

PROPOSED RULES

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

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

The Public Utility Commission of Texas (commission) proposes rule amendments to §§27.21, 27.31, 27.65, 27.69, 27.81, 27.83, 27.85, 27.87, 27.89, 27.91, 27.93, 27.97, 27.99, 27.111, 27.113, 27.115, 27.117, 27.121, 27.123, 27.125, 27.127, 27.143, 27.145 and 27.161, of Chapter 27 Substantive Rules, Applicable to Administrative Services for consideration at the April 11, 2024 Open Meeting. The specific proposed amendments are detailed below.

Rule Review Stakeholder Recommendations

On August 4, 2023, commission staff filed a preliminary notice and request for comments in this project. No comments were received in response to the preliminary requests for comments. Based upon an internal review by commission staff, the commission proposes the following rule changes.

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §§27.21, relating to Commission Employee Training; 27.31, relating to Historically Underutilized Business Program; 27.65 relating to Definitions; 27.69 relating to Sovereign Immunity; 27.81 relating to Notice of Claim of Breach of Contract; 27.83 relating to Agency Counterclaim; 27.85 relating to Request for Voluntary Disclosure of Additional Information; 27.87 relating to Duty to Negotiate; 27.89 relating to Timetable; 27.91, relating to Conduct of Negotiations; 27.93 relating to Settlement Approval Procedures; 27.97, relating to Costs of Negotiation; 27.99, relating to Request for Contested Case Hearing; 27.111, relating to Mediation Timetable; 27.113, relating to Conduct of Mediation; 27.115, relating to Agreement to Mediate; 27.117, relating to Qualifications and Immunity of Mediator; 27.121, relating to Costs of Mediation; 27.123, relating to Settlement Approval Procedures; 27.125, relating to Initial Settlement Agreement; 27.127, relating to Final Settlement Agreement; 27.143, relating to Factors Supporting the Use of Assisted Negotiation Processes; 27.145, relating to Use of Assisted Negotiation Processes; 27.161, relating to Procedures for Resolving Vendor Protests.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

(1) the proposed rules will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal an existing regulation;

(7) the proposed rules will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rules will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Mr. Jay Stone, Program Administrator, Budget & Fiscal Oversight Division, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Stone has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be enhanced clarity on rules applicable to contracts and administrative services, and the amendment of rules that have become outdated. There will not be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed sections are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by Friday, May 17, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by Friday, May 17, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 55307.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §27.21

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Amended §27.21 is proposed under Texas Government Code Chapter 656, Subchapter C. §§656.041-656.104 which requires the commission to adopt rules relating to the eligibility of the commissioners and commission employees for training and education supported by the commission, and the obligations assumed by the commissioners and commission employees on receiving the training and education.

Amended §27.31 is proposed under Texas Government Code §2161.003, which requires the commission to adopt the Comptroller of Public Accounts rules for Historically Underutilized Businesses.

For rules relating to Negotiation and Mediation of Certain Contract Disputes under Chapter 27, Subchapter C

Texas Government Code Chapter 2260 and 2261, which relates to state agency contracting standards and oversight; Texas Government Code §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section which relates to the resolution of certain contract claims against the State of Texas; Civil Practices and Remedies Code Chapter 107 which governs resolutions granting permission to sue the State of Texas or a unit of state government; and Civil Practice and Remedies Code Chapter 154 which governs alternative dispute resolution procedures.

Amended §27.161 is proposed under Texas Government Code §2155.076, which requires the commission to develop and adopt protest procedures for vendors' protests concerning purchases that are consistent with the Texas Building and Procurement Commission rules on the same subject.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.21. Commission Employee Training.

(a) "Training," as used in this section, means instruction, teaching, or other education received by a commission employee that is not normally received by all commission employees and that is designed to enhance the ability of the employee to perform the employee's job.

(1) The term includes a course of study at an institution of higher education, as defined by Texas Education Code §61.003(8), if the commission spends money to assist the employee to meet the expense of the course of study or pays salary to the employee to undertake the course of study as an assigned duty.

(2) The term does not include instruction, teaching, or other education that is required either by state or federal law or that is determined necessary by the commission and offered to all commission employees performing similar jobs.

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

(e) Requirements for eligibility and participation in training must [shall] be in accordance with this section and the commission's current employee handbook.

(f) Permission to participate in training, including commission-sponsored training, must [shall] not in any way affect an employee's at-will status or constitute a guarantee of continued employment, nor will [shall] it constitute a guarantee or indication of future employment in a prospective position.

(g) Permission to participate in any training may be denied or withdrawn at the discretion of the commission's executive director for any reason, including[, ~~but not limited to,~~] a determination that participation may negatively impact the employee's job duties or performance.

(h) Permission to participate in any training may be contingent upon reasonable requirements set in writing in advance by the employee's supervisor. If pre-determined requirements are not met:

(1) Permission to participate or continue participating in the training may be denied or withdrawn; or [and/or]

(2) (No change.)

(i) For an authorized training program offered by an institution of higher education or a private or independent institution of higher education:

(1) the commission will [shall] only reimburse the tuition expenses for each [a] program course [course(s)] successfully completed by the employee at an accredited institution of higher education (including online courses or courses not credited towards a degree); and

(2) the commission's executive director must authorize the tuition reimbursement payment before the employee may be reimbursed.

(j) (No change.)

(k) The commission's executive director may require an employee who requests full or partial payment or reimbursement of tuition for training necessary to obtain a degree or certification to agree in writing before payment or reimbursement is made to pay the commission for any amounts paid if the employee voluntarily leaves employment with the commission within one year after the training is completed.

(1) Amounts paid by the commission will [shall] be prorated to credit any full calendar month of employment following completion of the training.

(2) (No change.)

(l) - (n) (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 April 11, 2024.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322



SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES

16 TAC §27.31

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104;

Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.31. Historically Underutilized Business Program.

The commission adopts by reference the rules of the Comptroller of Public Accounts in 34 Texas Administrative Code (TAC) §§20.282, 20.284, 20.285, 20.296, and 20.297 [20.11, 20.13, 20.14, 20.26 and 20.27], relating to the Historically Underutilized Business Program.

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

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SUBCHAPTER C. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

DIVISION 1. GENERAL

16 TAC §27.65, §27.69

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.65. Definitions.

The following words and terms, when used in this subchapter, [shall] have the following meaning, unless the context clearly indicates otherwise:

(1) Chief administrative officer--The executive director of the commission or his or her [his/her] designee.

(2) - (4) (No change.)

(5) Counterclaim--A demand by the commission based upon the contractor's claim.

(6) Day--Calendar days, not working days, unless otherwise specified by this chapter [A calendar day. If an act is required

to occur on a day falling on a Saturday, Sunday, or holiday, the first working day which is not one of these days should be counted as the required day for purpose of this subchapter].

(7) Event--An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract:

(A) Examples of events in the context of a contract for goods or services include:

(i) - (vi) (No change.)

(B) - (C) (No change.)

(8) Mediation--A voluntary form of dispute resolution in which an impartial person facilitates communication between parties to promote negotiation and settlement of disputed issues.

(9) Working day--A day on which the commission is open for the conduct of business.

(10) [(8)] Goods--Supplies, materials or equipment.

(11) [(9)] Parties--The contractor and the commission that have entered into a contract in connection with which a claim of breach of contract has been filed under this subchapter.

(12) [(10)] Project--As defined in Texas Government Code §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.

(13) [(11)] Services--The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of the commission.

(14) [(12)] Unit of state government or unit--The state or an agency, department, commission (including the Public Utility Commission), bureau, board, office, council, court, or other state entity that is in any branch of state government that is created by the Texas Constitution, or statute of this state, including a university system or institution of higher education. The term does not include:

(A) a county;

(B) municipality;

(C) court of a county or municipality;

(D) special purpose district; or

(E) other political subdivision of the state.

§27.69. *Sovereign Immunity.*

This subchapter does not waive the commission's sovereign or governmental immunity to suit or liability.

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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DIVISION 2. NEGOTIATION OF CONTRACT DISPUTES

16 TAC §§27.81, 27.83, 27.85, 27.87, 27.89, 27.91, 27.93, 27.97, 27.99

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.81. *Notice of Claim of Breach of Contract.*

(a) A contractor asserting a claim of breach of contract under the Texas Government Code, Chapter 2260, must [shaH] file notice of the claim as provided by this section.

(b) The notice of claim must [shaH]:

(1) be in writing and signed by the contractor or the contractor's authorized representative;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the officer of the commission designated in the contract to receive a notice of claim of breach of contract under the Texas Government Code, Chapter 2260; if no person is designated in the contract, the notice must [shaH] be delivered to the commission's chief administrative officer, and

(3) (No change.)

(c) (No change.)

(d) The notice of claim must [shaH] be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim[; provided, however, that a contractor shall deliver notice of a claim that was pending before the commission on August 30, 1999, to the commission no later than February 26, 2000].

§27.83. *Agency Counterclaim.*

(a) The commission asserting a counterclaim under the Texas Government Code, Chapter 2260, will [shaH] file notice of the counterclaim as provided by this section.

(b) The notice of counterclaim will [shaH]:

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

(c) (No change.)

(d) The notice of counterclaim will shall be delivered to the contractor no later than 90 days after the commission's receipt of the contractor's notice of claim.

(e) (No change.)

§27.85. *Request for Voluntary Disclosure of Additional Information.*

(a) Upon the filing of a claim or counterclaim, a party parties may request to review and copy information in the possession or custody or subject to the control of the other party that pertains to the contract claimed to have been breached, including without limitation:

(1) (No change.)

(2) correspondence, including communications without limitation, correspondence between the commission and outside consultants the other party it utilized in preparing its bid solicitation or any part thereof or in administering the contract, and correspondence between the contractor and its subcontractors, materialmen, and vendors;

(3) (No change.)

(4) any relevant internal memoranda of the other party; and the parties' internal memoranda;

(5) documents created by the other party contractor in preparing its offer to the commission and documents created by the commission in analyzing the offers it received in response to a solicitation.

(b) Subsection (a) of this section applies to all information in the parties' possession regardless of the manner in which it is recorded, including without limitation, paper and electronic media.

(c) The contractor and the commission may seek additional information directly from third parties, including without limitation, the commission's third party consultants and the contractor's subcontractors.

(d) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under Texas or federal law.

(e) Material submitted under pursuant to this subsection and claimed to be confidential by the contractor must shall be handled in accordance with pursuant to the requirements of the Public Information Act, Texas Government Code, Chapter 552.

§27.87. *Duty to Negotiate.*

The parties must shall negotiate in accordance with the timetable established by set forth in §27.89 of this title (relating to Timetable) to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

§27.89. *Timetable.*

(a) Following receipt of a contractor's notice of claim, the chief administrative officer of the commission or other designated representative will shall review each claim of the contractor and each counterclaim of the commission the contractor's claim(s) and the commission's counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve each claim and counterclaim the claim(s) and counterclaim(s).

(b) Subject to subsection (c) of this section, the parties must shall begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:

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

(c) The commission may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

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

(d) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines prescribed by set forth in subsections (b) or (c) of this section, whichever is applicable.

(e) Subject to subsection (f) of this section, the parties must shall complete the negotiations that are required by this chapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days from the date after the commission received receives the contractor's notice of claim.

(f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the commission receives the contractor's notice of claim. The agreement must shall be signed by representatives of the parties with authority to bind each respective party and must shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(g) The contractor may request a contested case hearing before the State Office of Administrative Hearings (SOAH) in accordance with pursuant to §27.99 of this title (relating to Request for Contested Case Hearing) 270 days from the date after the 270th day after the commission received receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

(h) The parties may agree to mediate the dispute at any time before 270 days from the date the 270th day after the commission received receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties in accordance with pursuant to subsection (f) of this section. The mediation must shall be governed by Division 3 of this subchapter (relating to Mediation of Contract Disputes).

(i) Nothing in this section prohibits is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

§27.91. *Conduct of Negotiation.*

(a) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. A negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties, including without limitation, negotiation in person, by telephone, by digital or physical mail correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

(b) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation must shall be conducted in accordance with Division 3 of this subchapter (relating to Mediation of Contract Disputes). Parties may choose an assisted negotiation process other than mediation, including without limitation, processes such as those

described in Division 4 of this subchapter (relating to Assisted Negotiation Processes).

(c) To facilitate the meaningful evaluation and negotiation of each claim and, as applicable, each counterclaim ~~(the claim(s) and any counterclaim(s))~~, the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

(d) Material submitted under ~~[pursuant to]~~ this subsection and claimed to be confidential by the contractor must ~~[shall]~~ be handled in accordance with ~~[pursuant to]~~ the requirements of the Public Information Act, Texas Government Code, Chapter 552.

§27.93. Settlement Approval Procedures.

The parties' settlement approval procedures must ~~[shall]~~ be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties must ~~[shall]~~ select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§27.97. Costs of Negotiation.

Unless the parties agree otherwise, each party is ~~[shall be]~~ responsible for its own costs incurred in connection with a negotiation, including ~~;~~ ~~without limitation,~~ the costs of attorney's fees, consultant's fees and expert's fees.

§27.99. Request for Contested Case Hearing.

(a) A contractor may file a request with the commission for a contested case hearing before the State Office of Administrative Hearings (SOAH) if a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this subchapter 270 days from the date: ~~[If a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this subchapter on or before the 270th day after the commission receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §27.89(f) of this title (relating to Timetable), the contractor may file a request with the commission for a contested case hearing before the State Office of Administrative Hearings (SOAH).]~~

(1) the commission receives the notice of the claim; or

(2) the expiration of any extension agreed to by the parties in accordance with §27.89(f) of this title (relating to Timetable).

