

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 56. DISTRICT AND COUNTY ATTORNEY REPORTING REQUIREMENTS

1 TAC §§56.1 - 56.9

The Office of the Attorney General (OAG) proposes new Chapter 56 in Title 1 of the Texas Administrative Code (TAC), relating to reporting requirements for District Attorneys and County Attorneys presiding in a district or county with a population of 250,000 or more persons. Proposed new Chapter 56 consists of §§56.1 - 56.9. Proposed new Chapter 56 is necessary to implement Government Code §41.006.

EXPLANATION AND JUSTIFICATION OF RULES

Texas Government Code §41.006 states that district and county attorneys shall report to the OAG the information from their districts and counties that the OAG desires relating to criminal matters and interests of the state. Section 41.006 also states that the reports must be submitted to the OAG at the times and in the form the OAG directs. Proposed new Chapter 56 is necessary to implement §41.006 because it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

SECTION-BY-SECTION SUMMARY

Proposed new §56.1 specifies that District Attorneys and County Attorneys presiding in a district or county with a population of 250,000 or more are required to submit quarterly and annual reports relating to criminal matters and the interests of the state to the OAG in a manner prescribed by the OAG.

Proposed new §56.2(1) defines the term "case file" as all documents, notes, memoranda, and communications, whether handwritten or typed. The term includes, but is not limited to emails, instant messages, text messages, direct messages, social media messages, and handwritten notes. The term includes all drafts and final copies produced within or received by the reporting entity's office, including work product and otherwise privileged and confidential matters.

Proposed new §56.2(2) defines the term "correspondence" as any official or unofficial emails, letters, memoranda, instant message, text message, direct message, social media message, or notes received or issued by the reporting entity's office.

Proposed new §56.2(3) defines the term "fiscal year" as the twelve-month period between September 1 and August 31.

Proposed new §56.2(4) defines the term "reporting entity" as any office of a District Attorney or County Attorney serving a population of 250,000 or more.

Proposed new §56.2(5) defines the term "violent crime" to include, but is not limited to, capital murder, murder, or other felony homicide, aggravated assault, sexual assault of an adult or child, indecency with a child, family violence assault, robbery or aggravated robbery, burglary, theft, and automobile theft. The term also includes any attempt to commit such crimes.

Proposed new §56.3(a) specifies the content of the reports that must be provided to OAG on a quarterly each fiscal year.

Proposed new §56.3(b) specifies that the reporting requirement applies to all events occurring after the rule's final promulgation in the *Texas Register*. Proposed new § 56.3(b) also specifies that the reporting requirement applies to all events that occurred between January 1, 2023, and the effective date of the rule unless (1) the reporting entity obtains a waiver; (2) the reporting entity files a sworn affidavit that the information was the exclusive product of a previous District Attorney or County Attorney and is not reflective of the reporting entity's operations due to a formal change in policy, which must be described in detail; or (3) the reporting entity files a sworn affidavit that the information cannot be produced because it was destroyed or discarded pursuant to a legitimate document retention policy that existed prior to the effective date of this rule.

Proposed new §56.3(c) specifies that all information for which the relevant reporting event occurs after the effective date of the rule is due within 30 days of the beginning of each new fiscal quarter for all reportable events that occurred in the prior fiscal quarter. Proposed new §56.3(c) also specifies that all information for which the relevant reporting event occurs between January 1, 2021, and the date this final rule is promulgated in the *Texas Register* is due within 60 days of the effective date of this rule.

Proposed new §56.4 specifies the content of reports that must be provided to OAG on an annual basis. The information must be submitted to OAG on the last business day of January each year for the prior 12 months.

Proposed new §56.5 specifies that each District Attorney and each County Attorney that is subject to the reporting requirements must implement a reasonable document retention policy in order to preserve all document subject to the reporting requirements. The policies must, at a minimum, preserve documents for two years after the time when they are due to be reported.

Proposed new §56.6 specifies that if OAG believes a reporting entity has failed to comply with Chapter 56, the OAG may send a notice to the reporting entity notifying the reporting entity of its

failure to comply. A reporting entity has 15 days after receipt of the notice to remedy its noncompliance.

Proposed new §56.7 specifies that if a District Attorney or County Attorney intentionally violates proposed new Chapter 56, the Attorney General can (1) file a petition for removal of the District Attorney or County Attorney under Local Government Code 87.015; (2) file a petition for quo warranto under Civil Practice and Remedies Code 66.002; or (3) file a petition for an injunction in a civil proceeding ordering the District Attorney or County Attorney to comply.

Proposed new §56.8 specifies the makeup and responsibilities of the Oversight Advisory Committee as it relates to proposed new Chapter 56.

Proposed new §56.9 specifies that the application of every provision in the proposed rule is severable from the rest, if a court finds a provision to be invalid or unconstitutional.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Josh Reno, the Deputy Attorney General for Criminal Justice, has determined that for the first five-year period the proposed rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of state government. There may be minimal costs to local governments for gathering and submitting quarterly and yearly reports to OAG, however, the gathering and submitting of the required reports can likely be absorbed into reporting entities' ongoing operations with minimal, if any, fiscal impact.

District Attorneys and County Attorneys must report "information from their districts and counties that the attorney general desires relating to criminal matters and the interests of the state." Texas Government Code § 41.006. The proposed rules prescribe the information that the attorney general so desires relating to criminal matters. Accordingly, the proposed rules do not have an impact beyond that of the statute.

PUBLIC BENEFIT AND COST NOTE

Mr. Reno has determined that for the first five-year period the proposed rules are in effect, the public will benefit through clear procedures and standards for Texas District Attorneys and County Attorneys to submit quarterly and annual reports to the Attorney General's Oversight Advisory Committee. The public can confirm compliance with these standards.

Mr. Reno has also determined that for each year of the first five-year period the proposed rules are in effect, there are minimal, if any, anticipated economic costs to entities that are required to comply with the proposed rules.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

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

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

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

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

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

REQUEST FOR PUBLIC COMMENT

Written comments on the proposed rules may be submitted electronically to the OAG's Open Records Division by email to OAGRuleCommentsCh56@oag.texas.gov, or by mail to Josh Reno, Attn: Rule Comments, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Comments will be accepted for 30 days following publication in the *Texas Register*.

To request a public hearing on the proposal, submit a request before the end of the comment period by email to OAGRuleCommentsCh56@oag.texas.gov, or by mail to Josh Reno, Attn Rule Comments, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

STATUTORY AUTHORITY

New 1 TAC Chapter 56 is proposed pursuant to Texas Government Code §41.006.

CROSS-REFERENCE TO STATUTE. This regulation clarifies Texas Government Code §41.006. No other rule, regulation, or law is affected by this proposed rule.

§56.1. General Reporting Requirements.
District Attorneys and County Attorneys presiding in a district or county with a population of 250,000 or more persons shall submit quarterly and annual reports relating to criminal matters and the interest of the state to the Office of the Attorney (OAG) in a manner prescribed by the OAG and as set forth in this chapter. If needed the

OAG will post reporting instructions, guidance, and examples on the OAG's website for reference.

§56.2. Definitions.

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

(1) "Case file" means all documents, notes, memoranda, and communications, whether handwritten, typed, electric, or otherwise, including but not limited to all emails, instant messages, text messages, direct messages, social media messages, handwritten notes, and typed or handwritten memoranda, whether a draft or final copy, produced within or received by the reporting entity's office, including work product and otherwise privileged and confidential matters.

(2) "Correspondence" means any email, letter, memorandum, instant message, text message, direct message, social media message, note, or otherwise, received or issued by an employee of the reporting entity.

(3) "Fiscal Year" means the period of September 1 through August 30, of each calendar year.

(4) "Reporting entity" means the office of a District Attorney or County Attorney serving a population of 250,000 or more persons.

(5) "Violent crime" includes but is not limited to capital murder, murder, other felony homicides, aggravated assault, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, any crime listed in Code of Criminal Procedure § 17.50(3), and any attempt to commit such crimes.

§56.3. Quarterly Reporting Requirements.

(a) Content of reports. Reporting entities shall provide the following information to the OAG quarterly each Fiscal Year.

(1) The case file regarding any decision to indict a peace officer;

(2) The case file regarding any decision to indict a poll watcher;

(3) The case file in any prosecution where a defendant has raised a justification under Chapter 9 of the Penal Code, Subchapters C and/or D;

(4) The case file for any case where a recommendation is made to a judicial body that a person subject to a final judgment of conviction be released from prison before the expiration of their sentence;

(5) The case file regarding any prosecution for which the Texas Governor has announced that The Office of the Texas Governor is considering a pardon;

(6) The case file regarding any prosecution for which the Attorney General, through the OAG's Oversight Advisory Committee, has concluded there are substantial doubts whether probable cause exists to support a prosecution;

(7) All correspondence regarding any decision not to indict a person who was arrested by the Texas Department of Public Safety for a violent crime;

(8) All correspondence regarding any decision not to indict a person who was arrested for committing a violent crime;

(9) All correspondence and other documentation describing and analyzing a reporting entity's policy not to indict a category or sub-category of criminal offenses;

(10) All correspondence with any employee of a federal agency regarding a decision whether to indict an individual;

(11) All correspondence with any non-profit organization regarding a decision whether to indict an individual; and

(12) Correspondence or other records memorializing assistant district attorney or assistant county attorney resignations or terminations and the reasons therefore where a complaint was made, formally or informally, by the assistant district attorney or assistant county attorney.

(b) Applicability and Reporting Requirements

(1) A reporting entity must submit all information in subsection (a) of this section for which the relevant reporting event occurs.

(2) A reporting entity must submit all information in subsection (a) of this section for a which a reporting event occurred between January 1, 2021, and the effective date of this rule, unless:

(A) The reporting entity obtains a written exception, in whole or in part, from the OAG;

(B) The reporting entity provides a sworn affidavit that states the information:

(i) Was the exclusive product of a previous District or County Attorney; and

(ii) Is not reflective of the reporting entity's current operations due to a formal change in the office's policies, and the formal change is described in detail and transmitted to the Oversight Advisory Committee; or

(C) The reporting entity provides a sworn affidavit that states the information cannot be produced because it was destroyed or otherwise discarded pursuant to a bona fide document retention policy that existed prior to the effective date of this rule and that is described in detail and transmitted to the Oversight Advisory Committee.

(c) Timing of reports

(1) Reports for information under subsection (b)(1) of this section are due within 30 days of the beginning of each new fiscal quarter for all reporting events that occurred in the prior fiscal quarter.

(2) Reporting of information under subsection (b)(2) of this section is due within 60 days of the effective date of this rule.

§56.4. Annual Reports.

Reporting entities must submit electronic copies of the following information for the prior 12 months in a form prescribed by the OAG no later than the last business day of January of each year:

(1) All policies, rules, and orders, including internal operating procedures and public policy documents, that were modified during the prior 12 months;

(2) A list of all local, county, state, and federal ordinances, statutes, laws, and rules for which the reporting entity files reports, whether that requirement is regular or arises upon the occurrence of an event;

(3) A report providing individual expenditures and purchases made based on funds or assets received through civil asset forfeiture;

(4) A report providing all information regarding funds accepted by the commissioners court of their county pursuant to Texas Government Code §41.108 that were passed on to the reporting entity. The reporting entity must detail how much of the funds were passed

on to the reporting entity and provide a detailed accounting of how the reporting entity disposed of any funds received; and

(5) A report providing all information regarding funds accepted by the commissioners court of their county pursuant to Tex. Gov. Code Sec. 41.108 that were not passed on to the reporting entity, but were used to benefit the reporting entity, its personnel, or its operations. The report must include any correspondence regarding accepted funds, as well as a detailed account of how the funds were used to benefit the reporting entity, its personnel, or its operations.

§56.5. Document Retention.

Reporting entities must implement document retention policies reasonably designed to preserve all documents which are, or may be, subject to these reporting requirements. Reasonable document retention policies must at a minimum preserve documents until two years after the time when they are due to be reported.

§56.6. Overdue Reports.

If an entity fails to comply with this chapter, in whole or in part, the OAG may send notice to the reporting entity identifying the reporting entity of its failure to comply. A reporting entity must remedy the identified reporting failure within 15 days after receipt of notice.

§56.7. Compliance.

If a reporting entity intentionally violates §56.5 or §56.6 of this chapter:

(1) The OAG may file a petition for removal of the District or County Attorney under Local Gov't Code 87.015 for official misconduct or incompetency;

(2) The OAG may file a petition for quo warranto under Civil Practice and Remedies Code 66.002 for the performance of an act that by law causes the forfeiture of the County or District Attorney's office; or

(3) The OAG may initiate a civil proceeding for an injunction to order the County or District Attorney to comply with this chapter.

§56.8. Oversight Advisory Committee.

(a) The Attorney General may establish an Oversight Advisory Committee composed of three members of the Office of the Attorney General designated by the Attorney General.

(b) The Oversight Advisory Committee may publish on the OAG's website any necessary forms or coordinating instructions for submitting reports.

(1) In the absence of a form or coordinating instruction, District and County Attorneys are to use their discretion with respect to reporting format.

(2) Reporting entities must submit required case files and correspondence to the OAG via email if electronic service is possible, otherwise by certified mail.

(c) The Oversight Advisory Committee may issue clarifying instructions to reporting entities about the scope of their obligations under these rules.

(d) The Oversight Advisory Committee may issue notifications of Overdue Reports under §56.6 of this Chapter.

§56.9. Severability.

(a) If any application of any provision of this rule is found by a court to be invalid or unconstitutional, the remaining applications of

that provision shall be severed and be unaffected. All constitutionally valid applications of this rule shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Attorney General's intent and priority that the valid applications be allowed to stand alone.

(b) If any court declares or finds a provision of this rule facially unconstitutional, when discrete applications of that provision can be enforced without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the Attorney General had enacted a provision limited to circumstances for which the provision's application will not violate the United States Constitution or Texas Constitution.

(c) The Attorney General further declares that he would have promulgated this rule, and each provision and all constitutional applications of this rule, irrespective of the fact that any provision or application of this rule were to be declared unconstitutional.

(d) If any provision of this rule is found by any court to be unconstitutionally vague, the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(e) No court should decline to enforce the severability requirements of this rule on the ground that severance would rewrite the rule or involve the court in rulemaking activity.

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

Filed with the Office of the Secretary of State on February 26, 2024.

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General Counsel

Office of the Attorney General

Earliest possible date of adoption: April 7, 2024

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



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 382. WOMEN'S HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §382.1, concerning Introduction; §382.5, concerning Definitions; §382.7, concerning Client Eligibility; §382.9, concerning Application and Renewal Procedures; §382.15, concerning Covered and Non-covered Services; §382.17, concerning Health-Care Providers; §382.101, concerning Introduction; §382.105, concerning Definitions; §382.107, concerning Client Eligibility; §382.109, concerning Financial Eligibility Requirements; §382.113, concerning Covered and Non-covered Services; §382.115, concerning Family Planning Program Providers; §382.119, concerning Reimbursement; §382.121, concerning Provider's Request for Review of Claim Denial; §382.123, concerning Record Retention; §382.125, concerning Confidentiality and Consent; and §382.127, concerning FPP Services for

Minors; and proposes the repeal of §382.3, concerning Non-entitlement and Availability; and §382.11, concerning Financial Eligibility Requirements.

BACKGROUND AND PURPOSE

The primary purpose of the proposal is to update eligibility and other Medicaid requirements in the Healthy Texas Women (HTW) program to describe the agency's compliance with the HTW Section 1115 Demonstration that was approved by the Centers for Medicare and Medicaid Services on January 22, 2020, and transitioned the majority of the program into Medicaid. For eligible minors, the HTW program remains fully funded by state general revenue.

Another purpose of the proposal is to comply with Texas Health and Safety Code §32.102, added by Senate Bill (S.B.) 750, 86th Legislature, Regular Session, 2019, which requires HHSC to provide enhanced postpartum care services, called HTW Plus, to eligible clients. HHSC made HTW Plus available to eligible clients enrolled in the HTW program beginning September 1, 2020.

Another purpose of the proposal is to comply with Texas Health and Safety Code §31.018, also added by S.B. 750, to include a requirement for women in HTW to receive referrals to the Primary Health Care Services Program.

Another purpose of the proposal is to make conforming amendments to the Family Planning Program (FPP) rules where necessary and update covered and non-covered services for HTW and FPP.

Other non-substantive clarifying changes were made throughout the rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §382.1, Introduction, replaces references to statutes that have expired with a reference to the original bill in §382.1(b) and deletes "non-federally funded services" from §382.1(c)(5) because it no longer applies to the majority of the HTW program under the authority of the HTW Section 1115 Demonstration. The HTW Section 1115 Demonstration is state and federally funded through Medicaid. The proposed amendment also makes clarifications related to the use of state funds and minor changes to use "HTW program" consistently.

The proposed repeal of §382.3, Non-entitlement and Availability, deletes the rule as no longer necessary because it is no longer applicable to the HTW Section 1115 Demonstration. Within Medicaid, HTW is an entitlement program.

The proposed amendment to §382.5, Definitions, deletes the definition for "elective abortion" and adds a definition for "abortion" that aligns with the Texas Health and Safety Code. The proposed amendment adds definitions for "CHIP" and "HTW Plus" because they are new terms used in the proposed rules. The proposed amendment revises the terms "client," "covered service," "HTW," "HTW Provider," "Medicaid," "third-party resource," and "unintended pregnancy." The proposed amendment to "covered service" clarifies that a service reimbursable under the HTW program includes HTW Plus services to comply with Texas Health and Safety Code §32.102. The proposed amendments to "HTW" and "Medicaid" clarify that the terms refer to programs. The proposed amendment to "HTW Provider" specifies that HTW providers must be enrolled in the Texas Medicaid program and may also have a cost reimbursement contract with HHSC. The proposed amendment to "third-party

resource" complies with federal Medicaid third-party resource requirements. The proposed amendment to "unintended pregnancy" makes the term plural to conform with the usage of the term in §382.1. The proposed amendment deletes the terms "child," "contraceptive method," "corporate entity," "health care provider," and "health clinic" because they are no longer used in Chapter 382, Subchapter A.

The proposed amendment to §382.7, Client Eligibility, updates eligibility requirements in the HTW program to reflect changes made to comply with the HTW Section 1115 Demonstration and federal Medicaid requirements, as well as Texas Health and Safety Code §32.102. The eligibility requirements updated include income, citizenship, HTW Plus eligibility criteria, period of eligibility, automatic eligibility determination, and third-party resources. The proposed amendment updates rule references and reformats the rule to improve readability of the rules.

The proposed amendment to §382.9, Application and Renewal Procedures, revises the title of the section to "Initial Application and Renewal Procedures." The proposed amendment also updates §382.9(a) to specify that women apply for HTW using the medical assistance application form and can apply for HTW online. The proposed amendment in §382.9(h)(2) adds that HTW clients can renew online. The proposed amendment complies with the HTW Section 1115 Demonstration and federal Medicaid requirements. The proposed amendment updates a rule reference and makes editorial changes to improve readability of the rules.

The proposed repeal of §382.11, Financial Eligibility Requirements, deletes the rule because updated financial and income eligibility requirements were added to proposed amended §382.7, Client Eligibility.

The proposed amendment to §382.15, Covered and Non-covered Services, adds language on HTW Plus services in §382.15(b) to comply with Texas Health and Safety Code §32.102 and updates language on covered and non-covered services for more specificity as to services available in the HTW program. The proposed amendment clarifies that women receiving HTW Plus services can also receive HTW services listed in §382.15(a).

The proposed amendment to §382.17, Health-Care Providers, revises the title of the section to "HTW Providers." The proposed amendment also adds language to §382.17(a)(5) on requirements for HTW providers to refer women in HTW to HHSC programs like the Primary Health Care Services Program to comply with Texas Health and Safety Code §31.018. The proposed amendment to §382.17(e) changes the HTW provider requirement to certify compliance with §382.17(b) from annually to periodically using an HHSC-approved form. The proposed amendment deletes §382.17(h) because the initial certification period for the HTW program has passed.

The proposed amendment to §382.101, Introduction, replaces references to statutes that have expired with a reference to the original bill in §382.1(b) and makes clarifications related to the use of state funds and minor changes to use "FPP" consistently.

The proposed amendment to §382.105, Definitions, deletes the definition for "elective abortion" and adds a definition for "abortion" that aligns with the Texas Health and Safety Code. The proposed amendment replaces the definition for "contractor" with a definition for "grantee" to align current terminology. The proposed amendment revises the terms "covered service," "Family Planning Program provider," "Medicaid," "third-party resource,"

and "unintended pregnancy." The proposed amendment to "covered service" clarifies the definition using plain language. The proposed amendment to "Family Planning Program provider" removes the term "health-care" as it is included in the definition. The proposed amendment to "Medicaid" clarifies that the term refers to a program. The proposed amendment to "third-party resource" is consistent with third-party resource requirements used in HTW. The proposed amendment to "unintended pregnancy" makes the term plural to conform with the usage of the term in §382.101. The proposed amendment deletes the terms "corporate entity," "contraceptive method," and "health clinic," because the terms are not used in Chapter 382, Subchapter B.

The proposed amendment to §382.107, Client Eligibility, improves readability of the rules. The proposed amendment removes Medicaid for Pregnant Women from adjunctive eligibility as that program provides full health benefits.

The proposed amendment to §382.109, Financial Eligibility Requirements, improves readability of the rules.

The proposed amendment to §382.113, Covered and Non-covered Services, updates language on covered and non-covered services for more specificity as to services available in FPP and adds language on new services.

The proposed amendment to §382.115, Family Planning Program Health-Care Providers, improves readability; makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider;" and revises the title of the section to, "Family Planning Program Providers." The proposed amendment to §382.115(e) changes the FPP provider requirement to certify compliance with §382.115(b) from annually to before initially providing covered services using an HHSC-approved form.

The proposed amendment to §382.119, Reimbursement, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.121, Provider's Request for Review of Claim Denial, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.123, Record Retention, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.125, Confidentiality and Consent, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.127, FPP Services for Minors, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. The additional cost is due to HHSC's reimbursement for additional services provided through the HTW Plus and FPP service arrays.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$2,047,918 in fiscal year (FY) 2024, \$8,823,739 in FY 2025, \$10,904,489 in FY 2026, \$11,218,855 in FY 2027, and \$11,550,379 in FY 2028.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities related to the rule as there is no requirement to alter current business practices. In addition, no rural communities contract with HHSC in any program or service affected by the proposed rule.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, women in their postpartum period will be able to receive additional HTW Plus benefits for 12 months and improve continuity of care between Medicaid or CHIP and HTW. Additionally, the rules are expected to maintain or decrease the number of Medicaid and CHIP paid deliveries, which will reduce annual expenditures for prenatal, delivery, and newborn and infant care.

Michelle Alletto, Chief Program and Services Officer, has determined that for the first five years the rules are in effect, clients receiving services through FPP will have access to an improved array of benefits to promote health and well-being.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because HTW and FPP services are available at no cost to the public and providers are reimbursed by HHSC for HTW and FPP covered services, including additional HTW Plus services.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R082" in the subject line.

SUBCHAPTER A. HEALTHY TEXAS WOMEN

1 TAC §§382.1, 382.5, 382.7, 382.9, 382.15, 382.17

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendments also affect Texas Health and Safety Code §§31.018 and 32.102.

§382.1. Introduction.

(a) Governing rules. This subchapter sets out rules governing the administration of the Healthy Texas Women (HTW) program [(HTW)].

(b) Authority. This subchapter is authorized generally by Senate Bill 200, 84th Legislature, Regular Session, 2015 [Texas Government Code §531.0201(a)(2)(C)], which transferred [transfers] client services functions performed by the Texas Department of State Health Services to HHSC and required [, and Texas Government Code §531.0204, which requires] the HHSC Executive Commissioner to develop a transition plan which includes an outline of HHSC's reorganized structure and a definition of client services functions.

(c) Objectives. The HTW program is established to achieve the following overarching objectives:

(1) to increase access to women's health and family planning services to:

- (A) avert unintended pregnancies;
- (B) positively affect the outcome of future pregnancies;

and

(C) positively impact the health and wellbeing of women and their families;

(2) to implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;

(3) to ensure the efficient and effective use of state funds in support of these objectives and [to avoid the direct or indirect use of] that state funds are not directly or indirectly used to promote or support elective abortion;

(4) to reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans access to safe, effective services that are consistent with these objectives; and

(5) to enforce Texas Human Resources Code §32.024(c-1) and any other state law that regulates the delivery of HTW [~~non-federally funded family planning~~] services, to the extent permitted by the Constitution of the United States.

§382.5. Definitions.

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

(1) Abortion--As defined in Texas Health and Safety Code §245.002.

(2) [(+) Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this definition may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, articles of incorporation or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group agreement, staffing agreement, management agreement, or collaborative practice agreement.

(3) [(2)] Applicant--A female applying to receive services in the [under] HTW program, including a current client who is applying to renew.

(4) [(3)] Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

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

(5) CHIP--The Texas State Children's Health Insurance Program.

(6) [(5)] Client--A female who is enrolled in the [receives services through] HTW program.

[(6)] Contraceptive method--Any birth control options approved by the United States Food and Drug Administration, with the exception of emergency contraception.]

[(7)] Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, or a sole proprietorship.]

~~(7) [(8)] Covered service--A service that is reimbursable under the HTW program, including HTW Plus services [medical procedure for which HTW will reimburse an enrolled health-care provider].~~

~~(9) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:]~~

~~[(A) to terminate a pregnancy that resulted from an act of rape or incest;]~~

~~[(B) in a case in which a female suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the female in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or]~~

~~[(C) in a case in which a fetus has a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.]~~

~~(8) [(40)] Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.~~

~~(9) [(44)] Federal poverty level--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.~~

~~[(12) Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.]~~

~~[(13) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.]~~

~~(10) [(44)] HHSC--The Texas Health and Human Services Commission or its designee.~~

~~(11) HTW Plus--Healthy Texas Women Plus. An enhanced postpartum services package for women enrolled in the HTW program who are eligible for the services.~~

~~(12) [(45)] HTW program--The Healthy Texas Women program. A program administered by HHSC as outlined in this subchapter.~~

~~(13) [(46)] HTW provider--A [health-care] provider that is enrolled in the Texas Medicaid program and is qualified to perform covered services in the HTW program. An HTW provider with a cost reimbursement contract with HHSC may be reimbursed for providing [contracted with HHSC to provide] additional services as described in §382.21(a)(2) of this subchapter (relating to Reimbursement).~~

~~(14) [(47)] Medicaid program--The Texas Medical Assistance Program, a joint federal and state program provided for in Texas Human Resources Code Chapter 32, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.~~

~~(15) [(48)] Minor--In accordance with the Texas Family Code, a person under 18 years of age who has never been married and never been declared an adult by a court (emancipated).~~

~~(16) [(49)] Third-party resource--A person or organization, other than HHSC or a person living with a female [the] applicant or a client, who may be liable as a source of payment of the female applicant's or client's medical expenses, for example, a private health insurance company or liability insurance company [(for example, a health insurance company)].~~

~~(17) [(20)] Unintended pregnancies--Pregnancies that [pregnancy--Pregnancy] a female reports as either mistimed or undesired at the time of conception.~~

~~(18) [(21)] U.S.C.--United States Code.~~

~~§382.7. Client Eligibility.~~

~~(a) HTW Program Criteria. A female applicant is eligible for the [to receive services through] HTW program if she:~~

~~(1) meets the following age requirements:~~

~~(A) is 18 through 44 years of age[; inclusive]; or~~

~~(B) is 15 through 17 years of age[; inclusive], and has a parent or legal guardian apply, renew, and report changes to her case on her behalf;~~

~~(2) is not pregnant;~~

~~(3) meets the income eligibility requirements for the HTW program as determined by HHSC in accordance with Chapter 366 Subchapter K of this title (relating to Modified Adjusted Gross Income Methodology) and her household income is equal to or less than 204.2 percent [has countable income (as calculated under §382.11 of this subchapter (relating to Financial Eligibility Requirements) that does not exceed 200 percent] of the federal poverty level;~~

~~(4) is a:~~

~~(A) United States citizen[;]~~

~~(B) a United States national[;]~~ or

~~(C) an alien who qualifies under §366.513 of this title (relating to Citizenship) [§382.9(g) of this subchapter (relating to Application and Renewal Procedures)];~~

~~(5) resides in Texas;~~

~~(6) does not currently receive benefits through another [a] Medicaid program, CHIP [Children's Health Insurance Program], or Medicare Part A or B; and~~

~~(7) does not have creditable health coverage that covers the services provided in the HTW program [provides], except as specified in subsection (f) [(e)] of this section.~~

~~(b) HTW Plus Criteria.~~

~~(1) A client in the HTW program may also qualify to receive HTW Plus covered services if the client:~~

~~(A) meets the criteria in subsection (a) of this section; and~~

~~(B) has been pregnant within the past 12 months.~~

~~(2) HTW Plus services are available to a client for a period of not more than 12 months after the date of enrollment in the HTW program.~~

~~(c) [(b)] Age.~~

(1) For purposes of subsection (a)(1)(A) of this section, a female ~~[an]~~ applicant is considered 18 years of age on the day of her 18th birthday and 44 years of age through the last day of the month of her 45th birthday.

(2) For purposes of subsection (a)(1)(B) of this section, a female ~~[an]~~ applicant is considered 15 years of age the first day of the month of her 15th birthday and 17 years of age through the day before her 18th birthday.

(3) A female applicant is ineligible for the HTW program if her application is received the month before her 15th birthday or the month after she turns 45 years of age.

~~[(e) Third-party resources. An applicant with creditable health coverage that would pay for all or part of the costs of covered services may be eligible to receive covered services if she affirms, in a manner satisfactory to HHSC, her belief that a party may retaliate against her or cause physical or emotional harm if she assists HHSC (by providing information or by any other means) in pursuing claims against that third party. An applicant with such creditable health coverage who does not comply with this requirement is ineligible to receive HTW benefits.]~~

(d) Period of eligibility. A client is deemed eligible to receive covered services for 12 continuous months from the earliest day of the application month on which the female applicant meets all eligibility criteria ~~[after her application is approved]~~, unless:

- (1) the client dies;
- (2) the client voluntarily withdraws;
- (3) the client no longer satisfies criteria set out in subsection (a) of this section;
- (4) state law no longer allows the client ~~[female]~~ to be covered; or
- (5) HHSC determines the client provided information affecting her eligibility that was false at the time of application.

~~[(e) Transfer of eligibility. A female who received services through the Texas Women's Health Program is automatically enrolled as an HTW client and is eligible to receive covered services for as long as she would have been eligible for the Texas Women's Health Program.]~~

~~(c) [(f) Automatic Eligibility Determination [Auto-Enrollment].~~

~~(1) A client [female] who is receiving Medicaid or CHIP [for pregnant women] is automatically tested for eligibility for the [enrolled into] HTW program at the end of her Medicaid or CHIP [for pregnant women] certification period if she is not eligible for another Medicaid program or CHIP.~~

~~(2) Program coverage begins on the first day following the termination of her Medicaid or CHIP coverage.~~

~~(3) A client [female] enrolled in the [into] HTW program may [has the option to] opt out of the [receiving] HTW program. [To be auto-enrolled, a female must:]~~

~~[(1) be 18 to 44 years of age, inclusive, as defined in subsection (b) of this section;]~~

~~[(2) not be receiving active third-party resources at the time of auto-enrollment; and]~~

~~[(3) be ineligible for any other Medicaid or CHIP program.]~~

~~(f) Third party resources. All female applicants eligible for the HTW program must comply with §354.2313 of this title (relating to Duty of Applicant or Recipient to Inform and Cooperate). A female applicant with creditable health coverage or other third party resources that would pay for all or part of the costs of covered services may affirm, in a manner satisfactory to HHSC, her belief that someone may retaliate against her or cause physical or emotional harm if she assists HHSC by providing information or by any other means in pursuing claims against that third-party resource. A female applicant with such creditable health coverage who does not comply with §354.2313 of this title is ineligible to receive HTW benefits.~~

§382.9. *Initial Application and Renewal Procedures.*

(a) Application. A female, or a parent or legal guardian acting on her behalf if she is 15 through 17 years of age~~], inclusive,~~ may apply for the HTW program ~~[services]~~ by completing an application for medical assistance ~~[form]~~ and providing documentation as required by HHSC.

(1) A female ~~[An]~~ applicant may obtain an application ~~[in the following ways]:~~

(A) from a local benefits office of HHSC, ~~[an HTW provider's office,]~~ or any other location that makes the application ~~[HTW applications]~~ available;

(B) from the HTW program or HHSC website;

(C) by calling 2-1-1; or

(D) by any other means approved by HHSC.

(2) HHSC accepts ~~[and processes]~~ every application received through the following means:

(A) in person at a local HHSC benefits office ~~[of HHSC];~~

(B) by fax;

(C) by ~~[through the]~~ mail; ~~[or]~~

(D) online; or

(E) ~~[(D)]~~ by any other means approved by HHSC.

(b) Processing timeline. HHSC processes an ~~[HTW]~~ application for medical assistance by the 45th day after the date HHSC receives the application.

(c) Start of coverage. Program coverage~~],~~ for a client ~~[females]~~ who is determined eligible ~~[are not auto-enrolled]~~ in accordance with §382.7 ~~[(f)]~~ of this subchapter (relating to Client Eligibility)~~],~~ begins on the earliest ~~[first]~~ day of the application month ~~on [in]~~ which the client meets all eligibility criteria ~~[HHSC receives a valid application].~~

(1) For female applicants 18 through 44 years of age~~], inclusive,~~ a valid application has, at a minimum, the applicant's name, address, and signature.

(2) For female applicants 15 through 17 years of age~~], inclusive,~~ a valid application has, at a minimum, the female applicant's name, address, and the signature of a parent or legal guardian.

(d) Social security number (SSN) required. In accordance with 42 U.S.C. §405(c)(2)(C)(i), HHSC requires a female ~~[an]~~ applicant to provide or apply for a social security number. If a female ~~[an]~~ applicant is not eligible to receive an SSN, the female applicant must provide HHSC with any documents requested by HHSC to verify the female applicant's identity. ~~[HHSC requests, but does not require, budget group members who are not applying for HTW to provide or apply for an SSN.]~~

(e) Interviews. HHSC does not require an interview for purposes of an eligibility determination. A female [An] applicant may, however, request an interview for an initial or renewal application.

(f) Identity. A female [An] applicant must verify her identity the first time she applies to receive covered services.

(g) Citizenship.

(1) If a female [an] applicant is a United States citizen, she must provide proof of citizenship.

(2) If a female [the] applicant[;] who is otherwise eligible for the [to receive] HTW program [services;] is not a [an] United States citizen, HHSC determines her eligibility as described in [accordance with] §366.513 of this title (relating to Citizenship).

(3) Citizenship is only verified once, unless HHSC receives conflicting information related to citizenship. If a female [an] applicant's citizenship has already been verified by HHSC for eligibility for the Medicaid program [or HTW], the female applicant is not required to re-verify her citizenship.

(h) Renewal. A client, [female;] or a parent or legal guardian acting on [her] behalf of the client if she is 15 through 17 years of age, [inclusive;] may renew her enrollment in the HTW program [services] by completing a renewal form as described in this subsection and providing documentation as required by HHSC.

(1) HHSC sends a [An HTW] client [will be sent] a renewal packet during the 9th [10th] month of her 12-month certification period for the HTW program.

(2) HHSC accepts and processes every renewal form received through the following means:

(A) in person at a local HHSC benefits office [of HHSC];

(B) by fax;

(C) by [through the] mail; [or]

(D) online; or

(E) [(D)] by any other means approved by HHSC.

§382.15. Covered and Non-covered Services.

(a) Covered services[; Services] provided through the HTW program include:

(1) contraceptive services;

(2) pregnancy testing and counseling;

(3) preconception health screenings for:

(A) obesity;

(B) hypertension;

(C) diabetes;

(D) cholesterol;

(E) smoking; and

(F) mental health;

(4) sexually transmitted infection (STI) services;

(5) limited pharmacological treatment for the following chronic conditions:

(A) hypertension;

(B) diabetes; and

(C) high cholesterol;

(6) breast and cervical cancer screening and diagnostic services;

(A) radiological procedures including mammograms;

(B) screening and diagnosis of breast cancer; and

(C) diagnosis and treatment of cervical dysplasia;

(7) immunizations;

(8) limited pharmacological treatment for postpartum depression;

(9) health history and physical exam; and

(10) covered HTW Plus services for clients who qualify for HTW Plus as described in §382.7(b) of this subchapter.

[(1) health history and physical;]

[(2) counseling and education;]

[(3) laboratory testing;]

[(4) provision of a contraceptive method;]

[(5) pregnancy tests;]

[(6) sexually transmitted infection screenings and treatment;]

[(7) referrals for additional services, as needed;]

[(8) immunizations;]

[(9) breast and cervical cancer screening and diagnostic services; and]

[(10) other services subject to available funding.]

(b) In addition to the HTW services above, covered HTW Plus services include:

(1) mental health counseling/treatment, including:

(A) individual, family, and group psychotherapy services; and

(B) peer specialist services;

(2) substance use disorder treatment, including:

(A) screening, brief intervention, and referral for treatment;

(B) outpatient substance use counseling;

(C) smoking cessation services;

(D) medication-assisted treatment; and

(E) peer specialist services;

(3) cardiovascular and coronary condition management, including:

(A) cardiovascular evaluation imaging and laboratory studies;

(B) blood pressure monitoring equipment; and

(C) anticoagulant, antiplatelet, and antihypertensive medications;

(4) diabetes management, including:

(A) laboratory studies;

(B) additional injectable insulin options;

(C) blood glucose testing supplies;

(D) glucose monitoring supplies; and

(E) voice-integrated glucometers for women with diabetes who are visually impaired; and

(5) asthma management, including:

(A) medications; and

(B) supplies.

