].

HHSC determines Medicaid eligibility effective dates for an applicant as follows. [:]

(1) Medicaid coverage begins on the earliest day of the application month on which the applicant meets all eligibility criteria.

(2) Retroactive coverage may begin as early as three months before the application month.

(3) The Medicaid coverage of an applicant whose household income, as calculated under §366.1113 of this chapter (relating to Calculation of Household Income), exceeds the Medically Needy Income Limits (MNIL) may spend down the excess amount of income to pay unpaid medical bills and qualify for Medicaid. Medicaid begins on the earliest day of the month of potential eligibility on which spend down requirements are met.

(4) Once a pregnant woman meets spend down, she remains continuously eligible through her pregnancy and the end of the month in which the 12-month postpartum period ends and is not required to meet spend down again until the end of her 12-month postpartum period.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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## SUBCHAPTER J. FORMER FOSTER CARE CHILDREN'S PROGRAM

### 1 TAC §§366.1011, 366.1025, 366.1031

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021(c), which provides the executive commissioner the authority to administer the federal medical assistance program in Texas and to establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

The amendments affect Texas Government Code §531.0055, Texas Government Code §531.033, and Texas Human Resources Code §32.024.

#### §366.1011. Eligible Group.

To be eligible for the Former Foster Care Children's Program, a person must:

(1) have been under the conservatorship of a [of this] State upon attaining age 18;

(2) have received Medicaid at the time he or she left foster care; and

(3) be 18 to 25 years of age (coverage continues through the month of his or her 26th birthday).

#### §366.1025. Medicaid Eligibility Effective Dates.

(a) Medicaid eligibility begins the first month the person meets all eligibility criteria as long as the person is not eligible for and receiving other Medicaid coverage.

(b) A person eligible for the Former Foster Care Children's Program is also eligible for retroactive coverage but no earlier than January 1, 2014.

(c) A pregnant recipient in the Former Foster Care Children's Program remains continuously eligible through the duration of the member's pregnancy and the end of the 12-month postpartum period.

#### §366.1031. Eligibility Renewal.

(a) At 12 months, HHSC determines whether the recipient is still eligible to receive Medicaid coverage.

(b) If the recipient is pregnant and eligible to receive continuous eligibility, a renewal review will be conducted at the end of the recipient's 12-month postpartum period to determine if the individual is still eligible to receive Medicaid coverage.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



## CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §370.42, concerning Age Limits, §370.49, concerning Medicaid Referrals for Pregnant CHIP Members, §370.60, concerning Renewal, and §370.307, concerning Continuous Enrollment Period.

### BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 12, 88th Texas Legislature, Regular Session, 2023, which requires HHSC to provide 12 months of postpartum Medicaid coverage to all women receiving Medicaid at the time their pregnancy ends in accordance with Section 1902(e)(16) of the Social Security Act, which is a state option. If the option is elected under Medicaid, states are required to provide the same 12-month postpartum coverage to targeted low-income pregnant children in the Children's Health Insurance Program (CHIP).

### SECTION-BY-SECTION SUMMARY

Subchapter B, Application Screening, Referral, Processing, Renewal, and Disenrollment; Division 4, Eligibility Criteria



The proposed amendment to §370.42 adds subsection (b) to state that a pregnant CHIP member is eligible to receive CHIP for 12-months following the end of the pregnancy even if the CHIP member reaches age nineteen.

The proposed amendment to §370.49 retitles the name of the rule to "Pregnant CHIP Members," removes information about Medicaid referrals for pregnant CHIP members and modifies CHIP member's eligibility from two-months to the 12th month following the end of the member's pregnancy to align this section with H.B. 12. Additionally, new paragraph (2) is added to provide that if a CHIP member voluntarily elects to end their CHIP enrollment during the postpartum period, the member will no longer be eligible to receive continuous eligibility for the remainder of the member's postpartum period. The rule text is also amended to the singular.

Subchapter B, Application Screening, Referral, Processing, Renewal, and Disenrollment; Division 6, Renewal Process

The proposed amendment to §370.60 adds subsection (b) that a renewal will be conducted at the end of the 12-month postpartum period if the CHIP member is pregnant. Additionally, subsection (a) is amended to replace the term "recipient" with "member."

Subchapter C, Enrollment, Renewal, Disenrollment, and Cost Sharing; Division 1, Enrollment and Disenrollment

The proposed amendment to §370.307 adds subsection (b) stating that a pregnant member enrolled in CHIP is eligible to receive coverage until the end of the postpartum period even if they turn age nineteen and modifies the exceptions to the continuous enrollment period in CHIP by removing current (b)(3), (b)(7), and (b)(10), and adding (b)(8). The subparagraphs are renumbered to account for the removal.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$77,594,484 in fiscal year (FY) 2024, \$333,481,844 in FY 2025, \$240,633,175 in FY 2026, \$222,167,509 in FY 2027, and \$235,754,886 in FY 2028.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses, micro-businesses, or rural communities. HHSC has insufficient amount of information to determine the number of small businesses, micro-businesses or rural communities impacted.

This rule implements required state statute and therefore HHSC has no regulatory flexibility in the implementation.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be additional months of Medicaid and CHIP coverage increasing access to health care in the postpartum period, potentially resulting in improved health outcomes for the women and better birth outcomes in subsequent pregnancies. There could potentially be cost savings to the state if women have access to Medicaid or CHIP rather than being uninsured.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rule may incur economic costs to come into compliance with policy, procedure, training, and record-keeping requirements. HHSC lacks sufficient data to estimate costs to persons required to comply with the rules as proposed.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R001" in the subject line.

SUBCHAPTER B. APPLICATION  
SCREENING, REFERRAL, PROCESSING,  
RENEWAL, AND DISENROLLMENT  
DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §370.42, §370.49

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commission with broad rulemaking authority; and Texas Health and Safety Code Chapters 62 and 63, which provide HHSC with the authority to administer CHIP in Texas and adopt rules as necessary to implement the chapters.

The amendments affect Texas Government Code §531.0055, Texas Government Code §531.033, and Texas Health and Safety Code Chapters 62 and 63.

§370.42. *Age Limits.*

(a) A child can be eligible for CHIP from the day the child is born until the end of the month in which the child reaches age nineteen.

(b) A pregnant CHIP member is eligible to receive coverage until the end of their 12-month postpartum period even if the member turns nineteen years old.

§370.49. *Pregnant CHIP Members [Medicaid Referrals for Pregnant CHIP Members].*

A pregnant [Pregnant] CHIP member [members] may be determined eligible for Medicaid [referred for a Medicaid eligibility determination]. A [Those] pregnant CHIP member [members] who is [are] determined to be Medicaid eligible will be disenrolled from CHIP. Medicaid coverage will be coordinated to begin when CHIP enrollment ends to avoid gaps in health care coverage. In the event HHSC or its designee remains unaware of a member's pregnancy until delivery, the delivery will be covered by CHIP. HHSC or its designee will set the mother's eligibility expiration date at the later of:

(1) the end of the twelfth [second] month after [following] the end of a [month of the baby's birth or the] pregnancy [termination]; or

(2) if the CHIP member voluntarily elects to end the member's CHIP enrollment during the member's extended postpartum period, the individual is not eligible to receive continuous eligibility in Medicaid for the remainder of the member's 12-month postpartum period.