(b) A request for a contested case hearing must ~~[shall]~~ state the legal and factual basis for the claim, and must ~~[shall]~~ be delivered to the chief administrative officer of the commission or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to in accordance with ~~[pursuant to]~~ §27.89(f) of this title.

(c) The commission must ~~[shall]~~ forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.

(d) The parties may agree to submit the case to SOAH 270 days from the date ~~[before the 270th day after]~~ the notice of claim is received by the commission if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

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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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7322



DIVISION 3. MEDIATION OF CONTRACT DISPUTES

16 TAC §§27.111, 27.113, 27.115, 27.117, 27.121, 27.123, 27.125, 27.127

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.111. Mediation Timetable.

(a) The contractor and commission may agree to mediate the dispute at any time 270 days from the date ~~[before the 270th day after]~~ the commission receives a notice of claim of breach of contract, or before the expiration of any extension agreed to by the parties in writing.

(b) A contractor and the commission may mediate the dispute even after the case has been referred to the State Office of Administrative Hearings (SOAH) for a contested case. SOAH may also refer a contested case for mediation in accordance with ~~[pursuant to]~~ its own rules and guidelines, regardless of whether ~~[or not]~~ the parties have previously attempted mediation.

§27.113. Conduct of Mediation.

(a) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose their ~~[his/her]~~ own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(b) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009. ~~[For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.]~~

(c) To facilitate a meaningful opportunity for settlement, the parties must ~~[shall]~~, to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

§27.115. Agreement to Mediate.

(a) (No change.)

(b) Any agreement to mediate must [should] include consideration of the following factors:

(1) The source of the mediator. Potential sources of mediators include governmental officers or employees who are qualified as mediators under Civil Practice and Remedies Code, §154.052, private mediators, the State Office of Administrative Hearings (SOAH), the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Civil Practice and Remedies Code, Chapter 152, or another state or federal agency or through a pooling agreement with several state agencies. Before naming a mediator source in a contract, the parties must [will] contact the mediator source to be sure that it is willing to serve in that capacity. In selecting a mediator, the parties must [will] use the qualifications set forth in subsection §27.117 of this title (relating to Qualifications and Immunity of the Mediator).

(2) The time period for the mediation. The parties must [will] allow enough time in which to make arrangements with the mediator and attending parties to schedule the mediation, to attend and participate in the mediation, and to complete any settlement approval procedures necessary to achieve final settlement. While this time frame can vary according to the needs and schedules of the mediator and parties, it is important that the parties allow adequate time for the process.

(3) The location of the mediation, including whether the mediation will be held in-person or through a digital medium.

(4) Allocation of costs of the mediator.

(5) The identification of each representative [representatives] who will attend the mediation on behalf of the parties, if possible, by name or position within the commission or contracting entity.

(6) (No change.)

§27.117. *Qualifications and Immunity of the Mediator.*

(a) The mediator must [shall] possess the qualifications required under Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053, and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable.

(b) The parties must [will] decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(c) The parties must [will] obtain from the prospective mediator the ethical standards that will govern the mediation.

§27.121. *Costs of Mediation.*

Unless the contractor and the commission agree otherwise, each party is [shall be] responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees, and consultant or expert fees. The costs of the mediation process itself must [shall] be divided equally between the parties.

§27.123. *Settlement Approval Procedures.*

The parties prior to the mediation must [shall] disclose the parties' settlement approval procedures. To the extent possible, the parties must [shall] select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§27.125. *Initial Settlement Agreement.*

Any settlement agreement reached during the mediation must [shall] be signed by the representatives of the contractor and the commission.

The agreement [; and] must describe any procedures required to be followed by the parties in connection with final approval of the agreement.

§27.127. *Final Settlement Agreement.*

(a) A final settlement agreement reached during[;] or as a result of mediation[;] that resolves an entire claim or any designated and severable portion of a claim must be: [shall]

(1) [be] in writing; and

(2) signed by representatives of the contractor and the commission who have authority to bind each respective party.

(b) If the settlement agreement does not resolve all issues raised by each [the] claim and, as applicable, each counterclaim, the agreement must [shall] identify each issue that is [the issues that are] not resolved.

(c) (No change.)

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7322



DIVISION 4. ASSISTED NEGOTIATION PROCESSES

16 TAC §27.143, §27.145

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.143. *Factors Supporting the Use of Assisted Negotiation Processes.*

The following factors may help parties decide whether one or more assisted negotiation processes could help resolve their dispute:

(1) (No change.)

(2) The expense of proceeding to contested case hearing at the State Office of Administrative Hearings [(SOAH)] is substantial and may [might] outweigh any potential recovery.

- (3) The parties seek [~~want~~] an expedited resolution of the dispute.
- (4) The ultimate outcome of the dispute is uncertain.
- (5) - (7) (No change.)
- (8) There is an existing [~~on-going~~] relationship [~~that exists~~] between the parties.
- (9) - (13) (No change.)

§27.145. *Use of Assisted Negotiation Processes.*

Any of the following methods, or a combination of these methods, or any assisted negotiation process agreed to by the parties, may be used in seeking resolution of disputes or other controversy arising under Texas Government Code, Chapter 2260. If the parties agree to use an assisted negotiation procedure, they must [~~should~~] agree in writing to a detailed description of the process prior to engaging in the process.

- (1) (No change.)
- (2) Early evaluation by a neutral third-party [~~neutral~~].
 - (A) - (C) (No change.)
- (3) Neutral fact-finding by an expert.
 - (A) (No change.)

(B) The parties may agree in writing that the fact-finding will be binding on them in later proceedings [~~and, if the matter proceeds to contested case hearing~~, entered into as a stipulation in the dispute [~~if the matter proceeds to contested case hearing~~]], or that it will be advisory in nature, to be used only in further settlement discussions between representatives of the parties. This process may be particularly helpful when:

- (i) - (iii) (No change.)
- (4) Mini-trial.
 - (A) - (B) (No change.)

(C) At the hearing, representatives of the parties present a summary of the anticipated evidence and any legal issues that must be decided before the case can be resolved. The third-party neutral presides over the presentation and may question witnesses and counsel, as well as comment on the arguments and evidence. Each party may agree to put on abbreviated direct and cross-examination testimony. [~~The hearing generally takes no longer than one - two days.~~]

- (D) - (E) (No change.)

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

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Rules Coordinator

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SUBCHAPTER D. VENDOR PROTESTS

16 TAC §27.161

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.161. *Procedures for Resolving Vendor Protests.*

(a) Definitions. The following words and terms, when used in this subchapter, [~~shall~~] have the following meaning unless the context clearly indicates otherwise.

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

(3) Interested parties - All vendors who have submitted bids or proposals for the provision of goods or services in accordance with [~~pursuant to~~] a solicitation for a contract with the commission.

(b) Protest procedures. Any actual or prospective bidder, offeror [~~offerer~~], proposer or contractor who considers himself to have been aggrieved in connection with the commission's solicitation, evaluation, or award of a contract may formally protest to the purchasing officer. Such protests must be made in writing and received by the purchasing officer within ten working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. Protests must conform to the requirements of this subsection and subsection (d) of this section, and must [~~shall~~] be resolved through use of the procedures that are described in subsections (e) - (j) of this section. The protesting party must [~~shall~~] mail or deliver copies of the protest to the purchasing officer and other interested parties.

(c) Stay of contract award. In the event of a timely protest under this section, the commission will [~~shall~~] not proceed further with the solicitation or award of the contract unless the executive director, after consultation with the purchasing officer and the general counsel, makes a written determination that the contract must be awarded without delay, to protect the best interests of the commission.

(d) Protest requirements. A protest must be sworn and contain:

- (1) (No change.)

(2) a specific description of each action by the commission that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified in accordance with [~~pursuant to~~] paragraph (1) of this subsection;

- (3) - (6) (No change.)

(e) Purchasing officer's role and responsibilities. The purchasing officer will [~~shall~~] conduct a review of issues raised by the protesting parties and will [~~shall~~] have the following role and responsibilities in resolving the protest issues among the parties:

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

(4) If the purchasing officer determines that no violation of statutory or regulatory provisions has occurred, then the purchasing officer must [~~shall~~] inform the protesting party, the executive director,

and other interested parties by letter that states the reasons for the determination.

(5) If the purchasing officer determines that a violation of any statutory or regulatory provisions may have occurred in a situation in which a contract has not been awarded, then the purchasing officer must [shall] inform the protesting party, the executive director, and other interested parties of that determination by letter that states the reasons for the determination and the appropriate remedy.

(6) If the purchasing officer determines that a violation of any statutory or regulatory provisions may have occurred in a situation in which a contract has been awarded, then the purchasing officer must [shall] inform the protesting party, the executive director, and other interested parties of that determination by letter that states the reasons for the determination. This letter may include a declaration that the contract is void.

(f) Appeal from purchasing officer determination. The protesting party may appeal a determination of a protest by the purchasing officer to the executive director of the commission. An appeal of the purchasing officer's determination must be in writing and received in the executive director's office no later than ten working days from [after] the date [on which] the purchasing officer issued [has sent] written notice of his determination. The scope of the appeal is [shall be] limited to a review of the purchasing officer's determination. The protesting party must [shall] mail or deliver to the purchasing officer and all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(g) Executive director review or reference of appeal. The executive director will [shall] confer with general counsel in the review of the matter appealed. The executive director may consider any documents that the commission staff or interested parties may have submitted. At the discretion of the executive director, the matter may be referred to the commissioners for their consideration in a regularly scheduled open meeting or the executive director may issue a written decision on the protest.

(h) Appeals referred to commission. The following requirements [shall] apply to a protest that the executive director has referred to the commissioners:

(1) The executive director will [shall] deliver copies of the appeal and any responses by interested parties to the commissioners.

(2) - (3) (No change.)

(4) The commissioners' determination of the appeal will [shall] be made on the record and reflected in the minutes of the open meeting, and will [shall] be final.

(i) Written determination of appeal. A determination issued either by the commissioners in open meeting, or in writing by the executive director, will [shall] be the final administrative action of the commission.

(j) Protest or appeal [Protest/appeal] not timely filed. A protest or appeal that is not filed timely will [shall] not be considered unless good cause for delay is shown or the executive director determines that an appeal raises issues that are significant to commission procurement practices or procedures in general.

(k) Document retention. The commission will [shall] maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the commission's retention schedule.

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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Adriana Gonzales

Rules Coordinator

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For further information, please call: (512) 936-7322



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §61.10, §61.110

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 61, §61.10 and §61.110, regarding the Combative Sports program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 61, implement Texas Occupations Code, Chapter 2052, Combative Sports.

Slap fighting is a novel combative sports discipline that is growing in popularity in the United States and internationally. The Department has determined that slap fighting meets the statutory definitions of a "combative sport" and "martial art" set out in Texas Occupations Code, Chapter 2052.

The proposed rules recognize slap fighting as a martial arts discipline. This formal recognition allows the Department to extend the licensure and bonding requirements in Texas Occupations Code, Chapter 2052, to promoters and contestants of slap fighting events.

The proposed rules add a definition in 16 TAC, Chapter 61, §61.10, to define the discipline of slap fighting. Additionally, the proposed rules add provisions to 16 TAC, Chapter 61, §61.110, to recognize that slap fighting is subject to the Department's regulatory authority. Lastly, the proposed rules allow contestants in slap fighting events to participate without gloves.

SECTION-BY-SECTION SUMMARY

The proposed rules add new §61.10(16) to add the definition of "slap fighting" and renumber the remaining definitions.

The proposed rules add new §61.110(d) to recognize slap fighting as a martial arts discipline, and to allow slap fighting contestants to compete without gloves.

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 will be an impact to state costs and revenues associated with enforcing or administering the proposed rules, but there are no foreseeable implications relating to costs or revenues of 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 will impose costs to the State of \$44,400 per fiscal year. These costs are calculated by multiplying the anticipated number of events per year by the cost of the anticipated number of contactors needed to adequately staff each event.

Mr. Couvillon has also determined that for each year of the first five fiscal years the proposed rules are in effect, there will be an increase of revenue to the State associated with enforcing or administering the proposed rules. The increase in revenue will be approximately \$160,000 per fiscal year, attributable to the gross receipts tax paid by the promoter for each event held, with 20 events per fiscal year anticipated. Revenue will also be generated through the license fees received from new contestants. The additional revenue from licenses issued in the first fiscal year would be \$6,100, with revenues of \$5,700 in each subsequent fiscal year.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit as the proposed rules will ensure the integrity and safety of slap fighting events. Gross receipts taxes generated from these events will also add to the state's revenue.

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.

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. 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, is 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 proposed rules expand an existing regulation by including slap fighting as a recognized combative sport.
7. The proposed rules increase the number of individuals subject to the rules' applicability. The proposed rules increase the number of individuals subject to the rule's applicability by recognizing slap fighting as a combative sport and thus making the rules applicable to those who participate in slap fighting.
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 Shamica Mason, 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 2052, 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 2052. No other statutes, articles, or codes are affected by the proposed rules.

§61.10. Definitions.

The following words and terms have the following meanings:

- (1) - (15) (No change.)
- (16) Slap Fighting--A combative sport in which contestants take turns striking each other in the face with an open hand.
- (17) [(46)] Technical Zone--An alcohol free area located between the ring and a department-approved barrier with access re-

stricted to designated medical personnel and equipment; working officials including, managers, ring officials, contestants, seconds, the promoter, promoter representatives and assignees, round card staff, department staff, assigned contract inspectors, authorized members of the media, authorized members of the event's sanctioning bodies, and security personnel; and regulatory oversight authorities.

(18) [(17)] Timekeeper--A person who is the official timer of the length of rounds/heats and the intervals between rounds/heats and counts when a contestant is down.

§61.110. *Martial Arts.*

(a) All full-contact martial arts are forms of a combative sport.

