

# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER J. MEDICAID THIRD PARTY RECOVERY

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments in Texas Administrative Code (TAC), Title 1, Part 15, Chapter 354, Subchapter J, to §354.2301, concerning Basis and Purpose; §354.2302, concerning Definitions; §354.2311, concerning Applicant and Recipient Assignment of Rights; §354.2313, concerning Duty of Applicant or Recipient to Inform and Cooperate; §354.2315, concerning Duty of Attorney or Representative of a Recipient; §354.2321, concerning Provider Billing and Recovery from Third Party Resources; §354.2322, concerning Provider Billing and Recovery from Other Liable Third Parties; §354.2331, concerning Requests for Information; §354.2332, concerning Distribution of Recoveries; §354.2333, concerning Waiver Authority of the Executive Commissioner; §354.2334, concerning Notices and Payments; §354.2341, concerning Third Party Health Insurer Payment and Information Requirements; §354.2343, concerning Administrative Penalties for Failure to Provide Information; §354.2344, concerning Notice and Appeal of Administrative Penalty; §354.2354, concerning Billing Medicare Intermediaries; §354.2355, concerning Long Term Care Providers; and §354.2356, concerning Provider Requirements to Bill Third Party Health Coverage.

The amendments to §§354.2301, 354.2302, 354.2311, 354.2313, 354.2315, 354.2321, 354.2322, 354.2331 - 354.2334, 354.2341, 354.2343, 354.2344 and 354.2354 - 354.2356 are adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6696). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The federal Consolidated Appropriations Act of 2022 (H.R. 2471) amended §1902(a)(25)(I) of the Social Security Act to require a state plan for medical assistance to make certain assurances to the Secretary of Health and Human Services that state law imposes certain requirements on responsible third party health insurers.

Senate Bill (SB) 1342, 88th Legislature, Regular Session, 2023, implemented H.R. 2471 by amending Texas Human Resources Code §32.0424. SB 1342 also repealed Texas Human Resources Code §32.042. Section 32.0424 requires

a third party health insurer to: (i) provide certain insurance coverage information, upon timely request, to HHSC or HHSC's designee; (ii) with some exceptions, accept authorization from HHSC or HHSC's designee that an item or service is covered by Medicaid as if that authorization is a prior authorization made by the third party health insurer; and (iii) respond within 60 days to an inquiry from HHSC or HHSC's designee regarding a claim for payment for health care submitted to the third party health insurer. Further, Texas Human Resources Code §32.0424 defines "third party health insurer" to mean a health insurer or other person or arrangement that is legally responsible by state or federal law or private agreement to pay some or all claims for health care items or services provided to an individual.

One purpose of the amendments is to implement the recent changes to the Texas Human Resources Code as it applies to Medicaid Third Party Recovery. Additionally, the amendments implement other changes made to §1902(a)(25)(I) of the Social Security Act prior to H.R. 2471, such as obligating the state to require health insurers to accept the State's right of recovery and assignment to the State of any right to payment for an item or service for which payment has been made under Medicaid and to agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim or the type or format of the claim form. The amendments also add and update definitions; clarify the sections of the amendments that would apply to managed care organizations; add HHSC's right, based on the United States Supreme Court decision in *Gallardo v. Marsteller*, 142 S. Ct. 1751 (2022), to seek reimbursement from settlement amounts representing past or future payments for medical care; and update certain outdated terms and phrases throughout TAC Chapter 354, Subchapter J.

#### COMMENTS

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

During this period, the Health and Human Services Office of Inspector General (OIG) received one comment regarding the proposed rules from Kyle Mauro, HillCo Partners. A summary of the comment relating to the amended rules and OIG's response follows.

Comment: One general question was received inquiring if the rule amendments will require a State Plan Amendment (SPA).

Response: No changes are made to the rules in response to this comment OIG believes a SPA is not required for the rule amendments because the current Texas Medicaid State Plan, Third Party Liability section, provides that the State has laws in effect that require third parties to comply with the provisions of section 1902(a)(25)(I) of the Social Security Act.

#### DIVISION 1. GENERAL PROVISIONS

##### 1 TAC §354.2301, §354.2302

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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

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Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
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For further information, please call: (512) 221-7320



**DIVISION 2. APPLICANT AND RECIPIENT REQUIREMENTS**

**1 TAC §§354.2311, 354.2313, 354.2315**

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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

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Texas Health and Human Services Commission  
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For further information, please call: (512) 221-7320



**DIVISION 3. PROVIDER REQUIREMENTS**

**1 TAC §§354.2321, §354.2322**

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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## DIVISION 4. DUTIES OF THE COMMISSION

### 1 TAC §§354.2331 - 354.2334

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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

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## DIVISION 5. HEALTH INSURER REQUIREMENTS

### 1 TAC §§354.2341, 354.2343, 354.2344

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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

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## DIVISION 6. BILLING AND PAYMENT GUIDELINES

1 TAC §§354.2354 - 354.2356

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Human Resources Code §32.033(h), which provides the executive commissioner with the authority to adopt rules for the enforcement of the commission's right of recovery; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Section 531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by Section 531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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

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Karen Ray

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Texas Health and Human Services Commission

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For further information, please call: (512) 221-7320



## CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.102, concerning General Principles of Allowable and Unallowable Costs; §355.458, concerning Supplemental Payments to Non-State Government-Owned Facili-

ties; §355.722, concerning Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers; §355.8210, concerning Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care; §355.8422, concerning Reimbursement for Specialized Rehabilitation Services for Infants and Toddlers with Developmental Disabilities; and §355.9040, concerning Reimbursement Methodology for Comprehensive Rehabilitation Services Program.

Sections 355.306, 355.314, 355.743, 355.746, 355.781, and 355.8421 were also published as proposed in this rulemaking. These sections were withdrawn in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6881) due to conflicts with other agency rulemakings.

The amendments to §355.102, §355.458, §355.722, §355.8210, §355.8422, and §355.9040 are adopted without changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6065). The rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

In 2020, the Rate Analysis Department of HHSC underwent a rebranding to change the department's name to "Provider Finance Department." The amendments to §355.102, §355.458, §355.722, §355.8210, §355.8422, and §355.9040 are adopted to reflect the current department name.

#### COMMENTS

The 31-day comment period ended on November 20, 2023. During this period, HHSC did not receive any comments regarding the proposed rules.

### SUBCHAPTER A. COST DETERMINATION PROCESS

#### 1 TAC §355.102

##### 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, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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

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Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
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For further information, please call: (512) 730-7455

### SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

#### 1 TAC §355.458

##### 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, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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

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For further information, please call: (512) 730-7455

### SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

#### 1 TAC §355.722

##### 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, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 730-7455



## SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

#### 1 TAC §355.8210

##### 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, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 730-7455



## DIVISION 22. REIMBURSEMENT METHODOLOGY FOR THE EARLY CHILDHOOD INTERVENTION PROGRAM

#### 1 TAC §355.8422

##### 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, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 730-7455



## SUBCHAPTER M. MISCELLANEOUS PROGRAMS

### DIVISION 3. COMPREHENSIVE REHABILITATION SERVICES FOR INDIVIDUALS WITH A TRAUMATIC BRAIN INJURY OR TRAUMATIC SPINAL CORD INJURY

#### 1 TAC §355.9040

##### 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, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 730-7455



## SUBCHAPTER I. REPORTING

### 1 TAC §355.7201

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.7201, concerning Novel Coronavirus (COVID-19) Fund Reporting. The amendment to §355.7201 is adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6813). This rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

The amendment is necessary to comply with the 2024-25 General Appropriations Act, House Bill (H.B.) 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), which requires that HHSC develop a report detailing the total value and uses of COVID-19-related Federal Funds, including Provider Relief Funds, provided directly to nursing facilities and hospitals contracting with HHSC since the beginning of the public health emergency.

#### COMMENTS

The 31-day comment period ended December 27, 2023.

During this period, HHSC received a comment regarding the proposed rule from one commenter - the Texas Organization of Rural and Community Hospitals. A summary of the comment relating to the rule and HHSC's response follows.

Comment: One commenter, who is commenting on behalf of 157 rural Texas hospitals, expressed their support for the amendment. The commenter expressed their appreciation for the move from monthly to semi-annual reporting and the update that allows an organization or authorized person to report on behalf of a hospital.

Response: HHSC appreciates the comment. No changes are made in response to this comment.

#### 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 Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; 2024-25 General Appropriations Act, H.B. 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), which requires HHSC to establish procedures for hospitals and nursing facilities to report required information. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

Filed with the Office of the Secretary of State on February 2, 2024.

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Karen Ray

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Texas Health and Human Services Commission

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER AA. COMMISSIONER'S

##### RULES ON SCHOOL FINANCE

The Texas Education Agency adopts the repeal of §61.1008 and new §61.1008, concerning the school safety allotment. The repeal is adopted without changes to the proposed text as published in the November 3, 2023, issue of the *Texas Register* (48 TexReg 6448) and will not be republished. The new rule is adopted with changes to the proposed text as published in the November 3, 2023, issue of the *Texas Register* (48 TexReg 6448) and will be republished. The adopted repeal and new rule reflect changes to the school safety allotment made by House Bill (HB) 1525, 87th Texas Legislature, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, transferred many Foundation School Program formulas from Texas Education Code (TEC), Chapters 41 and 42, to Chapter 48. However, TEC, §42.168, which authorized the school safety allotment, remained in Chapter 42. Section

61.1008 was adopted to allow the school safety allotment authorized under TEC, §42.168, to be treated as an allotment under TEC, Chapter 48, Subchapter C. HB 1525, 87th Texas Legislature, Regular Session, 2021, transferred and redesignated TEC, §42.168, to §48.115, making the existing rule unnecessary.

HB 3, 88th Texas Legislature, Regular Session, 2023, amended TEC, §48.115(a)(2), to create a per-campus safety allotment in addition to the per-student funding districts and open-enrollment charter schools are currently provided by appropriation for each student in average daily attendance.

Adopted new §61.1008 implements the school safety allotment authorized under TEC, §48.115.