[(2) the date when the mother's eligibility would have expired.]

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

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Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
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DIVISION 6. RENEWAL PROCESS

1 TAC §370.60

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commission with broad rulemaking authority; and Texas Health and Safety Code Chapters 62 and 63, which provide HHSC with the authority to administer CHIP in Texas and adopt rules as necessary to implement the chapters.

The amendment affects Texas Government Code §531.0055, Texas Government Code §531.033, and Texas Health and Safety Code Chapters 62 and 63.

§370.60. *Renewal.*

(a) Every 12 months, HHSC redetermines if the member [recipient] is still eligible to receive CHIP services.

(b) If the CHIP member is pregnant and eligible to receive continuous eligibility, a renewal will be conducted at the end of the recipient's 12-month postpartum period.

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

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Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
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For further information, please call: (512) 206-4621



SUBCHAPTER C. ENROLLMENT, RENEWAL,  
DISENROLLMENT, AND COST SHARING  
DIVISION 1. ENROLLMENT AND  
DISENROLLMENT

1 TAC §370.307

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commission with broad rulemaking authority; and Texas Health and Safety Code Chapters 62 and 63, which provide HHSC

with the authority to administer CHIP in Texas and adopt rules as necessary to implement the chapters.

The amendment affects Texas Government Code §531.0055, Texas Government Code §531.033, and Texas Health and Safety Code Chapters 62 and 63.

§370.307. *Continuous Enrollment Period.*

(a) CHIP enrollment always begins on the first calendar day of the month and continues for a period up to 12 consecutive months.

(b) A pregnant CHIP member is eligible to receive coverage until the end of the member's 12-month postpartum period even if the member turns nineteen years old.

(c) ~~[(b)]~~ Exceptions to continuous enrollment include, but are not limited to:

(1) a sibling member in the home has an earlier initial date of coverage, in which case the coverage period for the newly enrolled child will be the remaining period of coverage of the already enrolled sibling;

(2) aging out when the member turns 19;

~~[(3) change in health or dental insurance status (parent acquires employer coverage);]~~

(3) ~~[(4)]~~ family moves out of state;

(4) ~~[(5)]~~ death of the member;

(5) ~~[(6)]~~ data match reveals member is enrolled in both CHIP and Medicaid;

~~[(7) notification of member's pregnancy;]~~

(6) ~~[(8)]~~ failure to drop current health insurance if member was determined to be CHIP-eligible due to the 10 percent rule regarding the cost of the current insurance;

(7) ~~[(9)]~~ direction by HHSC based on evidence that the member's original eligibility determination was incorrect; or

(8) child becomes eligible for Medicaid.

~~[(10) member becomes a resident of an institution as defined in 42 C.F.R. §457.310(e)(2).]~~

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 45. MARKETING PRACTICES

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §45.4

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §45.4, relating to Product Registration Required. The proposed amendment is necessary to implement Senate Bills 1322 and 1932 from the 88th Regular Session. SB 1322 authorized the sale of vintage distilled spirits by a vintage distilled spirits seller, while SB 1932 authorized the secondary sale of wine by a wine collection seller.

Currently, §45.4(a) prohibits alcoholic beverages from being sold in the state prior to the product being registered with TABC unless the type of alcoholic beverage is excepted from the registration requirement under §45.4(b). Pursuant to §101.671 of the Alcoholic Beverage Code, distilled spirits and wine are generally required to have a Certificate of Label Approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau in order to be registered with TABC and the registrant must be an authorized TABC permittee. Pursuant to §§1.04(31)(B) and 111.001(2)(B) of the Alcoholic Beverage Code, vintage distilled spirits sellers and wine collection sellers may not hold a TABC-issued permit. Thus, due to the nature of the distilled spirits and wine authorized by SB 1322 and SB 1932, the products are ineligible to receive a COLA and the authorized sellers are unable to apply for product registration. For these reasons, requiring registration of these products would be impracticable under the current regulatory framework. Therefore, the proposed amendment to §45.4 adds products sold by a vintage distilled spirits seller pursuant to Alcoholic Beverage Code §§22.19 or 23.07, and by a wine collection seller pursuant to Alcoholic Beverage Code §§111.002 or 111.003, to the list of products that do not require registration with TABC prior to being sold within the state.

TABC presented the proposed amendments at a stakeholder meeting on December 7, 2023, and received no comments.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Andrea Maceyra, Chief of Regulatory Affairs, has determined that during each year of the first five years the proposed amendments are in effect, there will be no fiscal impact on state or local governments because of enforcing or administering the amended rules, other than that imposed by statute. Mrs. Maceyra made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments. Mrs. Maceyra also does not anticipate any measurable effect on local employment or the local economy because of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Mrs. Maceyra expects that enforcing or administering the amended rules will have the public benefit of ensuring current rules align with new legislation and the prerequisites for product registration. Mrs. Maceyra does not expect the proposed amendments will impose economic costs on persons required to comply with the amended rules.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TABC has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TABC has determined that for each year of the first five years that the proposed amendments are in effect, they:

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

**TAKINGS IMPACT ASSESSMENT.** TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on March 11, 2024. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on February 22, 2024. Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

**STATUTORY AUTHORITY.** TABC proposes the amendments pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §5.31. Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. TABC also proposes new §45.4(b)(5) pursuant to Section 2 of SB 1932, which requires TABC to adopt rules necessary to implement Chapter 111 of the Texas Alcoholic Beverage Code.

**CROSS-REFERENCE TO STATUTE.** The proposed amendments implement Alcoholic Beverage Code §§22.01, 22.19, 23.01, 23.07, 28.07, and 111.001-.005.

§45.4. *Product Registration Required.*

- (a) (No change.)
- (b) Product registration is not required for products sold:
  - (1) in compliance with Code §101.6701 by holders of brewer's licenses authorized to sell directly to consumers under Code §62.122;
  - (2) by holders of brewpub licenses except for malt beverages sold under the authority of Code §§74.08 or a distributor under 74.09; [and]
  - (3) pursuant to out-of-state winery direct shipper's permits under Chapter 54 of the Code;:]

(4) by a vintage distilled spirits seller pursuant to Code §§22.19 or 23.07; and

(5) by a wine collection seller pursuant to Code §§111.002 or 111.003.