(b) All rules stated herein apply to martial art competitions with the exception of §§61.106, 61.107, 61.108, and 61.112, unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(c) If a contest or exhibition of a martial art is not conducted pursuant to §61.111 or §61.112 of these rules, it must be conducted pursuant to the official rules for the particular art, which must be filed with and approved by the Department. The sponsoring organization or promoter must file with and obtain permission of the Executive Director prior to holding the contest.

(d) Slap fighting is a martial arts discipline recognized by the Department. Rules for a slap fighting contest proposed under subsection (c) may allow contestants to compete without gloves.

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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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §75.110

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.110, regarding the Air Conditioning and Refrigeration Contractors Program. These proposed changes are referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 75, implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

The Air Conditioning and Refrigeration Contractor License Law, Texas Occupations Code, Chapter 1302, §1302.101(a), requires the Commission to adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards of the Uniform Mechanical Code and the International Mechanical Code. The codes define the standard of practice for air conditioning and refrigeration contracting and are used by Department staff to evaluate the mechanical integrity and proper

installation and service of air conditioning and refrigeration systems. Texas has also adopted the International Residential Code and the International Fuel Gas Code in accordance with Texas Occupations Code, Chapter 1301, Plumbers, §1301.255. The proposed rule amendments are necessary to align the program's regulations with these currently recognized national standards and to provide clarity and consistency for the Department's licensees.

The proposed rule updates the applicable code editions from 2018 to 2021 for the International Residential Code, International Mechanical Code, International Fuel Gas Code, and Uniform Mechanical Code.

Advisory Board Recommendations

The proposed rule was presented to and discussed by the Air Conditioning and Refrigeration Contractors Advisory Board at its meeting on March 27, 2024. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §75.110, Applicable Codes, subsection (a), to adopt the 2021 editions of the International Residential Code, International Mechanical Code, International Fuel Gas Code, and Uniform Mechanical Code.

The proposed rule amends §75.110, Applicable Codes, subsection (b), to state that the currently adopted code editions will remain in effect through August 31, 2024. Proposed subsection (b) states that air conditioning and refrigeration work permitted or started before September 1, 2024, may be performed in accordance with the 2018 edition of the applicable codes.

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 rule is in effect, there are no estimated additional costs or reductions in costs, and no estimated increase or loss in revenue, to state or local governments as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public will benefit from enhanced safety, product reliability, equipment compatibility, and energy efficiencies in enhancing the installation practices of air conditioning and refrigeration contractors and their technicians, while taking advantage of technical advances.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSED RULE

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there may be negligible economic costs to persons who are required to comply with it. Local governments adopt changes and updates to the codes on a timeline that is best for their specific needs and resources. Therefore, the State's adoption of the new codes, with

which most contractors are already required to comply, should not have an impact. For work in unincorporated areas that are subject to the State-adopted codes, the State adopts them one code-cycle (three years) after the codes' issuance to allow the industry, licensees, and the general public to become familiar with and prepare for any and all changes. Any additional minor cost increases for new technology requirements are expected to be offset by benefits from increased safety, product reliability, energy efficiency, and equipment compatibility going forward.

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

The Air Conditioning and Refrigeration Contractors Program regulates individuals who perform these services, some of whom could be categorized as small or micro-businesses. The Department anticipates that the adoption of the 2021 codes will not have any adverse economic effects on any small or micro-businesses because the majority of the new code requirements are consistent with the 2018 codes. Any costs will be minimal and will not have an overall effect on any business, regardless of its size.

The proposed rule has no anticipated adverse economic effect on rural communities because the rule adopting the revised codes will not decrease the availability of air conditioning and refrigeration services or increase the cost of those services. Additionally, for work in unincorporated areas that are subject to the State-adopted codes, the State adopts the updates one code cycle (three years) after the codes' issuance to allow the industry, licensees, and the general public to become familiar with any and all changes.

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

The proposed rule does 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 Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule expands an existing regulation in the sense that the rule adopts the 2021 code editions, which merely update some provisions of the 2018 editions of the codes. Therefore, the proposed rule modifies an existing regulation by changing

the versions of the codes with which individuals must comply. However, the proposed rule does not have an impact on government growth.

7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rule does 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 rule and the proposed rule 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. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rule 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 rule is proposed under Texas Occupations Code, Chapters 51 and 1302, 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 proposed rule is also proposed under Texas Occupations Code, Chapter 1301, Plumbers.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51, 1301, and 1302. No other statutes, articles, or codes are affected by the proposed rule.

§75.110. *Applicable Codes.*

(a) Effective September 1, 2024 [~~January 1, 2024~~], the commission adopts the following applicable codes as referenced in the Act and this chapter:

- (1) 2021 [~~2018~~] International Residential Code;
- (2) 2021 [~~2018~~] International Mechanical Code;
- (3) 2021 [~~2018~~] International Fuel Gas Code; and
- (4) 2021 [~~2018~~] Uniform Mechanical Code.

(b) The 2018 [~~2015~~] codes shall remain in effect through August 31, 2024 [~~December 31, 2020~~]. All air conditioning and refrigeration work permitted or started before September 1, 2024 [~~January 1, 2024~~], may be completed in accordance with the 2018 [~~2015~~] code editions.

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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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

The Texas Education Agency (TEA) proposes the repeal of §§102.1091, 102.1093, and 102.1095 and new §102.1091, concerning college and career readiness school models. The proposed revisions would repeal provisions related to Texas Science, Technology, Engineering, and Mathematics (T-STEM) Academies as a result of the sunset of T-STEM programs in June 2023 and would consolidate information related to Early College High School (ECHS) and Pathways in Technology Early College High School (P-TECH) into one new section. The proposed new section would update ECHS programmatic requirements to align with the requirements of Senate Bill (SB) 1887, 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 102.1091 defines early college terms and establishes requirements related to the application, operation, notification, evaluation, and authority of early college programs. Section 102.1095 defines P-TECH terms and provides requirements related to the application, operation, grants, incentives, evaluation, and authority of the P-TECH program.

The proposed revisions would repeal §102.1091 and §102.1095 and consolidate the definitions and programmatic requirements of ECHS and P-TECH programs into new §102.1091, College and Career Readiness School Models. The new rule would reflect revised ECHS and P-TECH programmatic blueprints released in June 2023. The revised blueprints align ECHS and P-TECH definitions and requirements, provide updated evaluation data indicators, and introduce a needs-improvement process. Specifically, the following provisions would be addressed.

Subsection (a) would include definitions related to ECHS and P-TECH programs as a result of new terms included in the ECHS and P-TECH revised blueprints.

Subsections (b)(2)-(4) would describe the different application processes for ECHS and P-TECH campuses based on the campus designation status.

Subsection (c) would establish the Needs Improvement campus designation status and needs-improvement processes for ECHS and P-TECH campuses.

Subsection (d) would include the notification process for P-TECH programs and add further detail on the notification processes for the new designation campus status as established in the ECHS and P-TECH 2023 blueprints.

Subsection (e) would add the program operation conditions for P-TECH programs and add further detail on ECHS and P-TECH operation requirements as outlined in the revised blueprints.

Subsection (f) would describe programs available to P-TECH campuses, including the P-TECH Year 5 and 6 programs.

Subsection (g) would add the evaluation criteria for P-TECH programs and update the evaluation criteria to be based upon ECHS and P-TECH outcomes-based measures, as established by the updated ECHS and P-TECH blueprints.

Subsection (h) would add P-TECH to factors resulting in the revocation of authority to operate a program.

In addition, the early college definitions would be updated to align with SB 1887, 88th Texas Legislature, Regular Session, 2023, which updated early college program requirements in TEC, §29.908.

Section 102.1093 provides definitions and programmatic requirements of the T-STEM program. The proposed revisions would repeal §102.1093 following the sunset of the T-STEM program in June 2023.

Finally, the subchapter title would be changed to Commissioner's Rules Concerning Postsecondary Preparation Programs.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and program, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation that adds definitions and requirements, provides updated evaluation data indicators, and introduces a needs-improvement process based on the revised ECHS and P-TECH programmatic blueprints released in June 2023. The proposed rulemaking would also repeal existing regulations to remove obsolete information related to the T-STEM program and to consolidate existing provisions into one new section.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal

is in effect, the public benefit anticipated as a result of enforcing the proposal would be to consolidate rules for ECHS and P-TECH to provide additional clarity and consistency of expectations for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact. Information related to students participating in T-STEM programs is no longer required to be reported.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins April 26, 2024, and ends May 27, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 26, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COLLEGE AND CAREER READINESS SCHOOL MODELS

19 TAC §§102.1091, 102.1093, 102.1095

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §29.553, which requires the commissioner of education to establish and administer the Pathways in Technology Early College High School (P-TECH) program; TEC, §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023, which establishes the Early College High School (ECHS) program; and TEC, §29.908(g), which permits the commissioner to adopt rules as necessary to administer the program.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §29.553 and §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023.

§102.1091. *Early College High Schools.*

§102.1093. *Designation of Texas Science, Technology, Engineering, and Mathematics Academies.*

§102.1095. *Pathways in Technology Early College High School.*

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 April 15, 2024.

TRD-202401578

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 26, 2024

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



SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING POSTSECONDARY PREPARATION PROGRAMS [COLLEGE AND CAREER READINESS SCHOOL MODELS]

19 TAC §102.1091

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §29.553, which requires the commissioner of education to establish and administer the Pathways in Technology Early College High School (P-TECH) program; TEC, §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023, which establishes the Early College High School (ECHS) program; and TEC, §29.908(g), which permits the commissioner to adopt rules as necessary to administer the program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.553 and §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023.

§102.1091. *College and Career Readiness School Models.*

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

(1) Benchmarks--The standards for program implementation that are included in the blueprints.

(2) Blueprint--The document that outlines the College and Career Readiness School Models (CCRSM) requirements, including benchmarks, design elements, artifacts, and outcomes-based measures.

(3) Business or industry partner--Employers who enter into a formal agreement with a Pathways in Technology Early College High School (P-TECH) to support work-based learning (WBL).

(4) Design elements--The processes, structures, or services within each benchmark that a CCRSM campus must fulfill.

(5) Designated campus--A CCRSM campus with six or more years of implementation that has met outcomes-based measures (OBMs) necessary for designation.

(6) Designated with Distinction campus--A CCRSM campus with seven or more years of implementation that has met Designated with Distinction OBMs.

(7) Early College High School (ECHS)--A school established under Texas Education Code (TEC), §29.908, that enables a student in Grade 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to combine high school courses and college-level courses. An ECHS program must provide for a course of study that, on or before the fifth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and either an applied or academic associate degree that is transferable toward a baccalaureate degree.

(8) Institution of higher education (IHE)--An institution of higher education has the meaning assigned by TEC, §61.003.

(9) Needs improvement campus--A CCRSM campus with six or more years of implementation that has not met OBMs necessary for designation.

(10) Optional Flexible School Day Program (OFSDP)--A program approved by the commissioner of education to provide flexible hours and days of attendance for eligible students in Grades 9-12, as

defined in §129.1027 of this title (relating to Optional Flexible School Day Program).

(11) Outcomes-based measures--The data indicators related to access, achievement, and attainment that a CCRSM campus is required to meet to achieve a status of Designated or Designated with Distinction.

(12) Pathways in Technology Early College High School--A school established under TEC, §29.553, that enables a student in Grades 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to combine high school and postsecondary courses. A P-TECH program must be open enrollment and provide for a course of study that, on or before the sixth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and an associate degree, a two-year postsecondary certificate, or an industry certification, and must include a work-based education program.

(13) Planning campus--A CCRSM campus with zero years of implementation.

(14) Provisional campus--A CCRSM campus with one to five years of implementation.

(15) School district--For the purposes of this section, the definition of school district includes an open-enrollment charter school.

(16) Work-based education program--Practical, hands-on activities or experiences through which a learner interacts with industry professionals in a workplace that may be an in-person, virtual, or simulated setting. Learners prepare for employment or advancement along a career pathway by completing purposeful tasks that develop academic, technical, and employability skills. A work-based education program is also known as work-based learning.

(b) Conditions for approval of CCRSM status.

(1) Conditions for approval of a Planning campus.

(A) Applicant eligibility. Any school district may submit a separate application on behalf of each campus it requests to be considered as a Planning campus.

(B) Application process. A school district must submit each application in accordance with the program application cycle (PAC) procedures determined by the commissioner.

(C) Planning campus timeline. A planning campus shall be eligible to apply for Provisional campus status after the mandatory planning year.

(2) Conditions for approval of a Provisional campus.

(A) Applicant eligibility. Any Planning campus or approved provisional campus may submit an application to be considered as a Provisional campus.

(B) Application process. Any Planning campus or approved Provisional campus must submit each application in accordance with the PAC procedures determined by the commissioner.

(C) Provisional campus timeline. A Provisional campus shall be eligible to apply to renew its status as a Provisional campus yearly for up to five years.

(3) Conditions for approval of a Designated campus.

(A) Applicant eligibility. A Provisional campus entering its fifth year of operation may submit an application on behalf of the campus it requests to be considered as a Designated campus.

(B) Application process. A prospective Designated campus must submit each application in accordance with the PAC procedures determined by the commissioner. Campuses must meet access, achievement, and attainment OBM criteria and implement all design elements in order to receive CCRSM Designated status.

(C) Designated campus timeline. A Designated campus shall be eligible to apply to renew its status as a Designated campus yearly.

(4) Conditions for approval of a Designated with Distinction campus.

(A) Applicant eligibility. A Designated campus may qualify for Designated with Distinction status in one or more of the following OBM distinction criteria areas beginning in its seventh year of operation:

(i) access;

(ii) achievement; and

(iii) attainment.