(c) ~~[(b)]~~ Non-covered services in the ~~[- Services not provided through]~~ HTW program include:

(1) counseling on and provision of abortion services; and

~~[(2) counseling on and provision of emergency contraceptives; and]~~

(2) ~~[(3)]~~ other services that cannot be appropriately billed with a permissible procedure code.

§382.17. HTW Providers ~~[Health-Care Providers].~~

(a) Procedures. An HTW provider must:

(1) be enrolled as a Medicaid program provider in accordance with Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);

(2) comply with subsection (b) of this section;

(3) ~~[(2)]~~ complete the [HTW] certification ~~[process as]~~ described in subsection (e) of this section; and

(4) ~~[(3)]~~ comply with the requirements ~~[set out]~~ in Chapter 354, Subchapter A, Division 1 of this title (relating to Medicaid Procedures for Providers).

(5) ensure women in HTW receive information and referrals to HHSC programs like the Primary Health Care Services Program.

(b) Requirements. An HTW provider must ensure that:

(1) the HTW provider does not perform or promote elective abortions outside the scope of the HTW program and is not an affiliate of an entity that performs or promotes elective abortions; and

(2) in offering or performing a covered ~~[an HTW]~~ service, the HTW provider:

(A) does not promote elective abortion within the scope of HTW;

(B) maintains physical and financial separation between its HTW activities and any elective abortion-performing or abortion-promoting activity, as evidenced by the following:

(i) physical separation of HTW services from any elective abortion activities, no matter what entity is responsible for the activities;

(ii) a governing board or other body that controls the HTW provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;

(iii) accounting records that confirm that none of the funds used to pay for HTW services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and

(iv) display of signs and other media that identify HTW and the absence of signs or materials promoting elective abortion in the HTW provider's location or in the HTW provider's public electronic communications; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:

(1) taking affirmative action to secure elective abortion services for an HTW client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion ~~[health-care]~~ provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a ~~[health-care]~~ provider;

(2) furnishing or displaying to an HTW client information that publicizes or advertises an elective abortion service or ~~[health-care]~~ provider; or

(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, an HTW provider must provide HHSC with all information HHSC requires to determine the HTW provider's compliance with this section.

(e) Certification. Before initially providing covered services and periodically thereafter ~~[Upon initial application for enrollment in HTW], an HTW~~ ~~[a health-care]~~ provider must certify its compliance with subsection (b) of this section using an HHSC-approved form and any other requirement specified by HHSC. ~~[Each health-care provider enrolled in HTW must annually certify that the HTW provider complies with subsection (b) of this section.]~~

(f) HTW provider disqualification. If HHSC determines that an HTW provider fails to comply with subsection (b) of this section, HHSC disqualifies the ~~[HTW]~~ provider from the HTW program.

(g) Client assistance and recoupment. If an HTW provider is disqualified, HHSC takes appropriate action to:

(1) assist a ~~[an HTW]~~ client to find an alternate HTW provider; and

(2) recoup any funds paid to a disqualified HTW provider for covered ~~[HTW]~~ services performed during the period of disqualification.

~~[(h) Exemption from initial certification. The initial application requirement of subsection (g) of this section does not apply to a health-care provider that certified and was determined to be in compliance with the requirements of the Texas Women's Health Program administered by HHSC pursuant to Texas Human Resources Code §32.024(e-1).]~~

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

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

TRD-202400821

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 7, 2024
For further information, please call: (512) 815-1887



1 TAC §382.3, §382.11

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The repeals also affect Texas Health and Safety Code §§31.018 and 32.102.

§382.3. *Non-entitlement and Availability.*

§382.11. *Financial Eligibility Requirements.*

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

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

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Karen Ray
Chief Counsel

Texas Health and Human Services Commission
Earliest possible date of adoption: April 7, 2024
For further information, please call: (512) 815-1887



SUBCHAPTER B. FAMILY PLANNING PROGRAM

1 TAC §§382.101, 382.105, 382.107, 382.109, 382.113, 382.115, 382.119, 382.121, 382.123, 382.125, 382.127

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendments also affect Texas Health and Safety Code §§31.018 and 32.102.

§382.101. *Introduction.*

(a) Governing rules. This subchapter sets out rules governing the administration of the HHSC Family Planning Program (FPP). This program is separate from family planning services provided through Medicaid.

(b) Authority. This subchapter is authorized generally by Senate Bill 200, 84th Legislature, Regular Session, 2015 [Texas Government Code §531.0201(a)(2)(C)], which transferred [transfers] client services functions performed by the Texas Department of State Health Services to HHSC and required [; and Texas Government Code §531.0204, which requires] the HHSC Executive Commissioner to develop a transition plan which includes an outline of HHSC's reorganized structure and a definition of client services functions.

(c) Objectives. FPP [The HHSC Family Planning Program] is established to achieve the following overarching objectives:

(1) to increase access to health and family planning services to:

(A) avert unintended pregnancies;

(B) positively affect the outcome of future pregnancies;

and

(C) positively impact the health and well-being of women and their families;

(2) to implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;

(3) to ensure the efficient and effective use of state funds in support of these objectives and that [~~to avoid the direct or indirect use of~~] state funds are not directly or indirectly used to promote or support elective abortion;

(4) to reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans access to safe, effective services that are consistent with these objectives; and

(5) to enforce any state law that regulates the delivery of non-federally funded family planning services, to the extent permitted by the Constitution of the United States.

§382.105. *Definitions.*

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

(1) Abortion--As defined in Texas Health and Safety Code §245.002.

(2) [(+)] Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this definition may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, articles of incorporation or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group

agreement, staffing agreement, management agreement, or collaborative practice agreement.

(3) [(2)] Applicant--An individual applying to receive services under FPP, including a current client who is applying to renew.

(4) [(3)] Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

(5) [(4)] Client--Any individual seeking assistance from an FPP health-care provider to meet their family planning goals.

[(5) Contraceptive method--Any birth control option approved by the United States Food and Drug Administration, with the exception of emergency contraception].

[(6) Contractor--An entity that HHSC has contracted with to provide services. The contractor is the responsible entity, even if a subcontractor provides the service.]

[(7) Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, or a sole proprietorship.]

(6) [(8)] Covered service--A service that is reimbursable under FPP [medical procedure for which FPP will reimburse a contracted health-care provider].

[(9) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:]

[(A) to terminate a pregnancy that resulted from an act of rape or incest;]

[(B) in a case in which a female suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the female in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or]

[(C) in a case in which a fetus has a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.]

(7) [(40)] Family Planning Program (FPP)--The non-Medicaid program administered by HHSC as outlined in this subchapter.

(8) [(41)] Family Planning Program [health-care] provider--A health-care provider that is contracted with HHSC and qualified to perform covered services.

(9) [(42)] Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.

(10) [(43)] Federal poverty level--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(11) Grantee--An entity that HHSC has contracted with to provide services. The grantee is the responsible entity, even if a subcontractor provides the service.

(12) [(44)] Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency,

health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.

[(15) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.]

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

(14) [(47)] Medicaid program--The Texas Medical Assistance Program, a joint federal and state program provided for in Texas Human Resources Code Chapter 32, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(15) [(48)] Minor--In accordance with the Texas Family Code, a person under 18 years of age who has never been married and never been declared an adult by a court (emancipated).

(16) [(49)] Point of Service--The location where an individual can receive FPP services.

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

(18) [(21)] Unintended pregnancies--Pregnancies that [pregnancy--Pregnancy] a female reports as either mistimed or undesired at the time of conception.

(19) [(22)] U.S.C.--United States Code.

§382.107. Client Eligibility.

(a) FPP Criteria. A male or female is eligible for [to receive services through] FPP if he or she:

(1) [he or she] is 64 years of age or younger;

(2) [he or she] resides in Texas; and

(3) has countable income (as calculated under §382.109 of this subchapter (relating to Financial Eligibility Requirements) that does not exceed 250 percent of the federal poverty level (FPL).

(b) Contractors determine eligibility at the point of service in accordance with program policy and procedures.

(c) Adjunctive eligibility--An applicant is considered adjunctively (automatically) eligible for FPP services at an initial or renewal eligibility screening if the applicant can provide proof of active enrollment in one of the following programs:

(1) Children's Health Insurance Program (CHIP) Perinatal;

[(2) Medicaid for Pregnant Women;]

(2) [(3)] Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); or

(3) [(4)] Supplement Nutrition Assistance Program (SNAP).

§382.109. Financial Eligibility Requirements.

Calculating countable income. FPP determines an applicant's financial eligibility by calculating the applicant's countable income. To determine countable income, FPP adds the incomes listed in paragraph (1) of this section, less any deductions listed in paragraph (2) of this section, and exempting any amounts listed in paragraph (3) of this section.

(1) To determine income eligibility, FPP counts the income of the following individuals if living together:

(A) the individual age 18 through 64[; ~~inclusive,~~] applying for FPP;

(i) the individual's spouse; and

(ii) the individual's children age 18 and younger; or

(B) the individual age 17 or younger[; ~~inclusive,~~] applying for FPP;

(i) the individual's parent(s);

(ii) the individual's siblings age 18 and younger; and

(iii) the individual's children;

(2) In determining countable income, FPP deducts the following items:

(A) a dependent care deduction of up to \$200 per month for each child under two years of age, and up to \$175 per month for each dependent two years of age or older;

(B) a deduction of up to \$175 per month for each dependent adult with a disability; and

(C) child support payments.

(3) FPP exempts from the determination of countable income the following types of income:

(A) the earnings of a child;

(B) up to \$300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(C) Temporary Assistance to Needy Families (TANF);

(D) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program) (7 U.S.C. §§2011-2036), the Child Nutrition Act of 1966 (42 U.S.C. §§1771-1793), the National School Lunch Act (42 U.S.C. §§1751-1769), and the Older Americans Act of 1965 (42 U.S.C. §§3056, et seq.);

(E) foster care payments;

(F) payments made under a government housing assistance program based on need;

(G) energy assistance payments;

(H) job training payments;

(I) lump sum payments;

(J) Supplemental Security Income;

(K) adoption payments;

(L) dividends, interest and royalties;

(M) Veteran's Administration;

(N) earned income tax credit payments;

(O) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(P) educational assistance payments; and

(Q) crime victim's compensation payments.

§382.113. *Covered and Non-covered Services.*

(a) Covered services[; ~~Services~~] provided through FPP include:

(1) contraceptive services;

(2) pregnancy testing and counseling;

(3) preconception health screenings for:

(A) obesity;

(B) hypertension;

(C) diabetes;

(D) cholesterol;

(E) smoking; and

(F) mental health;

(4) sexually transmitted infection (STI) services;

(5) limited pharmacological treatment for the following chronic conditions:

(A) hypertension;

(B) diabetes; and

(C) high cholesterol;

(6) breast and cervical cancer screening and diagnostic services:

(A) radiological procedures including mammograms;

(B) screening and diagnosis of breast cancer; and

(C) diagnosis and treatment of cervical dysplasia;

(7) immunizations;

(8) limited pharmacological treatment for postpartum depression;

(9) health history and physical exam;

(10) mental health counseling/treatment, including:

(A) individual, family, and group psychotherapy services; and

(B) psychological testing administration and evaluation;

(11) health behavior intervention, including:

(A) screening, brief intervention, and referral for treatment;

(B) smoking cessation services; and

(C) medication-assisted treatment;

(12) cardiovascular and coronary condition management, including:

(A) cardiovascular evaluation imaging and laboratory studies;

(B) blood pressure monitoring equipment; and

(C) antihypertensive medications; and

(13) diabetes management, including:

- (A) laboratory studies;
- (B) additional injectable insulin options; and
- (C) blood glucose testing supplies.

- ~~[(1) health history and physical;]~~
- ~~[(2) counseling and education;]~~
- ~~[(3) laboratory testing;]~~
- ~~[(4) provision of a contraceptive method;]~~
- ~~[(5) pregnancy tests;]~~
- ~~[(6) sexually transmitted infection screenings and treatment;]~~
- ~~[(7) referrals for additional services, as needed;]~~
- ~~[(8) immunizations;]~~
- ~~[(9) breast and cervical cancer screening and diagnostic services;]~~
- ~~[(10) prenatal services; and]~~
- ~~[(11) other services subject to available funding.]~~

(b) Non-covered services in ~~Services not provided through~~ FPP include:

- (1) counseling on and provision of abortion services; and
- ~~[(2) counseling on and provision of emergency contraceptives; and]~~
- (2) [(3)] other services that cannot be appropriately billed with a permissible procedure code.

§382.115. *Family Planning Program [Health-Care] Providers.*

(a) Procedures. An FPP [health-care] provider must:

- (1) be enrolled as a Medicaid program provider in accordance with Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);
- (2) comply with subsection (b) of this section;
- (3) [(2)] must complete the FPP certification process as described in subsection (c)[(g)] of this section; and
- (4) [(3)] must comply with the requirements set out in Chapter 354, Subchapter A, Division 1 of this title (relating to Medicaid Procedures for Providers).

(b) Requirements. An FPP health-care provider must ensure that:

- (1) the FPP [health-care] provider does not perform or promote elective abortions outside the scope of FPP and is not an affiliate of an entity that performs or promotes elective abortions; and
- (2) in offering or performing a covered [an FPP] service, the FPP [health-care] provider:
 - (A) does not promote elective abortion within the scope of FPP;
 - (B) maintains physical and financial separation between its FPP activities and any elective abortion-performing or abortion-promoting activity, as evidenced by the following:
 - (i) physical separation of FPP services from any elective abortion activities, no matter what entity is responsible for the activities;

(ii) a governing board or other body that controls the FPP [health-care] provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;

(iii) accounting records that confirm that none of the funds used to pay for FPP services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and

(iv) display of signs and other media that identify FPP services and the absence of signs or materials promoting elective abortion in the FPP [health-care] provider's location or in the FPP [health-care] provider's public electronic communications; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:

(1) taking affirmative action to secure elective abortion services for an FPP client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a [health-care] provider;

(2) furnishing or displaying to an FPP client information that publicizes or advertises an elective abortion service or [health-care] provider; or

(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, an FPP [health-care] provider must provide HHSC with all information HHSC requires to determine the provider's compliance with this section.

(e) Certification. Before initially providing covered services, [Upon initial application for enrollment in FPP,] an FPP grantee [contractor] must certify its compliance with subsection (b) of this section using an HHSC-approved form and any other requirement specified by HHSC. [Each FPP contractor must annually certify that the contractor complies with subsection (b) of this section.]

(f) FPP provider [Provider] disqualification. If HHSC determines that an FPP [health-care] provider fails to comply with subsection (b) of this section, HHSC disqualifies the [FPP health-care] provider from providing FPP services under this subchapter.

(g) Client assistance and recoupment. If an FPP [health-care] provider is disqualified from providing FPP services under this subchapter, HHSC takes appropriate action to:

(1) assist a [an FPP] client to find an alternate FPP [health-care] provider; and

(2) recoup any funds paid to a disqualified provider for covered [FPP] services performed during the period of disqualification.

§382.119. *Reimbursement.*

(a) Reimbursement.

(1) Covered services provided through FPP are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

(2) Entities that contract with HHSC to provide additional services related to family planning that are separate from services referenced in paragraph (1) of this subsection are reimbursed by HHSC in compliance with program standards, policy and procedures, and contract requirements unless payment is prohibited by law.

(b) Claims procedures. An FPP [health-care] provider must comply with Chapter 354, Subchapter A, Divisions 1 and 5 of this title (relating to Medicaid Procedures for Providers and relating to Physician and Physician Assistant Services).

(c) Improper use of reimbursement. An FPP [health-care] provider may not use any FPP funds received to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.

(d) An FPP [health-care] provider may not deny covered services to a client based on the client's inability to pay.

§382.121. *Provider's Request for Review of Claim Denial.*

(a) Review of denied claim. An FPP [health-care] provider may request a review of a denied claim. The request must be submitted as an administrative appeal under Chapter 354, Subchapter I, Division 3 of this title (relating to Appeals).

(b) Appeal procedures. An administrative appeal is subject to the timelines and procedures set out in Chapter 354, Subchapter I, Division 3 of this title and all other procedures and timelines applicable to an FPP [health-care] provider's appeal of a Medicaid program claim denial.

§382.123. *Record Retention.*

(a) FPP grantees [~~contractors~~] must maintain, for the time period specified by the HHSC, all records pertaining to client services, contracts, and payments.

(b) FPP grantees [~~contractors~~] must comply with the Medicaid program record retention requirements found in §354.1004 of this title (relating to Retention of Records).

(c) All records relating to services must be accessible for examination at any reasonable time to representatives of HHSC and as required by law.

§382.125. *Confidentiality and Consent.*

(a) Confidentiality required. An FPP [health-care] provider must maintain all health care information as confidential to the extent required by law.

(b) Written release authorization. Before an FPP [health-care] provider may release any information that might identify a particular client, that client must authorize the release in writing. If the client is a minor, the client's parent, managing conservator, or guardian, as authorized by Chapter 32 of the Texas Family Code or by federal law or regulations, must authorize the release.

(c) Confidentiality training. An FPP [health-care] provider's staff (paid and unpaid) must be informed during orientation of the importance of keeping client information confidential.

(d) Records monitoring. An FPP [health-care] provider must monitor client records to ensure that only appropriate staff and HHSC may access the records.

(e) Assurance of confidentiality. An FPP [health-care] provider must verbally assure each client that her records are confidential and must explain the meaning of confidentiality.

(f) Consent for minors. FPP services must be provided with consent from the minor's parent, managing conservator, or guardian

only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations.

(g) An [A] FPP [health-care] provider may not require consent for family planning services from the spouse of a married client.

§382.127. *FPP Services for Minors.*

(a) Minors must be provided individualized family planning counseling and family planning medical services that meet their specific needs as soon as possible.

(b) The FPP [health-care] provider must ensure that:

(1) counseling for minors seeking family planning services is provided with parental consent;

(2) counseling for minors includes information on use and effectiveness of all medically approved birth control methods, including abstinence; and

(3) appointment schedules are flexible enough to accommodate access for minors requesting services.

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

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

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Karen Ray
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Texas Health and Human Services Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 815-1887



TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission (commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 40 titled "Chronic Wasting Disease." Specifically, amendments are proposed to §40.6 CWD Movement Restriction Zones.

BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

The purpose of this chapter is to prevent and control the incidence of chronic wasting disease (CWD) in Texas by seeking to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species. The commission proposes amendments to §40.6 to modify existing movement restriction zones to provided targeted surveillance and reduce the risk of CWD being spread from areas where it may exist.

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD poses a serious threat to livestock and exotic livestock that the commission is charged with protecting. CWD can spread through natural movements of infected animals and transportation of live infected animals or car-

cass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

To mitigate the risks and spread of CWD, the commission works in coordination and collaboration with the Texas Parks and Wildlife Department (TPWD) to address CWD. The commission has jurisdiction over exotic CWD susceptible species. TPWD has jurisdiction over mule deer, white-tailed deer, and other native species. Those native species are classified as property of the State of Texas and managed as state resources. TPWD, under specific statutory authorization, allows herd owners to breed, trade, sell, and move white-tailed or mule deer that meet certain TPWD requirements.

The purpose of the movement restriction zones is to both increase surveillance and reduce the risk of CWD being spread from areas where it may exist. As required by §40.6(g), the commission reviewed the movement restriction zones and recommends the modifications as stated herein. The proposed amendments modify the boundaries of some existing zones and creates new zones to improve and implement surveillance efforts as part of the agency's effort to manage CWD.

SECTION-BY-SECTION DISCUSSION

§40.6 CWD Movement Restriction Zones

The proposed amendment to §40.6(b)(1)(I) would add a new containment zone in Coleman County in response to the detection of CWD in a free-range white-tailed deer in that county.

The proposed amendment to §40.6(b)(2)(V) would add a new surveillance zone in Brooks County in response to the detection of CWD in a deer breeding facility in that county.

The proposed amendment to §40.6(b)(2)(W) would add a new surveillance zone in Kimble County in response to the detection of CWD in a deer breeding facility in that county.

The proposed amendment to §40.6(b)(2)(X) would add a new surveillance zone in Medina County in response to the detection of CWD in a deer breeding facility in that county.

The proposed amendment to §40.6(b)(2)(Y) would add a new surveillance zone in Cherokee County in response to the detection of CWD in a deer breeding facility in that county.

The proposed amendment to §40.6(b)(2)(Z) would add a new surveillance zone in Coleman and Brown Counties in response to the detection of CWD in a white-tailed deer in Coleman County.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel of the Texas Animal Health Commission, determined for each year of the first five years the rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed rules. Commission employees will administer and enforce these rules as part of their regular job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as

a result of enforcing or administering the proposed rules and the proposed rules do not have foreseeable implications relating to costs or revenues of state governments.

PUBLIC BENEFIT

Ms. Coggeshall determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits will be the protection of CWD susceptible species by increasing the probability of detecting CWD in areas of the state where it is confirmed or likely to be detected and by reducing the inadvertent movement of the disease from those areas.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

MAJOR ENVIRONMENTAL RULE

The commission determined that Texas Government Code §2001.0225 does not apply to the proposed rules because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

TAKINGS ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

ECONOMIC IMPACT STATEMENT

The commission determined that the proposed amendments to §40.6 may impact animal agricultural industries, which meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006, and may affect rural communities. Specifically, the commission determined that the proposed rules may affect herd owners of exotic CWD susceptible species located in the proposed containment and surveillance zones.

The commission determined that the proposed surveillance and containment zones in response to recent positive CWD cases would not adversely affect herd owners of exotic CWD susceptible species because the proposal applies to exotic CWD susceptible species located in geographic areas where CWD has been detected or there is a high probability of detection. As such, the movement and testing requirements resulting from the proposed zones are intended to reduce exposure to other susceptible species in the same rural community, where the disease risk is greatest, and other communities and small businesses across the state. As a result, the application of the rule will help prevent adverse economic impacts associated with CWD.

REGULATORY FLEXIBILITY ANALYSIS

The commission considered several alternative methods for achieving the proposed rule's purpose while minimizing adverse economic impacts on small businesses, microbusinesses, and rural communities, as applicable, pursuant to Texas Government Code, Chapter 2006. The following sections analyze the substantive proposed changes that may have direct, adverse economic impacts on regulated parties in the order they are presented in Chapter 40.

Containment and Surveillance Zones. The commission considered alternatives for all proposed zones, especially where there are known exotic CWD susceptible species, including voluntary surveillance and alternative zone boundaries that followed more recognizable features. However, the commission determined that voluntary testing would not protect the health of other CWD susceptible species in the affected area and across the state. The commission also determined that the regulated community would benefit from consistent zone boundaries for both native and exotic CWD susceptible species. As such, the commission proposes zone boundaries to align with boundaries developed in consultation with Texas Parks and Wildlife Department. The commission determined these proposals are necessary to follow the legislative requirement that the commission protect exotic livestock from certain diseases that pose a serious threat to exotic livestock, specifically CWD.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, for each year of the first five years the proposed rules would be in effect, the commission determined the following:

- (1) The proposed rules will not create or eliminate a government program;
- (2) Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the commission;
- (4) The proposed rules will not require an increase or decrease in fees paid to the commission;
- (5) The proposed rules will not create a new regulation;
- (6) The proposed rules will expand existing rules, but will not otherwise limit or repeal an existing regulation;
- (7) The proposed rules may increase the number of individuals subject to the regulation; and
- (8) The proposed rules will not adversely affect this state's economy.

COST TO REGULATED PERSONS

The proposed amendments to §40.6 may impose an indirect cost on a regulated person if they are owners of exotic CWD susceptible species located within a proposed surveillance or containment zone. The commission determined these proposals are necessary to follow the legislative requirement that the commission protect exotic livestock from chronic wasting disease, a disease that poses a serious threat to the exotic livestock industry in Texas. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state. Pursuant to Section 161.041 of the Texas Agriculture Code, Section 2001.0045 of the Texas Government Code does not apply to rules adopted under Section 161.041; therefore, it is unnecessary to amend or repeal any other existing rule.

REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512)

719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40-CWD Rules" in the subject line.

STATUTORY AUTHORITY

The amendments to §40.6 within Chapter 40 of the Texas Administrative Code are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product," the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined

herd, premises, or area. The executive director of the commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the commission may pay indemnity to the owner of livestock or fowl if necessary to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the commission may charge a fee for an inspection made by the commission as provided by commission rule.

Pursuant to §161.061, titled "Establishment," if the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals po-

tentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the commission.

Pursuant to §161.081, titled "Importation of Animals," the commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

The proposed rules in this chapter for adoption do not affect other statutes, sections, or codes.

§40.6 CWD Movement Restriction Zones.

(a) (No change.)

(b) Declaration of area restricted for CWD. CWD has been detected in susceptible species in different locations in Texas. This creates a high risk for CWD exposure or infection in CWD susceptible species in those geographic areas. ~~[In order to protect other areas of the state from the risk of exposure and spread of CWD, restricted]~~ Restricted areas, such as containment zones and surveillance zones, are created to protect against the spread of and exposure to CWD to other areas of the state and to have necessary surveillance to epidemiologically assess the risk. The high-risk areas are delineated as follows:

(1) Containment Zone Boundaries:

(A) - (H) (No change.)

(I) Containment Zone 9. That portion of Coleman County lying within the area described by the following latitude-longitude coordinate pairs: -99.29788709, 32.00897313; -99.29703740, 32.00896493; -99.29618783, 32.00894951; -99.29533850, 32.00892688; -99.29448947, 32.00889704; -99.29364083, 32.00886000; -99.29279266, 32.00881574; -99.29194506, 32.00876429; -99.29109810, 32.00870565; -99.29025187, 32.00863981; -99.28940645, 32.00856680; -99.28856193, 32.00848661; -99.28771839, 32.00839925; -99.28687591, 32.00830473; -99.28603458, 32.00820307; -99.28519449, 32.00809426; -99.28435570, 32.00797833; -99.28351832, 32.00785528; -99.28268242, 32.00772513; -99.28184808, 32.00758789; -99.28101539, 32.00744357; -99.28018443, 32.00729219; -99.27935529, 32.00713375; -99.27852804, 32.00696829; -99.27770277,

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32.00642987;	-99.27523963;	32.00623645;	-99.27442309;	31.93848472;	-99.21317323;	31.93776088;	-99.21316025;
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32.00561461;	-99.27198809;	32.00539353;	-99.27118157;	31.93558876;	-99.21317202;	31.93486477;	-99.21319285;
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32.00365528;	-99.26561620;	32.00338000;	-99.26483356;	31.92980475;	-99.21357507;	31.92908388;	-99.21366337;
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31.87578009;	-99.34646263;	31.87618499;	-99.34716137;	31.95720914;	-99.37984572;	31.95790154;	-99.37958921;
31.87659585;	-99.34785528;	31.87701262;	-99.34854430;	31.95859179;	-99.37932465;	31.95927983;	-99.37905205;
31.87743525;	-99.34922836;	31.87786372;	-99.34990740;	31.95996559;	-99.37877146;	31.96064900;	-99.37848289;
31.87829798;	-99.35058134;	31.87873798;	-99.35125011;	31.96132999;	-99.37818639;	31.96200850;	-99.37788196;
31.87918368;	-99.35191366;	31.87963504;	-99.35257192;	31.96268446;	-99.37756966;	31.96335780;	-99.37724949;
31.88009201;	-99.35322482;	31.88055454;	-99.35387229;	31.96402845;	-99.37692151;	31.96469636;	-99.37658574;
31.88102260;	-99.35451428;	31.88149613;	-99.35515071;	31.96536144;	-99.37624221;	31.96602364;	-99.37589095;
31.88197509;	-99.35578153;	31.88245944;	-99.35640667;	31.96668289;	-99.37553201;	31.96733912;	-99.37516542;
31.88294911;	-99.35702608;	31.88344407;	-99.35763968;	31.96799228;	-99.37479121;	31.96864228;	-99.37440942;
31.88394426;	-99.35824743;	31.88444963;	-99.35884925;	31.96928908;	-99.37402009;	31.96993261;	-99.37362326;
31.88496015;	-99.35944509;	31.88547575;	-99.36003489;	31.97057279;	-99.37321896;	31.97120958;	-99.37280724;
31.88599638;	-99.36061859;	31.88652199;	-99.36119614;	31.97184290;	-99.37238814;	31.97247269;	-99.37196169;
31.88705254;	-99.36176747;	31.88758796;	-99.36233253;	31.97309889;	-99.37152795;	31.97372145;	-99.37108695;
31.88812820;	-99.36289126;	31.88867322;	-99.36344362;	31.97434028;	-99.37063873;	31.97495534;	-99.37018335;
31.88922296;	-99.36398953;	31.88977736;	-99.36452896;	31.97556657;	-99.36972084;	31.97617389;	-99.36925126;
31.89033636;	-99.36506184;	31.89089992;	-99.36558812;	31.97677726;	-99.36877464;	31.97737662;	-99.36829104;
31.89146798;	-99.36610776;	31.89204047;	-99.36662069;	31.97797189;	-99.36780051;	31.97856303;	-99.36730308;

31.97914998;	-99.36679882,	31.97973267;	-99.36628777,	27.15321858;	-98.32184384,	27.15504518;	-98.32229480,
31.98031105;	-99.36576999,	31.98088507;	-99.36524551,	27.15690215;	-98.32260903,	27.15878152;	-98.32278519,
31.98145465;	-99.36471440,	31.98201976;	-99.36417671,	27.16067526;	-98.32282607,	27.16222641;	-98.32281627,
31.98258033;	-99.36363249,	31.98313630;	-99.36308180,	27.16501134;	-98.32281627,	27.16501136;	-98.32281357,
31.98368763;	-99.36252469,	31.98423425;	-99.36196121,	27.16578038;	-98.32281357,	27.16578040;	-98.32280037,
31.98477612;	-99.36139142,	31.98531317;	-99.36081538,	27.16953161;	-98.32280037,	27.16953161;	-98.32279424,
31.98584536;	-99.36023314,	31.98637263;	-99.35964477,	27.17127223;	-98.32279424,	27.17127224;	-98.32278834,
31.98689493;	-99.35905031,	31.98741221;	-99.35844984,	27.17294980;	-98.32278477,	27.17329865;	-98.32268306,
31.98792442;	-99.35784341,	31.98843150;	-99.35723107,	27.17519678;	-98.32244276,	27.17708490;	-98.32206488,
31.98893341;	-99.35661289,	31.98943009;	-99.35598894,	27.17895493;	-98.32155103,	27.18079885;	-98.32090342,
31.98992150;	-99.35535927,	31.99040758;	-99.35472394,	27.18260877;	-98.32012480,	27.18437693;	-98.31921851,
31.99088830;	-99.35408302,	31.99136360;	-99.35343658,	27.18609576;	-98.31818841,	27.18775790;	-98.31703892,
31.99183343;	-99.35278467,	31.99229775;	-99.35212736,	27.18935622;	-98.31577496,	27.19088389;	-98.31440193,
31.99275651;	-99.35146472,	31.99320967;	-99.35079681,	27.19233434;	-98.31292571,	27.19370138;	-98.31135263,
31.99365717;	-99.35012369,	31.99409899;	-99.34944545,	27.19497913;	-98.30968942,	27.19616213;	-98.30794321,
31.99453506;	-99.34876213,	31.99496536;	-99.34807382,	27.19724530;	-98.30612147,	27.19822401;	-98.30423202,
31.99538983;	-99.34738057,	31.99580844;	-99.34668246,	27.19909405;	-98.30228293,	27.19985170;	-98.30028258,
31.99622114;	-99.34597956,	31.99662789;	-99.34527193,	27.20049372;	-98.29823953,	27.20101734;	-98.29616253,
31.99702865;	-99.34455965,	31.99742339;	-99.34384278,	27.20142033;	-98.29406049,	27.20170096;	-98.29194242,
31.99781205;	-99.34312141,	31.99819461;	-99.34239559,	27.20185803;	-98.29045520,	27.20189407;	-98.28905559,
31.99857103;	-99.34166541,	31.99894126;	-99.34093093,	27.20192944;	-98.28026777,	27.20192618;	-98.27814490,
31.99930528;	-99.34019223,	31.99966304;	-99.33944938,	27.20183447;	-98.27603329,	27.20161877;	-98.27394199,
32.00001451;	-99.33870245,	32.00035966;	-99.33795152,	27.20128001;	-98.27187997,	27.20081965;	-98.26985606,
32.00069845;	-99.33719667,	32.00103084;	-99.33643796,	27.20023964;	-98.26787893,	27.19954249;	-98.26595706,
32.00135681;	-99.33567548,	32.00167632;	-99.33490929,	27.19873118;	-98.26409868,	27.19780919;	-98.26231175,
32.00198934;	-99.33413949,	32.00229584;	-99.33336613,	27.19678046;	-98.26060393,	27.19564941;	-98.25898254,
32.00259578;	-99.33258930,	32.00288915;	-99.33180908,	27.19442088;	-98.25745451,	27.19310014;	-98.25602640,
32.00317590;	-99.33102554,	32.00345602;	-99.33023876,	27.19169285;	-98.25470432,	27.19020504;	-98.25349392,
32.00372947;	-99.32944882,	32.00399622;	-99.32865580,	27.18864308;	-98.25240039,	27.18701366;	-98.25142840,
32.00425625;	-99.32785977,	32.00450954;	-99.32706082,	27.18532377;	-98.25058212,	27.18358064;	-98.24986516,
32.00475606;	-99.32625903,	32.00499578;	-99.32545447,	27.18179175;	-98.24928058,	27.17996476;	-98.24883089,
32.00522868;	-99.32464722,	32.00545473;	-99.32383737,	27.17810748;	-98.24851799,	27.17622788;	-98.24834323,
32.00567392;	-99.32302500,	32.00588623;	-99.32221018,	27.17433401;	-98.24830351,	27.17300440;	-98.24827071,
32.00609162;	-99.32139299,	32.00629009;	-99.32057353,	27.16530377;	-98.24827454,	27.16473335;	-98.24837767,
32.00648161;	-99.31975186,	32.00666616;	-99.31892808,	27.16283530;	-98.24861935,	27.16094735;	-98.24899855,
32.00684372;	-99.31810225,	32.00701428;	-99.31727448,	27.15907758;	-98.24951363,	27.15723401;	-98.25016238,
32.00717782;	-99.31644483,	32.00733433;	-99.31561339,	27.15152451;	-98.25094202,	27.15365684;	-98.25184921,
32.00748378;	-99.31478024,	32.00762616;	-99.31394546,	27.15193857;	-98.25288004,	27.15027705;	-98.25403012,
32.00776147;	-99.31310915,	32.00788967;	-99.31227137,	27.14867938;	-98.25529449,	27.14715242;	-98.25666776,
32.00801077;	-99.31143222,	32.00812476;	-99.31059178,	27.14570269;	-98.25814404,	27.14433640;	-98.25971700,
32.00823161;	-99.30975013,	32.00833131;	-99.30890735,	27.14305939;	-98.26137991,	27.14187713;	-98.26312566,
32.00842387;	-99.30806353,	32.00850927;	-99.30721876,	27.14079468;	-98.26494677,	27.13981666;	-98.26627186,
32.00858750;	-99.30637311,	32.00865855;	-99.30552667,	27.13919216;	-98.26715049,	27.13880096;	-98.26771406,
32.00872242;	-99.30467953,	32.00877909;	-99.30383176,	27.13855607;	-98.26783677,	27.13850433;	-98.26809786,
32.00882857;	-99.30298346,	32.00887085;	-99.30213471,	27.13839484;	-98.26859139,	27.13819236;	-98.26885450,
32.00890593;	-99.30128558,	32.00893380;	-99.30043618,	27.13808680;	-98.26935182,	27.13789170;	-98.26961686,
32.00895445;	-99.29958657,	32.00896789;	-99.29873685,	27.13779009;	-98.27045143,	27.13748232;	-98.27057696,
32.00897412;	and -99.29788709,	32.00897313.		27.13743812;	-98.27086650,	27.13733678;	-98.27132970,

Figure: 4 TAC §40.6(b)(1)(I)

(2) Surveillance Zone Boundaries:

(A) - (U) (No change.)