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

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

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James Person  
General Counsel  
Texas Alcoholic Beverage Commission  
Earliest possible date of adoption: March 10, 2024  
For further information, please call: (512) 206-3220

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**TITLE 26. HEALTH AND HUMAN SERVICES**

**PART 1. HEALTH AND HUMAN SERVICES COMMISSION**

**CHAPTER 307. BEHAVIORAL HEALTH PROGRAMS**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §307.301, concerning Purpose; §307.303, concerning Definitions; §307.305, concerning General Conditions of a Grant; §307.307, concerning Eligible Applicants; §307.309, concerning Eligible Projects; §307.311, concerning Grant Proposals and Selection Process; §307.313, concerning Contract Execution; §307.315, concerning Project Review and Evaluation Report; §307.351, concerning Purpose; §307.353, concerning Definitions; §307.355, concerning General Conditions of a Grant; §307.357, concerning Eligible Applicants; §307.359, concerning Eligible Projects; §307.361, concerning Grant Proposals and Selection Process; §307.363, concerning Selection Criteria; §307.365, concerning Contract Execution; and §307.367, concerning Project Review and Evaluation Report.

**BACKGROUND AND PURPOSE**

The purpose of the proposal is to comply with Senate Bill (S.B.) 1677, 88th Legislature, Regular Session, 2023, which requires HHSC to adopt rules to implement Texas Government Code §531.0993(d-1), requiring HHSC to establish procedures to assist community collaboratives that include a county with a population of less than 250,000 and §531.09936, requiring HHSC, to the extent money is appropriated, to contract with nonprofit organizations or governmental entities to establish or expand behavioral health centers or jail diversion centers. The proposed rules in new Subchapter G, new Division 1, establish requirements for the HHSC Mental Health Grant Program for Justice-Involved Individuals (MHGPJII) authorized under Texas Government Code §531.0993, and the proposed rules in new Division 2, establish the Rural Initiatives Grant Program to implement Texas Government Code §531.09936.

The proposed rules in new Division 1 establish the requirements of the MHGPJII to provide grants to county-based community

collaboratives for the purpose of reducing: (1) recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and (2) the total waiting time for forensic commitment of persons with mental illness to a state hospital. The proposed rules outline the assistance offered by HHSC to community collaboratives that include a county with a population of less than 250,000 in submitting a proposal for the MHGPJII.

The proposed rules in Division 2 establish the requirements for the Rural Initiatives Grant Program to provide grants to establish or expand behavioral health centers or jail diversion centers in the local service area of a local mental health authority or local behavioral health authority located primarily in rural areas to provide: (1) additional forensic hospital beds and competency restoration services; (2) inpatient and outpatient mental health services to adults and children; and (3) services to reduce recidivism and the frequency of arrest, incarceration, and emergency detentions among persons with mental illness.

#### SECTION-BY-SECTION SUMMARY

New Division 1, Mental Health Grant Program for Justice Involved Individuals

Proposed new §307.301, Purpose, provides that the purpose of the division is to implement Texas Government Code §531.0993 by establishing a grant program.

Proposed new §307.303, Definitions, defines terms used in Division 1 of the rules.

Proposed new §307.305, General Conditions of a Grant, outlines that grants are subject to the requirements of the contract executed by HHSC. Proposed new subsection (b) outlines that HHSC provides training opportunities annually and technical assistance or data upon request up to six months before the release of a funding opportunity to assist community collaboratives that include counties with a population of less than 250,000. Proposed new subsections (c) and (d) address cancellation of a grant award and HHSC's authority to accept proposals from community collaboratives if there are appropriated but unawarded funds from the prior state fiscal year pursuant to Texas Government Code §531.0993(d-2).

Proposed new §307.307, Eligible Applicants, requires a community collaborative to provide matching funds.

Proposed new §307.309, Eligible Projects, sets forth that grant proposals must meet the requirements and specifications set forth by HHSC and lists the types of projects eligible for funding.

Proposed new §307.311, Grant Proposals and Selection Process, describes that grant funds are made available to a local mental health authority or local behavioral health authority representing a community collaborative through a competitive request for proposal process. The proposed rule establishes what the collaborative must submit in the proposal and that a proposal received after the deadline will not be considered. The proposed rule sets forth that the amount of grant money reserved for community collaboratives that include a county with a population of less than 250,000, and allows those community collaborative to request technical assistance or data from HHSC. The proposed rule addresses the process if HHSC has additional funds available after selecting grant recipients.

Proposed new §307.313, Contract Execution, sets forth contractual requirements for the award of the grant.

Proposed new §307.315, Project Review and Evaluation Report, requires grantees to submit performance data for each grant-funded project on a schedule specified by HHSC in the contract and a report. The proposed rule sets forth that HHSC may make inspections of the operation and provision of mental health services provided by a community collaborative to ensure state money appropriated for the grant program is used effectively.

New Division 2, Rural Initiatives Grant Program

Proposed new §307.351, Purpose, provides that the purpose of this division is to implement Texas Government Code §531.09936 by establishing a Grant Program.

Proposed new §307.353, Definitions, defines terms used in Division 2 of the rules.

Proposed new §307.355, General Conditions of a Grant, outlines that grants are subject to the availability of appropriated funding, a competitive award process established by HHSC, and the requirements of the contract executed by HHSC. Proposed new subsection (b) outlines that HHSC provides training opportunities annually and technical assistance or data upon request up to six months before the release of a funding opportunity to governmental entities or nonprofit organizations.

Proposed new §307.357, Eligible Applicants, provides that governmental entities and nonprofit organizations are eligible for grants and requires governmental entities and nonprofit organizations to provide matching funds.

Proposed new §307.359, Eligible Projects, sets forth that grant proposals must meet the requirements and specifications described in requests for proposals issued by HHSC for eligible funding and describes the type of services that must be part of a proposal to expand or establish a behavioral health center or jail diversion center.

Proposed new §307.361, Grant Proposals and Selection Process, requires a governmental entity or nonprofit organization to submit a proposal directly to HHSC in the time and manner specified by HHSC and any proposal received after the deadline will not be considered. The proposed rule sets forth that HHSC reviews and evaluates proposals in accordance with the evaluation methodology published in the request for proposal or other notice of potential award issued by HHSC.

Proposed new §307.363, Selection Criteria, outlines HHSC's criteria for selecting grant recipients.

Proposed new §307.365, Contract Execution, sets forth contractual requirements for the award of the grant.

Proposed new §307.367, Project Review and Evaluation Report, requires grantees to submit performance data for each grant-funded project on a schedule determined by HHSC and a report. The proposed rule sets forth that HHSC may make inspections of the operation and provision of mental health services provided by a grantee to ensure state money is used effectively.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood, HHSC Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there are no anticipated economic costs to persons who are required to comply with the proposed rules because participation in the grant programs described in the proposed rules is optional.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons, relate to a state agency procurement, and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner for Behavioral Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be that more Texans have access to behavioral health care in their local community.

Trey Wood, HHSC Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because participation in the grant programs described in the proposed rules is optional.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Robert Dole at (512) 568-4605 in HHSC Behavioral Health Services.

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin,

Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to [HHRulesCoordinationOffice@hhs.texas.gov](mailto:HHRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R007" in the subject line.