(B) Application process. A prospective Designated with Distinction campus must submit each application in accordance with the PAC procedures determined by the commissioner. The campus application in the PAC will serve as the Designated with Distinction application. Campuses must meet access, achievement, and attainment designated with distinction OBM criteria and implement all design elements in order to receive CCRSM Designated with Distinction status.

(C) Designated with Distinction campus timeline. A Designated with Distinction campus shall qualify to renew its status as a Designated with Distinction campus yearly.

(c) Needs Improvement and revocation of CCRSM status.

(1) Determination of CCRSM Needs Improvement status. If the conditions of approval for CCRSM Designated status are not met, including failure to meet the required OBM designated criteria, the CCRSM campus will be classified as a CCRSM Needs Improvement campus.

(2) Needs Improvement campus timeline. A Needs Improvement campus is required to remain in the Needs Improvement status for a period of three school years following campus notification of the Needs Improvement status. During the three years of Needs Improvement status, the campus is required to complete the PAC for Needs Improvement progress reports.

(3) Needs Improvement progress monitoring. During the three years of Needs Improvement status, the campus will receive targeted technical assistance at no cost to the CCRSM to improve OBMs.

(4) Fulfillment of CCRSM Needs Improvement requirements. Following completion of the three-year Needs Improvement period and upon successfully meeting the OBM designation criteria, the CCRSM will move out of the Needs Improvement status and into the Designated or Designated with Distinction status.

(5) Revocation of CCRSM status. Following completion of the mandatory three years of Needs Improvement status, if a CCRSM does not successfully meet the OBM designation criteria, the authorization of the campus as a CCRSM will be revoked and the campus will be removed from the CCRSM network.

(d) Notification timeline. TEA will notify each applicant of its selection or non-selection as a CCRSM Planning, Provisional, Designated, Designated with Distinction, or Needs Improvement campus. The designation notification will be sent no later than the summer fol-

lowing the submission of the campus application in the PAC. Campuses selected for Planning, Provisional, Designated, and Designated with Distinction status will be publicly identified on TEA's website and will be identified as such in designation status notification to the district and to the IHE partner listed in the CCRSM PAC. Campuses in Needs Improvement status will not be publicly identified but will be identified as Needs Improvement in the designation status notification sent to the district and to the IHE partner listed in the CCRSM PAC.

(e) Conditions of CCRSM program operation.

(1) As established under TEC, §29.908, an ECHS must:

(A) enable a student in Grade 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to provide for a course of study that enables a participating student to combine high school courses and college-level courses;

(B) allow participating students to complete high school and enroll in a program at an IHE that will enable a student to, on or before the fifth anniversary of a student's first day of high school, receive a high school diploma and either an applied or academic associate degree that is transferable toward a baccalaureate degree at one or more general academic teaching institutions, as defined by TEC, §61.003;

(C) include articulation agreements with colleges, universities, and technical schools in Texas to provide a participating student access to postsecondary educational and training opportunities at a college, university, or technical school; and

(D) provide a participating student flexibility in class scheduling and academic mentoring.

(2) As established under TEC, §29.553, a P-TECH must:

(A) be open enrollment and enable a student in Grade 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to combine high school courses and postsecondary courses;

(B) provide for a course of study that, on or before the sixth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and an associate degree, a two-year postsecondary certificate, or an industry certification and complete work-based training;

(C) include articulation agreements with colleges, universities, and technical schools in Texas to provide a participating student access to postsecondary educational and training opportunities at a college, university, or technical school;

(D) include a memorandum of understanding with regional business or industry partners to provide a participating student access to work-based training;

(E) include in each memorandum of understanding with a regional business or industry partner an agreement that the regional business or industry partner will give to a student who receives work-based training from the partner under the P-TECH program first priority in interviewing for any jobs for which the student is qualified that are available on the students' completion of the program; and

(F) provide a participating student flexibility in class scheduling and academic mentoring.

(3) The CCRSM must comply with all the requirements outlined in the CCRSM blueprints. If a CCRSM chooses to discontinue CCRSM operations, the CCRSM must ensure previously enrolled CCRSM students will have the opportunity to complete their course of

study. The CCRSM must notify TEA of its decision to discontinue operations and submit an official letter from the district superintendent with the district decision.

(4) A school district operating a CCRSM program must comply with all assurances included in the program application submitted through the PAC. If the CCRSM changes the location of the CCRSM, the CCRSM model, or the IHE partner outside of the PAC, the CCRSM must notify TEA of the change.

(5) CCRSM approval is valid for a maximum of one school year.

(6) The CCRSM program must be provided at no cost to CCRSM students. A student enrolled in a CCRSM program may not be required to pay for tuition, fees, or required textbooks for any coursework. The school district in which the student is enrolled shall pay for tuition, fees, and required textbooks, to the extent those charges are not waived by the IHE.

(7) P-TECH Year 5 and 6 students are not counted for accountability purposes.

(f) Programs available to an approved CCRSM.

(1) Approval as a CCRSM will allow a campus to access programs available to CCRSM programs.

(2) An approved CCRSM campus may access the OFSDP defined in §129.1027 of this title. An approved CCRSM campus is eligible for OFSDP but must apply separately in accordance with TEC, §29.0822, and procedures established by the commissioner.

(3) Approval as a P-TECH will allow a campus to access programs available to the P-TECH, including participation in a Year 5 and Year 6 P-TECH program.

(4) P-TECH Year 5 and 6 students are not counted for accountability purposes.

(g) Evaluation of a CCRSM program. Evaluation of the CCRSM program will occur through the PAC and using self-reported data provided by the campus to generate OBM data. Progress monitoring will also occur at the campus level through campus coaching provided through state-appointed technical assistance.

(h) Revocation of authority.

(1) The commissioner may deny renewal or revoke the authorization of a CCRSM program based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program OBM data;

(C) failure to meet performance standards specified in the application and/or CCRSM blueprints; or

(D) failure to provide accurate, timely, and complete information as required by TEA to evaluate the effectiveness of the CCRSM program.

(2) A decision by the commissioner to deny renewal or revoke authorization of a CCRSM is final and may not be appealed.

(3) The commissioner may impose sanctions on a school district as authorized by TEC, Chapters 39 and 39A, for failure to comply with the requirements of this section.

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

Filed with the Office of the Secretary of State on April 15, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 26, 2024

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



19 TAC §102.1097

The Texas Education Agency (TEA) proposes new §102.1097, concerning postsecondary preparation programs. The proposed new section would implement House Bill (HB) 8, 88th Texas Legislature, Regular Session, 2023, by establishing provisions for the Financial Aid for Swift Transfer (FAST) program.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 8, 88th Texas Legislature, Regular Session, 2023, established the FAST program to allow eligible students to enroll, at no cost to the student, in dual credit courses at participating institutions of higher education.

Proposed new §102.1097 would implement HB 8 by defining the requirements a school district must meet each school year to report educationally disadvantaged students for the purposes of the FAST program.

The proposal would add new subsection (a) to identify the purpose of the FAST program and new subsection (b) to include relevant definitions.

New subsections (c) and (d) would clarify the methods school districts and open-enrollment charter schools may use to determine student eligibility for the FAST program.

New subsection (e) would explain the relationship between the Community Eligibility Provision and determining individual student eligibility status.

New subsection (f) would establish the responsibility of school districts to obtain appropriate data needed from families to determine eligibility, verify information, and retain records.

New subsection (g) would state that the commissioner has the discretion to conduct an audit of data as it relates to the FAST program.

New subsection (h) would clarify that the eligibility of students participating in the FAST program would be based on Texas Student Data System Public Education Information Management System (TSDS PEIMS) data submissions.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and program, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation to establish student eligibility requirements; the responsibility of school districts to obtain appropriate data needed from families to determine eligibility, verify information, and retain records; and TSDS PEIMS reporting requirements.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with clarifications on the student eligibility of the FAST program. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact. Economically disadvantaged student indicators in TSDS PEIMS will be used.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins April 26, 2024, and ends May 27, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 26, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §28.0095(b), as added by House Bill 8, 88th Texas Legislature, Regular Session, 2023, which requires the Texas Education Agency and the Texas Higher Education Coordinating Board (THECB) to jointly establish the Financial Aid for Swift Transfer (FAST) program to allow eligible students to enroll, at no cost to the student, in dual credit courses at participating institutions of higher education. TEC, §28.0095(j), requires the commissioner and THECB to adopt rules as necessary to implement the FAST program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §28.0095(b) and (j), as added by House Bill 8, 88th Texas Legislature, Regular Session, 2023.

§102.1097. Financial Aid for Swift Transfer Program.

(a) Purpose. The Financial Aid for Swift Transfer (FAST) program is established to allow eligible students to enroll, at no cost to the student, in dual credit courses at participating institutions of higher education.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Dual credit course--A course offered for joint high school and junior college credit under Texas Education Code (TEC), §130.008, or another course offered by an institution of higher education for which a high school student may earn credit toward satisfaction of:

(A) a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree;

(B) a foreign language requirement at an institution of higher education;

(C) a requirement in the core curriculum, as that term is defined by TEC, §61.821, at an institution of higher education; or

(D) a requirement in a field of study curriculum developed by the Texas Higher Education Coordinating Board under TEC, §61.823.

(2) Institution of higher education--An institution of higher education has the meaning assigned by TEC, §61.003.

(c) Student eligibility. To be considered educationally disadvantaged, a student must meet the income requirements for eligibility under the National School Lunch Program (NSLP), authorized by 42 United States Code, §§1751, et seq. School districts and open-enrollment charter schools may use the following approved methods for determining student eligibility for the FAST program:

(1) parent certification, where the parent or guardian asserts meeting the income requirements for eligibility under this subsection;

(2) direct certification, where eligible children are certified for free meals without the need for a household application based on household participation in one or more federal assistance programs; or

(3) direct verification, where public records are used to verify a student's eligibility for free or reduced-price meals when verification of student eligibility is required.

(d) Student eligibility under an alternative method. School districts and open-enrollment charter schools with one or more campuses not participating in the NSLP may derive an eligible student count by an alternative method as determined by the Texas Education Agency (TEA).

(e) Community Eligibility Provision (CEP). School districts and open-enrollment charter schools with one or more campuses using the CEP must still determine each student's individual eligibility status under the income guidelines for the NSLP for purposes of the FAST program.

(f) Recordkeeping. School districts and open-enrollment charter schools that participate in the FAST program pursuant to this section are responsible for obtaining the appropriate data from families of potentially eligible students, verifying that information, and retaining records.

(g) Auditing procedures. TEA will conduct an audit of data submitted by school districts and open-enrollment charter schools that participate in the FAST program pursuant to this section at the discretion of the commissioner of education.

(h) Data source. The FAST program will be based on each eligible student submitted by school districts and open-enrollment charter schools in the Texas Student Data System Public Education Information Management System fall submission. An indicator must be submitted for every educationally disadvantaged student and each student coded with average daily attendance (ADA) eligibility, except those students who are homeless, not enrolled, or otherwise ineligible for ADA or who reside in a residential facility and whose parents live outside the district.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.46

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §133.46, concerning Hospital Billing.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §133.46 adds paragraph (2) in subsection (a), which requires a hospital to comply with the itemized billing requirements in HSC Chapter 185. The title of the section

is revised to "Billing Requirements." Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as removing short titles to statutes, formatting punctuation and capitalization, and spelling out "HHSC."

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§133.46. [~~Hospital~~] Billing Requirements.

(a) ~~Itemized statements. [A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with the Health and Safety Code (HSC), §311.002 (Itemized Statement of Billed Services).]~~

(1) A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with Texas Health and Safety Code (HSC) §311.002.

(2) A hospital shall comply with the itemized bill requirements under HSC §185.002.

(b) ~~Audits of billing. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with HSC [§] §311.0025(a) [(relating to Audits of Billing)].~~

(c) ~~Balance billing [Billing].~~

(1) A hospital may not violate a law that prohibits the hospital from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A hospital shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the hospital.

(d) ~~Complaint investigation procedures.~~

(1) A complaint submitted to the Texas Health and Human Services Commission's [HHSC's] Complaint and Incident Intake relating to billing must specify the patient for whom the bill was submitted.

(2) Upon receiving a complaint warranting an investigation, Texas Health and Human Services Commission (HHSC) [HHSC] shall send the complaint to the hospital requesting the hospital to conduct an internal investigation. Within 30 days of the hospital's receipt of the complaint, the hospital shall submit to HHSC:

(A) a report outlining the hospital's investigative process;

(B) the resolution or conclusions reached by the hospital with the patient, third party payor or complainant; and

(C) corrections, if any, in the hospital's policies or protocols which were made as a result of its investigative findings.

(3) In addition to the hospital's internal investigation, HHSC may also conduct an investigation to audit any billing and patient records of the hospital.

(4) HHSC shall inform in writing a complainant who identifies himself by name and address:

(A) of the receipt of the complaint;

(B) if the complainant's allegations are potential violations of the Act or this chapter warranting an investigation;

(C) whether the complaint will be investigated by HHSC;

(D) if the complaint was referred to the hospital for internal investigation;

(E) whether and to whom the complaint will be referred;

(F) of the results of the hospital's investigation and the hospital's resolution with the complainant; and

(G) of HHSC's findings if an on-site audit investigation was conducted.

(5) HHSC shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments which were not provided to the appropriate licensing agency.

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 April 10, 2024.

TRD-202401441

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



CHAPTER 135. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §135.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §135.4, concerning Ambulatory Surgical Center (ASC) Operation.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §135.4 adds subsection (n), which requires an ASC to comply with the itemized billing requirements in HSC Chapter 185. Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as deleting superfluous phrases, reorganizing paragraph (11)(B), adding "Texas" before a reference to a Texas statute, and deleting a lead-in phrase for consistency.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will expand existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §243.009, which requires HHSC to adopt rules for licensing of

ASCs; and HSC §243.010, which requires those rules to include minimum standards applicable to ASCs.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§135.4. Ambulatory Surgical Center (ASC) Operation.