(V) Surveillance Zone 22. That portion of Brooks County lying within the area described by the following latitude-longitude pairs: -98.29086210, 27.13309526; -98.29298351, 27.13318675; -98.29509370, 27.13340214; -98.29718363, 27.13374052; -98.29924438, 27.13420043; -98.30126711, 27.13477991; -98.30324318, 27.13547648; -98.30516413, 27.13628715; -98.30702174, 27.13720847; -98.30880805, 27.13823649; -98.31051543, 27.13936681; -98.31213656, 27.14059459; -98.31366451, 27.14191458; -98.31509272, 27.14332113; -98.31641508, 27.14480823; -98.31762594, 27.14636950; -98.31872010, 27.14799827; -98.31969287, 27.14968756; -98.32054008, 27.15143015; -98.32125809,

Figure: 4 TAC §40.6(b)(2)(V)

(W) Surveillance Zone 23. That portion of Kimble County lying within the area described by the following latitude-longitude pairs: -99.95180989, 30.29840729; -99.95400264, 30.29847039; -99.95618594, 30.29865777; -99.95835045, 30.29896861; -99.96048692, 30.29940160; -99.96258621, 30.29995488; -99.96463932, 30.3002607; -99.96663749, 30.30141232; -99.96857214, 30.30231025; -99.96983623,

30.30299275;	-99.97667133;	30.30295620;	-99.97688605;	30.40868110;	-99.87101006;	30.40778170;	-99.86914620;
30.30295564;	-99.97907892;	30.30301831;	-99.98126237;	30.40677446;	-99.86736238;	30.40566369;	-99.86566623;
30.30320526;	-99.98342707;	30.30351568;	-99.98556376;	30.40445415;	-99.86406502;	30.40315102;	-99.86256560;
30.30394824;	-99.98766328;	30.30450110;	-99.98971667;	30.40175989;	-99.86117441;	30.40028671;	-99.85989739;
30.30517190;	-99.99171514;	30.30595775;	-99.99365012;	30.39873781;	-99.85874000;	30.39711981;	-99.85770721;
30.30685531;	-99.99551334;	30.30786072;	-99.99729683;	30.39543965;	-99.85746146;	30.39499685;	-99.85659378;
30.30896969;	-99.99899295;	30.31017747;	-100.00059444;	30.39339897;	-99.85593577;	30.39210664;	-99.85516488;
30.31147889;	-100.00209444;	30.31286839;	-100.00348653;	30.39032398;	-99.85453017;	30.38850142;	-99.85429040;
30.31434001;	-100.00476475;	30.31588747;	-100.00592361;	30.38764797;	-99.85405994;	30.38727300;	-99.85337346;
30.31750413;	-100.00695816;	30.31918308;	-100.00769098;	30.38598353;	-99.85281357;	30.38486057;	-99.85259642;
30.32056160;	-100.00769527;	30.32057026;	-100.00770515;	30.38441489;	-99.85182566;	30.38263221;	-99.85119106;
30.32057419;	-100.00856976;	30.32093081;	-100.01050520;	30.38080964;	-99.85069533;	30.37895498;	-99.85034057;
30.32182811;	-100.01236890;	30.32283327;	-100.01415286;	30.37707618;	-99.85012831;	30.37518129;	-99.85005944;
30.32394201;	-100.01584945;	30.32514957;	-100.01745142;	30.37327842;	-99.85013426;	30.37137571;	-99.85035242;
30.32645078;	-100.01895190;	30.32784008;	-100.02034447;	30.36948133;	-99.85071299;	30.36760337;	-99.85121442;
30.32931152;	-100.02162315;	30.33085881;	-100.02278248;	30.36574988;	-99.85176446;	30.36416114;	-99.85459723;
30.33247532;	-100.02381749;	30.33415413;	-100.02472373;	30.35675198;	-99.85468731;	30.35651963;	-99.85546328;
30.33588807;	-100.02549732;	30.33766969;	-100.02613495;	30.35473872;	-99.85637186;	30.35300564;	-99.85740917;
30.33949139;	-100.02663387;	30.34134536;	-100.02699194;	30.35132780;	-99.85857074;	30.34971237;	-99.85985161;
30.34322366;	-100.02720763;	30.34511825;	-100.02727999;	30.34816629;	-99.86047057;	30.34748954;	-99.86049982;
30.34702101;	-100.02727926;	30.34721962;	-100.02698483;	30.34745852;	-99.86052178;	30.34742326;	-99.86100495;
30.38601250;	-100.02691424;	30.38771670;	-100.02669952;	30.34667428;	-99.86216640;	30.34505883;	-99.86344715;
30.38961139;	-100.02634231;	30.39148985;	-100.02584414;	30.34351270;	-99.86373981;	30.34318754;	-99.86408949;
30.39334403;	-100.02520711;	30.39516599;	-100.02443397;	30.34280464;	-99.86519138;	30.34165962;	-99.86535734;
30.39694793;	-100.02352801;	30.39868221;	-100.02249310;	30.34149711;	-99.86574783;	30.34111759;	-99.86708424;
30.40036141;	-100.02133367;	30.40197834;	-100.02005469;	30.33989216;	-99.86837905;	30.33882977;	-99.86854522;
30.40352605;	-100.01866162;	30.40499793;	-100.01716044;	30.33870050;	-99.86857268;	30.33867483;	-99.86856615;
30.40638767;	-100.01555756;	30.40768931;	-100.01385986;	30.33840357;	-99.86854991;	30.33733178;	-99.86854704;
30.40889727;	-100.01207460;	30.41000638;	-100.01020943;	30.33691486;	-99.86862146;	30.33501215;	-99.86883917;
30.41101189;	-100.00827235;	30.41190948;	-100.00627164;	30.33311174;	-99.86889510;	30.33276880;	-99.86917243;
30.41269531;	-100.00421590;	30.41336602;	-100.00211391;	30.33111199;	-99.86947657;	30.32958293;	-99.86997744;
30.41391872;	-99.99997470;	30.41435104;	-99.99780743;	30.32772937;	-99.87061696;	30.32590820;	-99.87139238;
30.41466115;	-99.99562139;	30.41484770;	-99.99361689;	30.32412720;	-99.87230039;	30.32239401;	-99.87333709;
30.41490944;	-99.97742474;	30.41498743;	-99.97723380;	30.32071604;	-99.87449802;	30.31910048;	-99.87553862;
30.41498786;	-99.97503838;	30.41492516;	-99.97285239;	30.31784364;	-99.87612434;	30.31649807;	-99.87703219;
30.41473811;	-99.97068521;	30.41442751;	-99.96854613;	30.31476485;	-99.87806872;	30.31308684;	-99.87922949;
30.41399469;	-99.96644432;	30.41344150;	-99.96438877;	30.31147124;	-99.88050951;	30.30992495;	-99.88190332;
30.41277033;	-99.96308679;	30.41225858;	-99.96228171;	30.30845459;	-99.88340493;	30.30706646;	-99.88500791;
30.41300309;	-99.96067798;	30.41430404;	-99.95897947;	30.30576649;	-99.88670541;	30.30456026;	-99.88849016;
30.41551127;	-99.95719345;	30.41661962;	-99.95532758;	30.30345291;	-99.89035451;	30.30244920;	-99.89229049;
30.41762432;	-99.95338985;	30.41852108;	-99.95138856;	30.30155340;	-99.89428981;	30.30076937;	-99.89634391;
30.41930605;	-99.94933228;	30.41997587;	-99.94722984;	30.30010044;	-99.89844401;	30.29954949;	-99.90058112;
30.42052767;	-99.94509023;	30.42095908;	-99.94292264;	30.29911887;	-99.90274609;	30.29881042;	-99.90492967;
30.42126825;	-99.94090675;	30.42144388;	-99.94082250;	30.29862546;	-99.90696497;	30.29856499;	-99.95165235;
30.42144900;	-99.94073928;	30.42146147;	-99.93938623;	30.29840756;	and -99.95180989;	30.29840729.	
30.42163958;	-99.93719992;	30.42182513;	-99.93500428;	Figure: 4 TAC §40.6(b)(2)(W)			
30.42188633;	-99.93280872;	30.42182290;	-99.93062266;	(X) Surveillance Zone 24. That portion of Medina			
30.42163512;	-99.92919163;	30.42144375;	-99.92652986;	County lying within the area described by the following lati-			
30.42103663;	-99.92579370;	30.42091666;	-99.92365468;	tude-longitude pairs: -99.03678558, 29.25833376; -99.03895416,			
30.42048309;	-99.92155298;	30.41992917;	-99.91949761;	29.25841257; -99.04111221, 29.25861555; -99.04325052,			
30.41925727;	-99.91749738;	30.41847027;	-99.91577099;	29.25894183; -99.04535994, 29.25939001; -99.04743143,			
30.41767601;	-99.91519239;	30.41739079;	-99.91376655;	29.25995817; -99.04945614, 29.26064389; -99.05142540,			
30.41692839;	-99.91052579;	30.41578007;	-99.91035853;	29.26144423; -99.05333079, 29.26235576; -99.05516414,			
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Figure: 4 TAC §40.6(b)(2)(X)

(Y) Surveillance Zone 25. That portion of Cherokee County lying within the area described by the following latitude-longitude pairs: -95.16551813, 31.88499767; -95.16585785, 31.88501179; -95.16883776, 31.88514836; -95.17072236, 31.88527950; -95.17293080, 31.88554853; -95.17511390, 31.88594019; -95.17726232, 31.88645280; -95.17936688, 31.88708417; -95.18141857, 31.88783159; -95.18340860, 31.88869188; -95.18532847, 31.88966134; -95.18716995, 31.89073583; -95.18892517, 31.89191075; -95.19058660, 31.89318107; -95.19214714, 31.89454137; -95.19360011,

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Figure: 4 TAC §40.6(b)(2)(Y)

(Z) Surveillance Zone 26. That portion of the state within the boundaries of a line beginning at the intersection of U.S. Highway 283 and County Road 176 in Coleman County; thence east along County Road 176 to State Highway (S.H.) 206; thence east along S.H. 206 to County Road 170; thence south along County Road 170 to County Road 171; thence south along C.R. 171 to County Road 113 in Brown County; thence south along C.R. 113 to Farm to Market (F.M.) 585; thence south along F.M. 585 to County Road 108 in Brown County; thence southwest along C.R. 108 to County Road 127 in Coleman County; thence southwest along C.R. 127 to F.M. 568; thence west along F.M. 568 to U.S. Highway 84, thence north along U.S. 84 to S.H. 206, thence north along S.H. 206 to U.S. 283; thence north along U.S. 283 to County Road 176.

Figure: 4 TAC §40.6(b)(2)(Z)

(c) - (g) (No change.)

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

Filed with the Office of the Secretary of State on February 26, 2024.

TRD-202400827

Jeanine Coggeshall
General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 839-0511



CHAPTER 49. EQUINE

4 TAC §49.5, §49.7

The Texas Animal Health Commission (commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 49 titled "Equine." Specifically, amendments are proposed to §49.5 regarding Piroplasmiasis: Testing, Identification of Infected Equine, and §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests.

BACKGROUND AND PURPOSE

The commission proposes amendments to §49.5 which establishes testing and identification requirements of equine piroplasmiasis. Equine piroplasmiasis is a tick-borne protozoal infection of horses. At least one species of tick, *Amblyomma cajennense*, has proven capable of transmitting the blood parasite. This species of tick is endemic to South Texas and several other southern states. Also, the disease may be spread between horses by unsafe animal husbandry practices such as sharing needles or equipment that is contaminated with blood. This has brought about the disclosure that there is a distinct group of positive animals which are for the purpose of racing, either through sanctioned events or otherwise.

In 2011, the commission took action to safeguard Texas equine population by requiring all equine participating in racing events at a sanctioned racetrack facility to have a negative piroplasmiasis test. The requirement was put in place to ensure that the positive animals are disclosed as well as to protect other animals participating in such events. Since 2010, there has not been a disclosed piroplasmiasis positive thoroughbred horse participating in sanctioned racing. As such, the commission approved a temporary waiver of the requirement that thoroughbred horses be tested for piroplasmiasis prior to entering a racetrack facility licensed by the Texas Racing Commission on July 26, 2022.

The proposed amendments to §49.5 incorporate the thoroughbred testing requirement waiver. The proposed amendments also streamline the existing testing and identification requirements for ease of use and readability.

Additionally, the commission proposes amendments to §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests. The section currently refers readers to an outdated section in the Code of Federal Regulations. The proposed amendment updates the citation.

SECTION-BY-SECTION DISCUSSION

Section 49.5 details the testing and identification requirements for equine piroplasmiasis. The proposed amendments stream-

line the rule for readability. The proposed amendments also formally codify the waiver of testing requirements for thoroughbreds as approved by the commission in the 413th Meeting on July 26, 2022. The proposed amendments to not change any other testing or identification requirements.

Section 49.7 sets requirements for individuals or laboratories performing EIA tests. The proposed amendments update the citation to the relevant section in the Code of Federal Regulations. The proposed amendments to not change the existing requirement.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments. Commission employees will administer and enforce these rules as part of their current job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are to provide clarity and guidance on the testing requirements of infectious equine diseases.

TAKINGS IMPACT ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. For each year of the first five years the proposed rules would be in effect, the commission determined the following:

- (1) The amendments will not create or eliminate a government program;
- (2) Implementation of the amendments will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the amendments will not increase future legislative appropriations to the commission;
- (4) The amendments will not increase or decrease the fees paid to the commission;
- (5) The amendments will not create a new rule;
- (6) The amendments do not expand, limit, or repeal existing rules;
- (7) The amendments do not change the number of individuals subject to the rules; and
- (8) The amendments will not affect the state's economy.

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

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

COSTS TO REGULATED PERSONS

The proposed amendments to Chapter 49 do not impose additional costs on regulated persons and are designed to provide clarity and accurate guidance on infectious equine diseases. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

PUBLIC COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 49, Equine" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.046 which authorizes the commission to promulgate rules in accordance with the Texas Agriculture Code.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products," the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.0602, entitled "Persons or Laboratories Performing Equine Infectious Anemia Tests," the commission shall adopt rules that require a person or laboratory to be approved by the commission if the person or laboratory performs an official equine infectious anemia test.

Pursuant to §161.113, entitled "Testing or Treatment of Live-stock," if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission.

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

§49.5. *Piroplasmosis: Testing, Identification of Infected Equine.*

(a) Official [Equine Piroplasmosis] Test. [:] A complement fixation test (CFT) or competitive enzyme linked immunosorbent assay (cELISA) are the official tests for equine piroplasmosis. [A test for Equine Piroplasmosis applied and reported by a laboratory approved by the Commission. The sample must be collected by or under the direct supervision of an authorized veterinarian. A completed Equine Piroplasmosis Laboratory Test chart (Form 10-07) must be submitted with the sample, listing the description of the equine to include the following: age, breed, color, sex, animal's name, and all distinctive markings (i.e., color patterns, brands, tattoos, scars, or blemishes), and any RFID numbers applied to the equine. In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos or scars), the equine must be identified by indicating the location of all hair whorls, vortices or cowlicks with an "X" on the illustration provided on the chart. In lieu of the manual illustration, digital photographs clearly showing the equine from the left side, right side, and full face may be incorporated in the chart. All charts must list owner's name, address, the equine's home premises and county, the name and address of the authorized individual collecting the test sample, and laboratory and individual conducting the test. The Piroplasmosis test document shall list one equine only.]

(b) Authorization to conduct test. Only a test applied and reported by a laboratory approved by the commission will be considered an official test. Only samples collected by or under the direct supervision of an authorized veterinarian accompanied by a completed Equine Piroplasmosis Laboratory Test chart (form 10-07) will be accepted for official testing.

(c) [(b)] Reactor. A reactor is any equine which discloses a positive reaction to the official test [for Piroplasmosis on a Complement Fixation (CF) or competitive Enzyme Linked Immunosorbent Assay (cELISA) applied at a laboratory approved by the Commission]. The individual collecting the test sample must notify the equine's owner of the quarantine within 48 hours after receiving the results. Movement of all piroplasmosis [Piroplasmosis] positive equine and all equine epidemiologically determined to have been exposed to a piroplasmosis [Piroplasmosis] positive equine will be restricted. Retests of a reactor may only be performed by a representative of the commission [Commission].

(d) [(e)] Official identification of reactors [Identification of Reactors].

(1) A reactor must be identified with an implanted radio frequency microchip identification device that provides unique identification for each individual equine and complies with ISO 11784/11785 and one of the following methods as determined by the commission [Commission]:

(A) The reactor [equine] may be identified with a [permanent mark as described herein or as approved by the Commission. If] branded [the] letter "P" [will be] applied as a hot-iron

brand, freeze-marking brand, [or a] hoof brand, or as approved by the commission. For a freeze [Freeze] or hot-iron [Hot-Iron] brand, the "P" brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. For a hoof brand, the "P" brand must be applied to the front left hoof and reapplied as necessary to maintain visibility;

(B) Using an identification device or a unique tattoo, approved by the commission [Commission], that provides unique identification for each individual equine; or

(C) Using digital photographs sufficient to identify the individual equine.

(2) Reactors must be identified by an authorized veterinarian or representative of the commission [Commission] within 10 [ten] days of the date the laboratory completes the test unless the equine is destroyed [equine being classified as a reactor by the Commission]. Any equine destroyed prior to identification must be described in a written statement by the authorized veterinarian or other authorized personnel certifying to the destruction. [The description must be sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes or biometric measurements).] This certification must be submitted to the commission [Commission] within 10 [ten] days of the date the equine is destroyed.

(d) Any equine [Equine] entering a racetrack facility, with the exception of thoroughbreds, must have a negative piroplasmosis [Piroplasmosis] test [(Theileria equi)] within the past 12 months. A racetrack facility is grounds used to conduct live horse racing events and is not limited to facilities licensed by the Texas Racing Commission.

§49.7. *Persons or Laboratories Performing Equine Infectious Anemia Tests.*

A person or laboratory who performs an official equine infectious anemia test in the State of Texas must meet and comply [be in compliance] with the requirements found in Title 9 Code of Federal Regulations §71.22 [§75.4(e)], which is entitled "Approval of laboratories to conduct official testing." [Laboratories, and Diagnostic or Research Facilities".]

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

Filed with the Office of the Secretary of State on February 26, 2024.

TRD-202400826

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 839-0511



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 110. ATHLETIC TRAINERS

16 TAC §§110.12, 110.21, 110.70

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 110, §§110.12, 110.21, and 110.70, regarding the Athletic Trainers program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 110, implement Texas Occupations Code, Chapter 451, Athletic Trainers.

The proposed rules implement House Bill (HB) 2495 and HB 2512, enacted during the regular session of the 88th Legislature, (2023). The proposed rules promulgate modernized definitions that reflect the current state of the occupation and remove outdated language related to licensure qualifications and requirements to obtain or renew a license. The proposed rules ensure consistency with processes already in place at the department. The proposed rules also allow greater access to an athletic trainer's services under supervision and increase employment opportunities. The acts upon which these proposed rules are based took effect September 1, 2023.

HB 2495

Section 3 of the enrolled bill removes the baccalaureate degree in corrective therapy as a satisfactory qualification for licensure, as this degree has become obsolete. Section 3 also removes the apprenticeship requirement of a minimum of 20 hours of work per week during the fall semester as specific sport seasons now span both fall and spring semesters. All other sections of the bill concern the internal processes of the department.

HB 2512

Section 1 of the enrolled bill updates the definitions of "athletic injury" and "athletic training".

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Advisory Board of Athletic Trainers at its meeting on February 12, 2024. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §110.12(a) to modernize the description of what services a licensed athletic trainer performs by referring to the applicable statute section.

The proposed rules amend §110.21(c) to remove a degree plan that is now obsolete.

The proposed rules amend §110.21(c)(2) to remove the minimum number of hours an apprentice must work weekly. The proposed rules also remove a time period for apprenticeship hours that is no longer applicable to the modern collegiate athletic calendar.

The proposed rules amend §110.70(a) to modernize the description of what services a licensed athletic trainer performs by referring to the applicable statute section.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reduc-

tions in costs to state or local government as a result of enforcing or administering the proposed rules. The activities required to implement the proposed rule changes, if any, are one-time program administration tasks that are routine in nature, such as modifying or revising publications and/or website information. The proposed rules will not necessitate an increase in personnel or resources and therefore will not result in an increase in costs to the State.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules. The proposed rules do not create a revenue loss, as they do not eliminate, amend, or impact any fees assessed by the licensing program.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments. Local governments are not responsible for administering the regulation of athletic trainers under Occupations Code, Chapter 451.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022. Changes made by the proposed rules are not anticipated to increase or decrease the number of licensed athletic trainers or temporary athletic trainers, nor is it anticipated to affect potential employers seeking to hire athletic trainers.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the effective and efficient regulation of athletic trainers, which promotes the health, safety, and welfare of athletes across Texas. Specifically, the proposed rules clarify the scope of practice for licensed athletic trainers and clarify the requirements for licensure.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The rules do not impose additional fees or costs upon licensees, businesses, or any other persons.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Licensed athletic trainers provide services under the direction of a physician, and they are typically employed by school districts, colleges and universities, professional sports organizations, and certain health care facilities. These entities do not qualify as small businesses or micro-businesses. The proposed rules have no anticipated adverse economic effect on rural communities, because the proposed rules will not decrease

the availability of athletic trainers to rural communities, nor will the rule increase the cost of athletic training services in rural communities. Additionally, the proposed rules do not impose additional requirements on licensees located in rural communities. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The enacted legislation found in H. B. 2512, Section 1, regarding the definitions of "Athletic injury" and "Athletic training" expand the breadth of the existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box

12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 451, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 451, and Texas Education Code, Chapter 38. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted are House Bill 2495 and House Bill 2512, 88th Legislature, Regular Session (2023).

§110.12. *Scope of Practice.*

(a) A licensed athletic trainer practices a form of health care defined as "athletic training" within the scope of the person's license and pursuant to §451.001(3) of the Act, [~~prevents, recognizes, assesses, manages, treats, disposes of, and reconditions athletic injuries and illnesses~~] under the direction of a physician licensed in this state or another qualified, licensed health professional who is authorized to refer for health care services within the scope of the person's license. "Athletic training" consists of:

- (1) managing the risk of an athletic injury or illness;
- (2) preventing an athletic injury or illness;
- (3) assessing an athletic injury or illness;
- (4) providing immediate emergency care;
- (5) providing therapeutic intervention for an athletic injury; and
- (6) reconditioning an athletic injury or illness.

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

§110.21. *License Requirements.*

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

(c) Applicants qualifying under the Act, §451.153(a)(2) [~~or (a)(3)~~], shall have a baccalaureate or post-baccalaureate degree or a state-issued certificate in physical therapy [~~or a baccalaureate or post-baccalaureate degree in corrective therapy with at least a minor in physical education or health~~]. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state-licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) [~~Actual working hours shall include a minimum of 20 hours per week during each fall semester.~~] A [~~fall~~] semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 hours of the 720 hours may be earned at an affiliated setting which the college or university's athletic trainer has approved. An affiliated setting may be any setting where athletic training takes place. No more than 120 hours may be earned at one affiliated setting.

(d) - (h) (No change.)

§110.70. *Standards of Conduct.*

(a) An athletic trainer, when carrying out the practice of athletic training in accordance with §451.001(3) of the Act, shall work under the direction of a licensed physician or another qualified, licensed health professional, who is authorized to refer for health care services within the scope of the person's license [~~when carrying out the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning athletic injuries~~].

(b) - (y) (No change.)

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

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

TRD-202400811

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 475-4879



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 559. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§559.1, 559.11, 559.81, and 559.91; the repeal of §§559.2, 559.12 - 559.23, 559.61 - 559.64, 559.82 - 559.84, 559.92 - 559.95, and 559.102 - 559.105; and new §§559.3, 559.13, 559.15, 559.17, 559.19, 559.21, 559.23, 559.25, 559.27, 559.29, 559.31, 559.33, 559.35, 559.37, 559.39, 559.50 - 559.53, 559.55, 559.57, 559.59, 559.61, 559.63, 559.65, 559.67, 559.69, 559.71, 559.73, 559.75, 559.77, 559.79, 559.83, 559.85, 559.87, 559.93, 559.95, 559.97, 559.99, 559.101, 559.103, 559.105, and 559.107, in Texas Administrative Code (TAC), Title 26, Part 1, Chapter 559, Day Activity and Health Services Requirements.

BACKGROUND AND PURPOSE

The purpose of this proposal is to comply with House Bill (H.B.) 1009 and H.B. 4696 from the 88th Legislature, Regular Session, 2023. The proposal also reorganizes rule sections so that key topics are easier to find, adds clarity and specificity to rules, and updates references throughout the chapter.

SECTION-BY-SECTION SUMMARY

Proposed amendments throughout the chapter update citations and references and restructure sentences to use active voice. Other proposed amendments throughout the chapter replace "individual" with "client" for consistency.

The proposed amendment to §559.1, Purpose, removes requirements for a Day Activity and Health Services (DAHS) facility contracting with DADS to provide DAHS under Title XIX or Title XX of the Social Security Act. These requirements are in 40 TAC Chapter 98, Day Activity and Health Services Requirements, Subchapter H, Day Activity and Health Services (DAHS) Contractual Requirements.

The proposed repeal of §559.2, Definitions, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.3, Definitions.

Proposed new §559.3, Definitions, relocates the rule from proposed repealed §559.2, Definitions. The proposed new rule deletes definitions for the terms "authorization," "case manager," "caseworker," and "Medicaid eligible" as these terms are only used in 40 TAC Chapter 98, Subchapter H, DAHS Contractual Requirements. The proposed new rule adds definitions for the terms "controlling person," "online portal," and "willfully interfere."

The proposed amendment to §559.11, Criteria for Licensing, requires submission of license applications through the online portal, adds controlling parties to the list of individuals whose background and qualification HHSC considers for licensure, and clarifies that the term of a license is three years.

The proposed repeal of §559.12, Building Approval, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.17, Building Approval.

The proposed repeal of §559.13, Applicant Disclosure Requirements, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.19, Applicant Disclosure Requirements.

Proposed new §559.13, General Application Requirements, creates a new section requiring applicants to use the online portal to submit a license application and fulfill all licensure requirements.

The proposed repeal of §559.14, Increase in Capacity, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.35, Change in Capacity.

The proposed repeal of §559.15, Renewal Procedures and Qualifications, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.23, Renewal Procedures and Qualifications.

Proposed new §559.15, Time Periods for Processing Licensing Applications, relocates the rule from proposed repealed §559.18, Time Periods for Processing Licensing Applications, and updates citations and references.

The proposed repeal of §559.16, Change of Ownership and Notice of Changes, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.25, Change of Ownership and Notice of Changes.

The proposed repeal of §559.17, Change of Staff, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.29, Change of Staff.

Proposed new §559.17, Building Approval, relocates the rule from proposed repealed §559.12, Building Approval, and updates citations and references.

The proposed repeal of §559.18, Time Periods for Processing Licensing Applications, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.15, Time Periods for Processing Licensing Applications.

The proposed repeal of §559.19, Criteria for Denying a License or Renewal of a License, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.31, Criteria for Denying a License or Renewal of a License.

Proposed new §559.19, Applicant Disclosure Requirements, relocates the rule from proposed repealed §559.13, Applicant Disclosure Requirements, and updates citations and references.

The proposed repeal of §559.20, Opportunity to Show Compliance, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.33, Opportunity to Show Compliance.

The proposed repeal of §559.21, License Fees, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.37, Fees.

Proposed new §559.21, Initial License Application Procedures and Requirements, creates a new section requiring full payment of fees with the application submission for an initial license. Additionally, the proposed new rule requires an applicant to notify HHSC via the online portal when the facility is ready for a Life Safety Code inspection and when the facility is ready for a health inspection.

The proposed repeal of §559.22, Plan Review Fees, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.37, Fees.

The proposed repeal of §559.23, Relocation, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.27, Relocation.

Proposed new §559.23, Renewal Procedures and Qualifications, relocates the rule from proposed repealed §559.15, Renewal Procedures and Qualifications, and updates citations and references. The proposed new rule clarifies that license renewals expire three years after the date of issuance.

Proposed new §559.25, Change of Ownership and Notice of Changes, relocates the rule from proposed repealed §559.16, Change of Ownership and Notice of Changes.

Proposed new §559.27, Relocation, relocates the rule from proposed repealed §559.23, Relocation, and updates citations and references.

Proposed new §559.29, Change of Staff, relocates the rule from proposed repealed §559.17, Change of Staff, and updates citations and references. The proposed new rule requires facilities to submit an application for a change of director through the online portal within 30 days before or after the change.

Proposed new §559.31, Criteria for Denying a License or Renewal of a License, relocates the rule from proposed repealed §559.19, Criteria for Denying a License or Renewal of a License, and updates citations and references.

Proposed new §559.33, Opportunity to Show Compliance, relocates the rule from proposed repealed §559.20, Opportunity to Show Compliance, and updates citations and references.

Proposed new §559.35, Change in Capacity, relocates the rule from proposed repealed §559.14, Increase in Capacity, and updates citations and references. The proposed new rule requires

license holders that wish to decrease the licensed capacity of the facility to provide notification via the online portal.

Proposed new §559.37, Fees, relocates the rules from proposed repealed §559.21, License Fees and §559.22, Plan Review Fees, and updates citations and references. The proposed new rule requires payment of fees in accordance with the options available in the online portal and removes the option of payment for a two-year license.

Proposed new §559.39, Voluntary Closure, creates a new section requiring providers to notify HHSC in writing at least five days before permanent closure of the operation.

Proposed new §559.50, Purpose, creates a new section defining the term "communicable diseases" used in the subchapter.

Proposed new §559.51, Compliance, relocates the rule from proposed repealed §559.61(b), and updates citations and references. The proposed new rule defines "reportable conduct" used in this section and implements H.B. 1009 requiring a facility to suspend an employee who has been reported to the Employee Misconduct Registry (EMR) during any appeals process.

Proposed new §559.52, Client Rights, creates a new section requiring facilities to extend the enumerated rights to all adult clients, not just those over age 60.

Proposed new §559.53, Maintenance of Policies and Procedures, relocates the rule from proposed repealed §559.61(c) and updates citations and references.

Proposed new §559.55, Reporting Incidents of Abuse or Neglect, relocates the rule from proposed repealed §559.61(d) and updates citations and references. The proposed new rule requires facilities report to HHSC via the online portal or by speaking with an HHSC agent at 1-800-458-9858 upon learning of alleged abuse or neglect of a client.

Proposed new §559.57, Postings, relocates the rule from proposed repealed §559.61(e) and updates citations and references.

Proposed new §559.59, Staff Qualifications, relocates the rule from proposed repealed §559.62(a) and updates citations and references. The proposed new rule adds basic infection prevention and control measures and emergency preparedness and response to the list of options for director annual continuing education. The proposed new rule deletes requirements for a facility that contracts with HHSC.

The proposed repeal of §559.61, General Requirements, deletes the rule as no longer necessary because the content of the rule has been added to proposed new rules as follows: §559.61(b) content added to §559.51, Compliance; §559.61(c) content added to §559.53, Maintenance of Policies and Procedures; §559.61(d) content added to §559.55, Reporting Incidents of Abuse or Neglect; and §559.61(e) content added to §559.57, Postings.

Proposed new §559.61, Staffing Ratio and Hours, relocates the rule from proposed repealed §559.62(b) and updates citations and references.

The proposed repeal of §559.62, Program Requirements, deletes the rule as no longer necessary because the content of the rule has been added to proposed new rules as follows: §559.62(a) content added to §559.59, Staff Qualifications; §559.62(b) content added to §559.61, Staffing Ratio and Hours;

§559.62(c) content added to §559.63, Infection Prevention and Control; §559.62(d) content added to §559.65, Staff Responsibilities; §559.62(e) content added to §559.67, Training; §559.62(f) content added to §559.69, Medications; §559.62(g) content added to §559.71, Accident, Injury, or Acute Illness; and §559.62(h) content added to §559.73, Menus.

The proposed repeal of §559.63, Peer Review, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.77, Peer Review.

Proposed new §559.63, Infection Prevention and Control, relocates the rule from proposed repealed §559.62(c) and updates citations and references. The proposed new rule requires facilities to develop, implement, enforce, and maintain an infection prevention and control program that provides a safe, sanitary, and comfortable environment and helps prevent the development and transmission of disease and infection.

The proposed repeal of §559.64, Emergency Preparedness and Response deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.79, Emergency Preparedness and Response.

Proposed new §559.65, Staff Responsibilities, relocates the rule from proposed repealed §559.62(d) and updates citations and references. The proposed new rule requires facilities ensure clients have a choice in whether to participate in facility activities.

Proposed new §559.67, Training, relocates the rule from proposed repealed §559.62(e) and updates citations and references. The proposed new rule adds a list of possible topics that may be covered in the required quarterly training to direct service staff.

Proposed new §559.69, Medications, relocates the rule from proposed repealed §559.62(f) and updates citations and references. The proposed new rule clarifies that a person who administers medications to clients must hold a current license under applicable state law authorizing the licensee to administer medications. The proposed new rule requires facilities to dispose of medication in accordance with federal and state laws and allows for disposal of medications via local pharmacy on-site medication drop-off boxes or local law enforcement or community drug take-back programs.

Proposed new §559.71, Accident, Injury, or Acute Illness, relocates the rule from proposed repealed §559.62(g) and updates citations and references.

Proposed new §559.73, Menus, relocates the rule from proposed repealed §559.62(h) and updates citations and references.

Proposed new §559.75, Client Records, creates a new section with facility requirements for retention of records, destruction of records, and client access to records.

Proposed new §559.77, Peer Review, relocates the rule from proposed repealed §559.63, Peer Review.

Proposed new §559.79, Emergency Preparedness and Response, relocates the rule from proposed repealed §559.64, Emergency Preparedness and Response. The proposed new rule adds definitions to the terms "designated emergency contact," "disaster or emergency," "emergency management coordinator," "emergency preparedness coordinator," "plan," and "risk assessment." The proposed new rule removes references to "receiving facility" to avoid confusion.

The proposed amendment to §559.81, Procedural Requirements, implements H.B. 4696, requiring HHSC to perform an inspection as soon as feasible but not later than the 14th day after the date HHSC receives a complaint alleging abuse, neglect, or exploitation (ANE) rather than not later than the 30th day. H.B. 4696 also provides that if a complaint does not allege ANE, HHSC must investigate the complaint not later than the 45th day after the complaint is received. The amendment requires facilities that maintain electronic records to have a mechanism for printing documentation if a surveyor or investigator requests copies.

The proposed repeal of §559.82, Determinations and Actions Pursuant to Inspections, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.83, Determinations and Actions Pursuant to Inspections.

The proposed repeal of §559.83, Referrals to the Attorney General, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.85, Referrals to the Attorney General.

Proposed new §559.83, Determinations and Actions Pursuant to Inspections, relocates the rule from proposed repealed §559.82, Determinations and Actions Pursuant to Inspections, and updates citations and references.

The proposed repeal of §559.84, Procedures for Inspection of Public Records, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.87, Procedures for Inspection of Public Records.

Proposed new §559.85, Referrals to the Attorney General, relocates the rule from proposed repealed §559.83, Referrals to the Attorney General, and updates citations and references.

Proposed new §559.87, Procedures for Inspection of Public Records, relocates the rule from proposed repealed §559.84, Procedures for Inspection of Public Records, and updates citations and references.

The proposed amendment to §559.91, Definitions of Abuse, Neglect, and Exploitation, updates an outdated reference to §98.1.

The proposed repeal of §559.92, Abuse, Neglect, or Exploitation Reportable to DADS by Facilities, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.93, Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities.

The proposed repeal of §559.93, Complaint Investigation, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.95, Complaint Investigation.

Proposed new §559.93, Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities, relocates the rule from proposed repealed §559.92, Abuse, Neglect, or Exploitation Reportable to DADS by Facilities, and updates citations and references. The proposed new rule requires facilities to investigate alleged abuse, neglect, or exploitation and submit a written report of the investigation via the online portal.

The proposed repeal of §559.94, Investigations of Complaints, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.97, Investigations of Complaints.

The proposed repeal of §559.95, Confidentiality, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.99, Confidentiality.

Proposed new §559.95, Complaint Investigation, relocates the rule from proposed repealed §559.93, Complaint Investigation, and updates citations and references.

Proposed new §559.97, Investigations of Complaints, relocates the rule from proposed repealed §559.94, Investigations of Complaints, and updates citations and references.

Proposed new §559.99, Confidentiality, relocates the rule from proposed repealed §559.95, Confidentiality, and updates citations and references.

Proposed new §559.101, Nonemergency Suspension, relocates the rule from proposed repealed §559.102, Nonemergency Suspension, and updates citations and references. The proposed new rule requires a facility whose license has been suspended to return the license to HHSC within 72 hours of the passing of the appeal deadline or, if an appeal is filed, the final disposition of the appeal.

The proposed repeal of §559.102, Nonemergency Suspension, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.101, Nonemergency Suspension.

The proposed repeal of §559.103, Revocation, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.103, Revocation.

Proposed new §559.103, Revocation, relocates the rule from proposed repealed §559.103, Revocation, and updates citations and references. The proposed new rule requires a facility whose license has been revoked to return the license to HHSC within 72 hours of the passing of the appeal deadline or, if an appeal is filed, the final disposition of the appeal.

The proposed repeal of §559.104, Emergency Suspension and Closing Order, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.105, Emergency Suspension and Closing Order.

The proposed repeal of §559.105, Administrative Penalties, deletes the rule as no longer necessary because the content of the rule has been added to proposed new §559.107, Administrative Penalties.

Proposed new §559.105, Emergency Suspension and Closing Order, relocates the rule from proposed repealed §559.104, Emergency Suspension and Closing Order, and updates citations and references.

Proposed new §559.107, Administrative Penalties, relocates the rule from proposed repealed §559.105, Administrative Penalties, and updates citations and references.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses or micro-businesses, or rural communities.

A DAHS may incur a cost due to the implementation of H.B. 1009 if an agency staff person is suspended while he or she goes through due process or an appeals process for being added to the EMR. This might not impact all DAHS but could affect those that may need to hire additional staff on a temporary basis while the staff person is on suspension.

HHSC lacks sufficient information to determine the number of small businesses, micro-businesses, or rural communities subject to the rule.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of DAHS clients.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, including clients of DAHS facilities, and are necessary to implement legislation that does not specifically state that Section 2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from increased clarity in the rules and guidance in the requirements for DAHS facilities.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Luis Aleman, Program Specialist, Texas Health and Human Services

Commission, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751, or by email to HHSCLTCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R117" in the subject line.

SUBCHAPTER A. INTRODUCTION

26 TAC §559.1, §559.3

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The amendment and new section implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.1. Purpose.

The purpose of this chapter is to[:]

[(+)] implement Texas Human Resources Code, Chapter 103, by establishing licensing procedures and standards for a DAHS facility.[: and]

[(2) establish requirements for a DAHS facility contracting with DADS to provide DAHS under Title XIX or Title XX of the Social Security Act.]

§559.3. Definitions.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person, or sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Actual harm--A negative outcome that compromises the physical, mental, or emotional well-being of an elderly person or a person with a disability receiving services at a facility.

(3) Adult--A person 18 years of age or older or an emancipated minor.

(4) Affiliate--With respect to a:

- (A) partnership, each partner of the partnership;
- (B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;
- (C) natural person, includes each:
- (i) person's spouse;
- (ii) partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and
- (iii) corporation in which the person is an officer, director, principal stockholder, or person with a disclosable interest.
- (5) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC) or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.
- (6) Ambulatory--Mobility not relying on walker, crutch, cane, or other physical object or use of wheelchair.
- (7) Applicant--A person applying for a license under Texas Human Resources Code, Chapter 103.
- (8) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.
- (9) Client--An individual receiving day activity and health services.
- (10) Construction, existing--See definition of existing building.
- (11) Construction, new--Construction begun after April 1, 2007.
- (12) Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.
- (13) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of management, expenditure of money, or policies of a facility or other person. A controlling person includes:
- (A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;
- (B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of a facility;
- (C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and
- (D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.
- (14) DADS--The term referred to the Texas Department of Aging and Disability Services; it now refers to HHSC.