Adopted new subsection (a) clarifies definitions applicable to the school safety allotment. Based on public comment, "prekindergarten instruction" was added at adoption to subsection (a)(1)(C) to clarify inclusion of prekindergarten campuses.

Adopted new subsection (b) clarifies that eligibility for funding under TEC, §48.115(a)(2), is open to both school districts and open-enrollment charter schools based on qualifying campuses and that juvenile justice alternative education program (JJAEP) campuses or those campuses offering exclusively virtual instruction are not eligible for funding under §61.1008. Based on public comment, language was added at adoption to subsection (b)(2) to clarify that the definitions in subsection (a) apply to school district campuses and open-enrollment charter school campuses.

Adopted new subsection (c) clarifies the timeline for calculating the school safety allotment entitlement under TEC, §48.115(a)(2), using data from Texas Student Data System Public Education Information Management System (TSDS PEIMS) summer submission.

Adopted new subsection (d) clarifies that school districts and open-enrollment charter schools will receive estimated funding for eligible campuses at the start of the school year based on the prior year's data from TSDS PEIMS. The final funding amount will be determined using current-year data from TSDS PEIMS. Any discrepancies between the estimated and final funding will be resolved as part of the Foundation School Program settle-up process as outlined in TEC, §48.272.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began November 3, 2023, and ended December 4, 2023. Following is a summary of public comments received and agency responses.

**Comment:** A Texas administrator commented that, in addition to funds, another challenge to the proposed rule is that finding appropriate personnel can be costly, especially if forced to use private companies to meet requirements.

**Response:** This comment is outside the scope of the rule proposal, which implements the school safety allotment authorized under TEC, §48.115.

**Comment:** Texas State Teachers Association (TSTA) commented that the proposed rules could potentially exclude prekindergarten-only campuses and recommended adding prekindergarten guidelines to subsection (a)(1)(C) to ensure prekindergarten campuses are included as eligible for the school safety allotment.

**Response:** The agency agrees and has modified §61.1008(a)(1)(C) at adoption to include clarifying language that includes prekindergarten instruction.

**Comment:** TSTA commented that the proposed rules also apply a unique set of restrictions on school district campuses that do not apply to campuses of open-enrollment charter schools and recommends language that would require subsection (a)(1) to apply equally to charter schools.

**Response:** The agency agrees and has modified §61.1008(b)(2) at adoption to include language to clarify that the definitions in subsection (a) of this section apply to school district campuses as well as open-enrollment charter school campuses.

### **19 TAC §61.1008**

**STATUTORY AUTHORITY.** The repeal is adopted under Texas Education Code (TEC), §48.004, which requires the commissioner of education to adopt rules and take action, as necessary, to implement and administer the Foundation School Program; and TEC, §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023, which establishes provisions for the school safety allotment.

**CROSS REFERENCE TO STATUTE.** The repeal implements Texas Education Code, §48.004 and §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023.

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

Filed with the Office of the Secretary of State on January 31, 2024.

TRD-202400351

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: November 3, 2023

For further information, please call: (512) 475-1497



### **19 TAC §61.1008**

**STATUTORY AUTHORITY.** The new section is adopted under Texas Education Code (TEC), §48.004, which requires the commissioner of education to adopt rules and take action, as necessary, to implement and administer the Foundation School Program; and TEC, §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023, which establishes provisions for the school safety allotment.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §48.004 and §48.115, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and HB 3, 88th Texas Legislature, Regular Session, 2023.

*§61.1008. School Safety Allotment.*

(a) Definitions. The following definitions apply to the school safety allotment (SSA) in accordance with Texas Education Code (TEC), §48.115.

- (1) School district campus--a campus that:



(A) has its own unique campus ID number registered with the Texas Education Agency (TEA), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;

(B) receives federal, state, or local funds or any combination of the three as its primary support;

(C) provides instruction in the Texas Essential Knowledge and Skills, including prekindergarten instruction;

(D) has one or more grade groups in the range from early education through Grade 12; and

(E) is not a program for students enrolled in another public school, does not provide only virtual instruction, and does not use only facilities not subject to the district's control.

(2) Instructional facility--a term that has the meaning defined by §61.1031(a)(3) of this title (relating to School Safety Requirements).

(b) Eligibility.

(1) Both school districts and open-enrollment charter schools are eligible for the SSA.

(2) Funding under TEC, §48.115(a)(2), will be calculated for campuses that qualify as a school district campus, as defined in subsection (a) of this section and which includes an open-enrollment charter school campus and an instructional facility, as defined in subsection (a) of this section, used for teaching the curriculum required by TEC, Chapter 28.

(3) Juvenile justice alternative education program campuses or campuses that provide only virtual instruction are not eligible for funding under TEC, §48.115(a)(2).

(c) Entitlement. In the fall of each school year, as part of the settle-up process for the preceding school year, campus data reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) for eligible campuses with confirmed enrollment and average daily attendance from the TSDS PEIMS summer submission will be used to calculate the allotment provided by TEC, §48.115(a)(2).

(d) Estimates. School districts and open-enrollment charter schools will be provided with estimated funding during a school year for eligible campuses based on the prior year's summer TSDS PEIMS data using the same methodology described in subsection (c) of this section to calculate the entitlement. The final entitlement will be based on data from the current school year as provided for in subsection (c) of this section. Any difference from the estimated entitlement will be addressed as part of the Foundation School Program settle-up process according to the provisions of TEC, §48.272.

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

Filed with the Office of the Secretary of State on January 31, 2024.

TRD-202400353

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497

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CHAPTER 101. ASSESSMENT  
SUBCHAPTER CC. COMMISSIONER'S  
RULES CONCERNING IMPLEMENTATION OF  
THE ACADEMIC CONTENT AREAS TESTING  
PROGRAM

DIVISION 1. IMPLEMENTATION OF  
ASSESSMENT INSTRUMENTS

**19 TAC §101.3011**

The Texas Education Agency (TEA) adopts an amendment to §101.3011, concerning the implementation and administration of academic content area assessment instruments. The amendment is adopted with changes to the proposed text as published in the October 6, 2023 issue of the *Texas Register* (48 TexReg 5808) and will be republished. The adopted amendment clarifies the policies relating to the administration mode of certain required assessments.

REASONED JUSTIFICATION: Section 101.3011 addresses federal and state requirements relating to the implementation and administration of academic content area assessments. The adopted amendment to 19 TAC §101.3011 clarifies state policies relating to the administration mode of certain required assessments.

Texas Education Code (TEC), §39.0234, requires that TEA administer the State of Texas Assessments of Academic Readiness (STARR®) online beginning with the 2022-2023 school year. House Bill (HB) 1225, passed by the 88th Texas Legislature, Regular Session, 2023, now allows two exceptions to online testing for STARR®: (1) a student who qualifies for a special paper administration of an online assessment, and (2) any student whose parent, guardian, or teacher in the applicable subject area requests a paper version of the assessment. The number of students who are provided a paper-by-request administration of STARR® may not exceed 3% of the number of eligible students enrolled in the district who are administered each assessment. The number of students who receive a paper-by-request administration is separate and distinct from the students who are eligible for a special paper administration of STARR®.

Based on public comment, the first sentence of subsection (a)(4)(B) was amended at adoption to clarify that public school districts and open-enrollment charter schools may implement the new optional paper-by-request administration. The amendment to the rule language was made to align the adoption with the statutory language of TEC, §39.02342(a), which states, "a school district may administer an assessment required under Section 39.023(a), (c), or (l) in paper format to any student whose parent, guardian, or teacher in the applicable subject area requests the assessment instrument be administered in paper format." The second and third sentences of subsection (a)(4)(B) were amended at adoption to clarify that subsection (a)(4)(B) applies only to paper-by-request administrations.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 6, 2023, and ended November 6, 2023. Following is a summary of public comments received and agency responses.

Comment: Nineteen individuals and the company, lead4ward, requested that the language of the rule be amended to clarify that paper-by-request administration is optional for public school districts and open-enrollment charter schools.

Response: The agency agrees that clarification is needed and has amended the language of the adopted rule to align with TEC, §39.0234. Subsection (a)(4)(B) was amended at adoption to clarify that school districts and open-enrollment charter schools may implement the new optional paper-by-request administration.

Comment: Three individuals commented that paper assessments for students in special circumstances should be allowed, but all other students should be required to test online.

Response: The agency disagrees. TEC, §39.02342, as added by HB 1225, 88th Texas Legislature, Regular Session, 2023, permits school districts and open-enrollment charter schools to administer assessments required under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, in a paper format to any student whose parent, guardian, or teacher in the applicable subject area requests a paper format.

Comment: One Texas administrator requested clarification on the enrollment value used to determine the 3% cap. The commenter also asked whether students served by Section 504 committees counted toward the 3% calculation.

Response: The agency provides the following clarification. As described in §101.3011(a)(4)(B), the number of students who are administered a paper-by-request version of an assessment may not exceed 3% of the eligible students enrolled in the district who are administered that specific assessment. More information as well as example calculations are provided in the Paper by Request Administration section of the *District and Campus Coordinator Resources*. All students in the district, including students served by Section 504 committees, are included in the total number of eligible students enrolled in the district who are administered each assessment. However, the number of students who receive a paper-by-request administration as described in §101.3011(a)(4)(B) is separate and distinct from the number of students who are eligible for a special paper administration of an assessment described in §101.3011(a)(4)(A). Students, including students served by Section 504 committees, who are eligible for a special paper administration are not counted in the maximum 3% of students who are administered a paper-by-request administration.

Comment: One Texas administrator commented requesting the agency align paper administration policies for STARR® interim assessments with the policies for STARR® assessments.