## SUBCHAPTER G. BEHAVIORAL HEALTH GRANT AND FUNDING PROGRAMS DIVISION 1. MENTAL HEALTH GRANT PROGRAM FOR JUSTICE INVOLVED INDIVIDUALS

**26 TAC §§307.301, 307.303, 307.305, 307.307, 307.309,  
307.311, 307.313, 307.315**

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.0993 which requires HHSC to establish a grant program to reduce recidivism, arrest, and incarceration among individuals with mental illness and to reduce the wait time for a forensic commitment; and §531.09936 which requires HHSC to contract with nonprofit organizations or governmental entities to establish or expand behavioral health centers or jail diversion centers in local service areas of local mental health authorities or local behavioral health authorities that are located primarily in rural areas.

The new sections affect Texas Government Code §531.0055, §531.0993, and §531.09936.

#### §307.301. Purpose.

The purpose of this division is to implement Texas Government Code §531.0993 by establishing a program to provide grants to county-based community collaboratives for the purpose of reducing:

(1) recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and

(2) the total waiting time for forensic commitment of persons with mental illness to a state hospital.

#### §307.303. Definitions.

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

(1) ACT--Assertive community treatment. A 24-hour team-based service that provides treatment, rehabilitation, and support services in the community to individuals who have a history of multiple psychiatric hospitalizations (two or more in 180 days or four or more in two years) or at least one hospitalization of greater than 30 days duration in the last two years. The provision of ACT requires the following.

(A) Individuals identified as needing ACT services must be prioritized for supportive housing, supported employment, and co-occurring psychiatric and substance use disorder services as needed.

(B) The use of an integrated services approach merging clinical and rehabilitation staff expertise, such as psychiatric, substance abuse, vocational or employment, and supportive housing, within one mobile service delivery system.

(C) ACT Teams provide permanent supportive housing services, supported employment services, substance use services, psychotherapy services, and mental health rehabilitation services to individuals they serve with minimal external referrals for these services. Referrals are appropriate for specialized therapeutic modalities for complex trauma.

(D) Services are delivered on an individual basis with the exception of group activities to reduce social isolation or address substance use disorder issues.

(E) The ACT Team has a maximum case ratio of 10 service recipients per staff person.

(F) The ACT Team implements ACT services according to its evidence-based practice or the guidelines defined by HHSC.

(2) Applicant--An entity that submits a proposal to apply for a grant award that is part of a community collaborative.

(3) Community collaborative--A partnership that includes a county, a local mental health authority, or local behavioral health authority that operates in the county, and each hospital district, if any, located in the county. A community collaborative may include other local entities designated by the collaborative's members.

(4) Continuity of care--This term has the meaning set forth in §306.153 of this title (relating to Definitions).

(5) FACT--Forensic assertive community treatment. A service delivery model intended for individuals with serious mental illness who are involved with the criminal justice system. These individuals may have co-occurring substance use and physical health disorders. FACT addresses the likelihood that an individual will engage in future illegal behavior in the form of a new crime or failure to comply with conditions of probation or parole, and factors that increase an individual's likelihood of re-offense, such as lack of employment or livable wages, or the presence of a substance use disorder.

(6) Grantee--A recipient of a grant awarded under this division.

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

(8) Local behavioral health authority--An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(9) Local mental health authority--An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(10) Mental health jail diversion program--A program that serves individuals with behavioral health needs who are involved, or at risk of involvement, in the criminal justice system by diverting the individuals from jail and providing the individuals with, or connecting them to, community mental health and substance use services.

(11) Rapid response team--An interdisciplinary team of behavioral health providers that provides rapid assessment and deployment of resources for individuals who are experiencing acute clinical

deterioration, or signs of imminent clinical deterioration, related to acute stress or a psychiatric condition that impairs or impedes their mental health in a hospital, facility, or community with the goal of preventing harm; a higher intensive level of care, such as an intensive care unit transfer in a hospital or hospitalization in the community; or death.

§307.305. General Conditions of a Grant.

(a) A grant awarded under this division, and any addition to such a grant is, subject to the requirements of the contract executed by HHSC with the grantee as required under §307.313 of this division (relating to Contract Execution).

(b) HHSC will provide a community collaborative that includes a county with a population of less than 250,000 with:

(1) annual training opportunities related to this grant program posted on the HHSC website; and

(2) technical assistance and provision of data to the community collaborative upon request as described in §307.311(e) of this division (Grant Proposals and Selection Process) up to six months before the release of a funding opportunity under Texas Government Code §531.0993.

(c) A grant award is subject to the availability of appropriated state funds and may be canceled either before or after HHSC awards a grant if funding appropriated to HHSC for the grant is terminated, withdrawn, or insufficient.

(d) As permitted under Texas Government Code §531.0993(d-2), in a given state fiscal year, if HHSC has appropriated but unawarded funds from the prior state fiscal year, HHSC will accept proposals from community collaboratives that were not selected in the previous fiscal year or that were selected as grant recipients in the previous fiscal year but require additional funding.

§307.307. Eligible Applicants.

A community collaborative must provide matching funds, as outlined by HHSC in the request for proposals, in alignment with Texas Government Code §531.0993(c-1), which can include gifts, grants, donations, or in-kind contributions from any person but must not include money from state funds.

§307.309. Eligible Projects.

Grant proposals must meet the requirements and specifications set forth in the competitive request for proposal by HHSC. Projects eligible for grant funding include:

(1) continuation of a mental health jail diversion program;

(2) establishment or expansion of a mental health jail diversion program;

(3) establishment of alternatives to competency restoration in a state hospital, including outpatient competency restoration, inpatient competency restoration in a setting other than a state hospital, or jail-based competency restoration;

(4) provision of ACT or FACT with an outreach component;

(5) provision of intensive mental health services and substance use treatment not readily available in the county;

(6) provision of continuity of care services for an individual being released from a state hospital;

(7) establishment of interdisciplinary rapid response teams to reduce law enforcement's involvement with mental health emergencies; and

(8) provision of local community hospital, crisis, respite, or residential beds.

§307.311. Grant Proposals and Selection Process.

(a) Grant funds are made available to a local mental health authority or local behavioral health authority representing a community collaborative through a competitive request for proposal process.

(b) An applicant must include in the proposal:

(1) the objectives of reducing:

(A) recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and

(B) the total waiting time for forensic commitment of persons with mental illness to a state hospital;

(2) a statement indicating the amount of matching funds the collaborative is able to provide; and

(3) a plan that:

(A) is endorsed by each of the collaborative's member entities;

(B) identifies a target population;

(C) describes how the grant money and matching funds will be used;

(D) includes outcome measures to evaluate the success of the plan; and

(E) describes how the success of the plan in accordance with the outcome measures would further the state's interest in the grant program's purposes.

(c) An applicant must submit a proposal for a grant directly to HHSC in the time and manner specified by HHSC. A proposal received after the deadline will not be considered. HHSC reviews and evaluates eligible, complete, and timely proposals in accordance with the evaluation methodology published in the request for proposal or other notice of potential grant award issued by HHSC.