- (15) DAHS--Day activity and health services. Health, social, and related support services as defined in this section.
- (16) DAHS facility--A facility that provides services through a day activity and health services program on a daily or regular basis, but not overnight, to four or more elderly persons or persons with disabilities who are not related to the owner of the facility by blood, marriage, or adoption.
- (17) DAHS program--A structured, comprehensive program offered by a DAHS facility that is designed to meet the needs of adults with functional impairments by providing DAHS in accordance with individual plans of care in a protective setting.
- (18) Days--Calendar days, unless otherwise specified.
- (19) Department--HHSC.
- (20) Dietitian consultant--A person licensed as a dietitian by the Texas Department of Licensing and Regulation or a person with a bachelor's degree with major studies in food and nutrition, dietetics, or food service management.
- (21) Direct service staff--An employee or contractor of a facility who directly provides services to individuals, including the director, a licensed nurse, the activities director, and an attendant. An attendant includes a driver, food service worker, aide, janitor, housekeeper, and laundry worker. A dietitian consultant is not a member of the direct service staff.
- (22) Director--The person responsible for the overall operation of a facility.
- (23) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.
- (24) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.
- (25) Elderly person--A person 65 years of age or older
- (26) Executive Commissioner--The executive commissioner of HHSC.
- (27) Existing building--A building or portion thereof that, at the time of initial inspection by HHSC, is used as an adult day care occupancy, as defined by Life Safety Code, NFPA 101, 2000 edition, Chapter 17, for existing adult day care occupancies; or has been converted from another occupancy or use to an adult day care occupancy, as defined by Chapter 16 for new adult day care occupancies.
- (28) Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.
- (29) Facility--A licensed DAHS facility.
- (30) Fence--A barrier to prevent elopement of an individual or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.
- (31) FM--FM Global (formerly known as Factory Mutual). A corporation whose approval of a product indicates a level of testing and certification that is acceptable to HHSC.
- (32) Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(33) Functional impairment--A condition that requires assistance with one or more personal care services.

(34) Health assessment--An assessment of an individual by a facility used to develop the individual's plan of care.

(35) Health services--Services that include personal care, nursing, and therapy services.

(A) Personal care services include:

- (i) bathing;
- (ii) dressing;
- (iii) preparing meals;
- (iv) feeding;
- (v) grooming;
- (vi) taking self-administered medication;
- (vii) toileting;
- (viii) ambulation; and
- (ix) assistance with other personal needs or maintenance.

(B) Nursing services may include:

- (i) administering medications;
- (ii) physician-ordered treatments, such as dressing changes; and
- (iii) monitoring the health condition of the individual.

(C) Therapy services may include:

- (i) physical therapy;
- (ii) occupational therapy; and
- (iii) speech therapy.

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

(37) Human services--Include:

(A) personal social services, including:

- (i) DAHS;
- (ii) counseling;
- (iii) in-home care; and
- (iv) protective services;

(B) health services, including:

- (i) home health;
- (ii) family planning;
- (iii) preventive health programs;
- (iv) nursing facility; and
- (v) hospice;

(C) education services, meaning:

- (i) all levels of school;
- (ii) Head Start; and
- (iii) vocational programs;

(D) housing and urban environment services, including public housing;

(E) income transfer services, including:

- (i) Temporary Assistance for Needy Families; and
- (ii) Supplemental Nutrition Assistance Program;

and

(F) justice and public safety services, including:

- (i) parole and probation; and
- (ii) rehabilitation.

(38) Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of a human service program are:

(A) dependent on public resources and are planned and provided by the community;

(B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences; and

(C) used to aid, rehabilitate, or treat people in difficulty or need.

(39) Immediate threat to the health or safety of an elderly person or a person with a disability--A situation that causes, or is likely to cause, serious injury, harm, or impairment to, or the death of, an elderly person or a person with a disability receiving services at a facility.

(40) Indirect ownership interest--Any ownership or membership interest in a person who has a direct ownership interest in an applicant or license holder.

(41) Individual--A person who applies for or is receiving services at a facility.

(42) Isolated--When a very limited number of elderly persons, or persons with disabilities, receiving services at a facility are affected and a very limited number of staff are involved, or the situation has occurred only occasionally.

(43) License holder--A person who holds a license to operate a facility.

(44) Life Safety Code, NFPA 101--The Code for Safety to Life from Fire in Buildings and Structures, NFPA 101, a publication of the National Fire Protection Association, Inc. that:

(A) addresses the construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic; and

(B) establishes minimum criteria for the design of egress features to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.

(45) Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) an assisted living facility licensed under Texas Health and Safety Code, Chapter 247; and

(C) an intermediate care facility serving individuals with an intellectual disability or related conditions licensed under Texas Health and Safety Code, Chapter 252.

(46) LVN--Licensed vocational nurse. A person licensed by the Texas Board of Nursing who works under the supervision of an RN or a physician.

(47) Management services--Services provided under contract between the owner of a facility and a person to provide for operation of a facility, including administration, staffing, maintenance, and delivery of services. Management services do not include contracts solely for maintenance, laundry, or food services.

(48) Manager--A person who has a contractual relationship to provide management services to a facility.

(49) Medically related program--A program providing the services listed in paragraph (37)(B) of this section.

(50) Neglect--Failure to provide for oneself goods or services, including medical services, that are necessary to avoid physical harm, mental anguish, or mental illness; or failure of a caregiver to provide these goods or services.

(51) NFPA--The National Fire Protection Association. The NFPA is an organization that develops codes, standards, recommended practices, and guides through a consensus standards development process approved by the American National Standards Institute.

(52) NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by the NFPA for selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

(53) NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by the NFPA for the minimum requirements for design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

(54) NFPA 70--National Electrical Code. A code developed by the NFPA for installation of electric conductors and equipment.

(55) NFPA 72--National Fire Alarm Code. A code developed by the NFPA for application, installation, performance, and maintenance of fire alarm systems and their components.

(56) NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by the NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(57) NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by the NFPA for systems for movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(58) NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by the NFPA that provides the minimum fire safety requirements related to design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(59) Nurse--An RN or LVN licensed in the state of Texas.

(60) Nursing services--Services provided by a nurse, including:

- (A) observation;
- (B) promoting and maintaining health;
- (C) preventing illness and disability;

(D) managing health care during acute and chronic phases of illness;

(E) guiding and counseling individuals and families; and

(F) referral to physicians, other health care providers, and community resources when appropriate.

(61) Online portal--A secure portal provided on the HHSC website for licensure activities, including for a DAHS facility applicant to submit licensure applications and information.

(62) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with Texas Human Resources Code, Chapter 103, or a rule, standard, or order adopted under Texas Human Resources Code, Chapter 103 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same elderly persons or persons with disabilities receiving services at the facility or the same facility employees.

(63) Person--An individual, corporation, or association.

(64) Person with a disability--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(65) Plan of care--A written plan, based on a health assessment and developed jointly by a facility and an individual or the individual's responsible party, that documents the functional impairment of the individual and the DAHS needed by the individual.

(66) Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact to an individual.

(67) Protective setting--A setting in which an individual's safety is ensured by the physical environment by staff.

(68) Related support services--Services to an individual, family member, or caregiver that may improve the person's ability to assist with an individual's independence and functioning. Services include:

(A) information and referral;

(B) transportation;

(C) teaching caregiver skills;

(D) respite;

(E) counseling;

(F) instruction and training; and

(G) support groups.

(69) Responsible party--A person designated by an individual as the individual's representative.

(70) RN--Registered nurse. A person licensed by the Texas Board of Nursing to practice professional nursing.

(71) Safety--Protection from injury or loss of life due to conditions such as fire, electrical hazard, unsafe building or site conditions, and presence of hazardous materials.

(72) Sanitation--Protection from illness, transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or

practices in preparation of food and beverage, or care of personal belongings.

(73) Semi-ambulatory--Mobility relying on a walker, crutch, cane, or other physical object, or independent use of wheelchair.

(74) Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(75) Social activities--Therapeutic, educational, cultural enrichment, recreational, and other activities in a facility or in the community provided as part of a planned program to meet the social needs and interests of an individual.

(76) TAC--Texas Administrative Code.

(77) UL--Underwriters Laboratories, Inc. A corporation whose approval of a product indicates a level of testing and certification that is acceptable to HHSC.

(78) Widespread in scope--A violation of Texas Human Resources Code, Chapter 103, or a rule, standard, or order adopted under Texas Human Resources Code, Chapter 103, that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systematic failure by the facility that affects or has the potential to affect a large portion or all the elderly persons or persons with disabilities receiving services at the facility.

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

(80) Working with people--Acts involving delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, experience in an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity.

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

Filed with the Office of the Secretary of State on February 26, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



26 TAC §559.2

STATUTORY AUTHORITY

The repeal 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 Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeal implements Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.2. Definitions.

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

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SUBCHAPTER B. LICENSING [APPLICATION PROCEDURES]

26 TAC §§559.11, 559.13, 559.15, 559.17, 559.19, 559.21, 559.23, 559.25, 559.27, 559.29, 559.31, 559.33, 559.35, 559.37, 559.39

STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The amendment and new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.11. Criteria for Licensing.

(a) A person must not establish or operate a DAHS facility in Texas without a license issued by HHSC in accordance with Texas Human Resources Code, Chapter 103, and this chapter.

(b) An applicant for a license must submit a complete application form and license fee to HHSC through the online portal in accordance with instructions provided with the application.

(c) An applicant for a license must affirmatively demonstrate that the applicant [DAHS facility] meets:

(1) the standards of the Life Safety Code, NFPA 101, 2000 edition;

(2) the construction standards in Subchapter C of this chapter (relating to Facility Construction Procedures); and

(3) the requirements for operation based on an on-site survey.

(d) HHSC may deny an application that remains incomplete after 120 days.

(e) Before issuing a license, HHSC considers the background and qualifications of:

- (1) the applicant or license holder;
- (2) a person with a disclosable interest;
- (3) an affiliate of the applicant or license holder;
- (4) controlling parties, such as a director or manager; and
- (5) anyone disclosed in the application in accordance with the instructions provided with the application [a manager].

(f) HHSC issues a license if it finds that the applicant [DAHS facility], and all persons [any person] described in subsection (e) of this section, meet [meets] all requirements of this chapter. The license is valid for three years[, except as provided by §98.15(b)(1) and (c)(1) of this subchapter (relating to Renewal Procedures and Qualifications)].

(g) A facility must not provide services to more clients [individuals] than the number [of individuals] specified on its license.

(h) A facility must prominently and conspicuously post its license for display in a public area of the facility that is readily accessible to individuals, employees, and visitors.

§559.13. General Application Requirements.

(a) An applicant must use the online portal and the forms prescribed by HHSC to submit a license application and fulfill all licensure requirements and activities that can be met or conducted using the online portal.

(b) An applicant must complete the application and furnish all documents and information that HHSC requests in accordance with the instructions provided with the application. An application must be complete, accurate, and submitted with full payment of applicable license fees described in §559.37 of this subchapter (relating to Fees). If an applicant provides incorrect or false information, or withholds information, HHSC may deny the application as described in §559.31 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

(c) An application must include documentation from the local fire authority that the facility and its operations meet local fire ordinances.

(d) If an applicant decides not to continue the application process for a license after submitting an application and license fee, the applicant must submit to HHSC a request to withdraw the application. HHSC does not refund the license fee for an application that is withdrawn, except as provided in §559.15(e) - (g) of this subchapter (relating to Time Periods for Processing Licensing Applications).

§559.15. Time Periods for Processing Licensing Applications.

(a) HHSC only processes applications received at least 60 days before the requested date of the license issuance.

(b) An application is complete when all requirements for licensing have been met, including compliance with standards. If an inspection for compliance is required, the application is not complete until the inspection has occurred, reports have been reviewed, and the applicant complies with the standards.

(c) The HHSC Regulatory Services Licensing and Credentialing Section notifies facilities through the online portal within 30 days after receipt of the application if any of the following applications are incomplete:

- (1) initial;
- (2) change of ownership;
- (3) renewal; and
- (4) increase in capacity.

(d) Except as provided in subsection (e) of this section, HHSC issues or denies a license within 30 days after the receipt of a complete application or within 30 days before the expiration date of the license. HHSC may delay an action on an application for renewal of a license for up to six months if the facility is subject to a proposed or pending licensure termination action on or within 30 days before the expiration date of the license. Issuing the license constitutes HHSC's official written notice to the facility of application acceptance and filing.

(e) In the event an application is not processed in the time periods established in this section, the applicant has a right to request from the program director full reimbursement of all filing fees paid as part of that application process. If the program director does not agree that the established periods have been exceeded or finds that good cause existed for exceeding the established periods, the request is denied.

(f) Good cause for exceeding an established period is considered to exist if:

(1) the number of applications to be processed by HHSC exceeds by 15 percent or more the number processed in the same calendar quarter of the preceding year;

(2) another public or private entity involved in the application process caused the delay; or

(3) other conditions existed giving good cause for exceeding the established periods.

(g) If the request for full reimbursement is denied, the applicant may appeal directly to HHSC's executive commissioner for resolution of the dispute. The applicant must send a written statement to the executive commissioner describing the request for reimbursement and the reasons for it. The program director may also send a written statement to the executive commissioner describing the program's reasons for denying reimbursement. The executive commissioner makes a timely decision concerning the appeal and notifies the applicant and the program in writing of the decision.

§559.17. Building Approval.

(a) Local fire authority. All initial, change of ownership, and renewal applications for licensure must include the written approval of the local fire authority that the facility and its operation meet local fire ordinances. The written approval must be uploaded into the application in the online portal.

(b) Local health authority. The following procedures allow the local health authority to provide recommendations to HHSC concerning facility licensure.

(1) New facility. The sponsor of a new facility under construction or a previously unlicensed facility must provide to HHSC a copy of a dated written notice to the local health authority that construction or modification has been or will be completed by a specific date. This notice must be uploaded into the application submitted through the online portal. The sponsor must also provide a copy of a dated written notice of the approval for occupancy by the local fire marshal or local building code authority, if applicable, by uploading the notice into the application submitted through the online portal. The local health authority may provide recommendations to the HHSC Regulatory Services Licensing and Credentialing Section regarding the status of compliance with local codes, ordinances, or regulations.

(2) Increase in capacity. The license holder must submit an application through the online portal for approval of an increase in capacity from the HHSC Regulatory Services Licensing and Credentialing Section. The license holder must notify the local fire marshal and health authority of the request. The license holder must arrange for the inspection of the facility by the local fire marshal. The facility

must upload a copy of the written notice sent to the local health authority notifying them of the increase in capacity into the capacity increase application submitted through the online portal. HHSC approves the application only if the facility is found to be in compliance with the standards. Upon approval, the HHSC Regulatory Licensing and Credentialing Section issues a license with the increased capacity.

(3) Change of ownership. The applicant for a change of ownership license must provide to HHSC a copy of a letter notifying the local health authority of the request for a change of ownership by uploading the letter into the change of ownership application submitted through the online portal. The local health authority may provide recommendations to HHSC regarding the status of compliance with local codes, ordinances, or regulations.

(4) Renewal. The applicant for renewal must provide to HHSC a copy of a letter notifying the local health authority of the request for a renewal by uploading the letter into the renewal application submitted through the online portal. The local health authority may provide recommendations to HHSC regarding the status of compliance with local codes, ordinances, or regulations. The local authority may also recommend that a state license be issued or denied; however, the final decision on licensure status remains with HHSC.

§559.19. Applicant Disclosure Requirements.

(a) Scope of section. No person may apply for a license, change of ownership, increase in capacity, or license renewal to operate or maintain a facility without disclosing information as required in this section.

(b) Disclosures. Disclosures are made on each application as defined in this section and as required by the instructions for the application submitted.

(c) General information required.

(1) For initial, change of ownership, renewal, and change applications related to capacity and real estate, evidence of the right to possession of the facility at the time of the application must be submitted. This requirement may be satisfied by uploading applicable portions of a lease agreement, deed or trust, or other appropriate legal document into the application submitted through the online portal. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds appurtenant to the buildings, must be disclosed to HHSC in the application submitted through the online portal.

(2) At the request of HHSC, an applicant or license holder must provide to HHSC any additional background information within 30 days after HHSC's request.

§559.21. Initial License Application Procedures and Requirements.

(a) An applicant for an initial license must submit an application in accordance with §559.13 of this subchapter (relating to General Application Requirements) and include full payment of the fees required in §559.37 of this subchapter (relating to Fees).

(b) HHSC reviews an application for an initial license within 30 days after the date the HHSC Licensing and Credentialing Section, Long-term Care Regulation, receives the application and the associated fees and notifies the applicant if additional information is needed to complete the application.

(c) The applicant must notify HHSC via the online portal indicating that the facility is ready for a Life Safety Code (LSC) inspection. The notice must be submitted with the application or within 120 days after the HHSC Licensing and Credentialing Section, Long-term Care Regulation, receives the application. After the applicant has satisfied

the application submission requirements in §559.11 of this subchapter (relating to Criteria for Licensing) and §559.13 of this subchapter, HHSC staff conduct an on-site LSC inspection of the facility to determine if the facility meets the applicable physical plant requirements in Subchapter C of this chapter (relating to Facility Construction Procedures).

(d) If the applicant fails to meet the licensure requirements within 120 days after the initial LSC inspection, HHSC denies the application for a license.

(e) After an applicant has met the licensure requirements in Subchapter C of this chapter and admitted at least one but no more than three clients, the applicant must notify HHSC via the online portal that the facility is ready for a health inspection.

(1) HHSC staff conduct an on-site health inspection to determine if the facility meets the licensure requirements for standards of operation and client care in Subchapter D of this chapter (relating to Standards for Licensure).

(2) If the facility fails to meet the licensure requirements for standards of operation and client care within 120 days after the initial health inspection, HHSC denies the application for a license.

(f) HHSC issues a license within 30 days after HHSC determines that the applicant and the facility have met the licensure requirements of this section. Issuing a license constitutes HHSC's official written notice to the facility of the approval of the application.

(g) HHSC may deny an application for an initial license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §559.11 of this subchapter.

(h) If HHSC denies an application for an initial license, HHSC sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with HHSC rules in 1 TAC, Part 15, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

§559.23. Renewal Procedures and Qualifications.

(a) A license issued under this chapter:

- (1) expires three years after the date issued;
- (2) must be renewed before the license expiration date; and
- (3) is not automatically renewed.

(b) The submission of a license fee alone does not constitute an application for renewal.

(c) The completion of a renewal survey alone does not renew the license. A renewal application submitted through the online portal is required.

(d) If a renewal application is not generated in the online portal within 120 days of expiration, it is the responsibility of the facility to request from HHSC that one be generated.

(e) To renew a license, a license holder must submit an application for renewal through the online portal no later than the 45th day before the expiration date of the current license. HHSC considers that an application for renewal has met the submission deadline if the license holder:

(1) submits a complete application to HHSC, and HHSC receives that complete application through the online portal no later than the 45th day before the expiration date of the current license;

(2) submits an incomplete application to HHSC through the online portal and uploads a letter explaining the circumstances that prevented the inclusion of the missing information, and HHSC receives the incomplete application and letter no later than the 45th day before the expiration date of the current license; or

(3) submits a complete application or an incomplete application through the online portal with a letter uploaded into the application explaining the circumstances that prevented the inclusion of the missing information to HHSC, HHSC receives the application during the 45-day period ending on the date the current license expires, and the license holder pays a late fee in accordance with §559.37(a)(2) of this subchapter (relating to Fees) in addition to the license renewal fee.

(f) If the application is submitted through the online portal along with the appropriate licensing fee by the submission deadline, HHSC considers the application to be timely filed. It is the license holder's responsibility to ensure that the application is timely received by HHSC by submission through the online portal.

(g) For purposes of Texas Government Code §2001.054, HHSC considers that an individual has submitted a timely and sufficient application for renewal of a license if the license holder's application has met the submission deadlines in subsections (e) and (f) of this section. Failure to submit a timely and sufficient application results in the expiration of the license on the expiration date listed on the license.

(h) HHSC does not accept an application for renewal submitted after the expiration date of the license. An application for an initial license must be submitted and must comply with the requirements for an initial license in §559.11 of this subchapter (relating to Criteria for Licensing) and §559.19 of this subchapter (relating to Applicant Disclosure Requirements).

(i) The application for renewal must contain the same information required for an initial application and the license fee as described in §559.37 of this subchapter.

(j) The renewal of a license may be denied for the same reasons an original application for a license may be denied under the criteria in §559.31 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

(k) The facility must have an annual inspection by the local fire marshal and must submit a copy of the most current inspection as part of the renewal procedures by uploading the report into the renewal application through the online portal.

§559.25. Change of Ownership and Notice of Changes.

(a) For purposes of this section, a temporary change of ownership license is a temporary license issued to an applicant who proposes to become the new operator of a facility that exists on the date the application is submitted.

(b) A license holder may not transfer its license. The applicant (new license holder) must obtain a temporary change of ownership license followed by an initial three-year license in accordance with this section. When HHSC approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the effective date of the change of ownership indicated in the change of ownership application. Between the effective date of the change of ownership and issuance of the temporary change of ownership license, the existing license holder remains responsible under its license; however, the applicant may operate a facility on behalf of the current license holder during such time period.

(c) The applicant must submit to HHSC through the online portal:

(1) a complete application for a license in accordance with HHSC instructions and §559.11 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §559.37 of this subchapter (relating to Fees); and

(3) a signed and notarized Change of Ownership Transfer Affidavit, HHSC Form 1092, from the applicant and the facility's current license holder of intent to transfer operation of the facility from the current license holder to the applicant, beginning on the change of ownership effective date specified on the change of ownership application.

(d) To avoid a facility operating without a license, an applicant must submit all items required by subsection (c) of this section at least 30 days before the anticipated date of a change of ownership, unless the 30-day notice requirement is waived in accordance with subsection (e) of this section.

(e) HHSC may waive the 30-day notice required in subsection (d) of this section if HHSC determines that the applicant presents evidence showing that circumstances prevented the submission of the items in subsection (c) of this section at least 30 days before the anticipated change of ownership and that not waiving the 30-day requirement would create a threat to client health and safety.

(f) Upon HHSC approval of the items specified in subsection (c) of this section, HHSC issues a temporary change of ownership license to the applicant if HHSC finds that the applicant, all controlling persons, and all persons disclosed in the application satisfy all applicable requirements in §559.11 of this subchapter, §559.19 of this subchapter (relating to Applicant Disclosure Requirements), and §559.31 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

(1) Issuing a temporary change of ownership license constitutes HHSC's official written notice to the facility of the approval of the application for a change of ownership.

(2) The effective date of the temporary change of ownership license is the date requested in the application and cannot precede the date the application is received by HHSC through the online portal.

(g) A temporary change of ownership license expires on the earlier of:

(1) 90 days after its effective date or the last day of any extension HHSC provides in accordance with subsection (h) of this section; or

(2) the date HHSC issues a three-year license in accordance with subsection (k) of this section.

(h) HHSC, in its sole discretion, may extend a temporary change of ownership license for a term of 90 days at a time based upon extenuating circumstances.

(i) HHSC conducts an on-site health inspection to verify compliance with the licensure requirements after issuing a temporary change of ownership license. HHSC may conduct a desk review instead of an on-site health inspection after issuing a temporary change of ownership license if:

(1) less than 50 percent of the direct or indirect ownership interest of the former license holder changed, when compared to the new license holder; or

(2) every person with a disclosable interest in the new license holder had a disclosable interest in the former license holder.

(j) HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection after issuing a temporary change of ownership license.

(k) If the applicant, all controlling persons, and all persons disclosed in the application satisfy all applicable requirements for a license in §§559.11, 559.19, and 559.31 of this subchapter, and the facility passes the change of ownership health inspection as described in subsection (i) of this section, HHSC issues a three-year license. The effective date of the three-year license is the same date as the effective date of the change of ownership and cannot precede the date the application was received by HHSC through the online portal.

(l) If a license holder adds an owner with a disclosable interest, but the license holder does not undergo a change of ownership, the license holder must notify HHSC of the addition no later than 30 days after the addition of the owner.

(m) If a license holder changes its name but does not undergo a change of ownership, the license holder must notify HHSC and submit documentation evidencing a legal name change by submitting an application through the online portal. On receipt of the notice and documentation, HHSC reissues the current license in the license holder's new name.

§559.27. Relocation.

(a) A license holder must not relocate a facility without approval from HHSC. The license holder must submit a complete application and the fee required under §559.37 of this subchapter (relating to Fees) to HHSC through the online portal before the relocation.

(b) Clients must not be relocated until the new building has been inspected and approved as meeting the standards of Life Safety Code, NFPA 101, 2000 edition, as applicable to day activity health services facilities.

(c) Following Life Safety Code, NFPA 101, 2000 edition, approval by HHSC, the license holder must notify HHSC of the date clients will be relocated. If the new facility meets the standards for operation based on an on-site survey, HHSC issues a license for the new location.

(d) The effective date of this license is the date all clients are relocated.

(e) The license holder must continue to maintain the license at the current location and meet all requirements for facility operation until the date of the relocation.

§559.29. Change of Staff.

(a) A facility must submit an application for a change of director through the online portal within 30 days before or after the change. The new director must submit qualifying documentation for approval to the HHSC Regulatory Services Regional Office within 30 days before or after the change, as specified in §559.59 of this chapter (relating to Staff Qualifications).

(b) A new facility activities director must submit qualifying documentation for approval within 30 days before or after the change, as specified in §559.59 of this chapter.

(c) If the facility does not have a director or activities director within 30 days after a vacancy, the facility must submit a letter to the HHSC Regulatory Services Regional Office requesting an extension. The HHSC Regulatory Services Regional Office notifies the facility in writing of the length of any extension.

§559.31. Criteria for Denying a License or Renewal of a License.

(a) HHSC may deny an initial license or refuse to renew a license if any person described in §559.11(e) of this subchapter (relating to Criteria for Licensing):

(1) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter;

(2) substantially fails to comply with the requirements described in §559.42 of this chapter (relating to Safety), §559.43 of this chapter (relating to Sanitation), and Subchapter D of this chapter (relating to Standards for Licensure), including:

(A) noncompliance that poses a serious threat to health and safety; or

(B) failure to maintain compliance on a continuous basis;

(3) aids, abets, or permits a substantial violation described in paragraph (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) knowingly provides false or fraudulent information by:

(A) submitting false or intentionally misleading statements to HHSC;

(B) using subterfuge or other evasive means of filing;

(C) engaging in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly concealing a material fact; or

(E) being responsible for fraud;

(6) fails to pay when due:

(A) licensing fees as described in §559.37 of this subchapter (relating to Fees); and

(B) franchise taxes, if applicable; or

(7) has a history of any of the following actions during the five-year period preceding the date of the application:

(A) received a sanction for operating a facility that has been decertified or had its contract canceled under the Medicare or Medicaid program in any state;

(B) being assessed federal or state Medicare or Medicaid sanctions or penalties;

(C) received unsatisfied final judgments;

(D) was evicted from any property or space used as a facility in any state; or

(E) received a suspension of a license to operate a health facility, long-term care facility, assisted living facility, or a similar facility in any state.

(b) Concerning subsection (a)(7) of this section, HHSC may consider exculpatory information provided by any person described in §559.11(e) of this subchapter and grant a license if HHSC finds that person able to comply with the rules in this chapter.

(c) HHSC does not issue a license to an applicant to operate a new facility if the applicant has a history of any of the following actions during the five-year period preceding the date of the application:

(1) revocation of a license to operate a health care facility, nursing facility, assisted living facility, or similar facility in any state;

(2) debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(3) a court injunction prohibiting any person described in §559.11(e) of this subchapter from operating a facility.

(d) Only final actions are considered for purposes of subsection (a)(7) of this section and subsection (c) of this section. An action is final when routine administrative and judicial remedies are exhausted. All actions, whether pending or final, must be disclosed.

(e) If an applicant owns multiple facilities, the overall record of compliance in all the facilities is examined. An overall record poor enough to deny issuing a new license does not preclude renewing licenses of individual facilities with satisfactory records.

(f) If HHSC denies a license or refuses to issue a license renewal, the applicant or license holder may request a hearing by following HHSC rules in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). An administrative hearing is conducted in accordance with Texas Government Code, Chapter 2001, and 1 TAC Chapter 357, Subchapter I.

§559.33. Opportunity to Show Compliance.

(a) Before starting proceedings to revoke or suspend a license or deny an application for the renewal of a license, HHSC gives the applicant or license holder:

(1) notice by personal service or registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all requirements of law for the retention of the license by sending the director of the HHSC Regulatory Enforcement Section a written request for an opportunity to show compliance. The request must:

(A) be postmarked within 10 days after the date of HHSC's notice and received in the state office of the director of the HHSC Regulatory Enforcement Section within 10 days after the date of the postmark; and

(B) contain specific documentation refuting HHSC's allegations.

(b) HHSC's review is limited to a review of documentation submitted by the license holder and information used by HHSC as the basis for its proposed action and is not conducted as an adversary hearing. HHSC gives the license holder a written affirmation or reversal of the proposed action.

§559.35. Change in Capacity.

(a) Increase in Capacity.

(1) During the license term, a license holder may not increase capacity without approval from HHSC. The license holder must submit to HHSC a complete application for increase in capacity through the online portal.

(2) Upon approval of an increase in capacity following a Life Safety Code Survey, HHSC issues a new license.

(b) Decrease in Capacity.

(1) A license holder that wishes to decrease the licensed capacity of the facility must provide notification via the online portal to HHSC Licensing and Credentialing Section, Long-term Care Regulation. The notification must include the desired capacity for the new license.

(2) Upon receipt of the notification, HHSC issues a new license with the desired capacity indicated in the notification.

§559.37. Fees.

(a) License Fees.

(1) The license fee is \$75 for a three-year license. The fee must be paid with each initial application, change of ownership application, and application for license renewal. A facility or applicant must pay fees in accordance with the options available in the online portal.

(2) An applicant for license renewal who submits an application during the 45-day period ending on the date the current license expires must pay a late fee of \$25 in addition to the license fee described in paragraph (1) of this subsection.

(b) Plan Review Fees.

(1) HHSC charges a fee to review plans for new buildings and conversion of buildings not licensed by HHSC and for additions and remodeling existing licensed facilities.

(2) HHSC fee schedule by building type:

(A) new buildings or conversion of buildings not licensed by HHSC--\$12 per client (minimum \$500 and maximum \$1,000); or

(B) additions or remodeling existing licensed facilities--2 percent of construction cost (minimum \$250 and maximum \$750).

§559.39. Voluntary Closure.

(a) A provider must notify HHSC in writing at least five days before permanent closure of the operation.

(b) The provider must include in the written notice:

(1) the date of permanent closure;

(2) the reason for closing;

(3) the location of individual records, both active and inactive; and

(4) the name and address of the individual records custodian.

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

Filed with the Office of the Secretary of State on February 26, 2024.

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Karen Ray

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Health and Human Services Commission

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For further information, please call: (512) 438-3161

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SUBCHAPTER B. APPLICATION PROCEDURES

26 TAC §§559.12 - 559.23

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.12. *Building Approval.*

§559.13. *Applicant Disclosure Requirements.*

§559.14. *Increase in Capacity.*

§559.15. *Renewal Procedures and Qualifications.*

§559.16. *Change of Ownership and Notice of Changes.*

§559.17. *Change of Staff.*

§559.18. *Time Periods for Processing Licensing Applications.*

§559.19. *Criteria for Denying a License or Renewal of a License.*

§559.20. *Opportunity to Show Compliance.*

§559.21. *License Fees.*

§559.22. *Plan Review Fees.*

§559.23. *Relocation.*

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

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Health and Human Services Commission

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SUBCHAPTER D. STANDARDS FOR LICENSURE [AND PROGRAM REQUIREMENTS]

26 TAC §§559.50 - 559.53, 559.55, 559.57, 559.59, 559.61, 559.63, 559.65, 559.67, 559.69, 559.71, 559.73, 559.75, 559.77, 559.79

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.50. *Purpose.*

For purposes of this subchapter, the term, "communicable diseases" has the meaning assigned to it in 25 TAC Chapter 97 (relating to Communicable Diseases).

§559.51. *Compliance.*

(a) For purposes of this section, "reportable conduct" includes:

(1) abuse or neglect that causes or may cause death or harm to a client;

(2) sexual abuse of a client;

(3) financial exploitation of a client in the amount of \$25 or more; or

(4) emotional, verbal, or psychological abuse that causes harm to a client.

(b) A facility must:

(1) comply with the requirements for advance directives as outlined under §559.53 of this subchapter (relating to Maintenance of Policies and Procedures);

(2) comply with the provisions of Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illness);

(3) before offering employment to any individual, search on the HHSC internet website, employee misconduct registry (EMR) established under Texas Health and Safety Code §253.007, and HHSC nurse aide registry (NAR) to determine if an individual is designated in either registry as unemployable;

(A) not employ a person who is listed as unemployable in either registry;

(B) provide information about the EMR to an employee in accordance with §561.3 of this title (relating to Employment and Registry Information);

(C) conduct a search of the EMR and NAR at least once every 12 months to determine if the employee is designated in either registry as unemployable;

(D) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file; and

(E) suspend the employment of an employee who HHSC finds has engaged in reportable conduct, as defined in subsection (a) of this section, while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review, pending a final decision by an administrative law judge, and not reinstate the employee's employment or contract during any applicable appeals process;

(4) develop policies to comply with standards for universal precautions for HIV/AIDS and related conditions in the workplace;

(5) develop written policies for control of communicable diseases in employees and clients, which include tuberculosis screening and provision of a safe and sanitary environment for clients and their families;

(6) comply with all relevant federal and state standards; and

(7) comply with all applicable provisions of Texas Human Resource Code, Chapter 102.

§559.52. Client Rights.

A facility must ensure that all adult clients receiving services provided by the facility are guaranteed the following rights.

(1) The facility must ensure that the facility's policies and procedures:

(A) enable a client to exercise his or her rights;

(B) promote the highest practicable quality of life for all clients and not deliberately or inadvertently prohibit a client from exercising the rights stated in this section or the rights of citizenship; and

(C) ensure that a client, in exercising his or her rights, does not impede the rights of others in the facility.

(2) The facility must ensure a listing of client rights is:

(A) provided in writing to each client or client's responsible party; and

(B) posted in English and Spanish in a prominent place in the facility accessible by clients and visitors.

(3) A client has all the rights, benefits, responsibilities, and privileges stated in the Constitution and laws of this state and the United States, except where lawfully restricted.

(4) A client has the right to be free of interference, coercion, discrimination, and reprisal in exercising his or her civil rights. Examples of interference, coercion, discrimination, and reprisal include:

(A) prohibiting a client from selecting the client's responsible party of the client's choice;

(B) intimidating a client to provide information about a private conversation with another person;

(C) not allowing a client to use the client's private property, such as durable medical equipment, recreational items, and assistive devices;

(D) not allowing a client to visit with an individual of the client's choice, unless the individual poses a threat to the health and safety of the client, other clients, or staff;

(E) discharging a client for filing a complaint or grievance; and

(F) using derogatory language to describe or address a client.

(5) A client has the right to be free from physical and mental abuse, including corporal punishment, physical restraints and seclusion, and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the client's medical symptoms.

(6) A client has the right to participate in activities of social, religious, and community groups unless the participation interferes with the rights of others.

(7) A client has the right to practice the religion of the client's choice or to abstain from religious activities.

(8) A client with an intellectual disability and who is represented by a court-appointed guardian may participate in a behavior modification program that involves the use of restraints or adverse stimuli only with the informed consent of the guardian.

(9) A client has the right to be treated with respect, courtesy, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the client:

(A) has the right to make individualized choices regarding personal affairs, care, benefits, schedules and activities, and services;

(B) has the right to be free from abuse, neglect, and exploitation;

(C) has the right, if protective measures are required and the client has not been adjudicated cognitively impaired, to designate a guardian or representative to ensure the right to quality stewardship of the client's affairs; and

(D) has the right to protection of the client's personal image. A facility employee must not share or post to the internet or social media any photographs or video of a client without the client's written consent.

(10) A client has the right to a safe and clean environment that:

(A) is free of pests;

(B) is free of electrical and structural hazards; and

(C) has clean bathrooms and client areas.

(11) A client has the right to communicate with staff and others in the client's native language for the purpose of acquiring or providing any type of treatment, care, or services.

(12) A client has the right to make a complaint about the client's care or treatment.

(A) A client's complaint may be made anonymously or communicated by a person designated by the client.

(B) The facility must promptly respond to resolve each client complaint.

(C) The facility must not discriminate or take other punitive action against a client who makes a complaint.

(D) The facility must not impede a client's right to make a formal complaint to HHSC or require that complaints be made to the facility prior to lodging a formal complaint with HHSC.

(13) The facility must ensure a client is given personal privacy while attending to personal needs.

(14) A client has the right to review and obtain copies of the client's records in accordance with §559.75 of this subchapter (relating to Client Records).

(15) A client has the right to be fully informed in advance about treatment, care, and services provided by the facility.

(16) A client has the right to participate in developing his or her individual plan of care that describes the client's DAHS needs and how the needs will be met.

(17) A client has the right to refuse medical treatment or services. The facility must ensure the client is advised by the person providing treatment or services of the possible consequences of refusing treatment or services.

(18) A client has the right to refuse to perform services for the facility, except as contracted for by the client and director.

(19) A client has the right to be informed by the provider, no later than the 30th day after admission:

(A) whether the client is entitled to benefits under Medicare or Medicaid related to DAHS services; and

(B) which items and services are covered by these benefits, including items or services for which the client may not be charged.

(20) A client has the right to execute an advance directive, under Texas Health and Safety Code, Chapter 166, or designate a guardian in advance of need to make decisions regarding the client's health care should the client become incapacitated.

§559.53. Maintenance of Policies and Procedures.