Response: This comment is outside the scope of the rule proposal, which addresses the administration mode of required assessments not optional assessments.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §39.023(a), (b), (c), and (l), which specify the required assessments for students in Grades 3-8, students enrolled in high school courses, and emergent bilingual students whose primary language is Spanish, respectively; TEC, §39.0234, which requires that assessment instruments under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, be administered online, unless otherwise provided by commissioner of education rule; TEC, §39.02342(a), as added by House Bill (HB) 1225,

88th Texas Legislature, Regular Session, 2023, which permits school districts to administer assessments required under TEC, §39.023(a), (c), and (l); Grades 3-8; end-of-course; and Spanish assessments, respectively, in a paper format to any student whose parent, guardian, or teacher in the applicable subject area requests a paper format; and TEC, §39.02342(c), as added by HB 1225, 88th Texas Legislature, Regular Session, 2023, which limits the number of students who take a paper-by-request version of the assessments during each administration to 3% of the students enrolled in the district, excluding students whose admission, review, and dismissal committee determines that the student requires an accommodation that must be delivered in a paper format.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§39.023(a), (b), (c), and (l); 39.0234; and 39.02342(a) and (c), as added by House Bill 1225, 88th Texas Legislature, Regular Session, 2023.

*§101.3011. Implementation and Administration of Academic Content Area Assessment Instruments.*

(a) The Texas Education Agency (TEA) shall administer each assessment instrument under Texas Education Code (TEC), §39.023(a), (b), (c), and (l), in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).

(1) For purposes of federal accountability as allowed by subsection (d) of this section, a Grade 3-8 student shall not be administered a grade-level assessment if the student:

(A) is enrolled in a course or subject intended for students above the student's enrolled grade level and will be administered a grade-level assessment instrument developed under TEC, §39.023(a), that aligns with the curriculum for that course or subject within the same content area; or

(B) is enrolled in a course for high school credit in a subject intended for students above the student's enrolled grade level and will be administered an end-of-course assessment instrument developed under TEC, §39.023(c), that aligns with the curriculum for that course or subject within the same content area.

(2) For purposes of federal accountability as allowed by subsection (d) of this section, a Grade 3-8 student who is accelerated in mathematics, reading/language arts, or science and on schedule to complete the high school end-of-course assessments in that same content area prior to high school shall be assessed at least once in high school with the ACT® or the SAT®.

(3) A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is on schedule to complete instruction in the entire curriculum for that subject during the semester the assessment is administered.

(4) A student shall be administered the assessments under TEC, §39.023(a), (c), and (l), online as required by TEC, §39.0234, except for a student:

(A) who requires specific accommodations that cannot be provided online as specified in the test administration materials; or

(B) who is enrolled in a school district or open-enrollment charter school that opts to offer paper administrations of assessments to students whose parent, guardian, or teacher in the applicable subject area requests a paper administration of an assessment. Requests for such paper administrations must be submitted to the school district or open-enrollment charter school by the dates indicated in TEC, §39.02342(b). Requests for these paper administrations from a district

or charter school may not exceed 3% of eligible students enrolled in the district or charter school who are administered each assessment.

(b) The TEA shall administer alternative assessment instruments under TEC, §39.023(b), that correspond to:

(1) the assessment instruments required under TEC, §39.023(a); and

(2) the following assessment instruments required under TEC, §39.023(c): English I, English II, Algebra I, biology, and U.S. history.

(c) Test administration procedures shall be established by the TEA in the applicable test administration materials. A school district, an open-enrollment charter school, or a private school administering the tests required by TEC, Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.

(d) In accordance with TEC, §39.023(a)(5), the TEA shall administer to students assessments in any other subject and grade required by federal law.

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

Filed with the Office of the Secretary of State on February 1, 2024.

TRD-202400396

Cristina de La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



## DIVISION 4. PERFORMANCE STANDARDS

### 19 TAC §101.3041

The Texas Education Agency (TEA) adopts an amendment to §101.3041, concerning implementation of the academic content areas testing program. The amendment is adopted without changes to the proposed text as published in the September 15, 2023 issue of the *Texas Register* (48 TexReg 5133) and will not be republished. The adopted amendment updates the performance standards for the State of Texas Assessments of Academic Readiness (STAAR®) and STAAR® Alternate 2 based on the redesigned testing programs.

**REASONED JUSTIFICATION:** Section 101.3041 establishes the level of performance considered to be satisfactory on state-developed assessments, as required by Texas Education Code (TEC), Chapter 39, Subchapter B, for all assessments.

TEC, §39.023(a), as amended by House Bill (HB) 3906, 86th Texas Legislature, 2019, eliminated the stand-alone writing assessments for Grades 4 and 7. The redesigned assessments combine reading and evidence-based writing into one reading language arts test to better support the interconnected way these subjects are taught.

TEC, §39.023(c-8), as amended by HB 3906 and HB 3261, 87th Texas Legislature, Regular Session, 2021, specifies that not more than 75% of the points on a STAAR® assessment may be from multiple-choice questions. Therefore, the redesigned

STAAR® includes new, non-multiple-choice questions like the questions teachers ask in class to give students more ways to show their understanding. There are also more cross-curricular reading passages that reference topics students have learned about in other classes.

With changes made to the statewide assessment program introduced by HB 3906 and amended by HB 3261, TEA wants to ensure that the performance standards continue to accurately reflect what students know and can do through a standard-setting process. Educators from across the state convened to provide their expert opinions and verify that the cut points and related scale scores are appropriate for the redesigned STAAR® and STAAR® Alternate 2 assessments. Based on these activities, the commissioner of education has approved updated performance standards for all STAAR® assessments and for STAAR® Alternate 2 reading language arts assessments.

The performance standards adopted in §101.3041 are modified to reflect the newly approved standards as follows.

The performance standards for all STAAR® Grades 3-8 assessments are updated in Figure: 19 TAC §101.3041(b)(1). References to Grades 4 and 7 writing assessments have been removed.

The performance standards for STAAR® Alternate 2 Grades 3-8 reading language arts assessments are updated in Figure: 19 TAC §101.3041(b)(2). References to Grades 4 and 7 writing assessments have been removed.

The performance standards for all five STAAR® end-of-course (EOC) assessments are updated in Figure: 19 TAC §101.3041(c)(1). References to Algebra II and English III have been removed.

The performance standards for STAAR® Alternate 2 English I and English II EOC assessments are updated in Figure: 19 TAC §101.3041(c)(2).

Finally, the adopted amendment made technical edits related to assessment program names to ensure consistency across administrative rules.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began September 15, 2023, and ended October 16, 2023. Following is a summary of public comments received and agency responses.

**Comment:** One Texas school district administrator expressed support for the proposed amendment, noting that it would benefit students.

**Response:** The agency agrees. Establishing performance standards on assessments is critical for ensuring all students have access to high-quality, rigorous, academic instruction.

**Comment:** Seven Texas school district administrators, twenty-five teachers, and ninety-five individuals commented that they do not support the commissioner's recommendations to update the performance standards for STAAR®. The commenters stated the changes to the performance levels do not accurately describe students' knowledge.

**Response:** The agency disagrees. Performance standards for STAAR® are based on recommendations from standard-setting committees, which were composed of Kindergarten-Grade 12 educators. Each committee member is an expert in the assessed curriculum, the Texas Essential Knowledge and Skills (TEKS), for his or her grade and subject level or course (e.g.,

Grade 5 reading language arts, English II). STAAR® performance standards relate test performance to the expectations defined in the state curriculum standards, the TEKS, and identify what students know and can through the performance level descriptors. The updated performance level descriptors are available on the STAAR® Performance Standards page of the TEA website at <https://tea.texas.gov/student-assessment/testing/student-assessment-results/taar-performance-standards>.

Comment: One individual commented that the changes to the performance standards for STAAR® Alternate 2 are not helpful to students with special needs or disabilities.

Response: The agency disagrees. Performance standards for STAAR® Alternate 2 are based on recommendations from standard-setting committees, which were composed of Kindergarten-Grade 12 educators and special education experts. Establishing performance standards on assessments is critical for ensuring all students have access to high-quality, rigorous, academic instruction.

Comment: The company lead4ward suggested the proposed performance standards for 2012-2015 Satisfactory Performance for STAAR® end-of-course assessments not be revised and the 2016-2022 Approaches Grade Level Performance column be eliminated.

Response: The agency disagrees. The performance standards in those two columns were adjusted, along with the other performance standards, to ensure equivalent rigor in the level of performance required for students who took the assessments during those time periods.

Comment: One Texas school district administrator questioned the timing of the proposed rule and the effective date.

Response: The agency provides the following clarification. The performance standards adopted in this rule were approved earlier this year by the commissioner of education as required by TEC, §39.0241, and the updated performance standards were implemented and reported for the spring 2023 administrations.

Comment: Twelve individuals suggested significant changes to the Texas Assessment Program, including abolishing the statewide testing program.

Response: These comments are outside the scope of the rule proposal, which addresses assessment performance standards.

Comment: The Texas State Teachers Association raised concerns about the decision to change the 2023 A-F academic accountability ratings for Texas public schools.

Response: This comment is outside the scope of the rule proposal, which addresses assessment performance standards.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §39.0241(a), which requires the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments; and TEC, §39.025(a), which requires the commissioner to provide a conversion of the scale scores for each end-of-course assessment to an equivalent score based on a 100-point scale score system.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §39.0241(a) and §39.025(a).

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

Filed with the Office of the Secretary of State on February 1, 2024.

TRD-202400395

Cristina de La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497

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**TITLE 22. EXAMINING BOARDS**

**PART 16. TEXAS BOARD OF  
PHYSICAL THERAPY EXAMINERS**

**CHAPTER 341. LICENSE RENEWAL**

**22 TAC §341.3**

The Texas Board of Physical Therapy Examiners adopts the amendment to §341.3, Qualifying Continuing Competence Activities with changes to the proposed text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6996). The rule will be republished. The amendments are adopted in order to clarify certain activities that qualify for continuing competence units (CCUs).

The amendments broaden the category of residencies and fellowships by allowing completion of a residency or fellowship accredited by an entity other than the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE) and mentorship of a resident or fellow in an approved program to qualify for CCUs, and requires the Board to maintain a list of approved residencies and fellowships. Additionally, the amendments eliminate oPTion as a qualifying activity as the Federation of State Boards of Physical Therapy (FSBPT) has discontinued the self-assessment tool.

The amendment is adopted without changes to the proposed text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6996).

No public comment was received.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

*§341.3. Qualifying Continuing Competence Activities.*

Licensees may select from a variety of activities to fulfill the requirements for continuing competence. These activities include the following:

- (1) Continuing education (CE).