(d) From money appropriated to HHSC for each state fiscal year to implement this grant, HHSC reserves at least 20 percent of that total for grants to community collaboratives that include a county with a population of less than 250,000.

(e) An applicant that includes a county with a population of less than 250,000 may request technical assistance or data from HHSC up to six months before the release of a funding opportunity.

(f) To the extent money appropriated to HHSC for a state fiscal year to implement this grant remains available to HHSC after grant recipients are selected for the fiscal year, HHSC makes grants available using the money remaining for the fiscal year through a competitive request for proposal process. Subsection (d) of this section does not apply to this process.

§307.313. Contract Execution.

Grantees are required to execute a contract with HHSC on mutually agreeable terms and conditions in the manner and format prescribed by HHSC. Grant funds may not be distributed to a grantee before the execution of a contract with HHSC. In addition to other requirements, the contract will require that the grantee comply with:

(1) the performance objectives established by HHSC and monitored through progress reports;

(2) any financial and reporting requirements established by HHSC;

(3) all applicable policies and procedures; and

(4) all applicable federal and state laws and their implementing regulations.

§307.315. Project Review and Evaluation Report.

(a) Performance data for each grant-funded project must be submitted by grantees on a routine schedule as specified in the contract with HHSC.

(b) Not later than the 90th day after the last day of the state fiscal year for which HHSC distributes a grant under this division, each grantee must prepare and submit a report to HHSC describing the effect of the grant money and matching funds in achieving the outcome measures in the plan submitted with the grantee's proposal.

(c) HHSC may make inspections of the operation and provision of mental health services provided by a community collaborative under this grant to ensure state money appropriated for the grant program is used effectively.

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

Filed with the Office of the Secretary of State on January 25, 2024.

TRD-202400265

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: March 10, 2024

For further information, please call: (512) 568-4605



## DIVISION 2. RURAL INITIATIVES GRANT PROGRAM

**26 TAC §§307.351, 307.353, 307.355, 307.357, 307.359, 307.361, 307.363, 307.365, 307.367**

### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.0993 which requires HHSC to establish a grant program to reduce recidivism, arrest, and incarceration among individuals with mental illness and to reduce the wait time for a forensic commitment; and §531.09936 which requires HHSC to contract with nonprofit organizations or governmental entities to establish or expand behavioral health centers or jail diversion centers in local service areas of local mental health authorities or local behavioral health authorities that are located primarily in rural areas.

The new sections affect Texas Government Code §531.0055, §531.0993, and §531.09936.

### §307.351. Purpose.

(a) The purpose of this division is to implement Texas Government Code §531.09936 by establishing a grant program to assist with the establishment or expansion of behavioral health centers or jail diversion centers in a local mental health authority or local behavioral health authority's local service area to provide:



(1) additional forensic hospital beds and competency restoration services;

(2) inpatient and outpatient mental health services to adults and children; and

(3) services to reduce recidivism and the frequency of arrest, incarceration, and emergency detentions among persons with mental illness.

(b) To the extent money is appropriated to HHSC for this program, HHSC, in cooperation with local mental health authorities and local behavioral health authorities located primarily in rural areas of this state, awards contracts to nonprofit organizations or governmental entities under this division.

§307.353. Definitions.

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

(1) Applicant--A non-profit or governmental entity that submits a proposal to apply for a grant under this division.

(2) Governmental entity--This state, a political subdivision of this state, or an agency of this state.

(3) Grantee--A recipient of funds awarded under this division.

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

(5) Local behavioral health authority--A local behavioral health authority designated by HHSC in accordance with Texas Health and Safety Code §533.0356.

(6) Local mental health authority--A local mental health authority designated by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(7) Nonprofit organization--An organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code.

(8) Rural--A county with a population of 250,000 or less.

§307.355. General Conditions of a Grant.

(a) A grant under this division, and any extension, continuation, or addition to such funds, are subject to:

(1) the availability of appropriated state funds;

(2) a competitive award process established by HHSC; and

(3) the requirements of the contract executed by HHSC with the grantee as required under §307.365 of this division (relating to Contract Execution).

(b) HHSC will provide a governmental entity or nonprofit organization with:

(1) annual training opportunities related to this grant program posted on the HHSC website; and

(2) technical assistance and the provision of data upon request as described in §307.361(c) of this division (Grant Proposals and Selection Process) up to six months before the release of a funding opportunity under Texas Government Code §531.09936.

§307.357. Eligible Applicants.

In addition to the general conditions described in §307.355 of this division (relating to General Conditions of a Grant):

(1) only governmental entities and nonprofit organizations are eligible for grants awarded under this division; and

(2) a governmental entity or nonprofit organization must provide matching funds as outlined by HHSC in the request for proposals, which can include gifts, grants, donations, or in-kind contributions from any person but must not include money from state funds.

§307.359. Eligible Projects.

Proposals must meet the requirements and specifications set forth in requests for proposals issued by HHSC. Proposals must be to expand or establish a behavioral health center or jail diversion center to provide:

(1) forensic hospital beds and competency restoration services;

(2) inpatient and outpatient mental health services for adults and children, including counseling and psychiatric services; and

(3) services to reduce recidivism and the frequency of arrest, incarceration, and emergency detentions among persons with mental illness in the local service area.

§307.361. Grant Proposals and Selection Process.

(a) An applicant must submit a proposal directly to HHSC in the time and manner specified by HHSC. A proposal received after the deadline specified by HHSC will not be considered.

(b) HHSC reviews and evaluates eligible, complete, and timely proposals in accordance with the evaluation methodology published in the request for proposal or other notice of potential award issued by HHSC.

(c) An applicant may request technical assistance or data from HHSC up to six months before the release of a funding opportunity under Texas Government Code §531.09936.

§307.363. Selection Criteria.

In selecting grant recipients, HHSC:

(1) prioritizes proposals from applicants for services that will be provided primarily in rural areas;

(2) considers the extent to which proposed services are already available in the area to be served; and

(3) considers other criteria established by HHSC as described in the specific request for proposal or other notice of potential awards issued by HHSC.

§307.365. Contract Execution.

Grantees are required to execute a contract with HHSC on mutually agreeable terms and conditions in the manner and format prescribed by HHSC. Grant funds may not be distributed to a grantee before the execution of a contract with HHSC. In addition to other requirements, the contract will require that the grantee comply with:

(1) the performance objectives established by HHSC and monitored through progress reports;

(2) any financial and reporting requirements established by HHSC;

(3) all applicable policies and procedures; and

(4) all applicable federal and state laws and their implementing regulations.

§307.367. Project Review and Evaluation Report.

(a) Performance data for each grant-funded project must be submitted by grantees on a routine schedule determined by HHSC.

(b) Not later than the 90th day after the last day of the state fiscal year for which HHSC distributes a grant under this division, each grantee must prepare and submit a report describing the effect of the grant money and matching funds in achieving the outcome measures in the plan submitted with the proposal.