(a) The ASC shall have a governing body that sets policy and assumes full legal responsibility for the total operation of the ASC.

(b) The governing body shall be responsible for assuring that medical staff bylaws are current and on file.

(c) The governing body shall address and is fully responsible, either directly or by appropriate professional delegation, for the operation and performance of the ASC. Governing body responsibilities include[; but are not limited to]:

(1) determining the mission, goals, and objectives of the ASC;

(2) assuring that facilities and personnel are adequate and appropriate to carry out the mission;

(3) establishing an organizational structure and specifying functional relationships among the various components of the ASC;

(4) adopting bylaws or similar rules and regulations for the orderly development and management of the ASC;

(5) adopting policies or procedures necessary for the orderly conduct of the ASC;

(6) assuring that the quality of care is evaluated and that identified problems are addressed;

(7) reviewing all legal and ethical matters concerning the ASC and its staff and, when necessary, responding appropriately;

(8) maintaining effective communication throughout the ASC;

(9) establishing a system of financial management and accountability that includes an audit appropriate to the ASC;

(10) developing, implementing, and enforcing a policy on the rights of patients;

(11) approving all major contracts or arrangements affecting the medical care provided under its auspices, including[; but not limited to;] those concerning:

(A) the employment of health care practitioners;

(B) an effective procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC[; The ASC shall have a written transfer agreement with a hospital or all physicians performing surgery at the ASC shall have admitting privileges at a local hospital];

(i) the ASC shall have a written transfer agreement with a hospital; or

(ii) all physicians performing surgery at the ASC shall have admitting privileges at a local hospital;

(C) the use of external laboratories;

(D) an effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services if laboratory, X-ray, and pharmacy services are not provided on site; and

(E) the provision of education to students and postgraduate trainees if the ASC participates in such programs;

(12) formulating long-range plans in accordance with the mission, goals, and objectives of the ASC;

(13) operating the ASC without limitation because of race, creed, sex, or national origin;

(14) assuring that all marketing and advertising concerning the ASC does not imply that it provides care or services which it is not capable of providing; and

(15) developing a system of risk management appropriate to the ASC including[; but not limited to]:

(A) periodic review of all litigation involving the ASC, its staff, and health care practitioners regarding activities in the ASC;

(B) periodic review of all incidents reported by staff and patients;

(C) review of all deaths, trauma, or adverse reactions occurring on premises; and

(D) evaluation of patient complaints.

(d) The governing body shall provide for full disclosure of ownership to the department.

(e) The governing body shall meet at least annually and keep such minutes or other records as may be necessary for the orderly conduct of the ASC.

(f) If the governing body elects, appoints, or employs officers and administrators to carry out its directives, the authority, responsibility, and functions of all such positions shall be defined.

(g) When a majority of its members are physicians, the governing body, either directly or by delegation, shall make (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges. When a majority of the members of the governing body are not physicians, the ASC's bylaws or similar rules and regulations shall specify a procedure for establishing medical review for the purpose of making (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges.

(h) The governing body shall provide (in a manner consistent with state law and based on evidence of education, training, and current competence) for the initial appointment, reappointment, and assignment or curtailment of privileges and practice for nonphysician health care personnel and practitioners.

(i) The governing body shall encourage personnel to participate in continuing education that is relevant to their responsibilities within the ASC.

(j) The governing body shall adopt, implement, and enforce written policies to ensure compliance with Texas Health and Safety Code[,] Chapter 324[; ~~Consumer Access to Health Care Information~~].

(k) The governing body shall adopt, implement, and enforce written policies to ensure compliance with applicable state laws.

(l) An ASC that performs abortions shall adopt, implement, and enforce a policy to ensure compliance with Texas Health and Safety Code[,] Chapters 245 and 171, Subchapters A and B [~~(relating to Abortion and Informed Consent)~~].

(m) An ASC shall comply with the following balance billing requirements. [~~Balance Billing.~~]

(1) An ASC may not violate a law that prohibits the ASC from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) An ASC shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the ASC.

(n) An ASC shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

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 April 10, 2024.

TRD-202401442

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



CHAPTER 137. BIRTHING CENTERS SUBCHAPTER D. OPERATIONAL AND CLINICAL STANDARDS FOR THE PROVISION AND COORDINATION OF TREATMENT AND SERVICES

25 TAC §137.39

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §137.39, concerning General Requirements for the Provision and Coordination of Treatment and Services.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §137.39 adds subsection (j), which requires a birthing center to comply with the itemized billing requirements in HSC Chapter 185. Other minor stylistic edits are

made to comply with current HHSC rulemaking guidelines, such as deleting the lead-in phrase in subsection (i) for consistency.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §244.009, which requires HHSC to adopt rules for licensing of birthing centers; and HSC §244.010, which requires those rules to include minimum standards applicable to birthing centers.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§137.39. General Requirements for the Provision and Coordination of Treatment and Services.

(a) A center shall develop, implement, and enforce policies for the provision and coordination of treatment and services.

(b) The center is responsible for all care provided to center clients on its licensed premises.

(c) A center and the client shall have a written agreement for services. The center shall obtain an acknowledgment of receipt of the agreement. The center shall comply with the terms of the agreement. The written agreement shall include[,] the following:

- (1) services to be provided;
- (2) who will provide the services; and
- (3) charges for services rendered.

(d) When services are provided through a contract, a center must assure that these services are also provided in a safe and effective manner. If a center utilizes independent contractors, there shall be a written agreement between such independent contractors (i.e., per hour, per visit) and the center. The agreement shall be enforced by the center and clearly designate:

- (1) that clients are accepted for care only by the center;
- (2) the services to be provided by both parties;
- (3) the necessity to conform to the Act, this chapter, and all applicable center policies, including personnel qualifications; and
- (4) the manner in which services will be coordinated and evaluated by the center.

(e) A center shall not commit an intentional or negligent act that adversely affects the health or safety of a client.

(f) A center must ensure that its licensed health care professionals practice within the scope of their practice and within the constraints of applicable state laws and regulations governing their practice and must follow the facility's written policies and procedures.

(g) A center may accept student midwives to provide them with clinical experience.

(h) If a center has a contract or agreement with an accredited school of health care to use their center for a portion of a student's clinical experience, those students may provide care under the following conditions.

(1) Students may be used in centers, provided the instructor gives classroom supervision and assumes responsibility for all student activities occurring within the center.

(2) A student may administer medications only if:

(A) on assignment as a student enrolled in [ef] their school of health care; and

(B) the birth attendant within their licensed scope of practice is on the premises and directly supervises the administration of medication by the student.

(3) Students shall not be considered when determining staffing needs required by the center.

(i) A center shall comply with the following balance billing requirements. [~~Balance Billing.~~]

(1) A center may not violate a law that prohibits the center from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A center shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the center.

(j) A center shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

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 April 10, 2024.

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Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



CHAPTER 139. ABORTION FACILITY
REPORTING AND LICENSING
SUBCHAPTER D. MINIMUM STANDARDS
FOR LICENSED ABORTION FACILITIES

25 TAC §139.60

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §139.60, concerning Other State and Federal Compliance Requirements.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §139.60 adds subsection (o), which requires an abortion facility to comply with the itemized billing requirements in HSC Chapter 185. Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as formatting punctuation, removing short titles to statutes, adding "Texas" before a reference to a Texas statute, removing a lead-in phrase in subsection (n) for consistency, and abbreviating "Code of Federal Regulations." The subsections are renumbered to account for the addition of a subsection.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies, and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §245.009, which requires HHSC to adopt rules for licensing of abortion facilities; and HSC §245.010, which requires those rules to include minimum standards to protect the health and

safety of a patient of an abortion facility and comply with HSC Chapter 171.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§139.60. Other State and Federal Compliance Requirements.

(a) A licensed abortion facility shall be in compliance with all state and federal laws pertaining to handling of drugs.

(b) A licensed abortion facility that provides laboratory services shall meet the Clinical Laboratory Improvement Amendments of 1988, 42 United States Code[;] §263a, Certification of Laboratories (CLIA 1988). CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(c) A licensed abortion facility shall ensure that its physicians comply with the Medical Practice Act, Texas Occupations Code[;] Chapters 151 - 160 and 162 - 165, while functioning in his or her capacity at or for the facility.

(d) A licensed abortion facility utilizing physician assistant services [~~the services of a physician assistant(s)~~] shall ensure that its physician assistants comply with the Physician Assistant Licensing Act, Texas Occupations Code[;] Chapter 204, while functioning in his or her capacity at or for the facility.

(e) A licensed abortion facility utilizing registered nurse services [~~the services of a registered nurse~~] shall ensure that its registered nurses comply with the Nursing Practice Act, Texas Occupations Code[;] Chapters 301 and 304, while functioning in his or her capacity at or for the facility.

(f) A licensed abortion facility utilizing licensed vocational nurse services [~~the services of a licensed vocational nurse(s)~~] shall ensure that its vocational nurses [~~nurse(s)~~] comply with the Nursing Practice Act, Texas Occupations Code[;] Chapters 301 and 304, while functioning in his or her capacity at or for the facility.

(g) A licensed abortion facility that provides pharmacy services shall obtain a license as a pharmacy if required by the Texas Pharmacy Act, Texas Occupations Code[;] Chapters 551 - 569.

(h) A licensed abortion facility shall comply with the following federal Occupational Safety and Health Administration requirements:

(1) 29 Code of Federal Regulations (CFR), Subpart E, §1910.38[; concerning emergency action plan] and §1910.39[; concerning fire prevention plans];

(2) 29 CFR [Code of Federal Regulations], Subpart I, §1910.132[; concerning general requirements for personal protective equipment];

(3) 29 CFR [Code of Federal Regulations], Subpart I, §1910.133[; concerning eye and face protection];

(4) 29 CFR [Code of Federal Regulations], Subpart I, §1910.138[; concerning hand protection];

(5) 29 CFR [Code of Federal Regulations], Subpart K, §1910.151[; concerning medical services and first aid];

(6) 29 CFR [Code of Federal Regulations], Subpart L, §1910.157[; concerning portable fire extinguishers];

(7) 29 CFR [Code of Federal Regulations], Subpart Z, §1910.1030[; concerning bloodborne pathogens]; and

(8) 29 CFR [Code of Federal Regulations], Subpart Z, §1910.1200, Appendices A - E[, concerning hazard communication (hazardous use of chemicals)].

(i) A licensed abortion facility shall not use adulterated or misbranded drugs or devices in violation of the Texas Health and Safety Code[;] §431.021. Adulterated drugs and devices are described in Texas Health and Safety Code[;] §431.111. Misbranded drugs or devices are described in Texas Health and Safety Code[;] §431.112.

(j) A licensed abortion facility shall not commit a false, misleading, or deceptive act or practice as that term is defined in the Deceptive Trade Practices-Consumer Protection Act, Business and Commerce Code[;] §17.46.

(k) A licensed abortion facility shall comply with the requirements of the Texas Family Code[;] §33.002[, relating to a Consent Form].

(l) A licensed abortion facility shall comply with the requirements of Texas Health and Safety Code[;] Chapter 171[, the Woman's Right to Know Act].

(m) A licensed abortion facility shall comply with the requirements of Texas Occupations Code[;] Chapter 102[, Solicitation of Patients].

(n) A licensed abortion facility shall comply with the following balance billing requirements. [Balance Billing.]

(1) A licensed abortion facility may not violate a law that prohibits the licensed abortion facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A licensed abortion facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the licensed abortion facility.

(o) A licensed abortion facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

(p) [(⊕)] A licensed abortion facility shall comply with human trafficking signage requirements in accordance with Texas Health and Safety Code §245.025 [(relating to Human Trafficking Signs Required)].

(q) [(⊕)] A licensed abortion facility shall not discriminate based on a patient's disability and shall comply with Texas Health and Safety Code Chapter 161, Subchapter S [(relating to Allocation of Kidneys and Other Organs Available for Transplant)].

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 April 10, 2024.

TRD-202401444

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



CHAPTER 229. FOOD AND DRUG SUBCHAPTER J. MINIMUM STANDARDS FOR NARCOTIC TREATMENT PROGRAMS

25 TAC §229.144

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §229.144, concerning State and Federal Statutes and Regulations.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §229.144 adds new subsection (d), which requires a narcotic treatment program (NTP) to comply with the itemized billing requirements in HSC Chapter 185. Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as removing superfluous phrases, adding "Texas" before references to Texas statutes, removing short titles to statutes, formatting punctuation and removing a lead-in phrase for consistency. Subsections are renumbered to account for the addition of a subsection.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §466.004, which authorizes HHSC to administer and enforce

rules to ensure the proper use of approved narcotic drugs in the treatment of persons with a narcotic drug dependency.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§229.144. State and Federal Statutes and Regulations.

(a) A permit holder shall assure that the narcotic treatment program (NTP) is in compliance with all State of Texas laws and rules regulating chemical dependency treatment facilities including ~~but not limited to,~~ the following laws: Texas Health and Safety Code ~~[,]~~ Chapters 464 and 466; the Medical Practice Act, Texas Occupations Code ~~[,]~~ Chapters 151-160 ~~[,]~~ and 162-165; the Nurse Practice Act, Texas Occupations Code ~~[,]~~ Chapter 301; the Texas Pharmacy Act, Texas Occupations Code ~~[,]~~ Chapters 551-566; and the Licensed Professional Counselor Act, Texas Occupations Code ~~[,]~~ Chapter 503.

(b) The permit holder shall assure the NTP is in compliance with Title 42, Code of Federal Regulations, Part 8, ~~[, titled, "Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction-"]~~ To the extent that the Code of Federal Regulation conflicts with these sections, these sections shall prevail.