(A) Program content structure must be approved by the board-approved organization, or be offered by a provider accredited by that organization. Programs must meet the following criteria:

(i) Program content must be easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(ii) The content must be identified by instructional level, i.e., basic, intermediate, advanced. Program objectives must be clearly written to identify the knowledge and skills the participants should acquire and be consistent with the stated instructional level.

(iii) The instructional methods related to the objectives must be identified and be consistent with the stated objectives.

(iv) Programs must be presented by a licensed health care provider, or by a person with appropriate credentials and/or specialized training in the field.

(v) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

(vi) The participants must evaluate the program. A summary of these evaluations must be made available to the board-approved organization upon request.

(vii) Records of each licensee who participates in the program must be maintained for four years by the CE sponsor/provider and must be made available to the board-approved organization upon request.

(B) CE programs subject to this subsection include the following:

(i) Live programs.

(I) One contact hour equals 1 continuing competence unit (CCU).

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(ii) Self-study programs - Structured, self-paced programs or courses offered through electronic media (for example, via the internet or on DVD) or on paper (for example, a booklet) completed without direct supervision or attendance in a class.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and instructional format of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(iii) Regular inservice-type programs over a one-year period where individual sessions are granted 2 CCUs or less.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the inservice; the signature of an authorized signer, and the accredited provider or program approval number with the maximum CCUs granted and the CCU value of each session or group of sessions specified and justified.

(III) Additionally, proof of attendance to any or all inservice sessions must be provided so that individual CCUs earned

can be calculated by the program sponsor/provider for submission to the board-approved organization.

(IV) If selected for audit, the licensee must submit the specified documentation.

(iv) Large conferences with concurrent programming.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the licensee's name and license number; title, sponsor/provider, date(s); and location of the conference; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or course approval number.

(III) If selected for audit, the licensee must submit the specified documentation and proof of attendance.

(2) College or university courses.

(A) Courses at regionally accredited US colleges or universities easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(i) The course must be at the appropriate educational level for the PT or the PTA.

(ii) All courses in this paragraph are subject to the following:

(I) One satisfactorily completed credit hour (grade of C or equivalent, or higher) equals 10 CCUs.

(II) Documentation required for consideration is the course syllabus for each course and a transcript indicating successful completion of the course.

(III) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) College or university sponsored CE programs (no grade, no official transcript) must comply with paragraph (1)(A) of this section.

(C) College or university courses that are part of a post-professional physical therapy degree program, or are part of a CAPTE-accredited program bridging from PTA to PT, are automatically approved and are assigned a standard approval number by the board-approved organization. If selected for audit, the licensee must submit a transcript indicating successful completion of the course.

(3) Scholarship.

(A) Publications. Publication(s) pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management written for the professional or lay audience. The author(s) are prohibited from self-promotion of programs, products, and/or services in the publication.

(i) The publication must be published within the 24 months prior to the license expiration date.

(ii) CCU values for types of original publications are as follows:

(I) A newspaper article (excluding editorials and opinion pieces) may be valued up to 3 CCUs.

(II) A regional/national magazine article (excluding editorials and opinion pieces) may be valued up to 10 CCUs.

(III) A case study in a peer reviewed publication, monograph, or book chapter(s) is valued at 20 CCUs.

(IV) A research article in a peer reviewed publication, or an entire book is valued at 30 CCUs.

(iii) Documentation required for consideration is:

(I) For newspaper articles, a copy of the article and the newspaper banner, indicating the publication date;

(II) For magazine articles and publications in peer reviewed journals, a copy of the article and the Table of Contents page of the publication showing the author's name and the name and date of the publication.

(III) For monographs or single book chapters, a copy of the first page of the monograph or chapter, and the Table of Contents page of the publication showing the author's name and the name and date of the publication.

(IV) For an entire book or multiple chapters in a book, the author must submit the following: title page, copyright page, entire table of contents, preface or forward if present, and one book chapter authored by the licensee.

(iv) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) Manuscript review. Reviews of manuscripts for peer-reviewed publications pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management. The Board will maintain and make available a list of peer-reviewed publications that are automatically approved for manuscript review and assigned a standard approval number by the board-approved organization.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One manuscript review is valued at 3 CCUs.

(iii) For each renewal:

(I) PTs may submit no more than 3 manuscript reviews (9 CCUs).

(II) PTAs may submit no more than 2 manuscript reviews (6 CCUs).

(iv) If selected for audit, the licensee must submit a copy of the letter or certificate from the publisher confirming completion of manuscript review.

(v) A peer-reviewed publication not on the list of recognized publications for manuscript review but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) The name of the peer-reviewed journal;

(II) The name of the manuscript; and

(III) A description of the journal's relevance to the physical therapy profession.

(C) Grant proposal submission. Submission of grant proposals by principal investigators or co-principal investigators for research that is pertinent to physical therapy and in the areas of ethics,

professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management.

(i) The grant proposal must be submitted to the funding entity within the 24 months prior to the license expiration date.

(ii) One grant proposal is valued at 10 CCUs.

(iii) Licensees may submit a maximum of 1 grant proposal (10 CCUs).

(iv) Documentation required for consideration is a copy of the grant and letter submitted to the grant-provider.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(D) Grant review for research pertinent to healthcare. The Board will maintain and make available a list of grant-issuing entities that are automatically approved for grant review and assigned a standard approval number by the board-approved organization.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One grant review is valued at 3 CCUs.

(iii) Licensees may submit a maximum of 2 grant reviews (6 CCUs).

(iv) If selected for audit, the licensee must submit a letter or certificate confirming grant review from the grant provider.

(v) A grant-issuing entity not on the list of recognized entities for grant review but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) The name of the grant-issuing entity;

(II) The name of the grant; and

(III) A description of the grant's relevance to the physical therapy profession.

(4) Teaching and Presentation Activities.

(A) First-time development or coordination of course(s) in a CAPTE-accredited PT or PTA program, or a post-professional physical therapy degree program, or a CAPTE accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(B) First-time development or coordination of course(s) in a regionally accredited U.S. college or university program for other health professions.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(C) Presentation or instruction as a guest lecturer in a CAPTE-accredited PT or PTA program, or a post-professional physical therapy degree program, or a CAPTE-accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course presenter or instructor.

(D) Presentation or instruction as a guest lecturer in a regionally accredited U.S. college or university program for other health professions.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(iv) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course presenter or instructor.

(E) First-time development, presentation or co-presentation at state, national or international workshops, seminars, or professional conferences, or at a board-approved continuing education course.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit no more than 10 CCUs for this activity.

(II) PTAs may submit no more than 8 CCUs for this activity.

(iv) Documentation required for consideration includes one of the following: a copy of a brochure for the presentation indicating the licensee as a presenter; or, a copy of the cover from the program and page(s) indicating the licensee as a presenter.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(F) Service as a clinical instructor for full-time, entry-level PT or PTA students enrolled in accredited education. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The instructorship must be completed within the 24 months prior to the license expiration date.

(ii) Valuation of clinical instruction is as follows:

(I) Supervision of full-time PT or PTA students for 5 - 11 weeks is valued at 5 CCUs.

(II) Supervision of full-time PT or PTA students for 12 weeks or longer is valued at 10 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a letter or certificate from the coordinator of clinical education confirming clinical supervision and the number of weeks supervised from the education program.

(5) Advanced Training, Certification, and Recognition.

(A) Specialty Examinations. The Board will maintain and make available a list of recognized specialty examinations. Successful completion of a recognized specialty examination (initial or recertification) is automatically approved and assigned a standard approval number by the board-approved organization.

(i) The specialty examination must be successfully completed within the 24 months prior to the license expiration date.

(ii) Each recognized specialty examination is valued at 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter from the certifying body notifying the licensee of completion of the specialty from the credentialing body, and a copy of the certificate of specialization.

(iv) A specialty examination not on the list of recognized examinations but pertinent to the physical therapy profession may be submitted to the board approved organization for consideration. Documentation required for consideration includes the following:

(I) Identification and description of the sponsoring organization and its authority to grant a specialization to PTs or PTAs;

(II) A complete description of the requirements for specialization;

(III) A copy of the letter notifying the licensee of completion of the specialty from the certifying body, and a copy of the certificate of specialization.

(B) APTA Certification for Advanced Proficiency for the PTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The certification must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of specialty certification is valued at 20 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter notifying the licensee of completion of the advanced proficiency, and a copy of the certificate of proficiency.

(C) Residency or fellowship relevant to physical therapy. The Board will maintain and make available a list of approved residencies and fellowships. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The residency or fellowship must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of the residency or fellowship is valued at up to 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the certificate of graduation indicating completion of the fellowship or residency.

(D) Mentorship of a resident or fellow in an approved residency or fellowship program. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Mentorship of a resident or a fellow for a minimum of 150 hours of 1:1 mentoring is valued at 10 CCUs. The Board will consider partial credit for those mentors who provide mentorship for only a portion of the residency or fellowship.

(ii) Licensees may submit a maximum of 20 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter from the residency or fellowship program confirming participation as a clinical mentor, with the dates and number of mentorship hours served as a clinical mentor.

(6) Professional Membership and Service. Licensees may submit activities in this category for up to one half of their CC requirement (PT - 15 CCUs, PTAs - 10 CCUs) at time of renewal. Licensees must demonstrate membership or participation in service activities for a minimum of one year during the renewal period to receive credit. Credit is not prorated for portions of years.

(A) Membership in the APTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of membership is valued at 1 CCU.

(ii) If selected for audit, the licensee must submit a copy of the current membership card.

(B) Service on a board, committee, or taskforce for the Texas Board of Physical Therapy Examiners, the American Physical

Therapy Association (APTA) (or an APTA component), or the Federation of State Boards of Physical Therapy (FSBPT). This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 9 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter on official organization letterhead or certificate confirming completion of service.

(C) Service as a TPTA Continuing Competence Approval Program reviewer. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 6 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

(D) Service as an item writer for the national PT or PTA exam or an American Board of Physical Therapy Specialties (ABPTS) exam. This activity type is automatically approved and is assigned a standard approval number by the board approved organization.