(c) HHSC may make inspections of the operation and provision of mental health services provided by a grantee under this section to ensure state money appropriated for the grant program is used effectively.

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

Filed with the Office of the Secretary of State on January 25, 2024.

TRD-202400266

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: March 10, 2024

For further information, please call: (512) 568-4605



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER V. COORDINATION OF BENEFITS

###### 28 TAC §§3.3502, 3.3503, 3.3510

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§3.3502, 3.3503, and 3.3510, concerning the applicability of coordination of benefits (COB) to vision and eye care plans. The proposed amendments implement Senate Bill 861, 88th Legislature, 2023, and Senate Bill 1367, 83rd Legislature, 2013. TDI also proposes nonsubstantive amendments to §3.3502 and §3.3503.

**EXPLANATION.** The proposed amendments enact changes in accordance with SB 1367, which abolished the Texas Health Insurance Pool, and SB 861, which specifies COB requirements for vision benefit plans under Insurance Code Chapter 1203, Subchapter C. SB 861 sets out provisions for the coordination of vision and eye care benefits. It also specifies the responsibilities of the primary and secondary issuers of an applicable health or vision benefit plan for an enrollee who is covered by at least two different health or vision benefit plans that provide the enrollee coverage for the same vision or medical eye care services, procedures, or products.

The proposed amendments to the sections are described in the following paragraphs.

**Section 3.3502.** To implement SB 861, an amendment to §3.3502 expands the applicability of the subchapter to include individual and group health benefit plans or vision benefit plans,

as described by Insurance Code Chapter 1203, Subchapter C, by adding new subsection (a)(6) listing such plans.

A nonsubstantive amendment relocates an exclusion addressing disability income protection coverage exclusion, removing it from subsection (a)(1) and addressing it with new text in (b)(1). Another amendment to subsection (a)(1) adds the title of Chapter 1251. And the acronym "(HMO)" is added to subsection (a)(2).

An amendment also removes a reference in subsection (b)(1) to the Texas Health Insurance Pool. The Texas Health Insurance Pool was dissolved by SB 1367, effective September 1, 2015.

Finally, the proposed amendments to §3.3502 eliminate subsections (c) - (f). The dates specified in these subsections have passed, and the transition period they establish is no longer needed. Consistent with the removal of these subsections, existing subsection (g) is redesignated as new subsection (c).

**Section 3.3503.** To implement SB 861, the definition of "plan" under §3.3503(15) is expanded to include vision plans. An amendment to paragraph (15)(A)(iii) adds the terms "self-funded" and "self-insured" in parentheses to clarify the types of arrangements that are included in the definition. A nonsubstantive amendment to paragraph (15)(B) conforms to the changes made in §3.3502 by replacing the reference to the Texas Health Insurance Pool with a clarification of the exclusion of disability income protection coverage. A missing Insurance Code reference is also added to paragraph (15)(B)(v).

**Section 3.3510.** Amendments to Figure: 28 TAC §3.3510(d) update the definition of "plan" to add a reference to vision coverage and remove a reference to the Texas Health Insurance Pool, consistent with changes made in §3.3502 and §3.3503. These changes ensure the model COB contract provisions are consistent with the rules. Use of the model COB contract provisions contained in Figure: 28 TAC §3.3510(d) is optional. Issuers may use the model COB provisions or make nonsubstantive changes to the provisions, as long as the contract provisions accurately reflect the COB rules. TDI also makes nonsubstantive amendments to Figure: 28 TAC §3.3510(e) to update the model COB notice to use more plain language and make the information easier for consumers to understand. The model COB notice is a resource for health benefit plan issuers. The notice provides a summary of the most common COB circumstances and does not replace or change the contract provisions.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Rachel Bowden, director of Regulatory Initiatives, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by the statute. Ms. Bowden made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Ms. Bowden expects that administering the proposed amendments will have the public benefits of ensuring that TDI rules conform to Insurance Code 1203, Subchapter C, and making them clearer and more consistent.

Ms. Bowden expects that the proposed amendments will not increase the cost of compliance with Insurance Code 1203 because they do not impose requirements beyond those in the statute. Insurance Code Chapter 1203, Subchapter C, requires the coordination of vision and eye care benefits and sets out the responsibilities of the primary and secondary issuers of an applicable health benefit plan or vision benefit plan. As a result, the cost associated with compliance does not result from the enforcement or administration of the proposed amendments. Changes made to the model COB contract provisions in Figure: 28 TAC §3.3510(d) conform to the changes in §3.3502 and §3.3503 and are necessary to implement SB 861 and SB 1367. Nonsubstantive changes to the model COB notice in §3.3510 to improve readability do not create a cost because use of the model notice is optional.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed amendments introduce a more-standardized regulation of the statute to simplify compliance for small businesses. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045. In addition, the proposal is necessary to implement legislation, which is an exception under §2001.0045(c).

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

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

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on March 11, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on March 11, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes to amend §§3.3502, 3.3503, and 3.3510 under Insurance Code §1203.107 and §36.001.

Insurance Code §1203.107 provides that the commissioner may adopt rules necessary to implement Chapter 1203, Subchapter C.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** Sections 3.3502, 3.3503, and 3.3510 implement Insurance Code §1203.104 and §1203.105.

*§3.3502. Applicability.*

(a) This subchapter applies to:

(1) group, blanket, or franchise accident and health insurance policies as described by Insurance Code Chapter 1251, concerning Group and Blanket Health Insurance; [excluding Disability Income Protection Coverage under §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage);]

(2) individual and group health maintenance organization (HMO) evidences of coverage as defined by Insurance Code §843.002, concerning Definitions;

(3) individual accident and health insurance policies as defined by Insurance Code §1201.001, concerning Definitions;

(4) individual and group preferred provider benefit plans and exclusive provider benefit plans as described by Insurance Code Chapter 1301, concerning Preferred Provider Benefit Plans;

(5) group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care; ~~and~~

(6) individual and group health benefit plans or vision benefit plans, as described by Insurance Code Chapter 1203, Subchapter C, concerning Vision and Eye Care Benefits; and

(7) ~~[(6)]~~ the medical care components of individual and group long-term care contracts.

(b) This subchapter does not apply to:

(1) disability income protection coverage; [the Texas Health Insurance Pool as described in Insurance Code Chapter 1506;]

(2) workers' compensation insurance coverage;

(3) hospital indemnity coverage benefits or other fixed indemnity coverage;

(4) accident only coverage;

(5) specified disease or specified accident coverage;

(6) school accident-type coverages that cover students for accidents only, including athletic injuries, either on a "24-hour" or a "to and from school" basis;

(7) benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, custodial care, or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(8) Medicare supplement policies;

(9) a state plan under Medicaid;

(10) a governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other non-governmental plan; or

(11) an individual accident and health insurance policy that is designed to fully integrate with other policies through a variable deductible.