(c) An NTP shall comply with the following balance billing requirements. ~~[Balance Billing-]~~

(1) An NTP may not violate a law that prohibits the NTP from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) An NTP shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 -21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the NTP.

(d) An NTP shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

(e) ~~[(d)]~~ All citations in these sections to statutes or regulations include those statutes or regulations as amended.

(f) ~~[(e)]~~ An NTP shall not discriminate based on a patient's disability and shall comply with Texas Health and Safety Code Chapter 161, Subchapter S ~~[(relating to Allocation of Kidneys and Other Organs Available for Transplant)].~~

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 April 10, 2024.

TRD-202401445

Karen Ray
Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 506. SPECIAL CARE FACILITIES

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §506.37

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §506.37, concerning Balance Billing.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §506.37 adds new subsection (b), which requires a special care facility (SCF) to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is updated to "Billing Requirements" and the section is reorganized for clarity.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural

communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §248.006, which requires HHSC to adopt rules establishing minimum standards for special care facilities.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§506.37. *[Balance] Billing Requirements.*

(a) A facility shall comply with the following balance billing requirements.

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) [(b)] A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

(b) A facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

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 April 10, 2024.

TRD-202401446

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



CHAPTER 507. END STAGE RENAL DISEASE FACILITIES

SUBCHAPTER D. OPERATIONAL REQUIREMENTS FOR PATIENT CARE AND TREATMENT

26 TAC §507.50

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §507.50, concerning Balance Billing.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §507.50 adds new subsection (b), which requires an end stage renal disease (ESRD) facility to

comply with the itemized billing requirements in HSC Chapter 185. The title of the section is updated to "Billing Requirements" and the section is reorganized for clarity.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, HSC §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; and HSC §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§507.50. *[Balance] Billing Requirements.*

(a) A facility shall comply with the following balance billing requirements. [A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.]

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

(b) A facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

[(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 -

21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies 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 April 26, 2024.

TRD-202401448

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §509.67

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §509.67, concerning Balance Billing.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §509.67 adds new subsection (b), which requires a freestanding emergency medical care (FEMC) facility to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is updated to "Billing Requirements" and the section is reorganized for clarity.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will expand existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§509.67. *[Balance] Billing Requirements.*

(a) A facility shall comply with the following balance billing requirements. [A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.]

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

(b) A facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

~~{(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies 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.

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Karen Ray

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CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.45

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §510.45, concerning Facility Billing.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §510.45 adds new paragraph (2) under subsection (a), which requires a private psychiatric hospital or crisis stabilization unit (CSU) to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is revised to "Billing Requirements." Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as removing short titles to statutes, formatting punctuation and capitalization, and spelling out "HHSC."

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

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

(8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC

§577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§510.45. *[Facility] Billing Requirements.*

(a) Itemized statements.

(1) A facility shall adopt, implement, and enforce a policy to ensure that the facility complies with Texas [the] Health and Safety Code (HSC) [§] §311.002 [~~relating to Itemized Statement of Billed Services~~].

(2) A facility shall comply with the itemized bill requirements under HSC §185.002.

(b) Audits of billing. A facility shall adopt, implement, and enforce a policy to ensure that the facility complies with HSC [§] §311.0025(a) [~~relating to Audits of Billing~~].

(c) Complaint investigation procedures.

(1) A complaint submitted to the Texas Health and Human Services Commission's [HHSC's] Complaint and Incident Intake relating to billing must specify the patient for whom the bill was submitted.

(2) Upon receiving a complaint warranting an investigation, Texas Health and Human Services Commission (HHSC) [HHSC] shall send the complaint to the facility requesting the facility to conduct an internal investigation. Within 30 days of the facility's receipt of the complaint, the facility shall submit to HHSC:

(A) a report outlining the facility's investigative process;

(B) the resolution or conclusions reached by the facility with the patient, third party payor, or complainant; and

(C) corrections, if any, in the policies or protocols which were made as a result of its investigative findings.

(3) In addition to the facility's internal investigation, HHSC may also conduct an investigation to audit any billing and patient records of the facility.

(4) HHSC may inform [in writing] a complainant who identifies themselves by name and address in writing of the receipt and disposition of the complaint.

(5) HHSC shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments which were not provided to the appropriate licensing agency.

(d) Balance billing [Billing].

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies 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.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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CHAPTER 511. LIMITED SERVICES RURAL HOSPITALS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §511.75

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §511.75, concerning Limited Services Rural Hospital Billing.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §511.75 adds subsection (c), which requires a limited services rural hospital (LSRH) to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is revised to "Billing Requirements." Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as removing short titles to statutes, spelling out "HHSC," and the section is renumbered for clarity.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will expand existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 be-

fore 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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §241.302(b), which provides that the Executive Commissioner of HHSC shall adopt rules to implement that section and establish minimum standards for LSRHs.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§511.75. *[Limited Services Rural Hospital] Billing Requirements.*

(a) A limited services rural hospital (LSRH) shall adopt, implement, and enforce a policy to ensure that the hospital complies with ~~the~~ Texas Health and Safety Code (HSC) §311.002 ~~[(relating to Itemized Statement of Billed Services)]~~.

(b) An LSRH shall adopt, implement, and enforce a policy to ensure that the LSRH complies with HSC §311.0025 ~~[(relating to Audits of Billing)]~~.

(c) An LSRH shall comply with the itemized bill requirements under HSC §185.002.

~~[(c) An LSRH may not violate a law that prohibits the hospital from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.]~~

(d) An LSRH shall comply with the following balance billing requirements. [An LSRH shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 Texas Administrative Code (TAC) Chapter 21, Subchapter OO (relating to Disclosures by Out-of-Network Providers) to the extent that subchapter applies to the LSRH.]

(1) An LSRH may not violate a law that prohibits the hospital from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) An LSRH shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO (relating to Disclosures by Out-of-Network Providers) to the extent that subchapter applies to the LSRH.

(e) A complaint submitted to the Texas Health and Human Services Commission's ~~[(HHSC's)]~~ Complaint and Incident Intake relating to billing must specify the patient for whom the bill was submitted.

(1) Upon receiving a complaint warranting an investigation, the Texas Health and Human Services Commission (HHSC) ~~[(HHSC)]~~ shall send the complaint to the LSRH and request the LSRH to conduct an internal investigation.

~~[(A) a report outlining the LSRH's investigative process;]~~

~~[(B) the resolution or conclusions reached by the LSRH with the patient, third party payor, or complainant; and]~~

~~[(C) corrections, if any, in the LSRH's policies or protocols that were made as a result of its investigative findings.]~~

(2) Within 30 days of the LSRH's receipt of the complaint, the LSRH shall submit to HHSC:

(A) a report outlining the LSRH's investigative process;

(B) the resolution or conclusions reached by the LSRH with the patient, third party payor, or complainant; and

(C) corrections, if any, in the LSRH's policies or protocols that were made as a result of its investigative findings.

(3) [(2)] In addition to the LSRH's internal investigation, HHSC may also conduct an investigation to audit any billing and patient records of the LSRH.

(4) [(3)] HHSC shall inform, in writing, a complainant who identifies him or herself by name and address:

(A) of the receipt of the complaint;

(B) if the complainant's allegations are potential violations of the Act or this chapter warranting an investigation;

(C) whether the complaint will be investigated by HHSC;

(D) if the complaint was referred to the LSRH for internal investigation;

(E) whether and to whom the complaint will be referred;

(F) of the results of the LSRH's investigation and the LSRH's resolution with the complainant; and

(G) of HHSC's findings if an on-site audit investigation was conducted.

(5) [(4)] HHSC shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments that were not provided to the appropriate licensing agency.

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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CHAPTER 564. TREATMENT FACILITIES FOR INDIVIDUALS WITH SUBSTANCE-RELATED DISORDERS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §564.28

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §564.28, concerning Balance Billing.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §564.28 adds new subsection (b), which requires a licensed chemical dependency treatment facility (CDTF) to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is updated to "Billing Requirements" and the section is reorganized for clarity.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule 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 rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will expand existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §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 rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HCR_PRU@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 24R004" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §464.009, which authorizes the Executive Commissioner to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§564.28. *[Balance] Billing Requirements.*

(a) A facility shall comply with the following balance billing requirements. [A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copay-

ment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.]

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

(b) A facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

[(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies 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.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§744.123, 744.605, 744.1301, 744.1309, 744.1311, 744.1403, 744.1901, 744.1907, 744.1911, 744.1913, 744.2601, 744.3351, 744.3401, 744.3411, and 744.3415; new §§744.1318, 744.3409, and 744.3410; and repeal of §744.1613.

BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding §341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

HHSC Child Care Regulation (CCR) is proposing new and amended rules in Chapter 744 that will (1) add definitions and requirements related to water safety, including (A) water safety training for employees, substitutes, volunteers, and contractors, and (B) the use of a personal flotation device for children who access swimming pools via their licensed child-care operation;

and (2) update references to bodies of water and wading pools to be consistent with HSC §341.0646(a). CCR is also proposing to repeal one rule that established a grandfather clause related to child to caregiver ratios and group sizes because the need for the grandfather clause has expired.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §744.123 (1) adds definitions for "body of water," "personal flotation device," "swimming pool," and "wading pool"; (2) updates the definition of "water activities" to remove the terms "splashing pools" and "bodies of water"; and (3) updates the numbering of the definitions accordingly.

The proposed amendment to §744.605 (1) moves requirements related to water activity participation to the end of the list of required admission information; (2) renumbers the rule accordingly; and (3) clarifies that if a child-care operation allows a child to access a swimming pool a parent is required to indicate at admission whether the child is (A) able to swim competently as defined by the American Red Cross, or (B) requires a personal flotation device because the child is unable to swim competently or is at risk of injury or death when swimming or otherwise accessing a body of water.

The proposed amendment to §744.1301 adds to the chart of training requirements for employees, caregivers, and directors (1) the word "safety" to the transportation training requirements to be consistent with the rule content for that training; and (2) a new water safety training requirement for a child-care operation that allows a child to access a swimming pool at or away from the operation. The chart specifies that the site director and program director or operation director and each employee who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed amendment to §744.1309 clarifies that water safety training is exclusive of the 15 clock hours of annual required training for caregivers and site directors.

The proposed amendment to §744.1311 clarifies that water safety training is exclusive of the 20 clock hours of annual required training for an operation director or a program director.

Proposed new §744.1318 adds a requirement for water safety training if a child-care operation allows a child to access a swimming pool at or away from the operation. The rule requires the training for each employee who accompanies a child to a swimming pool before the employee accompanies the child to a swimming pool and for each site director and program director or operation director. The rule also clarifies that water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

The proposed amendment to §744.1403 adds to the chart of training requirements for substitutes, volunteers, and contractors (1) the word "safety" to the transportation training requirements to be consistent with the rule content for that training; and (2) a new water safety training requirement for a child-care operation that allows a child to access a swimming pool at or away from the operation. The chart specifies that each substitute, volunteer, and contractor who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed repeal of §744.1613 deletes the rule as no longer necessary because the rule established a grandfather clause that is no longer necessary.

The proposed amendment to §744.1901 removes references to "splashing" in the rule title and within the rule.

The proposed amendment to §744.1907 (1) updates the rule title to reflect that a lifeguard must be on duty when children are swimming in 18 inches, rather than two feet, of water; and (2) updates language for better readability.

The proposed amendment to §744.1911 clarifies that each caregiver counted in the child to caregiver ratio for swimming in 18 inches or more of water must be able to swim and be prepared to do so in an emergency.

The proposed amendment to §744.1913 updates language for better readability.

The proposed amendment to §744.2601 (1) updates language for better readability; and (2) updates the list of vessels containing water that must be inaccessible to all children to (A) add wading pools, and (B) remove pools, ponds, and creeks as they are included in the definition of the previously listed "bodies of water."

The proposed amendment to §744.3351 updates the title of a cross-referenced subchapter.

The title of Subchapter O is updated to remove the term "splashing."

The proposed amendment to §744.3401 (1) updates the rule title; (2) updates the title of a rule reference; and (3) removes language indicating that a swimming pool has a depth of more than two feet of water.

Proposed new §744.3409 outlines the additional safety precautions a child-care operation must take for a child in care who is unable to swim competently or is at risk of injury or death when swimming. The rule requires the child-care operation to do the following before the child enters a swimming pool: (1) provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD); (2) ensure the child is wearing the PFD; and (3) ensure the PFD is properly fitted and fastened for the child.

Proposed new §744.3410 clarifies that a child-care operation is not required to provide a PFD to a child who is unable to swim competently or at risk of injury or death when swimming or ensure the child is wearing a PFD if (1) the child is actively participating in swim instruction or a competition; and (2) the child-care operation ensures the child is supervised in accordance with §744.1205 during the instruction or competition.

The proposed amendment to §744.3411 (1) removes the term "splashing" from the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; and (3) updates the title of a rule reference.

The proposed amendment to §744.3415 (1) updates the rule title; (2) updates language for better readability; (3) removes references to "lakes," "ponds," and "rivers" from the list of water bodies a child cannot swim in as they are included in the definition of a "body of water"; and (4) removes a reference to "wading pool" as a wading pool is not considered a "body of water".

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 and micro-businesses, but there will not be an adverse economic effect on rural communities.

Texas Government Code Chapter 2006 defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2022 CCR Data Book, there are approximately 1,460 School-Age Programs and Before and After-School Programs required to comply with the rules. CCR conducted a survey of licensed child-care operations in 2019 to determine which operations met the definition of a small or micro-business and only received a response rate of approximately 1.5 percent of School-Age Programs and 1.1 percent of Before and After-School Programs, which is not statistically significant. However, data in July 2020 indicated that approximately 36.7 percent (536 programs) were for profit. In addition, based on a survey conducted in 2010 approximately 98 percent of those programs (525 programs) have less than 100 employees and qualify as small businesses and approximately 68 percent of those small businesses (357 programs) have less than 20 employees and qualify as micro-businesses.