(i) One year of service is valued at 5 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 10 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

(7) Voluntary charity care. Providing physical therapy services for no compensation as a volunteer of a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(A) Voluntary charity care must be non work-related.

(B) Proof of voluntary charity care can count toward up to one-half (1/2) of the continuing competence requirement.

(C) Ten (10) hours of voluntary charity care equals 1 CCU.



(D) If selected for audit, the licensee must submit a letter indicating the dates and number of hours of voluntary charity care on official charitable organization(s) letterhead.

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

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

TRD-202400325

Ralph Harper

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 448. STANDARD OF CARE

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §448.801, concerning Screening; §448.803, concerning Assessment; and §448.911, concerning Treatment Services Provided Through Electronic Means.

The amendments to §§448.801, 448.803, and 448.911 are adopted with changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6562). These rules will be republished.

#### BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with and implement House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021. H.B. 4, Section 2, amended Texas Government Code Chapter 531 to require HHSC to determine which services are cost-effective and clinically effective and adopt rules to develop and implement a system to allow providers to provide certain behavioral health services using audio-only means to an individual receiving those services. The amendments allow a chemical dependency treatment facility (CDTF) to deliver certain audio-only substance use disorder treatment services that HHSC determined are clinically effective and safe.

The amendments are also necessary to update the requirements for providing services through electronic means to increase clarity and readability.

#### COMMENTS

The 31-day comment period ended December 11, 2023.

During this period, HHSC received comments regarding the proposed rules from 23 commenters: Disability Rights Texas (DRTx), Texas Medical Association (TMA), and 21 individuals. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One individual stated the draft rules were well written and wanted HHSC to implement the rules accordingly.

Response: HHSC acknowledges this comment.

Comment: One individual expressed concern with §448.801 allowing the use of audiovisual technology for screening but not for inpatient services and asked for clarification regarding why the proposed rules do not allow facilities to screen individuals using audiovisual technology in inpatient settings.

Response: HHSC declines to revise §448.801 because Texas Health and Safety Code §462.015, Outpatient Treatment Services Provided Using Telecommunications or Information Technology, authorizes only outpatient CDTF programs to provide treatment services through electronic means.

Comment: One individual expressed concern with §448.801(b) requiring the use of a valid screening tool before admission. The commenter stated they administer the brief scale once a facility admits an individual and clarified they do not administer the scale prior to an individual's admission. The commenter requested clarification regarding whether providers must administer a valid assessment tool prior to admission. The commenter noted that qualified credentialed counselors (QCCs) are not able under current law to interpret standardized assessments and stated a licensed clinician or clinical psychologist should instead administer the assessment.

Response: HHSC declines to revise §448.801(b) because individuals who qualify as QCCs under Texas Administrative Code Title (TAC), Title 25 §140.400(38) include a wide range of providers, including individuals who hold master's through medical doctorate degrees. Additionally, HHSC notes that a provider gains qualifications for assessment tools and instruments through training, and that there are a variety of appropriate tools and instruments available to qualified providers based on the provider's skill set, education level, and work experience.

Comment: One individual stated that §448.801(e)(4), which requires the physician to examine the client in person and sign the admission order within 24 hours of authorizing admission, only refers to a "physician" and recommended revising the rule to also include the physician's designee to align with the current regulations and avoid creating an undue burden on facilities.

Response: HHSC revises §448.801(e)(4) to add "the physician's designee" as a qualified individual who may satisfy the requirement to examine a client in person and sign the admission order within 24 hours of authorizing admission to a detoxification program. HHSC also revises §448.801(e) and §448.801(e)(3) for consistency with the revision at §448.801(e)(4) by adding "the physician's designee" as a qualified individual who may screen an individual for admission to a detoxification program and who may determine the appropriateness for and authorize the individual's admission.

Comment: DRTx stated §448.801(g) implies that screenings for programs other than detoxification programs must occur in person, and noted the language in the proposed rule does not clearly communicate that implication. DRTx recommended HHSC revise the language to clarify which programs may conduct virtual screenings and which programs are prohibited from conducting virtual screenings.

Response: HHSC declines to revise §448.801(g) because §448.801(h) clarifies a treatment program that is not a detoxification program may offer screenings in-person and face-to-face, or through electronic means, as that term is defined by §448.911(a)(1).

Comment: Fourteen individuals provided substantially similar comments and requested HHSC revise §448.801(h)(1), §448.803(b)(1), and §448.911(d)(2) to relax the requirement for counselor interns to pass the chemical dependency counselor licensing exam before providing telehealth services. These commenters stated Level III counselor interns already operate under the supervision of a QCC to provide services in person and have substantial training and experience, which should allow them to provide services electronically. These commenters also stated allowing counselor interns to provide services through electronic means could enhance accessibility to mental health care for individuals who may face barriers to in-person appointments.

Response: HHSC declines to revise §448.801(h)(1), renumbered to §448.801(h)(1)(B); §448.803(b)(1), renumbered to §448.803(b)(1)(B); and §448.911(d)(2) because the chemical dependency counselor licensing exam is necessary to demonstrate the intern's skill set and proficiency in service delivery.

Comment: One individual requested clarification on whether the 2,000 hours of supervised experience requirement, before a counselor or counselor intern may provide services through electronic means, would allow a licensed master social worker (LMSW) or licensed professional counselor assistant (LPC-A) to qualify under these paragraphs as being able to screen individuals using electronic means once they achieve the 2,000 hours and are under a board-approved supervision plan.

Response: HHSC revises §448.801(h)(1) and §448.803(b)(1) by dividing these paragraphs into two new subparagraphs and relocating "prior to screening an individual through electronic means" to the beginning of these paragraphs. HHSC revises §448.801(h)(1), renumbered to §448.801(h)(1)(A) and §448.803(b)(1), renumbered to §448.803(b)(1)(A), to clarify LMSWs or LPC-As, in addition to counselor interns, may conduct screenings and assessments if they meet the requirements of those subparagraphs.

HHSC also revises §448.801(h)(1), renumbered to §448.801(h)(1)(B), and §448.803(b)(1), renumbered to §448.803(b)(1)(B), to clarify that if the provider conducting the screening or assessment is a counselor intern, the intern must have passed the chemical dependency counselor licensing exam because LMSWs and LPC-As may conduct screenings and assessments without having to pass the chemical dependency counselor licensing exam.

Comment: One individual stated §448.801(h)(3)(A), which only allows CDTFs to screen individuals using audio-only technology during a declared state of disaster, is too narrow and limiting for both the prospective client and the organization completing the screening. The commenter stated this limitation disproportionately impacts indigent, low socio-economic-status, and rural populations that may not have cell phone service, data, or access to reliable broadband internet. The commenter also stated this limitation makes maintaining an individual's privacy during the screening process more difficult as the individual being screened may go to a place with public Wi-Fi, and in those situations, the individual's ability to have privacy is greatly reduced. The commenter further stated clients who are incarcerated often have limited options to complete screenings and being able to be screened over the phone may be an incarcerated individual's only means of being accepted into a treatment program. The commenter recommended revising the rule to expand the exceptions for using audio-only technology beyond a declared

state of disaster and include the circumstances the commenter noted in their comment.

Response: HHSC declines to revise §448.801(h)(3)(A) because the language allowing the use of audio-only technology for screening purposes only during declared states of disaster is consistent with HHSC Medicaid Managed Care rules at 1 TAC Chapter 353, Subchapter R, Telecommunications in Managed Care Service Coordination and Assessments.

Comment: One individual recommended revising §448.801(h)(3)(B) to require the organization completing the screening to document a justification for using audio-only technology that clearly outlines the reason why they did not use synchronous audiovisual technology to screen the individual.

Response: HHSC revises §448.801(h)(3)(B) and §448.803(b)(3)(B) to require the justification for using audio-only technology to include the reason why the counselor or counselor intern did not use synchronous audiovisual technology to screen or assess the individual, in addition to requiring the justification for their determination that using synchronous audio-only technology is safe and clinically appropriate for the individual being screened or assessed.

Comment: DRTx requested HHSC add language in the rules to clarify that a counselor or counselor intern must obtain the individual's consent before using electronic means to screen or treat the individual. DRTx further stated counselors or counselor interns must discuss with the individual how the counselor or counselor intern will conduct the screening or treatment, and if the individual chooses to utilize electronic means, that individual's choice must be documented in the individual's client record, as required by similar language in §448.803. DRTx noted their recommended revisions are consistent with 1 TAC Chapter 353, Subchapter R.

Response: HHSC revises §448.801(h)(4) and §448.803(b)(4) to clarify that the requirement to conduct an in-person and face-to-face screening or assessment with an individual when the individual does not provide their verbal consent to participate in a screening or assessment through electronic means is required by §448.911(u). HHSC notes §448.801(h) and §448.803(b) require a facility offering screenings and assessments through electronic means to comply with the applicable requirements under §448.911, including consent and consent documentation requirements.

Comment: One individual expressed concern with §448.803(d) requiring the assessment to result in a comprehensive diagnostic impression and stated licensed chemical dependency counselors (LCDCs) are not allowed to formulate comprehensive diagnostic impressions. The commenter further stated only a master's level professional licensed within the scope of their practice may formulate comprehensive diagnostic impressions from assessment results. The commenter recommended HHSC revise the rules to require only a fully licensed diagnostic clinician to properly review and approve a screening and assessment.

Response: HHSC revises §448.803(d) to clarify licensed interns or other providers must operate within the scope of their license when providing assessments. HHSC notes LCDCs are allowed under 25 TAC §140.424(a)(1)(B), Standards for Private Practice, to diagnose a patient based on an assessment.

Comment: TMA stated the "verbal consent" definition at §448.911(a)(5) could cause confusion because the definition uses the terms "medical consent" and "legally authorized

representative," which are synonymous. TMA further stated the current Texas Department of State Health Services chemical dependency treatment facility rules use the term "consenter," which could raise the question of whether "medical consenter" has a different meaning. TMA recommended revising the definition to either only include one of the terms or instead use the term "consenter" in place of "legally authorized representative and "medical consenter" to prevent confusion.