~~[(e) Except as provided in subsections (d) - (f) of this section, this subchapter applies to individual and group plans that are delivered, issued for delivery, or renewed on or after September 2, 2014.]~~

~~[(d) A contract delivered, issued for delivery, or renewed before September 2, 2014, must be brought into compliance with this subchapter on the next anniversary date or renewal date of the contract, or the expiration of any applicable collective bargaining contract under which it was written.]~~

~~[(e) A carrier in compliance with applicable filing requirements may comply with this subchapter prior to September 2, 2014.]~~

~~[(f) If there is a conflict, due to the implementation transition permitted by subsections (e) - (e) of this section, between the order of benefit provisions of different plans for purposes of determining which carriers are primary and secondary, then the order of benefit payments will be determined under the version of this subchapter that was in effect prior to September 2, 2014.]~~

(c) ~~[(g)]~~ This subchapter does not apply to individual policies issued before March 25, 2014, that are noncancellable or guaranteed renewable.

### §3.3503. Definitions.

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

(1) Allowable expense--Except as otherwise provided in §3.3505 of this title (relating to Allowable Expenses), or where a statute requires a different definition, any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

(2) Allowed amount--The amount of a billed charge that a carrier determines to be covered for services provided by a noncontracted health care provider or physician. The allowed amount includes the carrier's payment and any applicable deductible, copayment, or coinsurance amounts for which the insured is responsible.

(3) Birthday--Refers only to the month and day in a calendar year and does not include the year in which the individual is born.

(4) Carrier--An entity authorized under the Insurance Code to provide coverage subject to this subchapter, including an insurer, health maintenance organization, group hospital service corporation, or stipulated premium company.

(5) Certificate holder--An insured or enrollee who is covered other than as a dependent under a group plan or a group-type plan.

(6) Claim--A request that benefits be provided or paid. The benefits claimed may be in the form of:

(A) services, including supplies;

(B) payment for all or a portion of the expenses incurred;

(C) a combination of subparagraphs (A) and (B) of this paragraph; or

(D) an indemnification.

(7) Closed panel plan--A plan that provides health benefits to covered persons primarily in the form of services through a panel of health care providers and physicians that have contracted with or are employed by the plan, and that excludes benefits for services provided by other health care providers or physicians, except in cases of emergency or referral by a panel member.

(8) Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)--Coverage provided under a right of continuation under federal law.

(9) Contract--Refers to an insurance policy, insurance certificate, or health maintenance organization evidence of coverage.

(10) Coordination of benefits (COB)--A provision establishing an order in which plans pay their claims and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(11) Custodial parent--

(A) the parent with the right to designate the primary residence of a child by a court order under the Family Code or other applicable law; or

(B) in the absence of a court order, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation.

(12) Group-type contract--A contract that is not available to the public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage.

(13) High-deductible health plan--A high-deductible health plan under §223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and Insurance Code Chapter 1653, concerning High Deductible Health Plan.

(14) Hospital indemnity benefits--Benefits not related to expenses incurred. This term does not include reimbursement-type benefits, even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(15) Plan--A form of coverage with which coordination is allowed. For purposes of this subchapter:

(A) plan includes:

(i) any contract to which this subchapter applies;

(ii) limited benefit policies under §3.3079 of this title (relating to Minimum Standards for Limited Benefit Coverage), excluding Disability Income Protection Coverage under §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage);

(iii) uninsured (i.e., self-funded or self-insured) arrangements of group or group-type coverage;

(iv) the medical benefits coverage in automobile insurance contracts;

(v) Medicare or other governmental benefits, [;] as permitted by law; [and]

(vi) group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care; and[-]

(vii) individual and group health benefit plans or vision benefit plans, as described by Insurance Code Chapter 1203, Subchapter C, concerning Vision and Eye Care Benefits;

(B) plan does not include:

(i) disability income protection coverage; [the Texas Health Insurance Pool as described in Insurance Code Chapter 1506;]

(ii) workers' compensation insurance coverage;

(iii) hospital confinement indemnity coverage or other fixed indemnity;

(iv) specified disease coverage;

(v) supplemental benefit coverage under §3.3080 of this title (relating to Supplemental Coverage) and as described in Insurance Code Chapter 1203, concerning Coordination of Benefits Provisions;

(vi) accident-only coverage;

(vii) specified accident coverage;

(viii) school accident-type coverages that cover students for accidents only, including athletic injuries, either on a "24-hour basis" or on a "to and from school" basis;

(ix) benefits provided in long-term care insurance contracts for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(x) Medicare supplement policies;

(xi) a state plan under Medicaid;

(xii) a governmental plan which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan; or

(xiii) an individual accident and health insurance policy that is designed to fully integrate with other policies through a variable deductible.

(16) Policyholder--The primary insured named in an individual health insurance policy or evidence of coverage.

(17) Primary plan--A plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if:

(A) the plan either has no order of benefit determination rules, or its rules differ from those permitted by this subchapter; or

(B) all plans that cover the person use the order of benefit determination rules required by this subchapter, and under those rules, the plan determines its benefits first.

(18) Secondary plan--A plan that is not a primary plan.

§3.3510. *Model COB Contract Provisions.*

(a) Subsection (d) of this section contains an optional model COB provision form for use in contracts. The use of this model form is subject to the provisions of §3.3509 of this title (relating to Miscel-

laneous Provisions) and the provisions of §3.3507 of this title (relating to Rules for COB and Order of Benefits).

(b) Subsection (e) of this section contains an optional model plain language description of the COB process that explains to the covered person how health plans will implement COB. It is not intended to replace or change the provisions that are set forth in the contract. Its purpose is to explain the process by which two or more plans will pay for or provide benefits.

(c) A COB provision or a plain language description does not have to use the words and format shown in the model forms. Changes may be made to fit the language and style of the rest of the contract or to reflect the difference among plans that provide services, pay benefits for expenses incurred, and indemnify. No substantive changes are allowed.

(d) The model COB contract provisions are as follows:

Figure: 28 TAC §3.3510(d)

[Figure: 28 TAC §3.3510(d)]

(e) The model COB notice publication is as follows:

Figure: 28 TAC §3.3510(e)

[Figure: 28 TAC §3.3510(e)]

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

Filed with the Office of the Secretary of State on January 29, 2024.

TRD-202400322

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 10, 2024

For further information, please call: (512) 676-6555



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 5. TEXAS BOARD OF PARDONS AND PAROLES

#### CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

##### 37 TAC §§146.4, 146.5, 146.7, 146.9, 146.10

The Texas Board of Pardons and Paroles proposed amendments to 37 TAC Chapter 146, §§146.4, 146.5, 146.7, 146.9, and 146.10 concerning revocation of parole or mandatory supervision. The amendments are proposed for clarity and to also provide edits for uniformity and consistency through the rules.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the duties concerning continuation, modification, and revocation of parole or mandatory supervision. There will be no effect on small businesses, micro-busi-

nesses or rural areas. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov). Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are adopted under Texas Government Code Sections 508.036(b), 508.0441(a)(5), 508.045(c), 508.281, 508.2811, and 508.283. Section 508.036(b) requires the board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441(a)(5) vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045(c) provides parole panels with the authority to conduct parole revocation and mandatory supervision revocation hearings; and to grant, deny, revoke parole or mandatory supervision. Sections 508.281 and 508.2811 relate to hearings to determine violations of the releasee's parole or mandatory supervision. Sections 508.282 and 508.283 concern deadlines and sanctions for parole revocation and mandatory supervision revocation hearings.