There is a projected economic impact on small businesses and micro-businesses from proposed §744.3409. This economic impact, however, is limited to child-care operations that offer children access to a swimming pool, either onsite or during field trips where water activities take place. Based on data collected in November 2023 for Fiscal Year 2022, 55 child-care operations have a swimming pool on the premises and 227 child-care operations offer water activities (to include swimming pools, wading pools, and sprinkler play). However, CCR does not have data regarding how many of these child-care operations are a small business or a micro-business. With regards to water activities, CCR does not collect data regarding the type of water activities a child-care operation provides or whether those activities take place onsite or during field trips. Although HHSC can assume the 55 operations with a pool on the premises that are a small business or a micro-business will be required to comply with the proposed rule, HHSC is unable to determine the number of child-care operations whose water activities include ac-

cess to a swimming pool during field trips. Therefore, HHSC does not have enough information to determine the total number of child-care operations operating as a small business or micro-business that will be required to comply with the proposed rule.

Section 744.3409 requires a child-care operation to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a swimming pool a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care operation depending on the number of enrolled children who are unable to swim competently or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care operations may choose to obtain PFDs through organizations that provide them at no cost. These factors, coupled with HHSC's inability to determine the number of child-care operations that offer access to a swimming pool during field trips, renders HHSC unable to determine economic costs for persons required to comply with the rule as proposed.

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 children who access swimming pools via their licensed child-care operation.

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 and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) improve the safety of children enrolled in child-care operations who access swimming pools; and (2) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the rules require child-care operations to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a body of water a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care operation depending on the number of enrolled children who are unable to swim or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care operations may choose to obtain PFDs through organizations that provide them at no cost. As a result, HHSC does not have sufficient information to determine economic costs for persons required to comply with the rules as proposed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R074" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §744.123

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.123. What do certain words and terms mean when used in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) **Activity plan**--A written plan that outlines the daily routine and activities in which a group of children will engage while in your care. The plan is designed to meet the children's cognitive, language, social, emotional, and physical developmental strengths and needs.

(2) **Activity space**--An area or room used for children's activities, including areas separate from a group's classroom.

(3) **Administrative and clerical duties**--Duties that involve the administration of an operation, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(4) **Admission**--The process of enrolling a child in an operation. The date of admission is the first day the child is physically present at the operation.

(5) **Adult**--A person 18 years old and older.

(6) **Age-appropriate**--Activities, equipment, materials, curriculum, and environment, including the child's assigned classroom, that are developmentally consistent with the developmental or chronological age of the child being served.

(7) **Attendance**--When referring to a child's attendance, the physical presence of a child at the operation on any given day or at any given time, as distinct from the child's enrollment in the operation.

(8) **Before or after-school program**--An operation that provides care before and after or before or after the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend pre-kindergarten through grade six.

(9) **Body of water**--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D (relating to Sanitation and Safety of Facilities Used by Public).

(10) [(9)] **Caregiver**--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in paragraph (16) [(45)] of this section and Subchapter D, Division 5 of this chapter (relating to Substitutes, Volunteers, and Contractors).

(11) [(10)] **Certified Child-Care Professional Credential**--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(12) [(11)] **Certified lifeguard**--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate is current, relevant to the type of water activity in which children will engage, and represents the type of training described.

(13) [(12)] **CEUs**--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(14) [(13)] **Child Development Associate Credential**--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(15) [(14)] **Clock hour**--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individu-

als, as specified in §744.1319(a) of this chapter (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §744.1319(a) and (b) of this chapter, or self-study training.

(16) [(15)] Contract service provider--A person or entity contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(17) [(16)] Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting with a hand or instrument, slapping, pinching, shaking, biting, or thumping a child.

(18) [(17)] Days--Calendar days, unless otherwise stated.

(19) [(18)] Director--An adult you designate to have daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards, rules, and laws. As this term is used in this chapter, a director may be an operation director, program director, or site director, unless the context clearly indicates otherwise.

(20) [(19)] Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the operation staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, all directors, and the owner, if the owner is ever on site at the operation or transports a child.

(21) [(20)] Enrollment--The list of names or number of children who have been admitted to attend an operation for any given period of time; the number of children enrolled in an operation may vary from the number of children in attendance on any given day.

(22) [(21)] Entrap--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(23) [(22)] Field trips--Activities conducted away from the operation.

(24) [(23)] Food service--The preparation or serving of meals or snacks.

(25) [(24)] Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(26) [(25)] Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(27) [(26)] Governing body--A group of persons or officers of a corporation or other type of business entity having ultimate authority and responsibility for the operation.

(28) [(27)] Grounds--Includes any parcel of land where the operation is located and any building, other structure, body of water, play equipment, street, sidewalk, walkway, driveway, parking garage, or parking lot on the parcel. Also referred to as "premises" in this chapter.

(29) [(28)] Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(30) [(29)] Hazardous materials--Any substance or chemical that is a health hazard or physical hazard as determined by the Environmental Protection Agency. Also referred to as "toxic materials" and "toxic chemicals" in this chapter.

(31) [(30)] Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(32) [(31)] Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(33) [(32)] High school equivalent--

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received homeschooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(34) [(33)] Individual activities--Opportunities for the child to work independently or to be away from the group but supervised.

(35) [(34)] Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(36) [(35)] Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(37) [(36)] Janitorial duties--Those duties that involve the cleaning and maintenance of the operation's building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(38) [(37)] Local sanitation official--A sanitation official designated by the city or county government.

(39) [(38)] Multi-site operations--Two or more operations owned by the same person or entity, but the operations have separate permits. These operations may have centralized business functions, record keeping, and leadership.

(40) [(39)] Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(41) [(40)] Nighttime care--Care given on a regular or frequent basis to children who are starting or continuing their night sleep, or to children who spend the night or part of the night at the operation between the hours of 9:00 p.m. and 6:00 a.m.

(42) [(41)] Operation--A person or entity offering a before or after-school program or school-age program that is subject to Licensing's regulation. An operation includes the grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program.

(43) [(42)] Operation director--A director at your operation who is not supervised by a program director. An operation that has an operation director cannot have a program director or a site director.

(44) [(43)] Owner--The sole proprietor, partnership, corporation, or other type of business entity who owns the operation.

(45) [(44)] Permit holder--The owner of the operation that is granted the permit.

(46) [(45)] Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your:

(A) Operation voluntarily closes;

(B) Operation must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Operation must close because its permit is automatically revoked according to Texas Human Resources Code §§42.048(e), 42.052(j), or 42.054(f).

(47) Personal flotation device (PFD)--A United States Coast Guard approved life jacket.

(48) [(46)] Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases heart rate and breathing rate.

(49) [(47)] Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in the vigorous physical activity.

(50) [(48)] Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(51) [(49)] Premises--See the term "grounds" and its definition in this section.

(52) [(50)] Program--The services and activities provided by an operation.

(53) [(51)] Program director--A director who oversees your program at multi-site operations and supervises a site director at each operation.

(54) [(52)] Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title.

(55) [(53)] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(56) [(54)] Sanitize--The use of a disinfecting product that provides instructions specific for sanitizing and is registered by the Environmental Protection Agency (EPA) to substantially reduce germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing or disinfecting, depending on the surface (paying attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children). If you use bleach instead of an approved disinfecting product, you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a bleach solution for at least two minutes;

(D) Rinsing with cool water only those items that children are likely to place in their mouths; and

(E) Allowing the surface or item to air-dry.

(57) [(55)] School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

(58) [(56)] School-age program--An operation that provides supervision and recreation, skills instruction, or skills training for at least two hours a day and three days a week to children who attend pre-kindergarten through grade six. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session.

(59) [(57)] Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(60) [(58)] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(61) [(59)] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(62) [(60)] Site director--A director who has on-site responsibility at a specific operation, but who is supervised by a program director.

(63) [(61)] Special care needs--A child with special care needs is a child who has:

(A) A chronic physical, developmental, behavioral, or emotional condition or a disability and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the

movement of large or small muscles, learning, talking, communicating, comprehension, emotional regulation, self-help, social skills, emotional well-being, seeing, hearing, and breathing; or

(B) A limitation due to an injury, illness, or allergy.

(64) [(62)] State or local fire authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors. Also referred to as "fire marshal" in this chapter.

(65) Swimming Pool--An artificial body of water with a water depth of more than 18 inches that is maintained or used expressly for public or private recreational purposes, swimming, diving, aquatic sports or activities, or therapeutic purposes.

(66) [(63)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(67) Wading pool--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D.

(68) [(64)] Water activities--Related to the use of swimming pools, [splashing pools,] wading pools, or sprinkler play[; or other bodies of water].

(69) [(65)] Weather permitting--Weather conditions that do not pose any concerns for health and safety, such as significant risk of frostbite or heat-related illness. This includes adverse weather conditions in which children may still play safely outdoors for shorter periods with appropriate adjustments to clothing and any necessary access to water, shade, or shelter.

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 April 12, 2024.

TRD-202401505

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

26 TAC §744.605

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.605. *What admission information must I obtain for each child?*

You must obtain at least the following information before admitting a child to the operation:

- (1) The child's name and birth date;
- (2) The child's home address and telephone number;
- (3) Date of the child's admission to the operation;
- (4) Name and address of parents [parent(s)];
- (5) Telephone numbers at which parents [parent(s)] can be reached while the child is in care;
- (6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;
- (7) Names and telephone numbers of persons other than a parent to whom the child may be released;
- (8) Permission for transportation, if provided, including any authorized pick-up and drop-off locations;
- (9) Permission for field trips, if provided;
- [(10) Permission for participation in water activities, if provided, including whether the child is able to swim without assistance;]
- (10) [(41)] Name, address, and telephone number of the child's physician or an emergency-care facility;
- (11) [(42)] Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;
- (12) [(43)] A statement of the child's special problems or special care needs, which must include:
 - (A) Any limitations or restrictions on the child's activities;
 - (B) Special care the child requires, including:
 - (i) Any reasonable accommodations or modifications;
 - (ii) Any adaptive equipment provided for the child, including instructions for how to use the equipment; and
 - (iii) Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; and
 - (C) Any medications prescribed for continuous, long-term use.
- (13) [(44)] The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;
- (14) [(45)] Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; [and]
- (15) [(46)] The child's allergies and a completed food allergy emergency plan for the child, if applicable; and[-]
- (16) Permission for participation in water activities, if provided. If you allow a child to access a swimming pool, the parent must also indicate whether the child:
 - (A) Is able to swim competently, as defined by the American Red Cross; or
 - (B) Requires a personal flotation device because the child is:

(i) Unable to swim competently, as defined by the American Red Cross; or

(ii) At risk of injury or death when swimming or otherwise accessing a body of water.

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 April 12, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT MENT

26 TAC §§744.1301, 744.1309, 744.1311, 744.1318

STATUTORY AUTHORITY

The amendments 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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new section affect Texas Government Code §531.0055 and HRC §42.042.

§744.1301. What are the training requirements for employees, caregivers, and directors?

(a) Employees, caregivers, and directors must complete the following training requirements.

Figure: 26 TAC §744.1301(a)

[Figure: 26 TAC §744.1301(a)]

(b) If a caregiver or employee does not yet have a current certificate in pediatric CPR, as required in (a)(4)(A) in Figure: 26 TAC §744.1301(a), at least one caregiver or employee with a current certificate must also be on the premises with the caregiver.

§744.1309. What areas of training must the annual training for caregivers and site directors cover?

(a) The 15 clock hours of annual training must:

(1) For a caregiver, be relevant to the age of the children for whom the caregiver provides care; or

(2) For a site director, be relevant to the age of the children for whom the operation provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to employees, children, and parents.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §744.2653 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) The remaining annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition, and physical activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular age group the caregiver is assigned;

(9) Planning developmentally appropriate learning activities; and

(10) Minimum standards and how they apply to the caregiver.

(f) At least three of the 15 required annual training hours must be instructor-led training. The remaining 12 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.

(g) The 15 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, pediatric first aid and pediatric CPR training, transportation safety training, water safety training, and high school child-care work-study classes.

§744.1311. *What areas of training must the annual training for an operation director or a program director cover?*

(a) The 20 clock hours of annual training must be relevant to the age of the children for whom the operation provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum;
- (4) Teacher-child interaction; and
- (5) Serving children with special care needs.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

- (1) Factors indicating a child is at risk for abuse or neglect;
- (2) Warning signs indicating a child may be a victim of abuse or neglect;
- (3) Procedures for reporting child abuse or neglect; and
- (4) Community organizations that have training programs available to employees, children, and parents.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

- (1) Emergency preparedness;
- (2) Preventing and controlling the spread of communicable diseases, including immunizations;
- (3) Administering medication, if applicable, including compliance with §744.2653 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);
- (4) Preventing and responding to emergencies due to food or an allergic reaction;
- (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
- (6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) An operation director or program director with:

- (1) Five or fewer years of experience as a designated operation director or program director must complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or
- (2) More than five years of experience as a designated operation director or program director must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

(f) The remainder of the 20 clock hours of annual training must be selected from the training topics specified in §744.1309(e) of this division (relating to What areas of training must the annual training for caregivers and site directors cover?).

(g) An operation director or program director may obtain clock hours or CEUs from the same sources as caregivers.

(h) A director may not earn training hours by presenting training to others.

(i) At least four of the required 20 annual training hours must come from instructor-led training. The remaining 16 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.

(j) The 20 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, pediatric first aid and pediatric CPR training, ~~and~~ transportation safety training, and water safety training.