TMA also suggested revising §448.911(t), which uses the term "legally authorized representative," by replacing the term with "consenter" for consistency with their suggested revisions at §448.911(a)(5) and other rules for chemical dependency treatment services.

Response: HHSC revises the verbal consent definition in §448.911(a)(5) by removing "or a client's medical consenter" so the definition reads, "The spoken agreement of a client or a client's legally authorized representative to participate in treatment services through electronic means." HHSC notes the term "medical consenter" is defined at 1 TAC §353.1502(20).

HHSC declines to revise §448.911(t) because the term "legally authorized representative" in that subsection is appropriate and consistent with revised §448.911(a)(5).

Comment: One individual stated that while the proposed rule changes are well-intentioned, the commenter expressed concern with the audio-only rules preventing counselors from achieving any type of non-verbal observations by phone, including facial expressions, gaze, eye contact, gestures, posture, physical closeness, clothes, and grooming. The commenter expressed further concern with facilities being able to provide audio-only services under §448.911(k) as an everyday service but noted providing audio-only services during emergencies or catastrophes would make "perfect sense." The commenter also stated they could think of no other form of healthcare where audio-only services would be accepted or encouraged because a treatment provider must see the individual to provide quality services and effectively treat them.

Response: HHSC declines to revise §448.911(k) because the amended rule is authorized by Texas Health and Safety Code §462.015 and consistent with the rules at 1 TAC Chapter 353, Subchapter R.

Comment: One individual stated audio-only services should be reserved for screening purposes only and that any service requiring clinical assessment or insight should require direct client observation. The commenter further stated groups and individual sessions should require a visual of the client, assuming there are no limitations or unsuspected technology issues.

Another individual stated that while audio-only services would be appropriate for an established client in the middle to end parts of their treatment, a provider needs to be able to see the client in the earlier parts of the client's treatment to establish trust and gauge the client's understanding. The commenter further stated being able to monitor a person's body language allows a provider to better read a client's mood and determine whether the client is under the influence.

Response: HHSC declines to revise §448.803 and §448.911 because these rules are authorized by Texas Health and Safety Code §462.015 and consistent with the rules at 1 TAC Chapter 353, Subchapter R.

Comment: One individual identified themselves as an LCDC who works with juveniles and adults and stated delivering ser-

vices virtually is too impersonal, lacks connection with the client, and does not foster an effective one-on-one environment where the practitioner can build empathy and a more effective professional relationship with the individual.

Response: HHSC declines to revise the rules because the rules are authorized by Texas Health and Safety Code §462.015 and consistent with the rules at 1 TAC Chapter 353, Subchapter R. HHSC notes the rules do not require providers to deliver services virtually but allow that option.

Comment: One individual requested clearer regulations for co-occurring diagnoses. The commenter stated 25 TAC Chapter 448 has a section outlining staffing requirements and stated on-site inspectors used to confirm whether providers truly could deliver treatment for co-occurring diagnoses. The commenter further stated on-site inspections used to occur every two years and such inspections are no longer occurring. The commenter also stated there are several facilities that claim to provide treatment for co-occurring diagnoses but do not have the required staff to provide such services. The commenter recommended HHSC clarify who can and cannot provide treatment for co-occurring diagnoses or require a separate license for facilities wanting to provide such treatment.

Response: HSHC declines to revise the rules as suggested because such revisions are beyond the scope of this project. HHSC notes the agency will consider this comment when updating the CDTF rules in the future.

HHSC made minor editorial changes to §§448.911(f)(1), 448.911(o), and 448.911(r) to ensure consistency when using the term "electronic means" throughout the rules.

## SUBCHAPTER H. SCREENING AND ASSESSMENT

### 25 TAC §448.801, §448.803

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 462, which authorizes the Executive Commissioner to adopt rules governing the treatment of persons with chemical dependencies; and Chapter 464, which authorizes the Executive Commissioner to adopt rules governing the organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

#### *§448.801. Screening.*

(a) To be eligible for admission to a treatment program, an individual must meet the current Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for substance use disorders (or substance withdrawal or intoxication in the case of a detoxification program). The facility shall use a screening process appropriate for the target population, individual's age, developmental level, culture, and gender, which includes the Texas Department of Insurance (TDI) criteria to determine eligibility for admission or referral including an assessment of the client's financial resources and insurance benefits.

(b) The screening process shall collect other information as necessary to determine the type of services that are required to meet the individual's needs. This may necessitate the administration of all or part of validated assessment instruments.

(c) TDI criteria shall guide referral and treatment recommendations as well as placement decisions.

(d) Sufficient documentation shall be maintained in the client record to support the diagnosis and justify the referral or placement decision. Documentation shall include the date of the screening and the signature and credentials of the Qualified Credentialed Counselor (QCC) supervising the screening process.

(e) For admission to a detoxification program, the screening will be conducted by a physician, the physician's designee, physician assistant, nurse practitioner, registered nurse, or licensed vocational nurse (LVN). An LVN may conduct a screening under the following conditions:

(1) the LVN has completed detoxification training and demonstrated competency in the detoxification process;

(2) the training and competency verification is documented in the LVN's personnel file;

(3) the LVN shall convey in person or via telephone the medical data obtained during the screening process to a physician or the physician's designee, who shall determine the appropriateness of the admission and authorize the admission or give instructions for an alternative course of action; and

(4) the physician or the physician's designee shall examine the client in person and sign the admission order within 24 hours of authorizing admission.

(f) For admission to all other treatment programs, the screening will be conducted by a counselor or counselor intern.

(g) A detoxification program shall not offer screenings through electronic means.

(h) A treatment program, other than a detoxification program, may offer screenings in-person and face-to-face, or through electronic means, as that term is defined by §448.911(a)(1) of this chapter (relating to Treatment Services Provided by Electronic Means). A facility offering screenings through electronic means shall comply with the applicable requirements under §448.911 of this chapter and the following requirements.

(1) Prior to screening an individual through electronic means:

(A) a counselor intern, licensed professional counselor assistant (LPC-A), or licensed master social worker (LMSW) must have more than 2,000 hours of supervised work experience or have a supervised work experience waiver under §140.408(b) of this title (relating to Requirements for LCDC Licensure); and

(B) if the provider is a counselor intern, the intern must have passed the chemical dependency counselor licensing exam.

(2) A counselor or counselor intern screening an individual through electronic means shall use synchronous audiovisual technology, as that term is defined by §448.911(a)(4) of this chapter, except as provided under paragraph (3) of this subsection.

(3) To the extent allowed by federal law and only when all the following criteria are met, the counselor or counselor intern may screen an individual using synchronous audio-only technology, as that term is defined by §448.911(a)(3) of this chapter, when:

(A) the screening occurs during a declared state of disaster under Texas Government Code §418.014 (relating to Declaration of State of Disaster) in the county in which the facility where the client signed the client's consent for treatment form is located;

(B) the counselor or counselor intern determines and documents a justification for their determination in the individual's record that screening the individual using synchronous audio-only technology is safe and clinically appropriate for the individual being screened and the reason why the counselor or counselor intern did not use synchronous audiovisual technology to screen the individual; and

(C) the individual being screened agrees and provides verbal consent, as that term is defined by §448.911(a)(5) of this chapter, to participate in a screening using synchronous audio-only technology.

(4) The counselor or counselor intern shall conduct an in-person and face-to-face screening with an individual at the individual's request or if the individual does not provide their verbal consent to participate in a screening through electronic means as required by §448.911(u) of this chapter.

*§448.803. Assessment.*

(a) A counselor or counselor intern shall conduct and document a comprehensive psychosocial assessment with the client admitted to the facility. The assessment shall document and elicit enough information about the client's past and present status to provide a thorough understanding of the following areas:

(1) presenting problems resulting in admission;

(2) alcohol and other drug use;

(3) psychiatric and chemical dependency treatment;

(4) medical history and current health status, to include an assessment of Tuberculosis (TB), HIV and other sexually transmitted disease (STD) risk behaviors as permitted by law;

(5) relationships with family;

(6) social and leisure activities;

(7) education and vocational training;

(8) employment history;

(9) legal problems;

(10) mental/emotional functioning; and

(11) strengths and weaknesses.

(b) The counselor or counselor intern may conduct the assessment with a client in-person and face-to-face, or through electronic means, as that term is defined by §448.911(a)(1) of this chapter (relating to Treatment Services Provided by Electronic Means). A facility offering assessments through electronic means shall comply with the applicable requirements under §448.911 of this chapter and the following requirements.

(1) Prior to conducting an assessment through electronic means:

(A) a counselor intern, licensed professional counselor assistant (LPC-A), or licensed master social worker (LMSW) must have more than 2,000 hours of supervised work experience or have a supervised work experience waiver under §140.408(b) of this title (relating to Requirements for LCDC Licensure); and

(B) if the provider is a counselor intern, the intern must have passed the chemical dependency counselor licensing exam.

(2) A counselor or counselor intern assessing a client through electronic means shall use synchronous audiovisual technology, as that term is defined by §448.911(a)(4) of this chapter, except as provided under paragraph (3) of this subsection.

(3) To the extent allowed by federal law and only when all the following criteria are met, the counselor or counselor intern may assess a client using synchronous audio-only technology, as that term is defined by §448.911(a)(3) of this chapter, when:

(A) the assessment occurs during a declared state of disaster under Texas Government Code §418.014 (relating to Declaration of State of Disaster) in the county in which the facility where the client signed their consent for treatment form is located;

(B) the counselor or counselor intern determines and documents a justification for their determination in the client's record that assessing the client using synchronous audio-only technology is safe and clinically appropriate for the client being assessed and the reason why the counselor or counselor intern did not use synchronous audiovisual technology to screen the individual; and

(C) the client being assessed agrees and provides verbal consent, as that term is defined by §448.911(a)(5) of this chapter, to participate in an assessment using synchronous audio-only technology.

(4) The counselor or counselor intern shall conduct an in-person and face-to-face assessment with a client at the client's request or if the client does not provide their verbal consent to participate in an assessment through electronic means, as required by §448.911(u) of this chapter.

(c) The assessment shall result in a comprehensive listing of the client's problems, needs, and strengths.