A facility must maintain policies and procedures regarding the following with respect to all clients receiving services provided by the facility.

(1) The facility must provide a client with written information about:

(A) the client's rights under Texas law (whether statutory or as recognized by the courts of the state) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives;

(B) the facility's policies respecting the implementation of these rights; and

(C) a written list of the client's rights as applicable, as outlined under Texas Human Resource Code §102.004 (relating to List of Rights), and as required in §559.52 of this subchapter (relating to Client Rights).

(2) The facility must document in the client's record whether the client has executed an advance directive.

(3) The facility must not condition the provision of care or otherwise discriminate against a client based on whether the client has executed an advance directive.

(4) The facility must ensure compliance with the requirements of Texas law, whether statutory or as recognized by the courts of Texas, respecting advance directives.

(5) The facility must educate the client, family members, and staff, in a language each understands, on issues concerning advance directives.

(6) The facility must provide the attending physician with any information relating to a known existing Directive to Physicians, Living Will, or Durable Power of Attorney for Health Care and assist with coordinating prescribing practitioners' orders with any directive.

(7) When a client is in an incapacitated state, and therefore is unable to receive information or articulate whether he or she has executed an advance directive, the family, surrogate, or other concerned person must receive the information concerning advance directives. The facility must provide this information to the client in a language he or she understands if he or she is no longer incapacitated.

(8) When the client or a relative, surrogate, or other concerned or related individual presents the facility with a copy of the client's advance directive, the facility must comply with the advance directive including recognition of a durable power of attorney for health care to the extent allowed under state law. If no one comes forward with a previously executed advance directive and the client is incapacitated or otherwise unable to receive information or articulate whether he has executed an advance directive, the facility must note that the client was not able to receive information and was unable to communicate whether an advance directive existed.

§559.55. Reporting Incidents of Abuse or Neglect.

A facility must:

(1) report to HHSC via the online portal, or by speaking with an HHSC agent at 1-800-458-9858, upon learning of alleged abuse or neglect of a client and submit an investigation report to HHSC no later than the fifth working day after the initial report;

(2) maintain incident reports as required by §559.75 of this subchapter (relating to Client Records);

(3) ensure the confidentiality of individual client records and other information related to clients; and

(4) inform the client, or client's responsible party, orally and in writing of the client's rights, responsibilities, and grievance procedures in a language the client, or client's responsible party, understands.

§559.57. Postings.

A facility must prominently and conspicuously post for display in a public area of the facility that is readily available to clients, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by HHSC that can be found on the HHSC website that describes complaint procedures and specifies how complaints may be filed with HHSC;

(3) a notice in the form prescribed by HHSC stating that inspection and related reports are available at the facility for public inspection and providing the HHSC toll-free telephone number that may be used to obtain information concerning the facility;

(4) a copy of the most recent inspection report relating to the facility;

(5) a brochure or letter that outlines the facility's hours of operation, holidays, and a description of activities offered; and

(6) emergency telephone numbers, including the abuse hotline telephone number, near all telephones.

§559.59. Staff Qualifications.

(a) Director. A facility must employ a director.

(1) The director must:

(A) have graduated from an accredited four-year college or university and have no less than one year of experience in working with people in a human service or medically related program, or have an associate degree or 60 semester hours from an accredited college or university with three years of experience working with people in a human service or medically related program;

(B) be an RN with one year of experience in a human service or medically related program;

(C) meet the training and experience requirements for a license as a nursing facility administrator under Chapter 555 of this title (relating to Nursing Facility Administrators); or

(D) have met the qualifications for a director required on July 16, 1989, and served continuously in the capacity of director since that date.

(2) The director must show evidence of 12 hours of annual continuing education in at least two of the following areas:

(A) client and provider rights and responsibilities, abuse, neglect, exploitation, and confidentiality;

(B) basic principles of supervision;

(C) skills for working with individuals, families, and other professional service providers;

- (D) individual characteristics and needs;
- (E) community resources;
- (F) basic infection prevention and control measures;
- (G) emergency preparedness and response;
- (H) basic emergency first aid, such as cardiopulmonary resuscitation or choking; or

(I) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, Rehabilitation Act of 1993, and Family and Medical Leave Act of 1993.

(3) The activities director may fulfill the function of director if the activities director meets the qualifications for facility director.

(4) One person may not serve as facility nurse, activities director, and director.

(5) The facility must have a policy regarding the delegation of responsibility in the director's absence from the facility.

(6) The facility must notify HHSC Regulatory Services Regional Office for the region in which the facility is located if the director is absent from the facility for more than 10 working days.

(b) Nurse. A facility must employ a nurse.

(1) An RN must have a license from the Texas Board of Nursing and practice in compliance with the Nurse Practice Act and rules and regulations of the Texas Board of Nursing.

(2) An LVN must have a license from the Texas Board of Nursing and practice in compliance with the Nurse Practice Act and rules and regulations of the Texas Board of Nursing.

(3) If a nurse serving as director leaves the facility to perform other duties related to the DAHS program, an LVN or another RN must fulfill the duties of the facility nurse.

(4) A facility that does not have a DAHS contract, but that has a Special Services to Persons with Disabilities contract, is not required to have an RN on duty if the clients receiving services have no medical needs and are able to self-administer medication.

(c) Activities director. A facility must employ an activities director.

(1) Except as provided in paragraph (2) of this subsection, an activities director must have graduated from high school or have a certificate recognized by a state of the United States as the equivalent of a high-school diploma and have:

(A) a bachelor's degree from an accredited college or university and one year of full-time experience working with elderly people or people with disabilities in a human service or medically related program;

(B) 60 semester hours from an accredited college or university and two years of full-time experience working with elderly people or people with disabilities in a human service or medically related program; or

(C) completed an activities director's course and two years of full-time experience working with elderly people or people with disabilities in a human service or medically related program.

(2) An activities director hired before May 1, 1999, with four years of full-time experience working with elderly people or people with disabilities in a human service or medically related program is not subject to the requirements of paragraph (1) of this subsection.

(d) Attendants. An attendant must be at least 18 years of age and may be employed as a driver, aide, food service worker, janitor, housekeeper, or laundry services worker.

(1) If a facility employs a driver, the driver must have a current operator's license, issued by the Texas Department of Public Safety, that is appropriate for the class of vehicle used to transport clients.

(2) If an attendant handles food in the facility, the attendant must meet the requirements of the Texas Department of State Health Services (DSHS) rules on food service sanitation as described in 25 TAC Chapter 228 (relating to Retail Food Establishments).

(e) Food service personnel. If a facility prepares meals on site, the facility must have sufficient food service personnel to prepare meals and snacks. Food service personnel must meet the requirements of the DSHS rules on food service sanitation as described in 25 TAC Chapter 228.

§559.61. Staffing Ratio and Hours.

A facility must ensure that:

(1) the ratio of direct service staff to clients is at least one to eight, which must be maintained during provision of all services except during facility-provided transportation;

(2) at least one RN or LVN is working at the facility for at least eight hours per day and sufficient nurses are at the facility to meet the nursing needs of the clients at all times;

(3) the facility director routinely works at least 40 hours per week performing duties relating to provision of the DAHS program;

(4) the activities director routinely works at least 40 hours a week;

(5) clients whose needs cannot be met by the facility are not admitted or retained; and

(6) sufficient attendants are on duty at all times clients are present to meet the needs of the clients who are served by the facility.

§559.63. Infection Prevention and Control.

(a) A facility must develop, implement, enforce, and maintain an infection prevention and control program that provides a safe, sanitary, and comfortable environment and helps prevent development and transmission of disease and infection.

(1) The infection prevention and control program must include policies and procedures that reduce the risk of spreading communicable diseases in the facility, including:

(A) wearing personal protective equipment, such as gloves, a gown, or a mask when called on for anticipated exposure;

(B) properly cleaning hands after using the lavatory, before and after touching another client, and in between glove changes;

(C) cleaning and disinfecting environmental surfaces, including doorknobs, handrails, light switches, control panels, and remote controls;

(D) using universal precautions for blood and bodily fluids; and

(E) disposing of soiled items (such as used tissues, wound dressings, incontinence briefs, and soiled linens) from the environment.

(2) Staff must handle, store, process, and transport linens to prevent the spread of infection.

(3) If the facility knows or suspects an employee has contracted a communicable disease that is transmissible to clients through food handling or direct client care, the facility must exclude the employee from providing these services for the applicable period of communicability.

(4) The facility must maintain evidence of compliance with local and state health codes and ordinances regarding employee and client health status.

(5) The facility must immediately report the name of any client with a reportable disease as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases), to the city health officer, county health officer, or health unit director having jurisdiction, and implement appropriate infection control procedures as directed by the local health authority.

(b) The facility must comply with rules regarding special waste in 25 TAC Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(c) The facility's infection prevention and control program must include a policy to minimize the risk for transmission of tuberculosis (TB). The facility must screen a new employee for TB within two weeks of employment, according to Centers for Disease Control and Prevention screening guidelines and any additional guidance from HHSC.

(1) The facility must provide annual TB education to employees that must include the following topics:

- (A) TB risk factors;
- (B) the signs and symptoms of TB disease; and
- (C) TB infection control policies and procedures.

(2) The facility may request evidence of compliance with this requirement from a person who provides services under an outside resource contract.

§559.65. Staff Responsibilities.

(a) The facility director:

- (1) manages the DAHS program and the facility;
- (2) trains and supervises facility staff, contractors, and volunteers;
- (3) monitors the facility building and grounds to ensure compliance;
- (4) maintains all financial and client records;
- (5) develops relationships with community groups and agencies for identification and referral of clients;
- (6) maintains communication with clients' family members or responsible parties;
- (7) ensures development and maintenance of the clients' plans of care; and
- (8) ensures that, if the facility director also serves as the RN consultant, the facility director fulfills the responsibility as director.

(b) The facility nurse:

- (1) assesses clients' nursing and medical needs;
- (2) develops clients' plans of care;
- (3) obtains prescribing practitioner's orders for medication and treatments to be administered;

(4) determines whether self-administered medications have been appropriately taken, applied, or used;

(5) enters, dates, and signs monthly progress notes on medical care provided;

(6) administers medication and treatments;

(7) provides health education;

(8) maintains medical records; and

(9) oversees implementation of the facility's infection prevention and control policies.

(c) The activities director:

(1) plans and directs the daily program of activities, including physical fitness exercises or other recreational activities;

(2) records client's social histories;

(3) assists clients' related support needs;

(4) ensures that the identified related support services are included in clients' plans of care;

(5) signs and dates monthly progress notes about social and related support services activities provided; and

(6) ensures clients have a choice in whether to participate in activities.

(d) An attendant:

(1) provides personal care services to assist with activities of daily living;

(2) assists the activities director with recreational activities; and

(3) provides protective supervision through observation and monitoring.

(e) Food service personnel:

(1) prepare meals and snacks; and

(2) maintain the kitchen area and utensils in a safe and sanitary condition.

(f) A facility must obtain consultation at least four hours per month from a dietitian consultant.

(1) The dietitian consultant plans and reviews menus and must:

(A) approve and sign snack and lunch menus;

(B) review menus monthly to ensure that substitutions were appropriate; and

(C) develop a special diet for clients if ordered by a prescribing practitioner.

(2) A facility must obtain consultation from a dietitian consultant even if the facility has meals delivered from another facility with a dietitian consultant or the facility contracts for the preparation and delivery of meals with a contractor that employs a registered dietician. A consultant who provides consultation to several facilities must provide at least four hours of consultation per month to each facility.

(g) If a facility employs an LVN as the facility nurse, the facility must ensure that an RN consultant provides consultation at the facility at least four hours per week. The RN consultant must document the consultation provided. The RN consultant must provide the

consultation when clients are present in the facility. The RN consultant may provide the following types of assistance:

- (1) review plans of care and suggest changes, if appropriate;
- (2) assess clients' health conditions;
- (3) consult with the LVN in solving problems involving care and service planning;
- (4) counsel clients on health needs;
- (5) train, consult, and assist the LVN to maintain proper medical records; and
- (6) provide in-service training for direct service staff.

§559.67. Training.

(a) Initial training.

(1) A facility must provide direct service staff with training in its fire, disaster, and evacuation procedures within three workdays after the start of employment and document the training in the facility records.

(2) A facility must provide direct service staff a minimum of 18 hours of training during the first three months after the start of employment and document the training in the facility records.

(3) The training provided in accordance with paragraph (2) of this subsection must include:

(A) a nationally or locally recognized adult cardiopulmonary resuscitation (CPR) course or certification;

(B) first aid;

(C) orientation to health care delivery, including:

(i) safe body function and mechanics;

(ii) personal care techniques and procedures; and

(iii) overview of the population served at the facility;

(D) identification and reporting of abuse, neglect, or exploitation; and

(E) basic infection prevention and control measures.

(b) Continuing training.

(1) A facility must provide at least three hours of continuing training to direct service staff quarterly and document the training in the facility records. Training may include:

(A) assisting clients with personal care services;

(B) health conditions and diagnoses of clients in the facility and how they may affect provision of care;

(C) safety measures to prevent accidents and injuries;

(D) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a client falls, suffers a laceration, or is experiencing a sudden change in physical or cognitive status;

(E) managing dysfunctional, disruptive, or maladaptive behavior and de-escalation techniques;

(F) client rights;

(G) communication techniques for working with clients with hearing, visual, or cognitive impairment;

(H) basic infection prevention and control measures; and

(I) fall prevention.

(2) A facility must practice evacuation procedures with staff and individuals at least once a month and document evacuation results in the facility records.

(3) The facility must ensure that direct service staff maintain current certification in CPR.

(c) Policy for clients with Alzheimer's disease or a related disorder. A facility must adopt, implement, and enforce a written policy that:

(1) requires direct service staff who provide care at the facility to a client with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to clients with Alzheimer's disease or related disorders;

(2) ensures the care and services provided by direct service staff to a client with Alzheimer's disease or a related disorder meet the specific identified needs of the client relating to the diagnosis of Alzheimer's disease or a related disorder; and

(3) ensures the training required for direct service staff under paragraph (1) of this subsection includes information about:

(A) symptoms and treatment of dementia;

(B) stages of Alzheimer's disease;

(C) person-centered behavioral interventions; and

(D) communication with a client with Alzheimer's disease or a related disorder.

§559.69. Medications.

(a) Administration.

(1) A facility must ensure that a person who administers medications to clients who choose not to or who cannot self-administer his or her medications holds a current license under applicable state law that authorizes the licensee to administer medications.

(2) A facility must ensure that all medication prescribed to a client that is administered at the facility is dispensed through a pharmacy or by the client's prescribing practitioner.

(3) A facility may administer sample medications at the facility if the medication has been prescribed to the client and includes specific dosage instructions for the client.

(4) A facility must record a client's medications on the client's medication profile record. The recorded information must be obtained from the prescription label and must include the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and date each medication was issued by the pharmacy.

(b) Assistance with self-administration. A nurse may assist with self-administration of a client's medication if the client is unable to administer the medication without assistance. Assistance with self-administration of medication is limited to:

(1) reminding the client to take medications at the prescribed time;

(2) opening and closing containers or packages;

(3) pouring prescribed dosage according to the client's medication profile record;

(4) returning medications to the proper locked areas;

(5) obtaining medications from a pharmacy; and

(6) listing on the client's medication profile record the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(c) Self-administration.

(1) A nurse must counsel a client who self-administers medication or treatment at least once per month to ascertain if the client continues to be able to self-administer the medication or treatment. The facility must keep a written record of the counseling.

(2) A facility may permit a client who chooses to keep the client's medication locked in the facility's central medication storage area to enter or have access to the area for the purpose of self-administering medication or treatment. A facility staff member must remain in or at the storage area the entire time the client is present in the area.

(d) General.

(1) A facility director, an activities director, or a facility nurse must immediately report to a client's prescribing practitioner and responsible party any unusual reactions to a medication or treatment.

(2) When a facility supervises or administers medications, the facility must document in writing if a client does not receive or take the medication and treatment as prescribed. The documentation must include the date and time the dose should have been taken and the name and strength of medication missed.

(e) Storage.

(1) A facility must provide a locked area for all medications, which may include:

(A) a central storage area; or

(B) a medication cart.

(2) A facility must store a client's medication separately from other clients' medications within the storage area.

(3) A facility must store medication requiring refrigeration in a locked refrigerator that is used only for medication storage or in a separate, permanently attached, locked medication storage box in a refrigerator.

(4) A facility must store poisonous substances and medications labeled for "external use only" separately from other substances within the locked area.

(5) A facility must store drugs covered by Schedule II of the Controlled Substances Act of 1970 in a locked, permanently attached cabinet, box, or drawer that is separate from the locked storage area for other medications.

(f) Disposal.

(1) In accordance with applicable federal and state laws, a facility must dispose of medication that:

(A) has been discontinued by order of the client's prescribing practitioner;

(B) remains after the client no longer attends the DAHS; or

(C) has passed the medication expiration date.

(2) A facility must ensure the medication identified in paragraph (1) of this subsection is disposed by:

(A) a registered pharmacist licensed in the State of Texas;

(B) a local pharmacy on-site medication drop-off box;

(C) a local law enforcement or community drug take-back program.

(3) A facility must inventory and store medications awaiting disposal separate from current client medications.

(4) A facility must dispose of needles and hypodermic syringes with needles attached as required by 25 TAC Chapter 1, Subchapter K (relating to the Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(5) A facility must obtain a signed receipt from the client or the client's responsible party if the facility releases medication to the client or responsible party.

§559.71. Accident, Injury, or Acute Illness.

(a) A facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(b) In the event of accident or injury to a client requiring emergency medical, dental, or nursing care, or in the event of death of a client, a facility must:

(1) arrange for emergency care or transfer of the client to an appropriate place for treatment, including:

(A) a physician's or practitioner's office;

(B) a clinic; or

(C) a hospital;

(2) immediately notify the client's physician and responsible party or agency who admitted the client to the facility; and

(3) describe and document the accident, injury, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file as required by §559.75 of this subchapter (relating to Client Records).

§559.73. Menus.

A facility that prepares meals on-site must:

(1) serve meals according to the menu;

(2) plan, date, post a menu at least two weeks in advance, maintain a copy of the menu; and

(3) ensure that a special diet meal ordered by a client's prescribing practitioner and developed by the dietician consultant is labeled with the client's name and type of diet.

§559.75. Client Records.

(a) Retention of Records. The retention of client records must comply with the following.

(1) Client records must be retained for five years after the client's services end.

(2) A facility must safeguard a client's records against loss, destruction, or unauthorized use.

(3) A facility must keep confidential all information contained in a client's records, except when release is:

(A) required by law or this chapter;

(B) to the client or client representative, where permitted by applicable law;

(C) for treatment, payment, or health care operations, as permitted by and in compliance with applicable law; or

(D) for public health activities, reporting of abuse, neglect, or domestic violence, health oversight activities, judicial and administrative proceedings, law enforcement purposes, organ donation purposes, research purposes, or to coroners, medical examiners, funeral directors, or to avert a serious threat to health or safety as permitted by and in compliance with applicable law.

(b) Destruction of Records. When client records are destroyed after the retention period, the facility must shred or incinerate the records in a manner that protects confidentiality. At the time of destruction, the facility must document for each record destroyed:

(1) client name;

(2) client record number, if used;

(3) the client's social security number and date of birth, if available; and

(4) date and signature of the person carrying out disposal.

(c) Client Access to Records. The client or the client's representative has the right to:

(1) upon an oral or written request to the facility, view all records pertaining to the client, within 24 hours (excluding weekends and holidays); and

(2) obtain hard copies of all or any portion of the records upon request within 48 hours (excluding weekends and holidays).

(d) Right of Refusal. A client does not have the right to refuse release of the client's records:

(1) when the client is transferred to another health care institution;

(2) when the record release is required by law or permitted by this chapter; or

(3) during surveys.

§559.77. Peer Review.

A facility must adopt and enforce a written policy to ensure that all professional disciplines comply with their professional practice acts or title acts relating to reporting and peer review.

§559.79. Emergency Preparedness and Response.

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

(1) Designated emergency contact--A person whom a client, or a client's representative, identifies in writing for the facility to contact in the event of a disaster or emergency.

(2) Disaster or emergency--An impending, emerging, or actual situation that:

(A) interferes with normal activities of a facility or its clients;

(B) may:

(i) cause injury or death to a client or staff member of the facility; or

(ii) cause damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage, or interference; and

(D) does not include a situation that arises from the medical condition of a client such as cardiac arrest, obstructed airway, cerebrovascular accident.

(3) Emergency management coordinator (EMC)--The person appointed by the local mayor or county judge to plan, coordinate, and implement public health emergency preparedness planning and response within the local jurisdiction.

(4) Emergency preparedness coordinator (EPC)--The facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency.

(5) Plan--A facility's emergency preparedness and response plan.

(6) Risk assessment--The process of evaluating, documenting, and examining potential disasters or emergencies that pose the highest risk to the facility and assessing their foreseeable impacts based on the facility's geographical location, structural conditions, client needs and characteristics, and other influencing factors, to develop an effective emergency preparedness and response plan.

(b) Administration. A facility must:

(1) develop and implement a written plan as described in subsection (c) of this section;

(2) maintain a current printed copy of the plan that is accessible to all staff, clients, and client representatives at all times;

(3) evaluate and revise the plan as necessary:

(A) within 30 days after an emergency situation;

(B) as soon as possible after the remodeling or construction of an addition to the facility; and

(C) at least annually; and

(4) revise the plan within 30 days after information included in the plan changes.

(c) Emergency preparedness and response plan. A facility's plan must:

(1) include a risk assessment of all potential internal and external emergency situations relevant to the facility operations and geographical area, such as a fire, failure of heating and cooling systems, a power outage, an explosion, a hurricane, a tornado, a flood, extreme snow and ice for the area, a wildfire, terrorism, or a hazardous materials accident;

(2) include a description of the facility's client population;

(3) include a description of the services and assistance needed by the clients in an emergency situation;

(4) include a section for each core function of emergency management, as described in subsection (d) of this section, that is based on a facility's decision to either shelter-in-place or evacuate during an emergency; and

(5) include a fire safety plan that complies with subsection (f) of this section.

(d) Plan requirements regarding eight core functions of emergency management.

(1) Direction and control. A facility's plan must contain a section for direction and control that:

(A) designates by name or title the emergency preparedness coordinator (EPC) who is the facility staff person with the

authority to manage the facility's response to an emergency situation in accordance with the plan;

(B) designates by name or title the alternate EPC who is the facility staff person with the authority to act as the EPC if the EPC is unable to serve in that capacity;

(C) documents the name and contact information for the local EMC for the area where the facility is located, as identified by the office of the local mayor or county judge; and

(D) documents coordination with the local EMC as required by the local EMC's guidelines relating to emergency situations.

(2) Warning. A facility's plan must contain a section for warning that:

(A) describes how the EPC will be notified of an emergency situation;

(B) identifies who the EPC will notify of an emergency situation and when the notification will occur; and

(C) ensures monitoring of local news and weather reports.

(3) Communication. A facility's plan must contain a section for communication that:

(A) identifies the facility's primary mode of communication and alternate mode of communication to be used in the event of power failure or the loss of the facility's primary mode of communication in an emergency situation;

(B) includes procedures for maintaining a current list of telephone numbers for clients and responsible parties;

(C) includes procedures for maintaining a current list of telephone numbers for the facility's staff that also identifies the facility's EPC;

(D) identifies the location of the lists described in subparagraphs (B) and (C) of this paragraph where facility staff can obtain the lists quickly;

(E) includes procedures to notify:

(i) facility staff about an emergency situation;

(ii) the alternate location about an impending or actual evacuation of clients; and

(iii) clients, legally authorized representatives and other persons about an emergency situation;

(F) describes how the facility will provide, during an emergency situation, general information to the public, such as the change in the facility's location and hours, or that the facility is closed due to the emergency situation;

(G) includes procedures for the facility to maintain communication with:

(i) facility staff during an emergency situation;

(ii) an alternate location if applicable; and

(iii) facility staff who will transport clients to a secure location during an evacuation in a facility vehicle;

(H) includes procedures for reporting to HHSC an emergency situation that caused the death or serious injury of a client:

(i) by telephone, at 1-800-458-9858, within 24 hours after the death or serious injury; and

(ii) electronically via the online portal on the HHSC form titled HHSC Provider Investigation Report, within five working days after the facility makes the telephone report required by clause (i) of this subparagraph.

(4) Sheltering-in-place. A facility's plan must contain a section that includes procedures to shelter clients in place during an emergency situation.

(5) Evacuation. A facility's plan must contain a section for evacuation that:

(A) requires posting building evacuation routes prominently throughout the facility, except in small, one-story buildings where all exits are obvious;

(B) includes procedures for evacuating clients to a pre-arranged location in an emergency situation, if applicable;

(C) includes an agreement with an alternate location which must specify the arrangements for receiving clients in the event of an evacuation;

(D) identifies primary and alternate evacuation destinations and routes, and includes a map that shows the destination and routes;

(E) includes procedures for:

(i) ensuring facility staff accompany evacuating clients;

(ii) ensuring that all persons present in the building have been evacuated;

(iii) accounting for clients and staff after they have been evacuated;

(iv) accounting for clients who are absent from the facility at the time of the evacuation;

(v) contacting the local EMC, if required by the local EMC guidelines, to find out if it is safe to return to the geographical area; and

(vi) determining if it is safe to re-enter and occupy the building after an evacuation;

(F) includes procedures for notifying the local EMC regarding an evacuation of the facility, if required by the local EMC guidelines;

(G) includes procedures for notifying HHSC by telephone, at 1-800-458-9858, within 24 hours after an evacuation that clients have been evacuated;

(H) includes procedures for notifying the HHSC Regulatory Services Regional Office for the area in which the facility is located, by telephone, as soon as safely possible after a decision to evacuate is made; and

(I) includes procedures for notifying the HHSC Regulatory Services Regional Office for the area in which the facility is located, by telephone, that clients have returned to the facility after an evacuation, within 48 hours after their return.

(6) Transportation. A facility's plan must contain a section for transportation that:

(A) provides for a sufficient number of vehicles that are safe and suitable for any special needs of the clients or requires that the facility maintain a contract for transporting clients during an evacuation;

(B) identifies facility staff authorized to drive a vehicle during an evacuation;

(C) establishes alternate transportation arrangements if the vehicles or contracted transportation described in subparagraph (A) of this paragraph are not available;

(D) includes procedures for safely transporting oxygen tanks currently being used by clients and any extra oxygen tanks that may be needed during an evacuation; and

(E) includes procedures that will ensure:

(i) safe transport of records, food, water, equipment, and supplies needed during an evacuation; and

(ii) that the records, food, water, equipment, and supplies, described in clause (i) of this subparagraph, arrive at the alternate location at the same time as the clients.

(7) Health and medical needs. A facility's plan must contain a section for client health and special needs that:

(A) identifies all the facility's special needs clients including clients with conditions requiring assistance during an evacuation; and

(B) ensures the needs of those clients are met during an emergency.

(8) Resource management. A facility's plan must contain a section for resource management that:

(A) includes procedures for accessing medications, records, food, water, equipment and supplies needed during an emergency;

(B) identifies facility staff who are assigned to locate and ensure the transportation of items described in subparagraph (A) of this paragraph during an emergency situation; and

(C) includes procedures to ensure medications are secure and stored at the proper temperatures during an emergency situation.

(e) Training. A facility must:

(1) train all staff on their responsibilities under the plan when hired in accordance with §559.67 of this subchapter (relating to Training);

(2) retrain staff at least annually on the staff member's responsibilities under the plan and when the staff member's responsibilities under the plan change; and

(3) conduct unannounced drills with facility staff for severe weather and other emergency situations identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (c)(1) of this section.

(f) Fire safety plan. A facility's fire safety plan must:

(1) include the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 16 (relating to New Day-Care Occupancies) and Chapter 17 (relating to Existing Day-Care Occupancies), concerning:

(A) use of alarms;

(B) transmission of alarms to the fire department;

(C) response to alarms;

(D) isolation of fire;

(E) evacuation of immediate area;

(F) evacuation of smoke compartment;

(G) preparation of floors and building for evacuation;

and

(H) fire extinguishment;

(2) include procedures to contact HHSC by telephone, at 1-800-458-9858, within 24-hours after a fire in accordance with §559.42 of this chapter (relating to Safety); and

(3) include procedures to submit to HHSC, within 15 days after the fire, the form Fire Report for Long Term Care Facilities;

(4) include in the fire safety plan the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 16 and Chapter 17 concerning drills and inspections, except as superseded by this section; and

(5) establish procedures to:

(A) perform a monthly fire drill with all occupants of the building at expected and unexpected times and under varying conditions;

(B) relocate, during the monthly fire drill, all occupants of the building to a predetermined location where participants must remain until a recall or dismissal signal is given;

(C) complete the HHSC Fire Drill Report Form for each required fire drill;

(D) conduct a monthly fire prevention inspection performed by a trained and senior member of the facility and prepare a report of the inspection results;

(E) maintain copies of the fire prevention inspection report, described in subparagraph (D) of this paragraph, that were prepared by the facility within the last 12 months; and

(F) post a copy of the most recent fire prevention inspection report, described in subparagraph (D) of this paragraph, in a conspicuous place in the facility.

(g) Emergency Response System.

(1) The facility director and designee must enroll in an emergency communication system in accordance with instructions from HHSC.

(2) The facility must respond to requests for information received through the emergency communication system in the format established by HHSC.

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

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For further information, please call: (512) 438-3161



SUBCHAPTER D. LICENSURE AND PROGRAM REQUIREMENTS

26 TAC §§559.61 - 559.64

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.61. *General Requirements.*

§559.62. *Program Requirements.*

§559.63. *Peer Review.*

§559.64. *Emergency Preparedness and Response.*

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

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SUBCHAPTER E. INSPECTIONS, SURVEYS, AND VISITS

26 TAC §§559.81, 559.83, 559.85, 559.87

STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The amendment and new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.81. *Procedural Requirements.*

(a) HHSC may enter the premises of a facility at reasonable times and make an inspection necessary to issue a license or renew a license. HHSC inspection and survey personnel ~~[will]~~ perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits as required for carrying out the responsibilities of licensing.

~~[(b) An inspection may be conducted by a surveyor.]~~

~~(b) [(e)]~~ Generally, all inspections, surveys, complaint investigations, and other visits, whether routine or nonroutine, made for the purpose of determining the appropriateness of client care and day-to-day operations of a facility are are ~~[will be]~~ unannounced. Any exceptions must be justified.

~~(c) [(d)]~~ Certain visits may be announced, including initial architectural inspections, visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, systems installation or repairs, or conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

~~(d) [(e)]~~ Any person may request an inspection of a facility by notifying HHSC ~~[in writing]~~ of an alleged violation of a licensing requirement. The complaint should ~~[shall]~~ be as detailed as possible and signed by the complainant; however, HHSC does investigate anonymous complaints. Unless a complaint is anonymous, HHSC responds to the complainant in writing but without the outcome of the investigation. [HHSC performs an on-site inspection as soon as feasible but no later than 30 days after receiving the complaint, unless after an investigation the complaint is found to be frivolous. HHSC will respond to the complainant in writing.]

~~(e)~~ If the complaint alleges abuse, neglect, or exploitation, HHSC performs an inspection as soon as feasible but not later than the 14th day after the date HHSC receives the complaint, unless after an investigation the complaint is found to be frivolous. If the complaint does not allege abuse, neglect, or exploitation, HHSC investigates the complaint not later than the 45th day after the date HHSC receives the complaint.

~~[(f) HHSC will receive and investigate anonymous complaints.]~~

~~(f) [(g)]~~ The facility must make all ~~[of]~~ its books, records, electronic records, and other documents maintained by or on behalf of a facility accessible to HHSC upon request.

(1) HHSC is authorized to photocopy documents, photograph clients, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation ~~[that HHSC reasonably believes threaten the health and safety of a client].~~

(2) Examples of records and documents that may be requested and photocopied or otherwise reproduced are client medical records, including nursing notes, pharmacy records, medication records, and prescribing practitioner's ~~[physician's]~~ orders.

(3) The facility may charge HHSC at a rate not to exceed the rate HHSC charges for copies. The procedure of copying is the responsibility of the director or his or her designee. If copying requires that the records be removed from the facility, a representative of the facility is expected to accompany the records and ensure ~~[assure]~~ their order and preservation.

(4) HHSC protects the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and HHSC policy.

(5) If a facility maintains electronic records, it must have a mechanism for printing all documentation if a surveyor or investigator requests a printed copy.

~~(g) [(h)]~~ HHSC does not reveal the ~~[The]~~ source of a ~~[the]~~ complaint ~~[is not revealed].~~

(h) [(i)] HHSC inspects a facility at least once every two years after the initial inspection.

§559.83. Determinations and Actions Pursuant to Inspections.

(a) HHSC determines if a facility meets the licensing rules, including both physical plant and facility operation requirements.

(b) Violations of regulations are listed on forms designed for the purpose of the inspection.

(c) At the conclusion of an inspection or survey, any violations are discussed in an exit conference with the facility's management. HHSC leaves a written list of violations with the facility at the time of the exit conference.

(d) If additional violations are cited after the initial exit conference, the violations are communicated to the facility within 10 working days after the initial exit conference.

(e) HHSC provides a clear and concise written summary in nontechnical language of each licensure inspection, inspection of care, and complaint investigation. The summary outlines significant violations noted at the time of the inspection or survey but does not include names of clients, staff, or any other information that would identify individual clients or other prohibited information under general rules of public disclosure. The summary is provided to the facility at the time the report of contact or similar document is provided.

(f) Upon receipt of the final statement of violations, the facility has 10 working days to submit an acceptable plan of correction to the HHSC Regulatory Services Regional Office director. An acceptable plan of correction must address:

(1) how the facility will accomplish the corrective action for those clients affected by each violation;

(2) how the facility will identify other clients with the potential to be affected by the same violation;

(3) how the facility will put the corrective measure into practice or make systemic changes to ensure that the violation does not recur;

(4) how the facility will monitor the corrective action to ensure that the violation is corrected and will not recur; and

(5) the date the corrective action will be completed.

(g) If the facility disagrees with a survey finding regarding a violation of regulations, the facility is entitled to an informal dispute resolution (IDR) for the violation.

(1) The facility must request an IDR by submitting all supporting documentation to HHSC Regulatory Enforcement no later than the tenth day after receipt of the official statement of violations.

(2) HHSC completes the IDR process no later than the 30th day after receipt of a request from a facility.

(3) HHSC notifies the facility of the results of the IDR process in writing, and violations deemed invalid in the IDR are so noted in HHSC's records.

§559.85. Referrals to the Attorney General.

HHSC may refer a facility to the attorney general who may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the requirements or any other law affecting clients if HHSC reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a client; and

(2) an injunction to restrain a person from a violation or threatened violation of the requirements or any other law affecting clients if HHSC reasonably believes that the violation or threatened violation creates a threat to the health and safety of a client.

§559.87. Procedures for Inspection of Public Records.

(a) Procedures for inspection of public records are in accordance with Texas Government Code, Chapter 552, and as further described in this section.

(b) The HHSC Regulatory Services Division is responsible for the maintenance and release of records on licensed facilities and other related records.

(c) The application for inspection of public records is subject to the following criteria.

(1) The application must be made to Regulatory Services, Texas Health and Human Services Commission, Mail Code E-349, P.O. Box 149030, Austin, Texas 78714-9030.

(2) The requester must identify himself or herself.

(3) The requester must specify the records requested.

(4) On written applications, if HHSC is unable to ascertain what records are being requested, HHSC may return the written application to the requester for clarification.

(5) HHSC provides the requested records as soon as possible; however, if the records are in active use, or in storage, or time is needed for proper de-identification or preparation of the records for inspection, HHSC so advises the requester and sets an hour and date within a reasonable time when the records will be available.

(d) Original records may be inspected or copied, but in no instance will original records be removed from HHSC offices.

(e) HHSC Regulatory Services charges for copies of records requested.

(1) If the requester wants to inspect records without requesting copies, the requester specifies the records to be inspected. HHSC does not charge this service, unless the director of HHSC Regulatory Services determines a charge is appropriate based on the nature of the request.

(2) If the requester wants copies of a record, the requester specifies in writing the records to be copied on an appropriate HHSC form, and HHSC completes the form by specifying the cost of the records, which the requester must pay in advance. Checks and other instruments of payment must be made payable to the Texas Health and Human Services Commission.

(3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requester on a cost basis in accordance with costs established by the Office of the Attorney General or HHSC for office machine copies. All applicable sales taxes are added to the cost of copying records.

(4) For documents that are mailed, HHSC charges for postage at the time it charges for the production.

(5) When a request involves information pertaining to multiple facilities, HHSC may consider each facility's information a separate request.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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26 TAC §§559.82 - 559.84

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.82. Determinations and Actions Pursuant to Inspections.

§559.83. Referrals to the Attorney General.

§559.84. Procedures for Inspection of Public Records.

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SUBCHAPTER F. ABUSE, NEGLECT, AND EXPLOITATION: COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

26 TAC §§559.91, 559.93, 559.95, 559.97, 559.99

STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for

licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The amendment and new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.91. Definitions of Abuse, Neglect, and Exploitation.

For purposes of this subchapter, the definitions of abuse, neglect, and exploitation are those found in Chapter 48, Human Resources Code, and §559.3 [§98.4] of this chapter [title] (relating to Definitions).

§559.93. Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities.

(a) Any facility staff who has reasonable cause to believe that a client is experiencing abuse, neglect, or exploitation must report the abuse, neglect, or exploitation to HHSC's state office at 1-800-458-9858 immediately and must follow the facility's internal policies regarding abuse, neglect, or exploitation.

(b) The following information must be reported to HHSC:

(1) name, age, and address of the client;

(2) name and address of the person responsible for the care of the client, if available;

(3) nature and extent of the elderly or disabled person's condition;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

(c) The facility must investigate the alleged abuse, neglect, or exploitation and submit a written report of the investigation electronically via the online portal to HHSC no later than the fifth day after the oral report and be available for inspection by HHSC.