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

#### §146.4. Procedure after Waiver of Preliminary Hearing.

(a) Following the waiver of the right to a preliminary hearing, the parole panel or a designee of the Board may proceed to a revocation hearing after a finding of probable cause or reasonable belief that the releasee violated a condition of parole or mandatory supervision.

(b) The parole panel or designee of the Board may accept a waiver of the preliminary hearing provided that a waiver of the preliminary hearing includes the following:

- (1) information that the releasee was served with the following:
  - (A) notice of the right to a preliminary hearing and that its purpose is to determine whether there is probable cause or reasonable belief to believe the releasee has committed a parole violation;
  - (B) written notice of the allegations of parole violation against the releasee;
  - (C) notice of the right to full disclosure of the evidence;
  - (D) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the Hearing Officer specifically finds good cause for not allowing confrontation of the witness;

(F) notice that the case will be heard by a parole panel or designee of the Board;

(G) notice that the releasee has the opportunity to waive in writing the right to either or both the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the Board will in all probability revoke; and

(H) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney; and

(2) information which supports the evidence of the alleged rule violations, which may include but are not limited to the following:

- (A) [a] complaint and information or [a] grand jury indictment;
- (B) [a] judgment and sentence of conviction;
- (C) reports of violation;
- (D) witness affidavits; or
- (E) other evidence, e.g., if the releasee was not indicted by a grand jury or convicted.

#### §146.5. Procedure after Waiver of Revocation Hearing.

(a) Following a review of the waiver of the right to a revocation hearing and receipt of supporting documentation of evidence of the alleged rule violations as described in §146.4 of this title (relating to Procedure after Waiver of Preliminary Hearing), the parole panel may make final disposition of the case by taking one of the following actions:

- (1) continue the parole or mandatory supervision, in any manner warranted by the evidence;
- (2) revoke the parole or mandatory supervision in any manner warranted by the evidence, provided that the parole panel finds ~~that~~ a preponderance of evidence exists that a condition of parole or mandatory supervision was violated; or
- (3) refer the case for further action.

(b) If final Board disposition is an order to revoke the parole or mandatory supervision, the releasee or attorney shall be notified in writing of the parole panel's decision ~~[of the parole panel]~~.

#### §146.7. Preliminary Hearing.

(a) The parole panel or designee of the Board shall conduct the preliminary hearing. The purpose of the preliminary hearing is to determine whether there is probable cause or a reasonable belief that the releasee violated a condition of parole or mandatory supervision.

(b) The preliminary hearing shall be held at or near the location of the alleged violations or arrest, unless the releasee is:

- (1) ~~[the releasee is]~~ detained in federal custody;
- (2) ~~[the releasee is being]~~ held in a hospital or other facility for diagnosis or treatment of a physical or mental condition; or
- (3) ~~[the releasee is]~~ arrested or detained on the authority of a warrant in a state other than the state of release.

(c) If the decision of the parole panel or designee of the Board is that there is probable cause or reasonable belief to proceed to a revocation hearing, upon the request of the parole panel, designee of the Board or the parole officer, the Board's scheduling staff may schedule a revocation hearing:

- (1) at the conclusion of the hearing, or
- (2) after a pending charge is adjudicated.

(d) If the parole panel or the designee of the Board finds that there is no probable cause or reasonable belief to proceed to a revocation hearing or does not schedule a revocation hearing, the parole panel or designee of the Board shall collect, prepare and forward to a parole panel, or to the TDCJ PD Interstate Compact for Probation and Parole Supervision, if the hearing was held pursuant to the Interstate Commission for Adult Offender Supervision rules, the following information:

- (1) all documents and exhibits offered or admitted into evidence at the preliminary hearing;
- (2) a summary report of the evidence relied upon to formulate the Hearing Officer's findings; and
- (3) the recording of the hearing.

(e) Following a review of the supporting evidence of rule violations as described in subsection (d) of this section, the parole panel may dispose of the case by taking one of the following actions:

- (1) continue the parole or mandatory supervision in any manner warranted by the evidence;
- (2) proceed to a revocation hearing; or
- (3) refer the case for further action.

(f) No preliminary hearing is required if the releasee:

- (1) waives the preliminary hearing;
- (2) has been charged only with an administrative violation of a condition of parole or mandatory supervision; or
- (3) has been adjudicated guilty of or has pleaded guilty or nolo contendere to an offense committed after release, other than an offense punishable by fine only involving the operation of a motor vehicle, regardless of whether the court has deferred disposition of the case, imposed a sentence in the case, or placed the releasee on community supervision.

*§146.9. Revocation Hearing.*

(a) The parole panel or designee of the Board shall conduct the revocation hearing. The purpose of the revocation hearing is to consider the evidence offered pursuant to an allegation of a violation of a condition of parole or mandatory supervision. The parole panel or designee of the Board must determine whether it is shown by a preponderance of the credible evidence that the releasee violated a condition of parole or mandatory supervision.

(b) The revocation hearing shall not proceed to the mitigation phase unless it is determined by the parole panel or designee of the Board by a preponderance of the credible evidence that the releasee did violate a condition of parole or mandatory supervision.

(c) At the close of the hearing or within a reasonable time thereafter, the parole panel or designee of the Board shall collect, prepare and forward to the parole panel:

- (1) all documents;
- (2) a summary report of the hearing separately setting out findings of fact relative to the alleged violation of a condition of parole or mandatory supervision, based on a preponderance of the credible evidence, which includes statements of the evidence relied upon in reaching said finding; and
- (3) the hearing recording [of the hearing].

*§146.10. Final Board Disposition.*

(a) [~~After reviewing the report of the hearing, the~~] The parole panel may make final disposition of the case by taking one of the following actions:

- (1) continue the parole or mandatory supervision, in any manner warranted by the evidence;
- (2) recommend to the Governor that the conditional pardon be continued, revoked, or modified; or
- (3) revoke the parole or mandatory supervision, provided that all revocation decisions are preceded by a mitigation hearing; or
- (4) refer the case to the Hearing Officer, with or without reopening the hearing, for further development of issues as specified by the parole panel.

(b) If final Board disposition is an order to revoke the parole or mandatory supervision, the releasee or attorney shall be notified in writing and provided with a copy of the report of the Hearing Officer and notice of the right to submit a motion to reopen the hearing.

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

Filed with the Office of the Secretary of State on January 24, 2024.

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Bettie Wells  
General Counsel  
Texas Board of Pardons and Paroles  
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For further information, please call: (512) 406-5478