(d) The assessment shall result in a comprehensive diagnostic impression. The diagnostic impression shall correspond to current Diagnostic and Statistical Manual of Mental Disorders (DSM) standards. A licensed intern or other provider shall operate within the scope of their license when conducting assessments.

(e) If the assessment identifies a potential mental health problem, the facility shall obtain a mental health assessment and seek appropriate mental health services when resources for mental health assessments or services, or both, are available internally or through referral at no additional cost to the program. These services shall be provided by a facility or person authorized to provide such services or a qualified professional as described in §448.901 of this chapter (relating to Requirements Applicable to all Treatment Services).

(f) The assessment shall be signed by a QCC and filed in the client record within three individual service days of admission.

(g) The program may accept an evaluation from an outside source if:

(1) it meets the criteria set forth herein;

(2) it was completed during the 30 days preceding admission or is received directly from a facility that is transferring the client; and

(3) a counselor reviews the information with the client and documents an update.

(h) For residential clients, a licensed health professional shall conduct a health assessment of the client's physical health status within 96 hours of admission. The facility may accept a health assessment from an outside source completed no more than 30 days before admission or received directly from a transferring facility. If the client has any physical complaints or indications of medical problems, the client shall be referred to a physician, physician assistant, or nurse practitioner for a history and physical examination. The examination, if needed, shall be completed within a reasonable time frame and the results filed in the client record.

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

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Karen Ray

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**SUBCHAPTER I. TREATMENT PROGRAM SERVICES**

**25 TAC §448.911**

**STATUTORY AUTHORITY**

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 462, which authorizes the Executive Commissioner to adopt rules governing the treatment of persons with chemical dependencies; and Chapter 464, which authorizes the Executive Commissioner to adopt rules governing the organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

*§448.911. Treatment Services Provided Through Electronic Means.*

(a) In this section, the following words and terms have the following meanings:

(1) **Electronic means**--Live, synchronous, interactive treatment program services delivered using telecommunications or information technology by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional. This term includes services delivered using synchronous audiovisual technology or synchronous audio-only technology but does not include pre-recorded videos.

(2) **Existing clinical relationship**--A relationship that occurs when a person has received at least one in-person or synchronous audiovisual treatment service from the same provider within the six months prior to the initial service delivered by synchronous telephone (audio-only) technology.

(3) **Synchronous audio-only technology**--An interactive, two-way audio telecommunications platform, including telephone technology, that uses only sound and meets the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(4) **Synchronous audiovisual technology**--An interactive, two-way audio and video telecommunications platform that meets HIPAA privacy requirements.

(5) Verbal consent--The spoken agreement of a client or a client's legally authorized representative to participate in treatment services through electronic means.

(b) Except as provided under §448.801 of this chapter (relating to Screening) and §448.803 of this chapter (relating to Assessment), only a licensed outpatient chemical dependency treatment program may provide treatment program services through electronic means.

(c) The program providing treatment services through electronic means may provide treatment services to adult and adolescent clients to the extent allowed by the facility's license and shall comply with all requirements of this section.

(d) The program shall ensure only the following individuals provide services through electronic means under this section:

(1) a qualified credentialed counselor (QCC); or

(2) a counselor intern who has more than 2,000 hours of supervised work experience or a supervised work experience waiver under §140.408(b) of this title (relating to Requirements for LCDC Licensure) and who has passed the chemical dependency counselor licensing exam.

(e) The program's physical location shall be equipped to provide in-person, face-to-face treatment services with an individual at the individual's request.

(f) The program shall ensure all treatment sessions shall have the following two forms of access control:

(1) all contact between a QCC and clients via electronic means shall begin with a verification of the client through a name, password or pin number; and

(2) security as detailed in HIPAA.

(g) A facility shall implement adequate security and encryption measures to ensure all patient communications, recordings and records are protected and adhere to federal and state privacy laws, including HIPAA and Texas Health and Safety Code Chapters 181, 464, and 466 (relating to Medical Records Privacy; Facilities Treating Persons with a Chemical Dependency, and Regulation of Narcotic Drug Treatment Programs).

(h) A program shall maintain compliance with HIPAA and Code of Federal Regulations (CFR) Title 42, Part 2 (relating to Confidentiality of Substance Use Disorder Patient Records).

(i) A program shall not use e-mail communications containing client identifying information.

(j) A program shall use synchronous audiovisual technology, except as provided in subsection (k) of this section.

(k) A program may provide outpatient individual and group counseling to clients using synchronous audio-only technology only when all the following criteria are met:

(1) the client and provider have an existing clinical relationship;

(2) the provider receives the client's verbal consent before each session; and

(3) the provider documents in the client's record the specific reason why the provider provided outpatient counseling services using synchronous audio-only technology.

(l) A program shall ensure timely access to individuals qualified in the technology as backup for systems problems.

(m) A program shall develop a contingency plan and maintain alternate means of communication for clients when technical problems occur during the provision of services.

(n) A program shall provide individuals and clients with a description of all services offered.

(o) A program shall provide developed criteria, in addition to the Diagnostic and Statistical Manual of Mental Disorders, to assess clients for appropriateness of utilizing services through electronic means.

(p) A program shall provide appropriate referrals for clients who do not meet the criteria for services.

(q) A program shall develop a grievance procedure and provide the website and phone number to the Texas Health and Human Services Commission (HHSC) for filing a complaint.

(r) Prior to clients engaging in services through electronic means, a program shall describe and provide in writing the potential risks to clients. The risks shall address at a minimum the following areas:

(1) clinical aspects;

(2) security; and

(3) confidentiality.

(s) In a HIPAA-compliant manner, a program shall document and maintain in a client's record the client's verbal consent to participate in services provided through electronic means. The program shall provide the verbal consent documentation to HHSC upon request.

(t) A program shall explain to the client or the client's legally authorized representative what verbal consent means and to what the client or client's legally authorized representative is consenting. The verbal consent a client provides when electing to participate in a treatment service delivered through electronic means only applies to one treatment service at a time. A program shall obtain the client's verbal consent before the client receives each service through electronic means.

(u) If the program does not obtain verbal consent for a treatment service through electronic means, the program shall provide the service to the client in-person and face-to-face.

(v) A program shall inform a client who chooses to receive services through electronic means that the program will:

(1) monitor services for evidence of fraud, waste, and abuse;

(2) determine whether the client needs additional social services or supports;

(3) ensure the provider documents, in writing and in the client's record, the client's verbal consent to participate in services provided through electronic means; and

(4) adhere to HIPAA, including using HIPAA-compliant technology for services provided through electronic means.

(w) A program shall create safeguards to ensure adolescents receive treatment services separately from adults and verify a client's identity and the identity of any authorized participant.

(x) A program shall provide clients with information to access online or a copy of the current version of the following chemical dependency treatment facility (CDTF) rules, statutes, and federal regulations to notify clients of applicable rules and laws regarding CDTFs:

(1) This chapter;

(2) Texas Health and Safety Code Chapter 464; and

(3) 42 CFR Part 2.

(y) A program shall provide the program's emergency contact information to the client.

(z) A program shall maintain resource information for the local area of the client.

(aa) A program shall provide reasonable Americans with Disabilities Act of 1990 (ADA) accommodations for clients upon request.

(bb) A program shall be located and perform services in Texas.

(cc) HHSC maintains the authority to regulate the program regardless of the location of the client.

(dd) The facility shall provide the facility's emergency contact information to the client.

(ee) The facility shall maintain resource information for the local area of the client.

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

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## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 15. TEXAS FORENSIC SCIENCE COMMISSION**

#### **CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES**

The Texas Forensic Science Commission (Commission) adopts this rulemaking to 37 Texas Administrative Code Chapter 651 DNA, CODIS, Forensic Analysis, and Crime Laboratories, Subchapter A, Accreditation, amendments to §§651.3, 651.8, and 651.11; Subchapter B, Accreditation-Related Actions, amendments to §§651.101 - 651.104; new §651.105; and the repeal of Subchapter B, Accreditation-Related Actions and Procedure for Hearing and Appeal, §651.105 and §651.106; Subchapter C, Forensic Analyst Licensing Program, repeal of §651.216; Subchapter D, Procedure for Processing Complaints and Laboratory Self-Disclosures, amendments to §§651.305 - 651.308, the repeal of §651.309 and adopts new Subchapter E, Appeals, §651.402 without changes to the text as published in the December 1, 2023 issue of the *Texas Register* (48 TexReg 7020). The rules will not be republished.

Reasoned Justification for Rule Adoptions. Some changes are responsive to the 88th Legislature's passage of SB 991 and HB

3474, which clarify the Commission's existing appeals process to allow a crime laboratory to appeal the Judicial Branch Certification Commission's any determination that the laboratory has committed professional negligence or misconduct, or otherwise violated a rule or order of the Commission. Under the revised rules, both forensic analyst licensees and crime laboratories subject to the Commission's jurisdiction may appeal disciplinary actions, findings of professional negligence or professional misconduct or violations of the code of professional responsibility or rules or orders of the Commission to the Judicial Branch Certification Commission. Before the passage of SB 991 and HB 3474, the Code of Criminal Procedure only provided an appeals process for forensic analyst licensee disciplinary actions.

The rule adoption also makes other non-substantive edits to its accreditation rules that provide clarity to the Commission's process for initiating accreditation-related actions and that correspond with the changes to its appeals process, including clarification that the Commission may suspend the accreditation of a crime laboratory. These changes are in §§651.101 - 651.104. The rulemaking also provides that in investigations in which an investigation panel are deemed unnecessary, the Commission must instruct staff to conduct the investigation, a practice already in place by the Commission but clarified in this rule adoption. These changes are in §§651.305 - 651.308. This rulemaking further clarifies that the Commission's General Counsel may make recommendations to the Commission on the dismissal of certain complaints that fall outside the Commission's jurisdiction. These changes are in §§651.305 - 651.308. Finally, the rulemaking replaces the former process for stipulated agreements of appeals with a similar process for disposition by agreement. These changes are in §§651.305 - 651.308.

Public Comment. Pursuant to § 2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on December 1, 2023 and ended on January 5, 2024. The Commission did not receive any comments from the public.