§559.95. Complaint Investigation.

(a) A complaint is any allegation received by HHSC regarding abuse, neglect, or exploitation of a client or a violation of state standards.

(b) HHSC must give the facility notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.

§559.97. Investigations of Complaints.

(a) HHSC only investigates complaints of abuse, neglect, or exploitation when the act occurs in the facility, the licensed facility is responsible for the supervision of the client at the time the act occurs, or the alleged perpetrator is affiliated with the facility. HHSC refers complaints of abuse, neglect, or exploitation not meeting these criteria to the Texas Department of Family and Protective Services.

(b) Complaint investigations must include a visit to the facility and consultation with persons thought to have knowledge of the relevant circumstances. If the facility fails to admit HHSC staff for a complaint investigation, HHSC seeks a probate or county court order for admission. Investigators may request of the court that a peace officer accompany them during investigations.

(c) In cases concluded to be physical abuse, HHSC submits the written report of the investigation to the appropriate law enforcement agency.

(d) In cases concluded to be abuse, neglect, or exploitation of a client with a guardian, HHSC submits the written report of the investigation to the probate or county court that oversees the guardianship.

§559.99. Confidentiality.

All reports, records, communications, and working papers used or developed by HHSC in an investigation are confidential and may be released only as provided in this section.

(1) HHSC may furnish the final written investigation report on cases to the district attorney and law enforcement agencies exercising jurisdiction if the investigation reveals abuse that is a criminal offense. HHSC may provide to another state agency or governmental entity information that is necessary for HHSC, the state agency, or entity to properly execute its duties and responsibilities to provide services to the elderly or disabled.

(2) HHSC may release the final written investigation report to the public upon request provided the report is de-identified to remove all names and other personally identifiable data, including any information from witnesses and other person furnished to HHSC as part of the investigation.

(3) HHSC notifies the reporter and the facility of the results of HHSC's investigation of a reported case of abuse, neglect, or exploitation, regardless of whether HHSC concluded that abuse, neglect, or exploitation occurred or did not occur.

(4) Upon the written request of the person who is the subject of a report of abuse, neglect, or exploitation, his or her legal representative, or the personal representative of the person's estate if he or she is deceased, HHSC releases to the person or the representative otherwise confidential information relating to the final report. The request must specify the information desired and be signed and dated by the person making the request. A legal representative or personal representative must also specify the reason the information is requested and include with the request sufficient documentation to establish his or her authority as the representative. HHSC edits the information requested before release to protect the confidentiality of information related to the reporter's identify and to protect any other individual whose safety or welfare may be endangered by disclosure.

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26 TAC §§559.92 - 559.95

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.92. Abuse, Neglect, or Exploitation Reportable to DADS by Facilities.

§559.93. Complaint Investigation.

§559.94. Investigations of Complaints.

§559.95. Confidentiality.

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SUBCHAPTER G. ENFORCEMENT

26 TAC §§559.101, 559.103, 559.105, 559.107

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The new sections implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.101. Nonemergency Suspension.

(a) HHSC may suspend a facility's license when the facility's violation of the licensure rules threatens to jeopardize the health and safety of clients.

(b) Suspension of a license may occur simultaneously with any other enforcement provision available to HHSC.

(c) HHSC notifies the facility of its intent to suspend the license, including the facts or conduct alleged to warrant the suspension. The facility has an opportunity to show compliance with all requirements of law for retention of the license as provided in §559.33 of this chapter (relating to Opportunity to Show Compliance). If the facility requests an opportunity to show compliance, HHSC gives the license holder a written affirmation or reversal of the proposed action.

(d) HHSC notifies the facility of a suspension of the facility's license. If HHSC suspends a facility's license, the licensee may request a formal appeal by following HHSC's formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). A formal administrative hearing is conducted in accordance with Texas Government Code, Chapter 2001, and the

formal hearing procedures in 1 TAC Chapter 357, Subchapter I. The suspension takes effect when the deadline for appeal of the suspension passes unless the facility appeals the suspension. If the facility appeals the suspension, the status of the license holder is preserved until final disposition of the contested matter. The license holder must return the license to HHSC within 72 hours of passing the appeal deadline or, if an appeal is filed, the final disposition of the appeal.

(e) The suspension remains in effect until HHSC determines that the reason for suspension no longer exists. A suspension may last no longer than the term of the license. HHSC conducts an on-site investigation before making a determination to lift a suspension.

§559.103. Revocation.

(a) HHSC may revoke a facility's license when the license holder has violated the requirements of Texas Human Resources Code, Chapter 103.

(b) In addition, HHSC may revoke a license if the licensee:

(1) submitted false or misleading statements in the application for a license or any accompanying attachments;

(2) used other evasive means to obtain the license;

(3) concealed a material fact in the application for a license or failed to disclose information required in §559.19 of this chapter (relating to Applicant Disclosure Requirements) that would have been the basis to deny the license under §559.31 of this chapter (relating to Criteria for Denying a License or Renewal of a License); or

(4) violated the rules adopted under this chapter.

(c) Revocation of a license may occur simultaneously with any other enforcement provision available to HHSC.

(d) HHSC notifies the facility of its intent to revoke the license, including the facts or conduct alleged to warrant the revocation. The facility has an opportunity to show compliance with all requirements of law for retention of the license as provided in §559.33 of this title (relating to Opportunity to Show Compliance). If the facility requests an opportunity to show compliance, HHSC gives the license holder a written affirmation or reversal of the proposed action.

(e) If HHSC revokes a facility's license, the licensee may request a formal appeal by following the HHSC's formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). A formal administrative hearing is conducted in accordance with the formal hearing procedures in 1 TAC Chapter 357, Subchapter I. If the facility appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter. The license holder must return the license to HHSC within 72 hours of passing the appeal deadline or, if an appeal is filed, final disposition of the appeal.

§559.105. Emergency Suspension and Closing Order.

(a) HHSC suspends a facility's license or orders an immediate closing of part of the facility if:

(1) HHSC finds that the facility is operating in violation of the licensure rules; and

(2) the violation creates an immediate threat to the health and safety of a client.

(b) The order suspending a license or closing a part of a facility under this section is immediately effective on the date the license holder receives a written notice or on a later date specified in the order.

(c) The order suspending a license or ordering an immediate closing of a part of the facility is valid for ten days after the effective date of the order.

(d) A licensee whose facility is closed under this section is entitled to request a formal administrative hearing under HHSC's formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), but a request for an administrative hearing does not suspend the effectiveness of the order.

(e) When an emergency suspension has been ordered and the conditions in the facility indicate that clients should be relocated, the following requirements apply.

(1) In all circumstances, a client's rights and freedom of choice in selecting another DAHS must be respected.

(2) If a facility or part thereof is closed, the following procedures must be followed.

(A) HHSC notifies the local health department director, city or county health authority, and representatives of the appropriate state agencies of the closure.

(B) The facility staff must notify each client's guardian or responsible party and attending physician, advising them of the action in process.

(C) The client or client's guardian or responsible party must be given opportunity to designate a preference for another specific facility or for other arrangements.

(D) HHSC arranges for relocation to another facility in the area in accordance with the client's preference. A facility chosen for relocation must be in good standing with HHSC and, if certified under Titles XVIII and XIX of the United States Social Security Act, must be in good standing under its contract. The facility chosen must be able to meet the needs of the client.

(E) If necessary to prevent the transport of a client over a substantial distance, HHSC may grant a waiver to a receiving facility to temporarily exceed its licensed capacity, provided the health and safety of clients is not compromised and the facility can meet the increased demands for direct service staff and dietary services. A facility may exceed its licensed capacity under these circumstances, monitored by HHSC staff, until clients can be transferred to a permanent location.

(F) With each client transferred, the following reports, records, and supplies must be transmitted to the receiving institution:

(i) a copy of the current prescribing practitioner's orders for medication, treatment, diet, and special services required;

(ii) personal information such as the name and address of the next of kin, guardian, or responsible party for the client; attending physician; Medicare and Medicaid identification number; social security number; and other identifying information as deemed necessary and available; and

(iii) all medication dispensed in the name of the client for which prescribing practitioner's orders are current. These must be inventoried and transferred with the client.

(G) If the closed facility is allowed to reopen within 90 days, the relocated clients have the first right to return to the facility. Relocated clients may choose to return, to stay in the receiving facility (if the facility is not exceeding its licensed capacity), or any other available accommodations.

(H) Any return to the facility must be treated as a new admission, including exchange of medical information, medications, and completion of required forms.

§559.107. Administrative Penalties.

(a) HHSC may assess an administrative penalty if a facility:

(1) violates Texas Human Resources Code, Chapter 103, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the facility knows or should know is false:

(A) on an application for a license or a renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by HHSC;

(3) refuses to allow an HHSC representative to inspect:

(A) a book, record, or file required to be maintained by a facility; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a representative of HHSC or the enforcement of this chapter;

(5) willfully interferes with an HHSC representative who is preserving evidence of a violation of Texas Human Resources Code, Chapter 103, a rule adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under Texas Human Resources Code, Chapter 103, or a rule adopted under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify HHSC of a change of ownership before the effective date of the change of ownership.

(b) HHSC assesses administrative penalties against a facility in accordance with the schedule of appropriate and graduated penalties established in this section. To determine the amount of an administrative penalty, HHSC considers:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(2) the history of previous violations by a facility;

(3) the amount necessary to deter future violations;

(4) the facility's efforts to correct the violation; and

(5) any other matter that justice may require.

(c) Each day of a continuing violation constitutes a separate violation. The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation that is the subject of a penalty is presumed to continue each successive day until it is corrected. The date of correction alleged by the facility in its written plan of correction is presumed to be the actual date of correction unless it is later determined by HHSC that the correction was not made by that date or was not satisfactory.

(d) The administrative penalty schedule includes violations that warrant an administrative penalty.

Figure: 26 TAC §559.107(d)

(e) HHSC may not collect an administrative penalty from a facility if, not later than the 45th day after the date, the facility receives notice under subsection (j) of this section, the facility corrects the violation to the satisfaction of HHSC.

(f) Subsection (e) of this section does not apply to:

(1) a violation that HHSC determines is:

(A) a pattern of violation that results in actual harm;

(B) widespread in scope and results in actual harm;

(C) widespread in scope, constitutes a potential for more than minimal harm, and relates to:

(i) staffing, including staff ratio, health, and training under §559.61 of this chapter (relating to Staffing Ratio and Hours), §559.63 of this chapter (relating to Infection Prevention and Control), and §559.67 of this chapter (relating to Training);

(ii) administration of medication under §559.69 of this chapter (relating to Medications); or

(iii) emergency preparedness and response under §559.79 of this chapter (relating to Emergency Preparedness and Response);

(D) an immediate threat to the health or safety of an elderly person or a person with a disability receiving services at a facility; or

(E) substantially limits the facility's capacity to provide care;

(2) a violation described by subsection (a)(2) - (7) of this section;

(3) a violation of Texas Human Resources Code, Chapter 102; or

(4) a second or subsequent violation of §559.67(c) of this chapter that occurs before the second anniversary of the date of a previous violation of §559.67(c) of this chapter.

(g) A facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, HHSC may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. HHSC is not required to provide the facility with an opportunity to correct the subsequent violation.

(h) HHSC issues a preliminary report stating the facts on which HHSC concludes that a violation has occurred after HHSC has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(i) In the report, HHSC may recommend the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(j) HHSC provides a written notice of a preliminary report to the facility not later than 10 days after the date HHSC issues the preliminary report. The written notice includes:

(1) a brief summary of each violation;

(2) the amount of each recommended administrative penalty;

(3) a statement of whether a violation is subject to correction in accordance with subsection (e) of this section and, if the violation is subject to correction, a statement of:

(A) the date on which the facility must file with HHSC a plan of correction for approval by HHSC;

(B) the date on which the facility must complete the plan of correction to avoid assessment of the administrative penalty; and

(4) a statement that the facility has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(k) Not later than 20 days after the date on which a facility receives a written notice of a preliminary report, the facility may:

(1) give HHSC written notice that the facility agrees with HHSC report and consents to the recommended penalty; or

(2) make a written request for an administrative hearing.

(l) If a violation is subject to correction under subsection (e) of this section, the facility must submit a plan of correction to HHSC for approval not later than 10 days after the date on which the facility receives the written notice.

(m) If a violation is subject to correction, and the facility reports to HHSC that the violation has been corrected, HHSC inspects the correction or takes any other step necessary to confirm the correction and notify the facility that:

(1) the correction is satisfactory and HHSC will not assess an administrative penalty; or

(2) the correction is not satisfactory and HHSC recommends an administrative penalty.

(n) Not later than 20 days after the date on which a facility receives a notice that the correction is not satisfactory and HHSC recommends an administrative penalty, the facility may:

(1) give HHSC written notice that the facility agrees with HHSC's determination and consents to the recommended administrative penalty; or

(2) make a written request to HHSC for an administrative hearing.

(o) If a facility consents to the recommended administrative penalty or does not timely respond to a notice sent under subsection (j) of this section, the executive commissioner or designee assesses the recommended administrative penalty. If the executive commissioner or designee assesses the penalty, HHSC gives written notice of the penalty to the facility and the facility must pay the penalty within 30 days after receiving the notice.

(p) An administrative hearing is held in accordance with Chapter 110 of this title (relating to Hearings Under the Administrative Procedure Act) and HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(q) An administrative law judge sets a hearing and gives notice of the hearing if a facility that is assessed a penalty requests a hearing.

(r) The hearing is held before an administrative law judge who makes findings of fact and conclusions of law regarding the occurrence of a violation under Texas Human Resources Code, Chapter 103, a rule adopted under this chapter, or a term of a license issued under this chapter.

(s) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the executive commissioner or designee, by order, finds:

(1) a violation has occurred and assesses an administrative penalty; or

(2) a violation has not occurred.

(t) The executive commissioner or designee provides notice of the findings made under subsection (s) of this section to the facility charged with a violation. If the executive commissioner finds that a violation has occurred, the executive commissioner or designee provides written notice to the facility of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable on the penalty and the date on which interest begins to accrue; and

(4) the facility's right to judicial review of the order of the executive commissioner.

(u) Not later than the 30th day after the date on which the order of the executive commissioner or designee is final, the facility assessed an administrative penalty must:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(v) Notwithstanding subsection (o) of this section, HHSC may permit a facility to pay an administrative penalty in installments.

(w) If a facility does not pay an administrative penalty within the period provided by subsection (o) or (u) of this section or in accordance with the installment plan permitted by HHSC:

(1) the penalty is subject to interest; and

(2) HHSC may refer the matter to the attorney general for collection of the penalty and interest.

(x) Interest accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(y) If the amount of a penalty is reduced or the assessment of a penalty is not upheld on judicial review, the executive commissioner or designee must:

(1) remit to the facility the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(z) Accrued interest on the amount remitted by the executive commissioner or designee must be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the facility.

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

Filed with the Office of the Secretary of State on February 26, 2024.

TRD-202400846

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: April 7, 2024
For further information, please call: (512) 438-3161



26 TAC §§559.102 - 559.105

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

The repeals implement Texas Government Code §531.0055 and Texas Human Resources Code, Chapter 103.

§559.102. *Nonemergency Suspension.*

§559.103. *Revocation.*

§559.104. *Emergency Suspension and Closing Order.*

§559.105. *Administrative Penalties.*

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS

SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §341.204

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §341.204, concerning residential placement.

SUMMARY OF CHANGES

The amendments to §341.204 will include adding that: (1) a juvenile board or juvenile probation department may contract with

a facility that was constructed or previously used for the confinement of adult offenders only after TJJD has determined the facility has been appropriately retrofitted to comply with related standards; and (2) TJJD will maintain a list of pre-approved facilities.

The amendments to §341.204 will also include adding that, if the facility is not on the list of pre-approved facilities, the juvenile board or juvenile probation department must request approval from TJJD and submit any information TJJD needs in order to make a determination under this provision; and noting that a given subsection does not apply to facilities registered with TJJD.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to bring the agency in compliance with statutory changes by ensuring that any facility previously used for the confinement of adult offenders will be appropriately retrofitted to comply with all relevant standards before contracting with a county to house juveniles.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJD.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjtd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The amended section is also proposed under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJJ to use facilities previously constructed or used for adult offenders, if TJJJ determines the facility is appropriately retrofitted to meet youth-specific standards.

No other statute, code, or article is affected by this proposal.

§341.204. Residential Placement.

(a) **Duty to Certify Juvenile Justice Facilities.** The juvenile board serving the county where a juvenile justice facility is located must certify and register the facility as required by Texas Family Code §§51.12, 51.125, and 51.126, as applicable.

(b) **Prohibition on Placing Juveniles in Non-licensed Facilities.** The juvenile board must ensure that juveniles under its jurisdiction are placed only in:

(1) juvenile justice facilities that are certified by a juvenile board in Texas; or

(2) public or private residential facilities or programs licensed by a state governmental entity or exempted from licensure by state law.

(c) **Placement in a Facility Constructed or Previously Used for the Confinement of Adult Offenders.**

(1) A juvenile board or juvenile probation department may contract with a facility that was constructed or previously used for the confinement of adult offenders only after TJJJ has determined the facility has been appropriately retrofitted to comply with TJJJ standards related to facilities. TJJJ will maintain a list of pre-approved facilities.

(2) If the facility is not on the list of pre-approved facilities, the juvenile board or juvenile probation department must request approval from TJJJ and submit any information TJJJ needs in order to make a determination under this provision.

(3) This subsection does not apply to facilities registered with TJJJ.

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

Filed with the Office of the Secretary of State on February 22, 2024.

TRD-202400791

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 490-7278



CHAPTER 343. SECURE JUVENILE
PRE-ADJUDICATION DETENTION AND
POST-ADJUDICATION CORRECTIONAL
FACILITIES

SUBCHAPTER B. PRE-ADJUDICATION AND
POST-ADJUDICATION SECURE FACILITY
STANDARDS

37 TAC §343.206

The Texas Juvenile Justice Department (TJJJ) proposes to amend 37 TAC §343.206, concerning certification and registration of facility.

SUMMARY OF CHANGES

The amendments to §343.206 will include adding that: (1) TJJJ will not register a facility that was constructed or previously used for the confinement of adult offenders unless TJJJ determines the facility has been appropriately retrofitted to comply with related standards; and (2) a juvenile who has been committed to TJJJ and is awaiting transport to a TJJJ facility may be housed in a post-adjudication secure facility in a bed that is designated as a pre-adjudication bed or dually-designated as a pre-adjudication bed or a post-adjudication bed.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to bring the agency in compliance with statutory changes by ensuring that any facility previously used for the confinement of adult offenders will be appropriately retrofitted before being registered with the agency, and providing greater flexibility while housing a juvenile who is awaiting transport to a TJJJ facility.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the proposed section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJJ.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJJ.

(4) The proposed section does not impact fees paid to TJJJ.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The amended section is also proposed under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJJ to use facilities previously constructed or used for adult offenders, if TJJJ determines the facility is appropriately retrofitted to meet youth-specific standards.

No other statute, code, or article is affected by this proposal.

§343.206. *Certification and Registration of Facility.*

(a) Before the facility admits residents, the juvenile board in the county where the facility is located, shall ensure:

(1) the facility is certified in compliance with §51.12 or §51.125 of the Texas Family Code;

(2) the number of pre-adjudication and post-adjudication beds is designated in the facility certification;

(3) the facility is registered with TJJJ in compliance with §51.12 or §51.125 of the Texas Family Code; and

(4) the current facility certification and TJJJ's facility registration are posted within a public area of the facility.

(b) TJJJ will not register a facility that was constructed or previously used for the confinement of adult offenders unless TJJJ determines the facility has been appropriately retrofitted to comply with TJJJ standards related to facilities.

(c) A juvenile who has been committed to TJJJ and is awaiting transport to a TJJJ facility may be housed in a post-adjudication secure facility in a bed that is designated as a pre-adjudication bed or dually designated as a pre-adjudication bed or a post-adjudication bed.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



CHAPTER 344. EMPLOYMENT, CERTIFICATION, AND TRAINING

The Texas Juvenile Justice Department (TJJJ) proposes to amend 37 TAC §344.110 (concerning interpretation and applicability), §344.200 (concerning general qualifications for positions requiring certification), §344.202 (concerning general qualifications for faculty administrators), and §344.204 (concerning education requirements).

TJJJ also proposes new 37 TAC §344.360 (concerning disclosure and review of applicant's prior history), §344.370 (concerning review by TJJJ regarding eligibility for certification), and §344.690 (concerning credit for training hours for military service members, spouses, and veterans).

In addition, TJJJ proposes to amend 37 TAC §344.866 (concerning certification status).

SUMMARY OF CHANGES

The amendments to §344.110 will include adding that the requirements in this chapter are not subject to a waiver or variance except as provided in this chapter.

The amendments to §344.200 will include deleting the phrases *be of good moral character* from the general requirements for certification as a juvenile probation officer, juvenile supervision officer, and a community activities officer and *possess the work experience or graduate study required elsewhere in this chapter* from the general requirements for certification as a juvenile supervision officer.

The amendments to §344.202 will include deleting the phrase *possess the work experience or graduate study required elsewhere in this chapter* from the general requirements for facility administrators.

The amendments to §344.204 will include: 1) clarifying that to be eligible for certification as a juvenile probation officer, an individual must have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; 2) adding that a new subsection (:Waiver of Education Requirement for Military:) applies only to a person who is a military service member or military veteran who does not have a high school diploma or equivalent and who holds a current license issued by another jurisdiction for a position that is similar and with licensing requirements that are similar to TJJJ's certification requirements for a juvenile supervision officer or community activities officer; and 3) adding that a department or facility that wishes to hire a military service member or military veteran in a position requiring certification as a juvenile supervision officer or community activities officer may request a waiver of the requirement that the person have a high school diploma or GED.

The new §344.360 will include that: 1) a department or facility must require every applicant for any position to complete a TJJJ form that requires the applicant to disclose and provide additional information as given in the rule text; 2) prior to making an offer to allow an applicant who disclosed additional information in order to begin employment or provide services in a position requiring certification or for which certification is optional and will be sought, the department or facility must perform certain actions as given in the rule text; 3) a request for review is required only if the department or facility wants to employ, contract with, or accept the individual as a volunteer; 4) prior to making an offer to allow an applicant who disclosed additional information to begin employment or provide services in a position not requiring certification or for which certification is optional but will not be sought, the juvenile board or designee shall review the informa-

tion received and consider if the person is appropriate to work in the role; 5) a written record of the review must be maintained, including the name of the person(s) conducting the review, the date of the review, and the final decision; and 6) an applicant's failure to disclose the requested information is considered a violation of the Code of Ethics and may result in termination of employment, ineligibility for certification, or revocation of certification.

The new §344.370 will include that: 1) upon receipt of the request for review, TJJJ will review the submitted information, seek additional information if warranted, and determine if the person should be denied a certification; 2) TJJJ shall notify the person of its decision and of the opportunity to appeal that decision to the executive director; and 3) upon receipt of an appeal, the executive director review the matter and determine if the certification should be denied.

The new §344.690 will include that: 1) the given subsection applies only to a person who is a military service member, military veteran, or military spouse under certain conditions; 2) TJJJ may grant credit toward required training hours based on the person's verified military service, training, or education that is directly relevant to the position for which certification is sought; 3) no credit will be given for certain topics required elsewhere in the chapter; 4) the department or facility that employs a person described earlier may submit an application to TJJJ for possible credit; and 5) an individual to whom this section applies is also eligible to receive credit as otherwise provided by this chapter, as applicable.

The amendments to §344.866 will include adding subsections for two new certification statuses: provisional and ineligible.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new and amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the new and amended sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring the agency in compliance with statutory changes by ensuring qualification and experience requirements for certain county employees are revised and ensuring there is appropriate accessibility to the profession of juvenile justice for while preserving youth safety and public safety.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new and amended sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

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

(2) The proposed sections do not require the creation or elimination of employee positions at TJJJ.

(3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJJ.

(4) The proposed sections do not impact fees paid to TJJJ.

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

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

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

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §344.110

STATUTORY AUTHORITY

The amended section is proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJJ to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJJ.

The amended section is also proposed under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJJ and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJJ to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJJ to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJJ to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJJ for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.110. *Interpretation and Applicability.*

(a) Conflicting Standards. If a general provision contained in this chapter conflicts with a specific provision contained in another chapter promulgated by TJJJ, the specific language controls.

(b) Use of the Words "Including" and "Includes." When used in this chapter, the words "including" and "includes" are to be understood as introducing a non-exhaustive list unless the context clearly indicates otherwise.

(c) Applicability.

(1) This chapter applies to all juvenile justice programs and facilities in this state unless expressly stated otherwise.

(2) All provisions of this chapter apply regardless of the date an individual is hired or begins service provision unless expressly stated otherwise.

(3) All employment and education requirements in this chapter must have been completed prior to the date an individual begins employment in the position to which the requirements apply.

(d) Waiver or Variance. The requirements in this chapter are not subject to a waiver or variance except as provided in this chapter.

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

Filed with the Office of the Secretary of State on February 22, 2024.

TRD-202400797

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 490-7278



SUBCHAPTER B. QUALIFICATIONS FOR CERTIFICATION AND EMPLOYMENT

37 TAC §§344.200, 344.202, 344.204

STATUTORY AUTHORITY

The amended sections are proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The amended sections are also proposed under the following:

1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and

222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.200. *General Qualifications for Positions Requiring Certification.*

(a) Juvenile Probation Officer. To be eligible for certification as a juvenile probation officer, supervisor of a juvenile probation officer, or chief administrative officer, an individual must:

(1) be at least 21 years of age;

~~{(2) be of good moral character;}~~

~~(2) [(3)]~~ have no disqualifying criminal history as described in this chapter;

~~(3) [(4)]~~ have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

~~(4) [(5)]~~ have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board;

~~{(6) possess the work experience required in §344.210 of this chapter or graduate study required in §344.204 of this chapter;}~~

~~(5) [(7)]~~ never have had any type of certification revoked by TJJD;

~~(6) [(8)]~~ complete the training required by this chapter; and

~~(7) [(9)]~~ pass the certification exam as required by §344.700 of this chapter.

(b) Juvenile Supervision Officer. To be eligible for certification as a juvenile supervision officer, an individual must:

(1) be at least 21 years of age;

~~{(2) be of good moral character;}~~

~~(2) [(3)]~~ have no disqualifying criminal history as described in this chapter;

~~(3) [(4)]~~ have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

~~(4) [(5)]~~ have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;

~~(5) [(6)]~~ never have had any type of certification revoked by TJJD;

~~(6) [(7)]~~ complete the training required by this chapter; and

~~(7) [(8)]~~ pass the certification exam as required by §344.700 of this chapter.

(c) Community Activities Officer. To be eligible for certification as a community activities officer, an individual must:

(1) be at least 21 years of age;

~~{(2) be of good moral character;}~~

~~(2) [(3)]~~ have no disqualifying criminal history as described in this chapter;

(3) [(4)] have no criminal history as described in §344.410(a) of this chapter unless TJJJ has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(4) [(5)] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter;

(5) [(6)] never have had any type of certification revoked by TJJJ; and

(6) [(7)] complete the training required by this chapter.

§344.202. *General Qualifications for Facility Administrators.*

To serve as a facility administrator, an individual must:

(1) obtain and maintain an active certification as a juvenile supervision officer in accordance with requirements of this chapter; and

(2) have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; and

[(3) possess the work experience required in §344.210 of this title or graduate study required in §344.204(a) of this title.]

§344.204. *Education Requirements.*

(a) Juvenile Probation Officer. To be eligible for certification as a juvenile probation officer, an individual must have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

[(1) To be eligible for certification as a juvenile probation officer, an individual must meet the following educational requirements:]

[(A) have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; and]

[(B) have either:]

[(i) one year of graduate study at a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by TJJJ; or]

[(ii) qualifying work experience as specified in §344.210 of this title.]

[(2) For purposes of this section, one year of graduate study means successful completion of at least 18 post-graduate credit hours.]

(b) Juvenile Supervision Officer and Community Activities Officer.

(1) Except as provided by subsection (c) of this section, to [To] be eligible for certification as a juvenile supervision officer or community activities officer, an individual must meet one of the following educational requirements:

(A) a diploma from a high school accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense. TJJJ considers the following entities as generally recognized accrediting organizations:

(i) the Texas Education Agency or the equivalent agency in another state;

(ii) an entity approved by the Texas Private School Accreditation Commission; and

(iii) regional accreditation organizations such as:

(I) Middle States Association of Colleges and Schools;

(II) New England Association of Schools and Colleges;

(III) North Central Association of Colleges and Schools;

(IV) Northwest Accreditation Commission;

(V) Southern Association of Colleges and Schools; and

(VI) Western Association of Schools and Colleges;

(B) a high school equivalency certificate (e.g., GED) issued by the Texas Education Agency or equivalent agency in another state;

(C) a diploma or certificate of completion issued in a homeschool setting;

(D) a United States military record that indicates the education level received is equivalent to a United States high school diploma or high school equivalency certificate;

(E) a foreign high school diploma that meets the validation requirements established in §344.206 of this chapter [title]; or

(F) unconditional acceptance into a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

(2) A department or facility may attempt to establish that an entity not listed in paragraph (1)(A) of this subsection is a generally recognized accrediting organization by submitting supporting documentation to the TJJJ certification office. Based on the documentation, TJJJ will determine whether the entity is a generally recognized accrediting organization.

(c) Waiver of Education Requirement for Military.

(1) This subsection applies only to a person who is a military service member or military veteran as those terms are defined in Chapter 55, Occupations Code who does not have a high school diploma or equivalent and holds a current license issued by another jurisdiction for a position that is substantially similar and with licensing requirements that are substantially similar to TJJJ's certification requirements for a juvenile supervision officer or community activities officer, as determined by TJJJ.

(2) A department or facility that wishes to hire a person described by paragraph (1) of this subsection in a position requiring certification as a juvenile supervision officer or community activities officer may request a waiver of the requirement that the person have a high school diploma or GED. The request must be submitted to TJJJ's certification office on a form prescribed by TJJJ and must include sufficient information regarding the person's credentials and experience to allow TJJJ to determine if a waiver of the education requirement should be granted. Incomplete submissions may result in a denial of the waiver.

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

Filed with the Office of the Secretary of State on February 22, 2024.



SUBCHAPTER C. CRIMINAL HISTORY AND BACKGROUND CHECKS

37 TAC §344.360, §344.370

STATUTORY AUTHORITY

The new sections are proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The new sections are also proposed under the following: (1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.360. Disclosure and Review of Applicant's Prior History.

(a) The department or facility must require every applicant for any position, including employee, contractor, or volunteer, to complete a form promulgated by TJJD that requires the applicant to disclose and provide additional information, if applicable, regarding whether the applicant ever:

(1) worked, contracted with, volunteered with, or had an occupational license with a child-serving entity or entity that serves other vulnerable populations, such as elderly persons, persons with disabilities, persons in mental health facilities, or persons who were incarcerated;

(2) had their employment, contract, or volunteer status suspended or terminated or occupational license revoked or suspended;

(3) had a finding of abuse, neglect, or exploitation made against them; or

(4) had their name placed on a "do not hire" or similar registry with an entity that provides services to or regulation of services for children or vulnerable populations.

(b) Prior to making an offer to allow an applicant who disclosed information covered by subsection (a)(2), (3), or (4) of this section to begin employment or provide services in a position requiring certification or for which certification is optional and will be sought, the department or facility must:

(1) obtain additional information from all entities identified by the disclosures;

(2) submit to TJJD's certification office a request for review as provided in §344.370 of this chapter; and

(3) receive confirmation from TJJD that the applicant is not prohibited from obtaining a certification.

(c) The request for review described in subsection (b) of this section is required only if the department or facility wants to employ, contract with, or accept the individual as a volunteer.

(d) Prior to making an offer to allow an applicant who disclosed information covered by subsection (a)(2), (3), or (4) of this section to begin employment or provide services in a position not requiring certification or for which certification is optional but will not be sought, the juvenile board or designee shall review the information received and consider if the person is appropriate to work in the role. If the juvenile board makes a designation under this provision, it must be in writing.

(e) A written record of the review conducted in subsection (d) of this section must be maintained, including the name of the person(s) conducting the review, the date of the review, and the final decision.

(f) An applicant's failure to disclose the requested information is considered a violation of the Code of Ethics and may result in termination of employment, ineligibility for certification, or revocation of certification.

§344.370. Review by TJJD Regarding Eligibility for Certification.

(a) Upon receipt of the request for review described in §344.360 of this chapter, TJJD will review the submitted information, seek additional information if warranted, and determine if the person should be denied a certification.

(b) TJJD shall notify the person of its decision and of the opportunity to appeal that decision to the executive director. The notification shall be in writing. The person shall have 10 calendar days to appeal the decision. The appeal must be in writing and timely received. TJJD may grant an extension at its discretion.

(c) Upon receipt of an appeal, the executive director review the matter and determine if the certification should be denied. The executive director's response shall be in writing. The executive director's decision is final and not subject to appeal.

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

Filed with the Office of the Secretary of State on February 22, 2024.

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Jana L. Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 7, 2024
For further information, please call: (512) 490-7278



SUBCHAPTER E. TRAINING AND CONTINUING EDUCATION

37 TAC §344.690

STATUTORY AUTHORITY

The new sections are proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The new sections are also proposed under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.690. Credit for Training Hours for Military Service Members, Spouses, and Veterans.

(a) This section applies only to a person who is a military service member, military veteran, or military spouse as those terms are defined in Chapter 55, Occupations Code, and who:

(1) holds a current license issued by another jurisdiction with licensing requirements that are substantially similar to TJJD's certification requirements for a juvenile supervision officer or community activities officer, as determined by TJJD; or

(2) held a certification from TJJD as a juvenile supervision officer or community activities officer that was active within the five years preceding the person's most recent employment in a position requiring or otherwise eligible for certification.

(b) As provided by this section, TJJD may grant credit toward the training hours required in §344.600 to persons described by subsection (a) of this section. Any credit granted will be based on the person's

verified military service, training, or education that is directly relevant to the position for which certification is sought.

(c) No credit may be given for topics required by §§344.620, 344.622, 344.624, or 344.626.

(d) The department or facility that employs a person described by subsection (a) of this section may submit an application to TJJD for possible credit. TJJD will consider the person's experience and training to determine if credit should be granted and, if so, how much.

(e) An individual to whom this section applies is also eligible to receive credit as otherwise provided by this chapter, as applicable.

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

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Jana L. Jones
General Counsel

Texas Juvenile Justice Department

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SUBCHAPTER G. CERTIFICATION

37 TAC §344.866

STATUTORY AUTHORITY

The amended section is proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The amended section is also proposed under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

No other statute, code, or article is affected by this proposal.

§344.866. *Certification Status.*

(a) **Active.** A status that indicates a certified officer meets the current requirements of certification as set forth in this chapter and is eligible to perform the duties of a juvenile probation officer, juvenile supervision officer, and/or community activities officer, as applicable.

(b) **Inactive.** A status that indicates an officer's certification has not expired but the officer is ineligible to perform the duties of a certified officer because:

(1) the officer is no longer employed in a position that either requires or is eligible for the certification held;

(2) the officer has been convicted of a disqualifying criminal offense; or

(3) the officer's application for certification or renewal of certification is determined by TJJJ to contain deliberately false or misleading information.

(c) **Expired.** A status that indicates an application to renew or reactivate a certification has not been submitted before the end of the grace period or any applicable extension.

(d) **Suspended.** A status that indicates an officer's certification is actively suspended and the officer is no longer eligible for employment in a position requiring certification. If the officer's certification is suspended for failure to pay child support under Section 232.003, Texas Family Code, the suspension remains in effect until TJJJ receives an order staying or vacating the suspension.

(e) **Revoked.** A status that indicates an officer's certification has been permanently revoked by TJJJ and that the officer is no longer eligible for employment or certification as a juvenile probation officer, juvenile supervision officer, or community activities officer. An individual who has had his/her certification revoked is not eligible for any future certification.

(f) **Voluntarily Relinquished.** A status that indicates an officer has voluntarily relinquished his/her certification as provided in §344.884 of this chapter [title].

(g) **Provisional.** A status that indicates an individual has been hired into a position requiring certification but has not yet been certified.

(h) **Ineligible.**

(1) A status that indicates an individual who was never certified is ineligible for certification as a result of conduct that occurred:

(A) while the person had a provisional certification;

(B) while the person was employed by or under contract with the Texas Juvenile Justice Department; or

(C) prior to either time described in subparagraph (A) or (B) of this paragraph if the conduct was unknown to TJJJ.

(2) Prior to being designated as ineligible for certification, the person will be offered the same due process as a person for whom revocation or active or probated suspension of certification is sought.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



SUBCHAPTER B. QUALIFICATIONS FOR CERTIFICATION AND EMPLOYMENT

37 TAC §344.210, §344.220

The Texas Juvenile Justice Department (TJJJ) proposes to repeal 37 TAC §344.210 (concerning work experience) and §344.220 (concerning exemptions from required work experience or graduate study).

SUMMARY OF CHANGES

Section 344.210 and §344.220 are repealed as corresponding changes to the removal of the requirement that a person have one year of specific full-time work experience or one year of graduate study in order to be certified as a juvenile probation officer.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeals.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be to bring the agency in compliance with statutory changes by ensuring qualification and experience requirements for certain county employees are revised and ensuring there is appropriate accessibility to the profession of juvenile justice for while preserving youth safety and public safety.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by adoption of these repeals.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the repeals are in effect, the repeals will have the following impacts.

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

(2) The proposed repeals do not require the creation or elimination of employee positions at TJJJ.

(3) The proposed repeals do not require an increase or decrease in future legislative appropriations to TJJJ.

(4) The proposed repeals do not impact fees paid to TJJJ.

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

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

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

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJJ to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJJ.

The repeals are also proposed under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJJ and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJJ to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJJ to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJJ to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJJ for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure;

No other statute, code, or article is affected by this proposal.

§344.210. *Work Experience.*

§344.220. *Exemptions from Required Work Experience or Graduate Study.*

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

Filed with the Office of the Secretary of State on February 22, 2024.

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Justice Department (TJJJ) proposes new 37 TAC §§349.600, 349.650, and 349.700, concerning advisory council on juvenile services and data.

SUMMARY OF CHANGES

The new §349.600 will include a list of the overarching subjects on which the Advisory Council on Juvenile Services is meant to advise the Texas Juvenile Justice Board and will explain that the goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to TJJJ and its Board.

The new §349.600 will also include a description of the composition of the advisory council, the length of terms, and training received; a description of how vacancies that occur during a member's term are filled; an explanation of what constitutes a quorum; information pertaining to ex officio members; an explanation that the appearance of conflicts of interest should be avoided; a description of updates the advisory council's presiding officer provides to the Board; and an explanation of the statutes the advisory council is and is not subject to.

The new §349.650 will explain that it is a ground for removal from the advisory council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

The new §349.700 will explain that, for planning and research purposes, all juvenile probation departments participating in the state's regionalization plan are authorized to access data that any participating departments have submitted through the case management system.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring TJJJ in compliance with statutory changes by ensuring there are agency standards regarding the composition and activities of the Advisory Council on Juvenile Services.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJJ.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJJ.

- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER F. ADVISORY COUNCIL ON JUVENILE SERVICES

37 TAC §349.600, §349.650

STATUTORY AUTHORITY

Section 349.600 and §349.650 are proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new sections are also proposed under §203.0081, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires the Board to adopt general rules on the Advisory Council's purpose and procedures, updates the Advisory Council's membership to include the Department of Family and Protective Services, and requires the Advisory Council to make recommendations on sharing information with other child-serving agencies.

No other statute, code, or article is affected by this proposal.

§349.600. Purpose.

(a) The purpose of the Advisory Council on Juvenile Services is to advise the Texas Juvenile Justice Board and Texas Juvenile Justice Department on:

- (1) the needs and problems of juvenile boards and juvenile probation departments;
- (2) long-range strategic planning;
- (3) reviews and proposed revisions to standards affecting juvenile probation programs, services, and facilities;
- (4) the potential cost impact on juvenile probation departments of new standards proposed by the Texas Juvenile Justice Board;
- (5) recommendations to improve information sharing between agencies that serve children, including agencies serving children involved in both the juvenile justice and child welfare systems; and
- (6) any other matter at the request of the Texas Juvenile Justice Board.

(b) The goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to the Texas Juvenile Justice Board and Texas Juvenile Justice Department so the unified juvenile justice system can collectively develop and improve the state's comprehensive continuum of care for youth; prioritize evidence-based rehabilitative services; and ensure safety for youth, staff, and the public.

(c) The advisory council is composed of 15 members, as specified in Chapter 203, Human Resources Code. Members, excluding ex officio members, serve staggered two-year terms. Texas Juvenile Justice Board-appointed members shall receive training on the advisory council's purpose, role, and procedures within 30 days of their appointment.

(d) If a vacancy occurs on the council during a member's term, the Texas Juvenile Justice Board must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(e) A majority of advisory council members, excluding ex officio members as defined in Chapter 203, Human Resources Code, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the Texas Juvenile Justice Board for consideration.

(f) Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(g) An advisory council member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the council that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority.

(h) The advisory council's presiding officer or designee shall periodically update the board on the council's activities, progress on board directives, and issues impacting juvenile probation programs, services, and facilities.

(i) The advisory council is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(j) The advisory council is not subject to Chapter 2110, Government Code. The department shall evaluate the continuing need for and recommendations to improve the council during the rule review process established under Chapter 2001, Government Code.

§349.650. Removal of Members.

It is a ground for removal from the council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



SUBCHAPTER G. DATA

37 TAC §349.700

STATUTORY AUTHORITY

Section 349.700 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The new section is also proposed under §203.017, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires TJJJ to create a regionalization plan.

No other statute, code, or article is affected by this proposal.

§349.700. Access to Data Collected.

For planning and research purposes, all juvenile probation departments participating in the implementation of the state's regionalization plan developed under Chapter 203, Human Resources Code, are authorized to access data that any participating departments have submitted through the juvenile case management system.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



CHAPTER 351. STANDARDS FOR SHORT-TERM DETENTION FACILITIES SUBCHAPTER D. RESTRAINTS

37 TAC §351.49

The Texas Juvenile Justice Department (TJJJ) proposes new 37 TAC §351.49, concerning retrofitted adult facilities.

SUMMARY OF CHANGES

The new §351.49 will explain that before a short-term detention facility accepts residents, the juvenile board in the county where the facility is located must ensure the facility has been approved by TJJJ. It will also explain that TJJJ will not approve a facility that was constructed or previously used for the confinement of adult offenders unless TJJJ determines the facility has been appropriately retrofitted to comply with certain standards.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be to bring the agency in compliance with statutory changes by ensuring the juvenile boards verify a short-term detention fa-

cility has been approved by TJJJ before the facility accepts residents and that such facilities are appropriately retrofitted to comply with certain standards for being approved.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the new section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJJ.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJJ.
- (4) The proposed section does not impact fees paid to TJJJ.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The new section is also proposed §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJJ to use facilities previously constructed or used for adult offenders, if TJJJ determines the facility is appropriately retrofitted to meet youth-specific standards

No other statute, code, or article is affected by this proposal.

§351.49. Retrofitted Adult Facilities.

(a) Before a short-term detention facility accepts residents, the juvenile board in the county where the facility is located must ensure the facility has been approved by TJJJ.

(b) TJJJ will not approve a facility that was constructed or previously used for the confinement of adult offenders unless TJJJ determines the facility has been appropriately retrofitted to comply with TJJJ standards related to facilities.

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

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES

SUBCHAPTER B. APPLICABILITY AND GENERAL PROVISIONS

37 TAC §355.206

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §355.206, concerning certification and registration of facility.

SUMMARY OF CHANGES

The amendments to §355.206 will include adding that a juvenile board may use or contract with a non-secure correctional facility that was constructed or previously used for confinement of adult offenders if the juvenile board can document and TJJD can verify that the facility is appropriately retrofitted to adhere to applicable standards.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to bring the agency in compliance with statutory changes by ensuring a non-secure correctional facility that was constructed or previously used for confinement of adult offenders is appropriately retrofitted to comply with certain standards before being used or contracted with to house juveniles.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended section is also proposed under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJD to use facilities previously constructed or used for adult offenders, if TJJD determines the facility is appropriately retrofitted to meet youth-specific standards.

No other statute, code, or article is affected by this proposal.

§355.206. *Certification and Registration of Facility.*

(a) Non-Secure Correctional Facilities. Before the facility admits residents, the juvenile board in the county or district where a non-secure correctional facility is located shall ensure:

(1) the facility is certified in compliance with §51.126 of the Texas Family Code;

(2) the number of beds is designated in the facility certification;

(3) the facility is registered with TJJD in compliance with §51.126 of the Texas Family Code; and

(4) the current facility certification and TJJD's facility registration are posted within a public area of the facility.

(b) Retrofitted Adult Facilities. A juvenile board may use or contract with a non-secure correctional facility that was constructed or previously used for confinement of adult offenders if the juvenile board can document and TJJD can verify that the facility is appropriately retrofitted to adhere to applicable rules (i.e., standards) in Chapters 344, 345, 355, and 358 of this title.

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

Filed with the Office of the Secretary of State on February 22, 2024.

TRD-202400796



CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §380.8597 (concerning certain actions by the executive director) and §380.9147 (concerning youth career and technical education advisory committee).

SUMMARY OF CHANGES

The new §380.8597 will establish that TJJD tracks the frequency with which the executive director takes certain actions and reports the resulting data to the TJJD Board and the Sunset Advisory Committee; include a list of actions and explain that TJJD must track the frequency the executive director takes those actions; and explain that TJJD must compile frequency data and provide that date to the Board and the Sunset Advisory Committee.

The new §380.9147 will establish the Youth Career and Technical Education Advisory Committee, which assists TJJD with overseeing and coordinating vocational training for youth in state custody; describe the duties and goals of the committee; describe the composition of the committee's membership and the appointment of the presiding officer; and include the following: information pertaining to ex officio committee members, an explanation of what constitutes a quorum, term lengths of committee members, an explanation of how to fill vacancies on the committee, an explanation that the appearance of conflicts of interest should be avoided, a description of updates the advisory council's presiding officer provides to the Board; and information about other statutory requirements.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring the agency in compliance with statutory changes by ensuring certain actions of the executive director are reported by the agency and creating a Youth Career and Technical Education Advisory Committee.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE DIVISION 7. CERTAIN ACTIONS BY EXECUTIVE DIRECTOR

37 TAC §380.8597

STATUTORY AUTHORITY

Section 380.8597 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new section is also proposed under §203.002, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires TJJD to track the frequency with which the executive director takes certain actions and to report the resulting data to the Board and the Sunset Advisory Commission.

No other statute, code, or article is affected by this proposal.

§380.8597. Certain Actions by the Executive Director:

(a) Purpose. This rule establishes that the Texas Juvenile Justice Department (TJJD) tracks the frequency with which the executive director takes certain actions and reports the resulting data to the TJJD Governing Board and the Sunset Advisory Committee.

(b) General Provisions.

(1) The department shall track the frequency with which the executive director takes the following actions:

(A) selecting youth for a conditional placement;

(B) selecting youth for a home placement;

(C) waiving the requirement for a youth with a determinate sentence to spend the youth's entire minimum period of confinement in a high-restriction facility;

(D) waiving the requirement for a youth to be on intensive supervision when initially released on parole; and

(E) authorizing the early discharge of a youth on parole.

(2) The department shall compile frequency data outlined in paragraph (b)(1) on a quarterly basis. The department shall provide the frequency data from the previous quarter to the TJJD Governing Board and Sunset Advisory Commission at the beginning of each quarter.

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

Filed with the Office of the Secretary of State on February 22, 2024.

TRD-202400803

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 490-7278



SUBCHAPTER C. PROGRAM SERVICES

DIVISION 2. EDUCATION PROGRAMS

37 TAC §380.9147

STATUTORY AUTHORITY

Section 380.9147 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new section is also proposed under §203.0083, Human Resources Code (as enacted by SB 1727, 88th Legislature, Regular Session), which requires the Board to create a youth career and technical education advisory committee and to adopt rules on the committee's purpose, goals, and membership.

No other statute, code, or article is affected by this proposal.

§380.9147. Youth Career and Technical Education Advisory Committee.

(a) Purpose. This rule establishes the Youth Career and Technical Education Advisory Committee, which assists the Texas Juvenile Justice Department (TJJD) with overseeing and coordinating vocational training for youth in state custody, including training provided by community colleges and other local entities.

(b) General Provisions.

(1) Committee duties include, but are not limited to:

(A) assessing the vocational training needs of youth committed to state custody;

(B) identifying barriers to the success of vocational training programs for youth committed to state custody;

(C) engaging in long-range strategic planning to assist TJJD in establishing goals and actionable plans for expanding the use of vocational training for youth committed to state custody, including opportunities to successfully transition youth from programming in secure facilities to training and employment in the community; and

(D) any other matter at the request of the board.

(2) The goal of the committee is to help TJJD improve its procedures for and outcomes of vocational training to increase youths' success as they reenter Texas communities.

(3) The committee is composed of 11 members appointed by the TJJD's governing board, including:

(A) one representative from the Texas Education Agency;

(B) one representative from the Texas Workforce Commission or a local workforce development board who has experience with programs for youth or young adults;

(C) one representative from the Texas Department of Licensing and Regulation;

(D) one representative from the Texas Department of Family and Protective Services;

(E) two county juvenile probation chiefs;

(F) one certified educator;

(G) two members with professional experience in an occupation relevant to TJJD's vocational training programs, such as agriculture, construction, technology, manufacturing, and business;

(H) one representative from a post-secondary education entity who has experience in the administrative, training, or coordination functions of a career and technical education program; and

(I) one representative from an advocacy group with a primary function to improve education outcomes, safety, or well-being of youth.

(4) The board must appoint a presiding officer for the advisory committee.

(5) Committee members appointed under (c)(1)-(4) serve as ex officio members. Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(6) A majority of committee members, excluding ex officio members, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the board for consideration.

(7) Committee members, excluding ex officio members, serve staggered two-year terms with the terms of half of the members expiring on February 1 of each year. Members may serve multiple terms.

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

(9) A committee member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the committee that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority or the employer for whom the member works.

(10) The committee's presiding officer or designee shall periodically update the board on the committee's activities, progress on board directives, and issues impacting vocational training for youth committed to state custody.

(11) The committee is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(12) In accordance with Chapter 2110, Government Code, the committee is abolished on the fourth anniversary of the date of its creation unless the board amends rules to provide for a different abolishment date.

(13) TJJD shall evaluate the continuing need for and recommendations to improve the committee during the rule review process established under Chapter 2001, Government Code.

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

Filed with the Office of the Secretary of State on February 22, 2024.

TRD-202400804

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 490-7278



CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §380.8767, concerning crisis stabilization unit, and §380.9571, concerning procedure for mental-health-status review hearing.

SUMMARY OF CHANGES

The amendments to §380.8767 will include clarifying that a mental-health-status review hearing must be held for each youth within 72 hours (rather than 96 hours) after the youth's arrival at the stabilization unit.

The amendments to §380.9571 will include clarifying that: 1) a mental-health-status review hearing must be held for each youth within 72 hours (rather than 96 hours) after the youth's arrival at the stabilization unit; and 2) if the hearing manager determines an unavoidable absence would prevent a key witness or party from attending the hearing, the hearing may be rescheduled to the earliest possible time but not later than 72 hours (rather than 96 hours) from the original scheduled hearing.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be timely implementation with recommendations from the agency's Internal Auditor by aligning agency rule to current practice.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are re-

quired to comply with the amended sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended sections are in effect, the sections will have the following impacts.

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

(2) The proposed sections do not require the creation or elimination of employee positions at TJJD.

(3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed sections do not impact fees paid to TJJD.

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

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

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

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER B. TREATMENT

DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS

37 TAC §380.8767

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.8767. Crisis Stabilization Unit.

(a) Purpose. The purpose of this rule is to establish criteria and a process for admitting youth who are experiencing a psychiatric crisis into a crisis stabilization unit (CSU) operated by the Texas Juvenile Justice Department (TJJD).

(b) Definitions.

(1) Designated Mental Health Professional--has the meaning assigned by §380.9187 of this chapter [title].

(2) Psychiatric Provider--has the meaning assigned by §380.9187 of this chapter [title].

(c) References.

(1) For due process procedures for mental health status reviews, see §380.9571 of this chapter [title].

(2) For emergency mental health placements, see §380.8771 of this chapter [title].

(d) Admissions.

(1) Admission Criteria. A youth may be admitted to a CSU only when the following criteria are met:

(A) the youth demonstrates serious dysfunction in behavior, judgment, thinking, or mood; and

(B) the dysfunction is the result of a current neurological deficit, emotional disturbance, and/or psychiatric disorder (e.g., psychosis, major affective disorder, organic disorder, or anxiety disorder) and the dysfunction is not the result of a primary conduct disorder or antisocial personality disorder; and

(C) the youth:

(i) presents a risk of serious harm to self or others; or

(ii) if not treated, will continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration in the youth's [his/her] ability to function independently, as evidenced by the youth's inability to attend to basic needs, such as food, health, personal hygiene, or safety; and

(D) a CSU is the least restrictive intervention that is appropriate and available to safely and effectively meet the treatment needs and to control the dysfunctional behavior.

(2) Referral Documents. The referral must include a current psychiatric evaluation from a psychiatric provider and a psychological evaluation approved by the designated mental health professional, unless the referral is due to an emergency mental health placement under §380.8771 of this chapter [title].

(3) 72-Hour [96-Hour] Admission Review Process. A mental-health-status [mental health status] review hearing must be held for each youth within 72 [96] hours after arrival at the unit. If the 72-hour [96-hour] period ends on a Saturday, Sunday, or official holiday, the hearing must be held on the next workday. The hearing is held to determine whether criteria for unit admission have been met.

(A) If the youth does not meet criteria for admission, the youth [he/she] is not retained in the CSU. Youth who are not admitted are returned to the referring program/location.

(B) If the youth meets criteria for admission, the youth [he/she] is retained and treated in the CSU.

(C) If the youth's treatment needs and appropriateness for admission cannot be determined during the hearing, the youth may be temporarily admitted to the CSU for diagnostic and assessment purposes for up to 45 days from the date of arrival.

(i) A youth may be temporarily admitted for diagnostic and assessment purposes only if the hearing manager determines:

(I) the youth exhibits evidence of psychiatric dysfunction;

(II) the youth has recently engaged in behavior that presents a danger to self or others or has demonstrated a chronic failure to progress in the youth's [his/her] prior programming;

(III) the youth is in need of comprehensive psychiatric and psychological evaluation in a specialized setting; and

(IV) the CSU is the least restrictive setting in which to effectively accomplish this evaluation.

(ii) Before the end of the 45-day diagnostic and assessment period, the CSU staff must:

(I) hold a mental-health-status [mental health status] review hearing to seek admission to CSU; or

(II) transfer the youth out of CSU if a hearing is not held or if the youth is not admitted to CSU.

(e) Program Requirements.

(1) The program focus is on stabilization of the psychiatric dysfunction.

(2) Services are provided in a self-contained unit.

(3) An individualized treatment program, including treatment goals and objectives, is developed for and with each youth.

(4) The treatment team reviews the youth's progress weekly.

(5) The youth must be transferred out of the CSU within 90 days after the admission hearing unless an extension is granted.

(f) Extensions.

(1) Extension Criteria. An extension may be granted beyond 90 days only if:

(A) the youth continues to meet admission criteria and the youth's treatment plan has been implemented appropriately; or

(B) the youth has symptoms of mental illness and continued treatment in the CSU is deemed to be in the youth's best interest.

(2) Due Process Requirements for Extensions.

(A) The due process required to determine whether extension criteria have been met is a mental-health-status [mental health status] review hearing. A youth on parole status, as defined in §380.9550 of this chapter [title], will remain on parole status.

(B) If an extension is recommended, the mental-health-status [mental health status] review hearing must be held:

(i) approximately 75 days but no later than 90 days after the last mental-health-status [mental health status] review hearing; or

(ii) within two workdays after the youth returns to the unit if the youth's [he/she] is in a state hospital at the time the hearing is required.

(C) Multiple extensions may be granted by following procedures in this subsection.

(3) Release and Transition Options.

(A) The extension of time to treat the psychiatric dysfunction must be terminated when placement in a CSU is no longer needed for the primary purpose of treatment of the dysfunction, as determined by a majority vote of the youth's treatment team.

(B) Following termination of the extension, future placement decisions, including the youth's return to [his/her] home parole placement, are made in accordance with other applicable policies and procedures.

(C) No youth may be discharged from TJJJ jurisdiction directly from a CSU unless TJJJ's jurisdiction ends by statute.

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

Filed with the Office of the Secretary of State on February 22, 2024.



**SUBCHAPTER E. BEHAVIOR MANAGEMENT
AND YOUTH DISCIPLINE
DIVISION 2. DUE PROCESS HEARINGS
37 TAC §380.9571
STATUTORY AUTHORITY**

The amended section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9571. *Procedure for Mental-Health-Status Review Hearing.*

(a) Purpose. This rule establishes the due process required to admit a youth into a Texas Juvenile Justice Department (TJJJ) stabilization unit or to extend a youth's stay in a stabilization unit to provide treatment for a psychiatric disorder.

(b) Applicability.

(1) For criteria for admission to a TJJJ stabilization unit, see §380.8767 of this title.

(2) A mental-health-status review hearing is a Level II due process hearing with several procedural exceptions, as noted in this rule. See §380.9555 of this title for Level II hearing procedures.

(c) Procedure.

(1) Decision Makers.

(A) The facility administrator of the TJJJ stabilization unit at which placement is sought appoints a mental health professional, as defined in §380.9187 of this title, to conduct the review hearing and serve as the hearing manager.

(B) The hearing manager must not have direct or primary responsibility in the youth's current treatment or diagnosis.

(C) The hearing manager has the same authority and responsibility as that assigned to a hearing manager in §380.9555 of this title.

(D) The hearing manager must be trained to conduct the review hearing.

(2) Single-Function Hearing. The single function of a mental-health-status review hearing is to consider the facts presented relative to the criteria for admission or extension established in §380.8767 of this title.

(3) Location. All mental-health-status review hearings must be conducted at a TJJJ stabilization unit and are the responsibility of staff at that facility.

(4) Advocate. The youth's advocate is appointed by the facility administrator or designee and must be a mental health professional or a case manager assigned to the stabilization unit.

(5) Timing of Hearing. A mental-health-status review hearing must be held for each youth within 72 [96] hours after the youth's arrival at the stabilization unit. If the 72-hour [96-hour] period ends on a Saturday, Sunday, or official holiday, the hearing must be held on the next regular work day. If the hearing manager determines an unavoidable absence would prevent a key witness or party from attending the hearing, the hearing may be rescheduled to the earliest possible time but not later than 72 [96] hours from the original scheduled hearing.

(6) Teleconference. The hearing may not be conducted by teleconference. However, testimony may be accepted via telephone if the hearing manager determines in-person testimony is impractical or unfeasible. If testimony is accepted via telephone, all persons required to be present at the hearing must be able to simultaneously hear the testimony.

(7) Exclusion from the Hearing. To protect the confidential nature of the hearing, persons other than the youth, the youth's advocate, the staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearing manager. However, any person except the youth's advocate or staff representative may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing or when matters being discussed are of a very sensitive nature. The reason(s) for the exclusions must be stated on the record.

(8) Decision.

(A) Following the presentation of evidence, the hearing manager must announce his/her decision regarding whether criteria for admission or extension have been established.

(B) A hearing manager's decision to admit or extend a youth in the stabilization unit must be supported by expert testimony of a psychiatrist that the youth meets the requisite criteria. The testimony should be given in person when feasible.

(C) The youth must be informed of his/her right to appeal the decision to the executive director in accordance with §380.9353 of this title. The hearing manager's decision will be implemented even if an appeal has been filed and a response is pending.

(9) Hearing Report.

(A) A report that includes the hearing manager's findings and the basis for them must be completed within seven work days after the date of the hearing.

(B) The facility administrator or designee must review the report to ensure accurate and consistent application of this rule. The person who conducted the hearing may not be the person who conducts this review. If necessary, the facility administrator or designee may return the report to the hearing manager for clarification or to reopen the hearing for the purpose of obtaining further information.

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

Filed with the Office of the Secretary of State on February 22, 2024.

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SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §§380.9503, 380.9504, 380.9510

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §§380.9503, 380.9504, and 380.9510, concerning behavior management.

SUMMARY OF CHANGES

The amendments to §380.9503 will include adding that a Level II hearing will be requested for any youth not on parole status who allegedly commits a first- or second-degree felony unless TJJD determines, given all circumstances, a hearing would not be appropriate. Such a decision must be documented. TJJD will review the youth for placement in the most restrictive setting appropriate, including the intervention program in Section 380.9510, if the allegation is proved.

The amendments to §380.9503 will also include: 1) adding a new rule violation entitled *Failure to Comply with Electronic Monitoring Program Conditions*, which applies only to youth in medium-restriction facilities and includes failing to comply with any of the specific electronic monitoring conditions listed in the rule; and 2) changing the definition of the rule violation entitled *Participating in a Major Disruption of Facility Operations* to no longer require that a youth must participate with two or more persons.

The amendments to §380.9504 will include adding that a parole revocation hearing will be requested for any youth who allegedly commits a first- or second-degree felony while on parole, although it may not be held if a deferral is requested by local prosecutors or TJJD determines that, given all circumstances, a hearing would not be appropriate. Also added that TJJD shall review the youth for placement in the most restrictive setting appropriate if the youth's parole is revoked.

The amendments to §380.9504 will also include adding the following to the list of parole rule violations: 1) *Failure to Comply with Electronic Monitoring Program Conditions*, which includes failing to comply with any of the specific conditions listed in the rule; and 2) *Participating in a Major Disruption of Facility Operations*, which is conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs (only for youth on parole status in medium-restriction facilities).

The amendments to §380.9510 will include: 1) adding first- or second-degree felony to the list of violations that require a youth in a high-restriction facility to be reviewed for possible placement in the intervention program; and 2) adding that youth whose parole has been revoked and youth who are transferred from a medium-restriction facility to a high-restriction facility may be reviewed for placement in the intervention program. This review is mandatory if the return to a high-restriction facility is due to a first- or second-degree felony.

The amendments to §380.9510 will also include several changes relating to the primary level of the intervention program: 1) adding that youth in this level of the program move around campus for non-program-related activities in a manner generally comparable to the general campus population; 2) removing a provision stating that youth in this level of the program continue

to sleep at their assigned dorm but engage in other activities at the site of the program; and 3) removing a reference that states which staff divisions are involved in reviewing youth for possible placement in this level of the intervention program.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to more effectively administer TJJD's electronic monitoring program, to clarify certain rule violations, and to bring the agency in compliance with statutory changes by ensuring youth who engage in certain conduct while in the agency's custody are reviewed for the most appropriate setting for the child based on rehabilitative needs while preserving due process rights.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjtd.texas.gov.

STATUTORY AUTHORITY

The amended sections are proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended sections are also proposed under §243.001, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires the board to adopt rules establishing procedures to determine the appropriate placement for youth pending prosecution for an alleged first- or second-degree felony committed while in TJJD custody.

No other statute, code, or article is affected by this proposal.

§380.9503. *Rules and Consequences for Residential Facilities.*

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Attempt to Commit--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) Direct Someone to Commit--occurs when:

(A) a youth communicates with another youth;

(B) the communication is intended to cause the other youth to commit a rule violation; and

(C) the other youth commits or attempts to commit a rule violation.

(4) Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) General Provisions.

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this chapter [title], respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal incident report is not appealable or grievable; only disciplinary consequences may be appealed or grieved, as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter [title].

(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth

shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) Disciplinary Consequences.

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;

(B) restriction from planned activities;

(C) trust-fund restriction; and

(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;

(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;

(C) subjecting a youth to personal injury;

(D) subjecting a youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping;

(F) purposeless or degrading work, including group exercise as a consequence;

(G) placement in the intervention program under §380.9510 of this chapter [title];

(H) disciplinary isolation; and

(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:

(A) a written description of the incident must be prepared;

(B) staff must tell the youth which rule violation the youth allegedly committed and describe the information staff has that establishes the youth committed it;

(C) staff must tell the youth what disciplinary consequence(s) staff is considering imposing; and

(D) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter [title].

(f) Review and Appeal of Consequences.

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter [title].

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter [title].

(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this chapter [title].

(g) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Assault of Another Youth (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) Assault of Staff (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) Assault Causing Bodily Injury to Another Youth--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement for the first 10 days while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJ staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(11) [(40)] Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(12) [(41)] Fighting That Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(13) [(42)] Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(14) [(43)] Misuse of Medication--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) [(44)] Participating in a Major Disruption of Facility Operations--intentionally engaging [participating with two or more persons] in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) [(45)] Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(17) [(46)] Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter [title] for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(18) [(17)] Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(19) [(18)] Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(20) [(19)] Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(21) [(20)] Refusing a Search--refusing to submit to an authorized search of person or area.

(22) [(21)] Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(23) [(22)] Sexual Misconduct--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(24) [(23)] Stealing--intentionally taking property with an estimated value of \$100 or more from another without permission.

(25) [(24)] Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(26) [(25)] Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(27) [(26)] Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(28) [(27)] Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is

something that is capable of inflicting bodily injury in the manner in which it is being used.

(29) [(28)] Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(30) [(29)] Vandalism--intentionally causing \$100 or more in damage to state property or personal property of another.

(31) [(30)] Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's

personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under \$100 from another without permission.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) Undesignated Area--being in any area without the appropriate permission to be in that area.

(18) Vandalism--intentionally causing less than \$100 in damage to state or personal property.

§380.9504. *Rules and Consequences for Youth on Parole.*

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision. Violations of the rules may result in disciplinary consequences, including revocation of parole, that are proportional to the severity and extent of the violation. Appropriate due process must be followed before imposing consequences.

(b) Applicability.

(1) This rule applies to youth on parole status who are assigned to a home placement.

(2) For parole revocation purposes, this rule also applies to youth on parole status who are assigned to a residential placement as a home substitute. However, this rule does not apply to the daily rules of conduct for these youth. For the daily rules of conduct, see §380.9503 of this chapter.

(c) General Provisions.

(1) Conditions of parole are provided to the youth before release on parole.

(2) Conditions of parole, including the rules of conduct, are reviewed with youth when they initially meet with their parole officers and at other times as necessary.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(d) Definitions. Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(e) Parole Rule Violations. It is a violation to knowingly commit, attempt to commit, or aid someone else in committing any of the following:

(1) Abscond--leaving a home placement or failing to return from an authorized leave when:

(A) the youth's parole officer did not give permission; and

(B) the youth's whereabouts are unknown to the youth's parole officer.

(2) Failure to Comply with Electronic Monitoring Program Conditions--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement for the first 10 days while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(3) [(2)] Failure to Comply with Sex Offender Conditions of Parole--intentionally or knowingly failing to comply with one of the following conditions present in the youth's sex offender conditions of parole addendum:

(A) do not have unsupervised contact with children under the age specified by the conditions of parole;

(B) do not babysit or participate in any activity where the youth is responsible for supervising or disciplining children under the age specified by the conditions of parole; or

(C) do not initiate physical contact or touching of any kind with a child, victim, or potential victim.

(4) [(3)] Failure to Report an Arrest or Citation--failing to report an arrest or receipt of a citation to the youth's parole officer within 24 hours of arrest or citation.

(5) Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs. (This parole violation applies only to youth assigned to a residential placement as a substitute for home placement.)

(6) [(4)] Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(7) [(5)] Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(8) [(6)] Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen.

(9) [(7)] Repeated Non-Compliance with a Written, Reasonable Request of Staff--failing on two or more occasions to comply with a specific condition of release under supervision and/or a specific written, reasonable request of staff. If the request requires the youth

to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(10) [(8)] Photos, Videos, or Social Media Posts with Weapon, Ammunition, or Unauthorized Substance--appearing in photos, videos, or other images, whether or not posted to social media, with any weapon, ammunition, or unauthorized substance or related paraphernalia, including any object that reasonably resembles a weapon, ammunition, or unauthorized substance or related paraphernalia. The term weapon includes, but is not limited to, guns, explosive devices, knives, blades, and clubs. The term related paraphernalia includes, but is not limited to, items used to make or deliver unauthorized substances.

(11) [(9)] Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(12) [(10)] Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(13) [(11)] Possession or Use of Unauthorized Substances--possessing, ingesting, inhaling, or otherwise consuming any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol or tobacco products, or related paraphernalia such as that used to deliver or make any unauthorized substance.

(14) [(12)] Violation of Any Law--violating a federal or state law or municipal ordinance.

(f) Possible Consequences.

(1) A parole rule violation may result in a Level I hearing or a Level III hearing conducted in accordance with §380.9551 or §380.9557 of this chapter, respectively.

(A) This subparagraph applies only to youth alleged to have engaged in conduct classified as a first- or second-degree felony while on parole. Except as provided by this subparagraph, a Level I hearing shall be requested on these youth. The hearing may be deferred when requested by local prosecutors, as provided in §380.9551 of this chapter. The designated staff person may determine that, given all circumstances, a Level I hearing is not appropriate. Such decision shall be documented. If a Level I hearing is held and the youth's parole is revoked, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(B) Parole officers are encouraged to be creative in determining a consequence appropriate to address and correct the youth's behavior. Staff should use evidence-based interventions that relate to the youth's risk, needs, and responsibility when appropriate. All assigned consequences should be related to the misconduct when possible.

(2) Consequences through a Level III hearing for a youth on parole include, but are not limited to:

(A) Verbal Reprimand--conference with a youth including a verbal reprimand that draws attention to the misbehavior and serves as a warning that continued misbehavior could result in more severe consequences.

(B) Curfew Restriction--an immediate change in existing curfew requirements outlined in the youth's conditions of parole.

(C) Community Service Hours--disciplinary assignment of a specific number of hours the youth is to perform community service in addition to the hours assigned when the youth was placed on parole. In no event may more than 20 community service hours be assigned through a Level III hearing.

(D) Increased Level of Supervision--an assigned increase in the number of primary contacts between the youth and parole officer in order to increase the youth's accountability.

(E) Electronic Tracking--assignment to a system that electronically tracks a youth's movement and location.

(F) Writing Assignment--an assignment designed for the youth to address the misbehavior and identify appropriate behavior in similar situations.

(3) Consequences through a Level I hearing for a youth on parole, including youth assigned to a residential placement as a home substitute, include:

(A) parole revocation and placement in any high- or medium-restriction program operated by or under contract with the Texas Juvenile Justice Department; and

(B) assignment of a length of stay consistent with §380.8525 of this chapter.

§380.9510. *Intervention Program.*

(a) Purpose. The Texas Juvenile Justice Department (TJJD) delivers interventions in a structured environment for youth who have engaged in certain serious conduct. The interventions are designed to promote violence reduction and skill building to increase safety on TJJD campuses and to help the youth regulate their behavior in order to progress in treatment. Placement in an intervention program is not considered a disciplinary consequence. This rule sets forth eligibility criteria, program requirements, and services to be provided to youth.

(b) Applicability. The program described by this rule operates only at [This rule applies only to] high-restriction facilities operated by TJJD.

(c) Definitions.

(1) Admission, Review, and Dismissal (ARD) Committee--a committee that makes decisions on educational matters relating to special-education-eligible youth.

(2) Individualized Education Program (IEP)--the program of special education and related services developed by a youth's ARD committee.

(3) Isolation--the confinement of a youth in a locked room or cubicle as a tool to manage the behavior of a youth. Rules regarding isolation do not apply:

(A) when doors are routinely locked during normal sleeping hours and isolation has not otherwise been imposed; or

(B) when a youth is placed in the security program.

(4) Manifestation Determination Review--a review conducted by a youth's ARD committee when a decision has been made to change a special-education-eligible youth's school placement due to a violation of the code of conduct. The committee determines whether a youth's conduct is a manifestation of the youth's disability and whether the youth's IEP was fully implemented.

(d) Eligibility.

(1) At a minimum, a youth must be reviewed to determine appropriateness for placement at any level of the intervention program

if the youth engages in one or more of the following rule violations as defined in §380.9503 of this chapter [~~title~~]:

- (A) assault of youth (with or without injury);
- (B) assault of staff (with or without injury);
- (C) fighting (with or without injury);
- (D) threatening another with a weapon;
- (E) escape;
- (F) extortion or blackmail;
- (G) possession of a weapon;
- (H) sexual misconduct;
- (I) threatening others; [~~or~~]
- (J) any first- or second-degree felony; or

(K) [~~(J)~~] any other rule violation that the executive director or designee establishes in writing as an eligible violation.

(2) A youth may be reviewed to determine appropriateness for placement at any level of the intervention program based on any other rule violation defined in §380.9503 of this chapter [~~title~~] or based on a pattern of rule violations that suggests the youth would benefit from the program.

(3) Notwithstanding any other provisions in this rule, a youth whose parole has been revoked may be reviewed for possible placement in the intervention program. Review for possible placement in the intervention program is mandatory for a youth whose parole was revoked for conduct classified as a first- or second-degree felony. If the youth is placed in the intervention program:

(A) the youth may be placed at any level of the program, provided there are no therapeutic contraindications to placement at that level; and

(B) the youth may be moved between levels of the program if the youth was given notice of the potential placement in the program before the Level I hearing.

(4) Notwithstanding any other provisions in this rule, a youth who has been disciplinarily transferred from a medium-restriction facility to a high-restriction facility through a Level II due process hearing may be reviewed for possible placement in the intervention program. Review for possible placement in the intervention program is mandatory for a youth who was transferred for conduct classified as a first- or second-degree felony. If the youth is placed in the intervention program:

(A) the youth may be placed at any level of the program, provided there are no therapeutic contraindications to placement at that level; and

(B) the youth may be moved between levels of the program as outlined in this rule.

(e) Program Intervention Levels.

(1) Primary. The primary level of the intervention program provides short-term intervention that cannot be provided during regular campus programming.

(A) Youth at this level of intervention in the program will move around campus for non-program-related activities in a manner generally comparable to the general campus population but are provided program-related interventions while admitted to the program [continue to sleep at their assigned dorm but other activities are conducted at the site of the program].

(B) A Level II hearing is not required for placement at this level of intervention. However, designated [~~treatment and direct-care~~] staff must review the youth for appropriateness in the intervention program, including the youth's treatment needs and the severity of the youth's behavior.

(2) Moderate. The moderate level of the intervention program provides short-term intervention in a self-contained unit with a gradual transition back to regular campus programming.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this chapter [~~title~~];

(ii) there is a finding of *true* that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a *true* finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(3) Intensive. The intensive level of the intervention program provides longer-term intervention in a highly structured environment.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this chapter [~~title~~];

(ii) there is a finding of *true* that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a *true* finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(f) Placement in the Program.

(1) Each youth being considered for placement in the intervention program is reviewed to determine if placement is appropriate and, if so, which level of the program is appropriate.

(2) If it is determined that the youth should be placed in the intensive level of the program but space is not available, the youth may be temporarily placed in a lower level of the program until space becomes available at the intensive level or the youth otherwise successfully meets the criteria under subsection (j) of this section.

(3) TJJD procedural manuals shall establish a process that allows a youth to be moved from one level of the program to another, if appropriate. A youth may be placed in the moderate or intensive level of the program only if the youth was given notice of the potential placement before the Level II hearing. Once a youth has been removed from the intervention program, new conduct and a new Level II due process hearing, if necessary for the program level, are required to return the youth to the intervention program.