#### **SUBCHAPTER A. ACCREDITATION**

##### **37 TAC §§651.3, 651.8, 651.11**

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adoption affects Tex. Code Crim. Proc. art. 38.01.

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

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## SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS

### 37 TAC §§651.101 - 651.105

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affects Tex. Code Crim. Proc. art. 38.01.

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## SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS AND PROCEDURE FOR HEARING AND APPEAL

### 37 TAC §§651.105, §651.106

Statutory Authority. The repeals are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01.

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## SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

### 37 TAC §651.216

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adoption affects Tex. Code Crim. Proc. art. 38.01.

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## SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

### 37 TAC §§651.305 - 651.308

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01.

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### 37 TAC §651.309

Statutory Authority. The repeal is adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01.

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## SUBCHAPTER E. NOTICE TO AND APPEALS BY LICENSE HOLDERS AND CRIME LABORATORIES

### 37 TAC §651.402

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The adopted rules affects Tex. Code Crim. Proc. art. 38.01.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 700. CHILD PROTECTIVE SERVICES

##### SUBCHAPTER I. PURCHASED PROTECTIVE SERVICES TO PREVENT REMOVAL OR TO REUNIFY FAMILIES

### 40 TAC §700.905

The Department of Family and Protective Services (DFPS) adopts new §700.905 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter I, relating to Purchased Protective Services to Prevent Removal or to Reunify Families. The new rule is adopted with changes to the proposed text published in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7165) and will be republished.

#### BACKGROUND AND JUSTIFICATION

The new rule §700.905 as required by House Bill 793 of the Texas 88th Regular legislative session (2023) allows DFPS to reimburse a licensed or qualified provider in an amount equal to the average cost for the specific service from department contractors providing the service in the region the parent resides, from existing DFPS resources. This provision is codified at Texas Family Code §263.1021.

Chapter 263, Subchapter B of the Texas Family Code pertains to when the Department of Family and Protective Services (DFPS) has been court ordered the temporary managing conservator of a minor, and the parent, as a client, is required to obtain services under a family service plan. Under the adopted rule, a parent seeking services under a family service plan will be permitted to choose a licensed or qualified service provider that is not under contract with DFPS or an SSCC if the requirements of the rule are met. Services obtained from a service provider selected by the parent must be designed to achieve the stated goals of the Family Plan of Service for a child in DFPS conservatorship and the service provider must certify whether the parent has satisfactorily completed the required service that is being sought for reimbursement.

#### COMMENTS

The 30-day comment period ended January 6, 2024. During this period, DFPS did not receive any comments regarding the new rule.

#### STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of DFPS

with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide DFPS with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

§700.905. *Reimbursement of Noncontracted Service Providers.*

(a) A parent who is required to complete a Family Service Plan may obtain services from a qualified or licensed noncontracted service provider, and this provider may be reimbursed by DFPS in an amount equal to the average cost for the specific service from DFPS contractors providing the service in the region where the parent resides. Only services where the parent is the direct client of the service provider are eligible for reimbursement. In addition, the rules relating to the reimbursement of noncontracted service providers are intended to further supplement and clarify Texas Family Code §263.1021. This rule is operable to the extent that DFPS has existing resources to implement Texas Family Code §263.1021.

(b) Definitions:

(1) Case Plan: a Case Plan, as defined by 42 U.S.C. 675, is a written document which meets the requirements 42 U.S.C. 675a. Texas has divided the federal requirement of a Case Plan into two separate plans, the Family Service Plan as defined in Texas Family Code §263.101 and the Child's Plan of Service as defined in Texas Family Code §264.128. For the purpose of this Rule, a Child's Plan (also referred to as a Child's Plan of Service) is not a Family Service Plan.

(2) Family Service Plan (also referred to as a "Family Plan of Service," "Family Plan" or "Individual Family Service Plan") is a written plan in which DFPS and a child's parents identify the actions, specific skills, knowledge, steps, and/or responsibilities that are necessary for the parents to achieve the Family Service Plan's goal during this Plan's service period and the assistance to be provided to the parents by the DFPS or other agency toward meeting that goal.

(3) Single Source Continuum Contract/Contractor (SSCC) is an entity, as described in Texas Family Code §264.154, with whom DFPS enters into a contract for the provision of the full continuum of substitute care, case management, and reunification services in a Designated Community Area.

(4) Licensed Provider is an individual who is required by the State of Texas to be licensed to provide the professional service that the parent is receiving and DFPS is reimbursing.

(5) Qualified Provider is an individual who has completed certification or other training programs and has two (2) years of verified full-time experience in the professional service in which they are providing to the parent and DFPS is reimbursing.

(6) Noncontracted Service Provider is one who is not under a current contract with DFPS or SSCC for the service that they are seeking reimbursement for. They also cannot be an employee of DFPS or SSCC.

(c) SSCCs must adopt similar requirements relating to the manner in which noncontracted service providers are reimbursed that do not conflict with this Section.

(d) Only the noncontracted service provider may seek reimbursement from DFPS for services and must not have already been paid by the parent or a third party.

(e) To be reimbursed, services may be provided in-person or through an electronic communication platform.

(f) DFPS cannot use state funds to reimburse a noncontracted service provider for Medicaid services to a parent who is a Medicaid beneficiary, as described in Texas Human Resources Code Chapter 32. If the parent has Texas Medicaid, the noncontracted service provider must bill Medicaid and not seek reimbursement through DFPS.

(g) All the following requirements/conditions must be met in order for a noncontracted service provider to be reimbursed:

(1) Must be qualified or licensed provider and comply with the DFPS's guidelines and requirements for reimbursement pursuant to Texas Family Code §263.1021.

(2) If a license is required, the service provider must maintain licensure and the license must remain in good standing while providing services that they are seeking reimbursement for.

(3) Services obtained from a service provider selected must be designed to achieve the stated goals of the Family Plan of Service for a child in DFPS conservatorship and the noncontracted service provider must certify whether the parent has satisfactorily completed the required service that is being sought for reimbursement.

(4) DFPS cannot reimburse for services that occur after DFPS is dismissed from the case, or the parental rights have been terminated (earlier of two). If a Family Service Plan is reinstated, then the service provider would have to seek reimbursement through a new claim under the reinstated Family Service Plan.

(5) The noncontracted service provider must be able to receive reimbursement from state or federal funds and not be debarred from receiving these funds.

(6) The noncontracted service provider cannot have had a prior DFPS contract to provide the specific service that they are seeking reimbursement for which DFPS terminated for cause.

(7) The noncontracted service provider cannot be related by consanguinity or affinity to the parent receiving services.

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Department of Family and Protective Services

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Proposal publication date: December 8, 2023

For further information, please call: (512) 915-1729



# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Health and Human Services Commission

### Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 363, Texas Health Steps Comprehensive Care Program

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 363, Texas Health Steps Comprehensive Care Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 363" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202400397

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: February 1, 2024



Texas Department of Housing and Community Affairs

### Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.617, Affirmative Marketing Requirements. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to have rules in effect that specify the applicability of affirmative marketing on Department monitored developments and provides a rule citation for where to seek more specific information. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for re adoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 23, 2024 through March 23, 2024. Comments may be submitted by email to Brooke Boston, Texas Department of Housing and Community Affairs, at [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 23, 2024.

TRD-202400451

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 6, 2024



Department of State Health Services

### Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services, proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 2, Emergency Preparedness

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 2, Emergency Preparedness, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 2" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202400394

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: February 1, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

**Chapter 27, Case Management for Children and Pregnant Women**

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 27, Case Management for Children and Pregnant Women, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 27" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202400398

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: February 1, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

**Chapter 98, Texas HIV Medication Program**

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 98, Texas HIV Medication Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 98" in the subject line. The deadline for comments is on or before 5:00

p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202400379

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: January 31, 2024



**Health and Human Services Commission**

**Title 26, Part 1**

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

**Chapter 275, Consumer Managed Personal Attendant Services (CM-PAS) Program**

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 275, Consumer Managed Personal Attendant Services (CMPAS) Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 275" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202400399

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: February 1, 2024



**Texas Forensic Science Commission**

**Title 37, Part 15**

The Texas Forensic Science Commission (Commission) files this notice of its intent to review 37 Texas Administrative Code Chapter 651, DNA, CODIS, Forensic Analysis, and Crime Laboratories, Subchapters A, B, C and D. The review is conducted in accordance with Government Code § 2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the Commission will assess whether the reasons for initially adopting the rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments.

For 30 days following the publication of this notice, the Commission will accept public comments regarding the review. Please direct comments to Leigh Tomlin, Associate General Counsel, Texas Forensic Science Commission, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or by email at [Leigh.tomlin@fsc.texas.gov](mailto:Leigh.tomlin@fsc.texas.gov).

Any proposed changes to these rules, as a result of the review, will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to possible final adoption.

TRD-202400392

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Filed: January 31, 2024



Department of Aging and Disability Services

#### **Title 40, Part 1**

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 46, Contracting to Provide Assisted Living and Residential Care Services

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 46, Contracting to Provide Assisted Living and Residential Care Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 46" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202400401

Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Filed: February 1, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 58, Contracting to Provide Special Services to Persons with Disabilities

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every

four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 58, Contracting to Provide Special Services to Persons with Disabilities, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 58" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202400402

Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Filed: February 1, 2024



### **Adopted Rule Reviews**

Health and Human Services Commission

#### **Title 26, Part 1**

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 302, IDD-BH Training

Notice of the review of this chapter was published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 8004). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 302 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 302. Any amendments or repeals to Chapter 302 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 302 as required by the Texas Government Code, §2001.039.

TRD-202400411

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: February 2, 2024



The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 321, Substance Use Services

Notice of the review of this chapter was published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7620). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 321 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 321. Any amendments or repeals to Chapter 321 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 321 as required by the Texas Government Code, §2001.039.

TRD-202400435

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: February 5, 2024



The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 990, Anatomical Gift

Notice of the review of this chapter was published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7620). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 990 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 990. Any amendments or repeals to Chapter 990 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 990 as required by the Texas Government Code §2001.039.

TRD-202400490

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: February 7, 2024