(4) TJJD procedural manuals shall establish the factors to be considered when determining if a youth should be placed in the intervention program and which level of intervention is most appropriate or when determining if a youth should be moved from one level to another.

other. The procedural manuals shall include a requirement that, at a minimum, the following factors be considered:

(A) whether the youth poses a continuing risk to the safety of the facility;

(B) whether less restrictive methods of documented intervention have been attempted when appropriate; and

(C) whether there are any therapeutic contraindications to placing the youth in the intervention program or at a particular level in the intervention program.

(5) A youth shall not be placed at any level in the intervention program if a therapeutic contraindication to placement at that level exists.

(6) TJJD shall make reasonable efforts to provide notice to the parent/guardian that the child is being considered for placement in the intervention program or for moving to a different level of the program.

(g) Additional Considerations for Youth Receiving Special Education Services.

(1) If a youth who is receiving special education services engages in a rule violation during school-related activities and that violation is the basis for placement or potential placement in the intervention program, the requirements of the Individuals with Disabilities Education Act, including a manifestation determination review when required, must be met. TJJD's procedural manuals shall include specific instructions for compliance and shall include a routine review to ensure the requirements are met.

(2) All special education services shall be provided in accordance with ARD committee decisions. For youth who are eligible to participate in special education services, an ARD committee meeting to review the IEP is held within ten days after admission to the intervention program. Subsequent ARD committee meetings and evaluations are completed in compliance with state and federal regulations.

(h) Program Requirements.

(1) The intervention program is administered in units designated for such purpose. Each level may be administered in a different unit.

(2) A structured daily schedule is maintained and posted to provide a predictable and safe environment.

(3) On scheduled academic days, youth shall be provided with the amount of education services established by the approved master schedule for the regular school program.

(4) Youth with limited English proficiency shall be provided with appropriate adaptations to the educational program as recommended by the Language Proficiency Assessment Committee.

(5) An individual plan shall be developed or modified for each youth. The plan shall be written in a language the youth clearly understands. The plan shall address the reasons for admission to the program, including providing strategies for intervention and prevention of the admitting behavior, include a component that addresses transition to the general campus population, and provide clearly written objectives for completion of the program. The plan shall also take into consideration any recommendations by a mental health specialist to address the motivation for the behavior.

(6) TJJD procedural manuals will set out how the individual plan and youth's progress will be reviewed and evaluated. This review shall occur at least once every seven days.

(7) Youth in the moderate and intensive levels of the intervention program are provided daily contact and weekly individual sessions with the assigned case manager or other designated staff for counseling and case management services.

(8) Staff shall immediately refer a youth to a mental health professional if concerns exist as to the youth's mental health status.

(9) Youth shall be provided with at least one hour of large-muscle exercise seven days per week.

(10) Youth are allowed phone calls and visitation with approved family members and other individuals according to program visitation procedures.

(11) A youth in the moderate level of the program:

(A) earns privileges based on progress through the program;

(B) shall be gradually reintegrated into campus programming as soon as he/she demonstrates comprehension of the goals established in the individual plan; and

(C) shall receive weekly mental health status exams by mental health staff as long as the youth's movement and program activities are restricted to the program unit. If deemed necessary by mental health staff, youth shall receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(12) A youth in the intensive level of the program:

(A) earns privileges based on progress through the program; and

(B) shall receive weekly mental health status exams by mental health staff. If deemed necessary by mental health staff, youth receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(13) For youth assigned to the primary and moderate levels, staff not assigned to the intervention program shall review each youth's progress at least once every 30 days to ensure the individual plan is being implemented appropriately.

(14) For youth assigned to the intensive level, staff not assigned to the intervention program shall review each youth's progress when the youth has been at that level for 60 days and every 30 days thereafter to ensure the individual plan is being implemented appropriately.

(15) A youth may remain in the moderate level of the program for more than 90 days only if approved by the executive director or designee.

(16) A youth may remain in the intensive level of the program for more than 120 days only if approved by the executive director or designee.

(17) In all levels of the program, mechanical restraints may be used in a manner consistent with the use of such restraints as provided by §380.9723 of this chapter [title]. In the intensive level of the program only, mechanical restraints may also be used in a manner consistent with the use of such restraints in a security unit as provided by §380.9723 of this chapter [title].

(i) Room Isolation and Security Unit.

(1) Youth may be referred to the security program while assigned to the intervention program if the youth meets criteria in

§380.9740 of this chapter [title]. A security unit and program may be operated at the location of each level of the intervention program.

(2) Room isolation may be used as necessary in accordance with §380.9739 of this chapter [title].

(j) Criteria for Release from the Intervention Program. A youth shall be released from the intervention program upon the earliest of the following events:

(1) a determination by the executive director or designee that the youth has:

(A) met the goals in his/her individual plan; and

(B) based on a totality of circumstances, demonstrated an ability to safely transition to campus programming; or

(2) a decision by the executive director or designee to return the youth to the youth's assigned dorm or transfer to an alternative placement based on a recommendation by a mental health professional due to the youth's mental health condition; or

(3) a decision by appropriate staff not to continue the youth in the intervention program after an administrative transfer of the youth to another high-restriction facility while assigned to the intervention program.

(k) Family Notification. The youth's parent/guardian shall be notified of the decision to place the youth in the intervention program no later than the end of the next business day following the day the decision was made. In accordance with §380.8705 of this chapter [title], the notification may occur only with the youth's consent if the youth is 18 years of age.

(l) Program Monitoring and Youth Rights.

(1) To ensure the intervention program is being implemented according to the provisions of this rule, staff from facility administration shall visit each program unit seven days per week. Staff from psychology administration shall visit each program unit weekly.

(2) Youth rights staff or a designee shall visit each program unit seven days per week to ensure that youth have access to the youth grievance system.

(3) Staff are not required to visit a program unit on days when there are no youth in that unit.

(m) Grievance Regarding Assessment of Progress. A youth in the intervention program may address disagreement with the results of an assessment of progress or may address the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this chapter [title]. The person assigned to respond to the youth's grievance may not be a person involved in the subject of the youth's grievance.

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

Filed with the Office of the Secretary of State on February 22, 2024.

TRD-202400807

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 490-7278

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CHAPTER 385. AGENCY MANAGEMENT
AND OPERATIONS

SUBCHAPTER C. MISCELLANEOUS

37 TAC §385.9921

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §385.9921 (concerning legal sufficiency review for administrative findings of abuse, neglect, or exploitation).

SUMMARY OF CHANGES

The new §385.9921 will establish that all findings in abuse, neglect, and exploitation investigations shall be reviewed for legal sufficiency before the appropriate parties are notified of the findings.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be to bring TJJD in compliance with statutory changes by ensuring certain actions of the executive director are reported by the agency and ensuring legal sufficiency reviews are required before appropriate parties are notified of abuse, neglect, and exploitation investigation findings.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new section is in effect, the section will have the following impacts.

(1) The proposed section will not create or eliminate a government program.

(2) The proposed section will not require the creation or elimination of employee positions at TJJD.

(3) The proposed section will not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section will not impact fees paid to TJJD.

(5) The proposed section will not create a new regulation.

(6) The proposed section will not expand, limit, or repeal an existing regulation.

(7) The proposed section will not increase or decrease the number of individuals subject to the section's applicability.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

Section 385.9921 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The new section is also proposed under §203.002, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires TJJJ to track the frequency with which the executive director takes certain actions and to report the resulting data to the Board and the Sunset Advisory Commission.

No other statute, code, or article is affected by this proposal.

§385.9921. Legal Sufficiency Review for Administrative Findings of Abuse, Neglect, or Exploitation.

All findings in abuse, neglect, and exploitation investigations shall be reviewed for legal sufficiency before the appropriate parties are notified of the findings.

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

Filed with the Office of the Secretary of State on February 22, 2024.

TRD-202400806

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 7, 2024

For further information, please call: (512) 490-7278



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 811. CHOICES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 811, relating to Choices:

Subchapter A. General Provisions, §§811.1 - 811.5

Subchapter B. Choices Services Responsibilities, §§811.11, 811.13, and 811.14

Subchapter C. Choices Services, §811.22 and §811.30

Subchapter D. Choices Activities, §811.50

Subchapter E. Support Services and Other Initiatives, §811.65 and §811.66

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 811 rule change is to update rule language to conform with present terminology, update

definitions to conform with federal statute and regulations under the Social Security Act and Title 45 of the Code of Federal Regulations (CFR), and update Temporary Assistance for Needy Families (TANF) purpose statements to conform with federal regulations.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§811.1. Purpose and Goal

Section 811.1(a)(3) updates one of the TANF purposes to align with current language found in Title IV, Social Security Act, §401.

Section 811.1(c) is amended to change "Texas Workforce Commission" to "Agency."

§811.2. Definitions

Section 811.2(18) amends the definition of secondary school to replace "GED" with "high school equivalency."

Section 811.2(20) is amended to replace "TWIST" with "the TWC case management system. The TWIST case management system is being replaced."

Section 811.2(23) is amended to align the definition of "Work-eligible individual" with the definition of "Work-eligible individual" in CFR Title 45, Subtitle B, Chapter II, Part 261.

Section 811.2(26)(D), is amended to replace "GED" with "high school equivalency."

§811.3. Choices Service Strategy

Section 811.3(b)(2)(B) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

§811.4. Policies, Memoranda of Understanding, and Procedures

Section 811.4(b)(1) is amended to refer to the current eligible training system and Chapter 840 of this title.

Section 811.4(d)(1) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

§811.5. Documentation, Verification, and Supervision of Work Activities

Section 811.5(a), (c), and (d) are amended to replace "TWIST" with "the TWC case management system."

Section 811.5(d) is amended to replace "GED" with "high school equivalency."

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

TWC proposes the following amendments to Subchapter B:

§811.11. Board Responsibilities

Section 811.11(a) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

Section 811.11(f) and (h) are amended to replace "TWIST" with "the TWC case management system."

§811.13. Responsibilities of Choices Participants

Section 811.13(c)(3) is amended to change "Commission's" to "Agency's."

§811.14. Noncooperation

Section 811.14(e) is amended to replace "TWIST" with "the TWC case management system."

SUBCHAPTER C. CHOICES SERVICES

TWC proposes the following amendments to Subchapter C:

§811.22. Assessment

Section 811.22(a)(1)(B) and (e) are amended to replace "GED" with "high school equivalency."

Section 811.22(b)(5) changes "substance abuse" to "substance use that impairs daily life" to align with the new universal needs assessment provided in the new case management system.

Section 811.22(e)(1)(B) is amended to replace "literacy level" with "functional educational level" to align with Human Resources Code, Title 2, Subtitle C, Chapter 31, Subchapter A, Section 31.0065(f)(1).

§811.30. Special Provisions for Teen Heads of Household

Section 811.30(a) and (b) are amended to replace "GED" with "high school equivalency."

SUBCHAPTER D. CHOICES ACTIVITIES

TWC proposes the following amendments to Subchapter D:

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential

Section 811.50 is amended to rename the section "Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a High School Equivalency Credential."

Section 811.50(a) is amended to replace "GED" with "high school equivalency."

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

TWC proposes the following amendments to Subchapter E:

§811.65. Wheels to Work

Section 811.65(a) is amended to change "Commission" to "Agency."

§811.66. General Educational Development Credential Testing Payments

Section 811.66 is amended to rename the section "High School Equivalency Credential Testing Payments."

Section 811.66 is amended to replace "GED" with "high school equivalency."

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045 does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to update rule language to conform with present terminology, update definitions to conform with federal rules, update TANF purposes to conform with federal regulations, and update Choices service strategies.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to align these rules with state and federal regulations, and current terminology and definitions.

PART IV. COORDINATION ACTIVITIES

In the development of the proposed rules for publication and public comment, TWC consulted the Texas Health and Human Services Commission via email in August 2023 and determined that no changes were needed relating to local-level memorandum of understanding requirements. Additionally, TWC conducted a conference call with Board executive directors and staff on December 8, 2023, to inform them of the proposed rule amendments and seek their input. TWC considered all information gathered in order to develop clear and concise rules.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than April 8, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§811.1 - 811.5

PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.1. Purpose and Goal.

(a) The purposes of Temporary Assistance for Needy Families (TANF), as set forth in Title IV, Social Security Act, §401 (42 USCA §601) are:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce incidences of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing these pregnancies; and [prevent and reduce the incidence of out-of-wedlock pregnancies; and]
- (4) encourage the formation and maintenance of two-parent families.

(b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. A Local Workforce Development Board (Board) may exercise flexibility in providing services to Choices-eligible individuals to meet this Choices goal. A Board is also provided the flexibility and may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services, which is employment and job retention.

(c) The Agency's goal [~~The goal of the Texas Workforce Commission (Commission)~~] is to ensure delivery of the employment and training activities as described in the TANF State Plan and the TANF Work Verification Plan.

(d) Boards shall identify the workforce needs of local employers and design Choices services to ensure that local employer needs are met and that the services are consistent with the goals and purposes of Choices services as referenced in this section, and as authorized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the applicable federal regulations at 45 CFR Parts 260 - 265, the TANF State Plan, the TANF Work Verification Plan, this chapter, and consistent with a Board's approved integrated workforce training and services plan as referenced in §801.17 of this title.

§811.2. Definitions.

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

(1) Applicant--An adult, or teen head of household, in a family who applies for TANF cash assistance, who previously did not leave TANF in a sanctioned status.

(2) Choices-eligible individual--An individual eligible to receive Choices services including an adult or teen head of household who is an applicant, conditional applicant, recipient, nonrecipient parent, former recipient, or sanctioned family as defined in this chapter.

(3) Choices participant--A Choices-eligible individual participating in or outreached for Choices services, including:

(A) Exempt Choices participant--A Choices-eligible individual who is not required under Texas Human Resources Code, Chapter 31 or Texas Health and Human Services Commission (HHSC) rules (1 TAC, Part 15, Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs) to participate in Choices services, but who may voluntarily participate in Choices services.

(B) Mandatory Choices participant--A Choices-eligible individual who is required under Texas Human Resources Code, Chapter 31 or HHSC rules (1 TAC, Part 15, Chapter 372) to participate in Choices services.

(4) Community service--A program that provides employment and training activities to Choices participants through unsalaried, work-based positions in the public or private nonprofit sectors. Community service programs contain structured, supervised activities that are a direct benefit to the community and are designed to improve the employability of Choices participants who have been unable to find employment.

(5) Conditional applicant--An adult or teen head of household who left TANF in a sanctioned status, but who is reapplying for TANF cash assistance and must demonstrate cooperation with Choices program requirements for four consecutive weeks.

(6) Earned Income Deduction (EID)--A standard work-related and income deduction, available for four months through HHSC.

(7) Employment Planning Session (EPS)--A meeting with a TANF recipient to introduce Choices services.

(8) Extended TANF recipient--A recipient who receives TANF cash assistance past the 60-month federal time limit because of a hardship exemption as defined in Texas Human Resources Code, Chapter 31 and HHSC rules (1 TAC, Part 15, Chapter 372).

(9) Former recipient--An adult or teen head of household who no longer receives TANF cash assistance because of employment.

(10) HHSC--Texas Health and Human Services Commission.

(11) Job readiness--Short-term structured activities or a series of activities lasting less than six months designed to prepare a job seeker for unsubsidized employment and increase the job seeker's employability. Activities may include, but are not limited to: interviewing skills, job retention skills, personal maintenance skills, professional conduct skills, and introductory computer skills.

(12) Job search--Acts of seeking or obtaining employment, or preparing to seek or obtain employment, including life skills training, substance abuse treatment, mental health treatment, or rehabilitation activities. Activities may include: information on and referral to available jobs; occupational exploration, including information on local emerging and demand occupations; job fairs; applying or interviewing for job vacancies; and contacting potential employers.

(13) Job skills training--Training or education for job skills required by an employer to provide a Choices participant with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.

(14) Nonrecipient parent--Adults or minor heads of household not receiving TANF cash assistance[;] but living with their own children who are receiving TANF cash assistance. Nonrecipient parents include parents who are not eligible for TANF cash assistance:

(A) due to a disqualification by HHSC [the Texas Health and Human Services Commission]. These disqualifications include parents who:

(i) refuse to comply with Medicaid third-party resource requirements;

(ii) do not comply with Social Security number requirements;

(iii) are found guilty of an intentional program violation;

(iv) fail to report the temporary absence of a certified child;

(v) are fugitives fleeing to avoid prosecution of, or confinement for, a felony criminal conviction, or are found by a court to be violating federal or state probation or parole;

(vi) are convicted of a felony drug offense (not deferred adjudication) committed on or after April 1, 2002; or

(vii) refuse to cooperate with the program integrity assessment process;

(B) because they are receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI); or

(C) because they have exhausted their TANF state time limit.

(15) PRWORA--The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.

(16) Recipient--An adult or teen head of household who receives TANF cash assistance.

(17) Sanctioned family--An adult or teen head of household who must demonstrate cooperation for one month in order to reinstate TANF cash assistance.

(18) Secondary school--Educational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a high school equivalency [GED] credential.

(19) TANF cash assistance--The cash grant provided through HHSC to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including ~~[the]~~ PRWORA, the TANF block grant statutes, the TANF State Plan, TANF cash assistance provided under Texas Human Resources Code, Chapters 31 and 34, and other related regulations.

(20) The TWC case management system [Workforce Information System of Texas (TWIST)]--~~The [the]~~ Agency's automated data processing and case management system for the Texas workforce system.

(21) Vocational educational training--Organized educational programs directly related to preparing Choices participants for employment in current or emerging occupations.

(22) Work-based services--Includes those employment programs defined in Texas Human Resources Code §31.0126.

(23) Work-eligible [Work eligible] individual--Work-eligible [Work eligible] individuals are adults or minor heads of household receiving TANF cash assistance, and nonrecipient parents living with a child receiving such assistance--with the following exceptions:

(A) Noncitizens who are ineligible to receive cash assistance because of their immigration status;

(B) Parents caring for a disabled family member who lives in the home (provided the need for such care is supported by medical documentation), on a case-by-case basis; ~~and]~~

(C) Recipients of SSI or SSDI, on a case-by-case basis; and[-]

(D) A minor parent who is not the head-of-household.

(24) Work experience--Unpaid training in the public or private sector designed to improve the employability of Choices participants who have been unable to find employment.

(25) Work ready--A Choices-eligible individual is considered work ready if he or she has the skills that are required by employers in the local workforce development area. A Board must ensure immediate access to the labor market to determine whether the Choices-eligible individual has those necessary skills to obtain employment.

(26) Work requirement--For the purposes of 42 USC §607 and 45 CFR §261.10, a Choices participant is deemed to be engaged in work by participating in:

(A) unsubsidized employment;

(B) subsidized employment;

(C) on-the-job training (OJT); or

(D) educational services for Choices participants who have not completed secondary school or received a high school equivalency [GED] credential as provided in §811.30 of this chapter.

§811.3. Choices Service Strategy.

(a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:

- (1) determine employers' needs;
- (2) determine emerging and demand occupations; and
- (3) identify employment opportunities, which include those with a potential for career advancement that may assist a Choices-eligible individual's progression toward self-sufficiency.

(b) The Choices service strategy shall include:

(1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants and conditional applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce.

(2) Work First Design.

(A) The work first design:

(i) allows Choices participants to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and

(ii) meets the needs of employers by linking Choices participants with skills that match those job requirements identified by the employer.

(B) Boards shall provide Choices participants access to other services and activities available through the One-Stop Service Delivery System [Network], which includes [the] WOA, to assist with employment in the labor market before certification for TANF cash assistance.

(C) Post-employment services shall be provided in order to assist a Choices participant's progress toward self-sufficiency as described in §811.4(a)(1) of this subchapter and §811.51 of this chapter.

(D) In order to assist a Choices-eligible individual's progress toward self-sufficiency:

(i) Boards shall provide Choices-eligible individuals who are employed, including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID, with information on available post-employment services; or

(ii) Boards may provide Choices-eligible individuals with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51 of this chapter.

(E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:

(i) employee post-employment education or training;

(ii) employee child care, transportation, or other support services available to obtain and retain employment; and

(iii) employer tax credits.

(F) Boards shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for TANF cash assistance.

(3) Post-Employment Services. A Board shall ensure that post-employment services are designed to assist Choices participants with job retention, career advancement, and reemployment, as defined in §811.51 of this chapter. Post-employment services are a continuum in the Choices service strategy to support a Choices participant's job retention, wage gains, career progression, and progression to self-sufficiency.

(4) Adult Services. A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.

(5) Teen Services. A Board shall ensure that services for teen heads of household shall include secondary school, as defined in §811.2(18) of this subchapter [~~§811.2(13)~~], and making the transition from school to employment, as described in §811.30 and §811.50 of this chapter.

(6) Choices-Eligible Individuals with Disabilities. A Board shall ensure that services for Choices-eligible individuals with disabilities include reasonable accommodations to allow the Choices-eligible individuals to access and participate in services, where applicable by law.

(7) Target Populations. A Board shall ensure that services are concentrated, as further defined in §811.4(d)(5) of this subchapter and §811.11(d) of this chapter, on the needs of recipients who [the following]:

(A) [recipients who] have six months or less remaining of their state TANF time limit, irrespective of any extension of time due to a hardship exemption;

(B) [recipients who] have 12 months or less remaining of their 60-month federal TANF time limit, irrespective of any extension of time due to a hardship exemption; and

(C) [recipients who] are extended TANF recipients.

(8) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery System [Network].

§811.4. Policies, Memoranda of Understanding, and Procedures.

(a) A Board shall establish policies regarding the following:

(1) A Choices service strategy, as defined in §811.3 of this subchapter, that coordinates various service delivery approaches to:

(A) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;

(B) use a work first design as referenced in §811.3(b)(2) of this subchapter to provide Choices participants access to the labor market; and

(C) assist former TANF recipients with job retention and career advancement in order to remain independent of TANF cash assistance;

(2) Limits on the amount of funds per Choices participant and the maximum duration for subsidized employment and OJT placements; and

(3) The methods and limitations for provision of work-related expenses.

(b) A Board may establish optional policies that:

(1) require the use of the Eligible Training Provider (ETP) statewide list [Certification System (ETPS)] and Individual Training Account (ITA) system [systems] as described in Chapter 840 [841] of

this title to provide training services [~~for Choices services~~] for Choices participants and paid for with TANF funds; and

(2) make post-employment services available to:

(A) former TANF recipients who are denied TANF cash assistance because of earnings; and

(B) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.

(c) A Board shall ensure that the following memoranda of understanding (MOUs) and collaborative partnerships are developed:

(1) Local-level MOUs with the appropriate agencies to serve Choices-eligible individuals with disabilities to maximize their potential for success in employment;

(2) A local-level MOU with HHSC for providing mental health and substance abuse services to Choices participants; and

(3) A collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.

(d) A Board shall ensure that procedures are developed:

(1) to ensure that job development services are available to Choices participants. These services include:

(A) contacting local employers or industry associations to request that job openings be listed with Workforce Solutions Offices[;] and other entities in the One-Stop Service Delivery System [~~Network~~] selected by the Board;

(B) identifying the hiring needs of employers;

(C) assisting an employer in creating new positions for Choices participants based on the job developer's and employer's analysis of the employer's business needs; and [~~or~~]

(D) finding opportunities with an employer for a specific Choices participant or a group of Choices participants;

(2) to ensure that job placement services are available to Choices participants. Job placement services shall include:

(A) identifying employers' workforce needs;

(B) identifying Choices participants who have sufficient skills and abilities to be successfully linked with employment; and

(C) matching the skills of the Choices participant pool to the hiring needs of local employers;

(3) to notify applicants and conditional applicants--in conjunction with HHSC--on the availability of regularly scheduled [~~Workforce Orientations for Applicants (WOAs)]~~ and alternative WOAs;

(4) to notify HHSC of applicants and conditional applicants who contacted a Workforce Solutions Office to request alternative WOAs;

(5) to ensure that services are concentrated on Choices-eligible individuals approaching their state or federal time limit, as identified in §811.3(b)(7)(A) and (B) of this subchapter. Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a Choices-eligible individual's ability to participate, and targeted job development; and

(6) to determine a family's inability to obtain child care.

(e) If a Board elects to establish one or more of the optional policies described in subsection (b) of this section, the Board must ensure that corresponding procedures are developed for those policies.

§811.5. Documentation, Verification, and Supervision of Work Activities.

(a) A Board shall ensure that all required information related to the documentation and verification of participation in Choices work activities, as described in this section, is documented in the TWC case management system [~~The Workforce Information System of Texas (TWIST)]~~.

(b) A Board shall ensure that all participation in Choices is verified and documented and that self-attestation is not allowed.

(c) For Choices work activities, as described in §§811.42, 811.43, 811.44, and 811.50 of this chapter, Boards shall ensure that all participation is verified and documented in the TWC case management system [~~TWIST~~] at least monthly.

(d) For educational services, as described in §811.50 of this chapter, for teen heads of household who have not completed secondary school or received a high school equivalency [~~GED~~] credential, Boards shall ensure that:

(1) good or satisfactory progress, as determined by the educational institution, is verified and documented in the TWC case management system [~~TWIST~~] at least monthly;

(2) all participation is supervised daily; and

(3) all participation is verified and documented in the TWC case management system [~~TWIST~~] at least monthly.

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

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SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

40 TAC §§811.11, 811.13, 811.14

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.11. Board Responsibilities.

(a) A Board shall ensure that:

(1) [~~the~~] WOA is offered frequently enough to allow applicants and conditional applicants to comply with the HHSC requirement

that gives applicants and conditional applicants 10 calendar days from the date of their eligibility interview to attend a WOA;

(2) during a regularly scheduled WOA or alternative WOA, applicants and conditional applicants are informed of:

(A) employment services available through the One-Stop Service Delivery System [Network] to assist applicants and conditional applicants in achieving self-sufficiency without the need for TANF cash assistance;

(B) benefits of becoming employed;

(C) impact of time-limited benefits;

(D) individual and parental responsibilities; and

(E) other services and activities, including education and training, available through the One-Stop Service Delivery System [Network], including services and referrals for services available to Choices-eligible individuals with disabilities;

(3) alternative WOAs are developed that allow applicants and conditional applicants with extraordinary circumstances to receive the information listed in paragraph (2) of this subsection;

(4) verification that applicants and conditional applicants attend a scheduled or alternative WOA is completed and HHSC is notified in accordance with HHSC rules (1 TAC, Part 15, Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs); and

(5) applicants and conditional applicants are provided with an appointment to develop a family employment plan (FEP).

(b) A Board shall ensure that:

(1) Choices services are offered to applicants who attend a WOA; and

(2) conditional applicants who attend a WOA are immediately scheduled to begin Choices services.

(c) A Board shall ensure that a Choices participant's eligibility is verified monthly.

(d) A Board shall ensure that all extended TANF recipients are outreached and offered the opportunity to participate in Choices activities.

(e) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to Choices-eligible individuals, including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving EID.

(f) A Board shall ensure that monitoring of Choices program requirements is ongoing and frequent, as determined by the Board, unless otherwise specified in this chapter, and consists of the following:

(1) ensuring receipt of support services;

(2) tracking and reporting all support services and entering them into the TWC case management system [TWIST] at least monthly;

(3) tracking and reporting actual hours of participation in Choices work activities, at least monthly, unless otherwise specified in this chapter;

(4) determining and arranging for any intervention needed to assist the Choices participant in complying with Choices program requirements; and

(5) ensuring that the Choices participant is progressing toward achieving the goals and objectives in the FEP.

(g) A Board shall ensure that:

(1) no fewer than four hours of training regarding family violence is provided to staff who:

(A) provide information to Choices-eligible individuals;

(B) request penalties or grant good cause; or

(C) provide employment planning or employment retention services; and

(2) Choices-eligible individuals who are identified as being victims of family violence are referred to an individual or an agency that specializes in issues involving family violence.

(h) A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices participants, including verification of participation hours, and data is entered into the TWC case management system [TWIST].

(i) A Board shall ensure that a referral program is developed to provide Choices-eligible individuals facing higher than average barriers to employment, as described in this chapter, with referrals to pre-employment and post-employment services offered by community-based and other organizations.

§811.13. Responsibilities of Choices Participants.

(a) A Board shall ensure that Choices participants comply with the provisions contained in this section.

(b) Choices participants shall:

(1) accept a job offer at the earliest possible opportunity;

(2) participate in or receive ancillary services necessary to enable Choices participants to work or participate in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;

(3) report actual hours of participation in Choices work activities, including hours of employment; and

(4) attend scheduled appointments.

(c) Within two-parent families, Choices participants shall participate in assessment and family employment planning sessions and assigned employment and training activities as follows:

(1) participate in Choices employment and training as specified in §811.25(b) - (c) of this chapter;

(2) comply with all requirements specified in the FEP; and

(3) sign a form that contains all the information identified in the Agency's [Commission's] Family Work Requirement form, as described in §811.24 of this chapter.

(d) Within single-parent families, Choices participants shall participate in assessment and employment planning sessions and assigned employment and training activities as follows:

(1) participate in Choices employment and training activities as specified in §811.25(a) of this chapter; and

(2) comply with all requirements specified in the FEP.

(e) A Board shall ensure that mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID:

(1) report to the Board actual hours of work, as defined in §811.34 of this chapter; and

(2) are provided with information on available post-employment services.

§811.14. *Noncooperation.*

(a) A Board shall ensure that cooperation by Choices participants is verified each month to ensure that the Choices participants:

(1) comply with Choices program requirements as set forth in the FEP, as described [specified] in §811.23 of this chapter; or

(2) have good cause as described in §811.16 of this subchapter [chapter].

(b) If Choices participants have not cooperated with Choices program requirements and do not have good cause, a Board shall ensure that:

(1) a penalty is requested for mandatory Choices participants; or

(2) Choices services and support services, except Commission-funded child care, are terminated for exempt Choices participants; and

(3) Choices child care is provided as needed, as specified in §809.45 of this title.

(c) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are made to contact a mandatory Choices participant prior to requesting a penalty to:

(1) determine the reason for noncooperation and whether good cause is applicable, as described in §811.16(c) of this subchapter;

(2) inform the mandatory Choices participant of:

(A) the violation[s] if good cause has not been determined;

(B) the right to appeal; and

(C) the necessary procedures to demonstrate cooperation.

(d) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are made to contact a sanctioned family and conditional applicants upon discovery of noncooperation during their demonstrated cooperation period to determine if good cause exists.

(e) A Board shall ensure that the reasonable attempts to contact a mandatory Choices participant are documented in the TWC case management system [TWIST].

(f) A Board shall ensure that:

(1) HHSC is notified of a mandatory Choices participant's failure to comply with Choices program requirements; and

(2) the notification of noncooperation is submitted as early as possible in the same month in which the noncooperation occurs.

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

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §811.22, §811.30

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.22. *Assessment.*

(a) A Board shall ensure that initial and ongoing assessments are performed to determine the employability and retention needs, including wage advancement and career development needs, of Choices participants as follows:

(1) An assessment is required for Choices participants who are:

(A) at least age 18; or

(B) heads of household, as determined by HHSC, who are not yet age 18, have not completed secondary school or received a high school equivalency [GED] credential, and are not attending secondary school.

(2) An assessment shall be provided to applicants who choose to participate in Choices services.

(3) Ongoing assessments shall be provided to former recipients who choose to participate in Choices services.

(b) Assessments shall include evaluations of strengths and potential barriers to obtaining and retaining employment, such as:

(1) skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;

(2) pre- and post-employment skills development needs to determine the necessity for job-specific training;

(3) unmet housing needs and whether those needs are a barrier to full participation in the workforce and progression to self-sufficiency;

(4) support services needs; and

(5) individual and family circumstances that may affect participation, including the existence of family violence, substance use that impairs daily life [abuse], mental health, or disability-related issues, as one of the factors considered in evaluating employability.

(c) A Board shall ensure that the assessment identifies Choices-eligible individuals with higher-than-average barriers to employment, as defined by the Board.

(d) A Board shall ensure that if the skills assessment indicates that a Choices participant requires job-specific training for placement in a job paying wages that equal or exceed the Board's identified self-sufficiency wage, the Board shall, to the extent funds are available and

to the extent allowed under this chapter, place the Choices participant in vocational educational training activities or job skills training activities that are designed to improve employment and wage outcomes and job retention.~~;~~ ~~and~~

(e) A Board shall ensure that ~~For~~ mandatory Choices participants who are at least age 18, or who are heads of household but are not yet age 18 and have not completed secondary school or received a high school equivalency [GED] credential and are not attending secondary school:

(1) The assessments shall also include evaluations of the mandatory Choices participants':

(A) vocational and educational skills, experience, and needs; and

(B) functional educational level [literacy level] by using a statewide standard literacy assessment instrument unless the Choices participants are mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID.

(2) A Board shall ensure that the grade-level results or other literacy information are provided to HHSC for use in determining the appropriateness of the initial state time-limit designation for TANF cash assistance as described in ~~the~~ Texas Human Resources Code §31.0065, relating to state time-limited benefits.

(f) Assessment Outcome. Assessments shall result in the development of a family employment plan, as described in §811.23 of this subchapter.

§811.30. Special Provisions for Teen Heads of Household.

(a) A Board shall ensure that teen heads of household who have not completed secondary school or received a high school equivalency [GED] credential are enrolled in educational activities as defined in §811.50 of this chapter.

(b) Teen heads of household who have not completed secondary school or received a high school equivalency [GED] credential count as engaged in work if they:

(1) maintain satisfactory attendance at a secondary school or the equivalent during months in which school is in session;

(2) participate in allowable activities, as described in §811.25 of this subchapter, during months in which school is not in session;

(3) participate in education directly related to employment for at least an average of 20 hours per week during the month; or

(4) participate in Choices employment and training activities as described [specified] in §811.25 of this subchapter.

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SUBCHAPTER D. CHOICES ACTIVITIES

40 TAC §811.50

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule makes changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a High School Equivalency [General Educational Development] Credential.

(a) Educational services are only available for Choices participants who have not completed secondary school or who have not received a high school equivalency [GED] credential.

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants who are age 20 and older for any of the following educational or other training services:

(1) secondary school, as defined in §811.2(18) of this chapter, when required as a prerequisite for employment;

(2) Adult Basic Education (ABE), language instruction, or literacy instruction; or

(3) other educational activities that [which] are directly related to employment.

(c) A Board shall ensure educational services related to employment directly provide education, knowledge, and skills for specific occupations, work settings, jobs, or job offers.

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

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SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §811.65, §811.66

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

§811.65. Wheels to Work.

(a) The Agency [~~Commission~~] may develop a Wheels to Work initiative in which local nonprofit organizations provide automobiles for Choices-eligible individuals who have obtained employment but are unable to accept or retain the employment solely because of a lack of transportation.

(b) A Board may, through local policies and procedures, establish services to assist Choices-eligible individuals who verify the need for an automobile to accept or retain employment by referring them to available providers.

(c) Persons or organizations donating automobiles under a Wheels to Work initiative shall receive a charitable donation receipt for federal income tax purposes.

§811.66. High School Equivalency [General Educational Development] Credential Testing Payments.

A Board shall ensure that the cost of high school equivalency credential [GED] testing and issuance [of the ~~credential~~] is paid through direct payments to the high school equivalency credential [GED] test centers and the Texas Education Agency for Choices participants referred for testing by a Board's provider of Choices services.

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

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CHAPTER 843. JOB MATCHING SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §843.2

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 843, relating to Job Matching Services:

Subchapter A. General Provisions, §843.2

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 843 rule change is to amend references to "Veteran Preference for Public Employment" to "Military Employment Preference" in accordance with changes to Texas Government Code Chapters 656 and 657 resulting from the passage of Senate Bill (SB) 1376 by the 88th Texas Legislature, Regular Session (2023).

SB 1376 expands the categories of eligibility for military employment preference, formerly known as "veterans preference." The expanded eligibility provides military employment preference to spouses of active members of the United States armed forces or Texas National Guard, as well as spouses of veterans where the spouse is the primary source of income for the household.

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has

conducted a rule review of Chapter 843, Job Matching Services, and any changes are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§843.2. Public Employer Requirements Regarding Veterans Preference

Section 843.2 is amended to change "veterans preferences" to "military employment preferences." The section title is also amended to change Public Employer Requirements Regarding Veterans Preference to Public Employer Requirements Regarding Military Employment Preference.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043.

The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend references to "Veteran Preference for Public Employment" to "Military Employment Preference" in accordance with changes to Texas Government Code resulting from passage of SB 1376 by the 88th Texas Legislature, Regular Session (2023).

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

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

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules /will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to expand the categories of eligibility for military employment preference, formerly known as "veterans preference." Specifically, the change provides that the spouse of a member of the United States armed forces or Texas National Guard serving on active duty qualifies for military employment preference. This preference will also be provided to the spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70 percent or on individual unemployability.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

SB 1376 amended Texas Government Code Chapter 656 and Chapter 657, making it necessary for TWC to update rules under Texas Administrative Code Chapter 843, Job Matching Services, accordingly.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than April 8, 2024.

PART VI. STATUTORY AUTHORITY

The rules are proposed under:

--Texas Government Code §657.009(c), which provides TWC with the authority to adopt rules to facilitate the exchange of employment information between state agencies and individuals entitled to military preference; and

--Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement changes made to Texas Government Code Chapters 656 and 657 by SB 1376 of the 88th Texas Legislature, Regular Session, (2023).

§843.2. *Public Employer Requirements Regarding Military Employment [Veterans] Preference.*

(a) A public entity or public work shall provide information to the Agency, as specified in Texas Government Code §657.009, regarding any open position subject to the military employment [veterans] preferences set forth in Texas Government Code Chapter 657 [as specified in Texas Government Code §657.009], unless specifically exempted under the state statute.

(b) A public entity or public work shall provide information by one or more of the methods indicated in §843.1(b)(1) - (3) relating to the Employer Postings of Job Openings and submit basic information regarding the opening to the Agency as soon as practical, including the following:

- (1) the name of the public entity;
- (2) the location where the job is to be performed including city and state;
- (3) a description of the job opening;
- (4) the minimum educational and work experience required for the position; and
- (5) contact information regarding the opening.

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