§744.1318. *What additional training must an employee and director have if the operation allows a child to access a swimming pool at or away from the operation?*

(a) If the operation allows a child to access a swimming pool at or away from the operation, annual water safety training is required for:

- (1) Each employee prior to accompanying a child to a swimming pool; and
- (2) Each site director and program director or operation director.

(b) Water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

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

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Karen Ray

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For further information, please call: (512) 438-3269



DIVISION 5. SUBSTITUTES, VOLUNTEERS, AND CONTRACTORS

26 TAC §744.1403

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.1403. *What are the training requirements for substitutes, volunteers, and contractors?*

(a) Substitutes, volunteers, and contractors must complete the following training requirements.

Figure: 26 TAC §744.1403(a)

[Figure: 26 TAC §744.1403(a)]

(b) If a substitute, volunteer, or contractor who is counted in the child to caregiver ratio does not yet have a current certificate in pediatric CPR, as required in (a)(4)(A) in Figure: 26 TAC §744.1403(a), at least one caregiver or employee with a current certificate must also be on the premises with the substitute, volunteer, or contractor.

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SUBCHAPTER E. CHILD/CAREGIVER

RATIOS AND GROUP SIZES

DIVISION 2. CLASSROOM RATIOS AND

GROUP SIZES

26 TAC §744.1613

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The repeal affects Texas Government Code §531.0055 and HRC §42.042.

§744.1613. *Will I be given an opportunity to comply with changes in child/caregiver ratio and group sizes?*

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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DIVISION 5. RATIOS FOR WATER ACTIVITIES

26 TAC §§744.1901, 744.1907, 744.1911, 744.1913

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments affect Texas Government Code §531.0055 and HRC §42.042.

§744.1901. *Must I have additional caregivers for wading [~~splashing/wading~~] activities?*

You must comply with §746.2101 of this title (relating to Must I have additional caregivers for wading [~~splashing/wading~~] activities?).

§744.1907. *Must a certified lifeguard be on duty when children are swimming in more than 18 inches [~~two feet~~] of water?*

A [Yes. ~~When children are swimming in more than two feet of water,~~ a] certified lifeguard must be on duty at all times when children are swimming in more than 18 inches of water.

§744.1911. *Must persons who are counted in the child/caregiver ratio during swimming activities know how to swim?*

[Yes.] Each caregiver [~~person~~] included in the child/caregiver ratio for swimming in 18 inches [~~two feet~~] or more of water must be able to swim and must be prepared to do so in an emergency.

§744.1913. *May I include volunteers or child-care employees who do not meet minimum qualifications for caregivers in the child/caregiver ratio for water activities?*

You [Yes. ~~To meet the child/caregiver ratio for splashing/wading and swimming activities,~~ you] may include adult volunteers and employees of your operation who do not meet the minimum qualifications for caregivers specified in Subchapter D of this chapter (relating to Personnel) to meet the child/caregiver ratio for swimming and wading activities, provided that:

(1) You maintain at least the classroom child/caregiver ratios required in this subchapter with caregivers who do meet the minimum qualifications for caregivers;

(2) All persons included in the ratios for water activities must be able to swim and must be prepared to do so in an emergency; and

(3) You ensure compliance with all other minimum standards, including, but not limited to, standards relating to supervision, discipline, and guidance.

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 L. SAFETY PRACTICES DIVISION 1. SAFETY PRECAUTIONS

26 TAC §744.2601

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.2601. *What safety precautions must I take to protect children in my operation?*

All areas accessible to a child must be free from hazards including[, but not limited to,] the following:

- (1) Electrical outlets accessible to a child younger than five years old must have childproof covers or safety outlets;
- (2) 220-volt electrical connections within a child's reach must be covered with a screen or guard;
- (3) Air conditioners, electric fans, and heaters must be mounted out of all children's reach or have safeguards that keep any child from being injured;
- (4) Glass in sliding doors must be clearly marked with decals or other materials placed at children's eye level;
- (5) Play materials and equipment must be safe and free from sharp or rough edges and toxic paints;
- (6) Poisonous or potentially harmful plants must be inaccessible to all children;
- (7) All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside;
- (8) All bodies of water, wading pools [such as pools], hot tubs, [ponds, creeks,] birdbaths, fountains, buckets, and rain barrels must be inaccessible to all children; and

- (9) All televisions must be anchored, so they cannot tip over. A television may be anchored to a rolling cart, if [as long as] it is anchored in a way that the cart will not tip over.

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 N. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT DIVISION 6. INFLATABLES

26 TAC §744.3351

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.3351. *May I use inflatable active play equipment?*

You may use inflatable equipment both at and away from your operation if you follow these guidelines:

- (1) You use enclosed inflatables (such as bounce houses or moon walks) according to the manufacturer's instructions;
- (2) You use open inflatables (such as obstacle courses, slides, or games) according to the manufacturer's instructions; and
- (3) Inflatables that include water activity also comply with all applicable requirements in Subchapter O of this chapter [title] (relating to Swimming Pools, Wading [Wading/Splashing] Pools, and Sprinkler Play).

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 O. SWIMMING POOLS, WADING/SPLASHING POOLS, AND SPRINKLER PLAY

26 TAC §§744.3401, 744.3409 - 744.3411, 744.3415

STATUTORY AUTHORITY

The amendments and new sections 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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new sections affect Texas Government Code §531.0055 and HRC §42.042.

§744.3401. What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?

In addition to complying with the child/caregiver ratios specified in §744.1905 of this chapter [title] (relating to What are the child/caregiver ratios for swimming activities?) and other safety requirements specified in §744.1907 of this chapter [title] (relating to Must a certified lifeguard be on duty when children are swimming in more than 18 inches [two feet] of water?) and §744.1911 of this chapter [title] (relating to Must persons who are counted in the child/caregiver ratio during swimming know how to swim?), you must comply with the following safety precautions when any child uses a swimming pool [(more than two feet of water)] both at and away from your operation:

- (1) A minimum of two life-saving devices must be available;
- (2) One additional life-saving device must be available for each 2,000 square feet of water surface;
- (3) Drain grates must be in place, in good repair, and must not be able to be removed without using tools;
- (4) Pool chemicals and pumps must be inaccessible to any child;
- (5) Machinery rooms must be locked when any child is present;
- (6) Employees must be able to clearly see all parts of the swimming area;
- (7) The bottom of the pool must be visible at all times;
- (8) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in a pool; and
- (9) All indoor/outdoor areas must be free of furniture and equipment that any child could use to scale a fence or barrier or release a lock.

§744.3409. What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?

Before a child who is unable to swim competently or who is at risk of injury or death when swimming enters a swimming pool, you must:

- (1) Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- (2) Ensure the child is wearing the PFD; and
- (3) Ensure the PFD is properly fitted and fastened for the child.

§744.3410. Must I provide a personal flotation device (PFD) to a child in care who is unable to swim competently or who is at risk of injury or death when swimming when the child is participating in swim instruction or a competition?

You are not required to provide the child with a PFD or ensure the child is wearing the device if:

(1) The child is actively participating in swim instruction or a competition; and

(2) You ensure that the child is supervised in accordance with §744.1205 of this chapter (relating to What responsibilities does a caregiver have when supervising a child or children?) during the instruction or competition.

§744.3411. What are the safety requirements for wading pools?

(a) Wading [Wading/splashing] pools [(two feet of water or less)] at your operation must be:

- (1) Stored out of children's reach when not in use;
- (2) Drained at least daily and sanitized; and
- (3) Stored so they do not hold water.

(b) You must comply with the safety precautions specified in §744.3401 of this subchapter [title] (relating to What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?) when using wading [wading/splashing] pools away from your operation.

§744.3415. Can a child [children] in my care swim in a body of water other than a swimming pool[, such as a lake, pond, or river]?

You [No, you] must not allow a child [children] to swim in a [lake, pond, river, or a] body of water other than a swimming pool [or wading pool] that complies with the rules specified in this subchapter.

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 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §745.31 and §745.37; and new §§745.9051, 745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071, 745.9073, 745.9075, 745.9077, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, and 745.9097, in Texas Administrative Code, Title 26, Chapter 745, Licensing, Subchapter B, Child Care and Other Operations That We Regulate, and new Subchapter O, Psychiatric Residential Youth Treatment Facility.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 3121, 87th Legislature, Regular Session, 2021, which created Texas Health and Safety Code Chapter 577A, Psychiatric Residential Youth Treatment Facilities. Chapter 577A mandates HHSC Child Care Regulation (CCR) to create a voluntary process whereby a general residential operation (GRO) may be certified as a psychiatric residential youth treatment facility (PRYTF) to provide treatments and services to individuals 21

years of age or younger with a severe emotional disturbance. Section 577A.004 requires HHSC to adopt rules to implement the chapter. Accordingly, CCR is proposing amended rules in Chapter 745, Subchapter B to (1) clarify that CCR will also regulate PRYTFs that will care for young adults 18 to 21 years of age in addition to child care; and (2) update rules to meet current practice and to improve readability and understanding. In addition, CCR is proposing new rules in Chapter 745, Subchapter O to (1) define terms; (2) create an application process, including requiring accreditation and a current GRO license; (3) create a renewal process every two years; (4) establish application and renewal fees; (5) clarify how inspections, investigations, and confidentiality will apply to PRYTFs; and (6) establish the enforcement actions that HHSC may take against a PRYTF.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.31 clarifies that for PRYTFs, CCR will regulate the GRO's care of young adults 18 to 21 years of age in addition to child care. CCR is also updating the rule to improve readability and understanding.

The proposed amendment to §745.37 (1) updates the charts specifying the types of operations that CCR regulates to be consistent with current practice; (2) improves the rule for readability and understanding; and (3) clarifies that a licensed GRO may apply for a PRYTF certificate to provide psychiatric health treatments and services to individuals 21 years of age and younger.

Proposed new §745.9051 defines the terms "individual," "psychiatric health treatments and services," "Psychiatric Residential Youth Treatment Facility (PRYTF)," and "severe emotional disturbance."

Proposed new §745.9053 lists the requirements that a GRO must meet before applying for a PRYTF certificate, including (1) having a current GRO license; (2) having CCR's approval to provide treatment services to children with an emotional disorder; and (3) being accredited.

Proposed new §745.9055 lists the requirements for a completed PRYTF application, including submitting (1) the application; (2) a GRO - Additional Operation Plan; (3) an updated GRO floor plan; (4) additional written policies; and (5) the PRYTF certificate application fee.

Proposed new §745.9057 requires the GRO that is applying for a PRYTF certificate to comply with the public notice and hearing requirements, which must include the capacity of the children and young adults the PRYTF will serve. CCR may deny the PRYTF certificate if the public notice and hearing requirements are not met.

Proposed new §745.9059 establishes that CCR has 21 calendar days to review a PRYTF application, after which CCR will notify the GRO (1) if there is good cause to delay the review of the application; (2) the operation is ineligible to receive the PRYTF certificate; (3) the application is complete and ready for processing; or (4) the application is incomplete and what must be done to complete the application. If the application is not complete by the first anniversary of the original submission, CCR will close the application and the GRO must reapply.

Proposed new §745.9061 establishes that CCR has two months after accepting an application to determine whether to issue the PRYTF certificate, unless there is good cause to exceed the timeframe. An applicant may also file a complaint regarding untimely determinations.

Proposed new §745.9063 lists the factors CCR will consider when evaluating a PRYTF application, including (1) the application and any information submitted with the application and the Additional Operation Plan; (2) the on-site inspection to determine compliance with statutes, rules, and minimum standards; and (3) any information gathered during the application process or the public hearing.

Proposed new §745.9065 establishes the reasons CCR may deny a PRYTF certificate when a public hearing is required, including (1) the community has insufficient resources to support the children or young adults that the GRO proposed to serve; (2) issuing the certificate would have an adverse impact on the children and young adults the PRYTF would serve: (A) by significantly increasing, in the local school district, the ratio of the students enrolled in a special education program to students enrolled in a regular education program; or (B) by significantly impacting the local school district; or (3) issuing the certificate would have a significant adverse impact on the community and limit opportunities for social interaction for the children and young adults the PRYTF would serve.

Proposed new §745.9067 (1) requires the PRYTF to renew the certificate every two years after the date it is issued; (2) requires a timely renewal even if there is a pending civil or administrative penalty or if the GRO or PRYTF is under an enforcement action; and (3) establishes the beginning and end date of the renewal period.

Proposed new §745.9069 lists the requirements for a completed PRYTF renewal application, including submitting (1) the application; (2) verification of controlling persons and the governing body; (3) a statement regarding waivers and variances; (4) a validation of the list of persons who require a background check; (5) verification of ongoing accreditation; and (6) the PRYTF certificate renewal fee.

Proposed new §745.9071 establishes that CCR (1) will evaluate whether (A) the renewal application is complete; (B) the GRO is still approved to provide treatment services to children with an emotional disorder; (C) any administrative penalties have not been paid; and (D) the PRYTF meets the statutory, rule, and minimum standard requirements; and (2) after evaluation will send the GRO written notice that CCR (A) has renewed the PRYTF certificate; (B) the PRYTF renewal application is incomplete and the reason why; or (C) CCR refuses to renew the PRYTF certificate and the bases for the refusal.

Proposed new §745.9073 establishes when a PRYTF certificate expires and what actions the GRO must take if it expires, including (1) informing the young adults and any guardians and the parents of the children of the expiration; (2) discharge and stop providing care to the young adults; and (3) either enroll a child into the GRO, as appropriate, or discharge a child to the parents.

Proposed new §745.9075 establishes the PRYTF Certificate Application Fee of \$890 and the PRYTF Certificate Renewal Fee of \$740.

Proposed new §745.9077 clarifies that the rules in Chapter 745, Subchapter K regarding inspections, investigations, and confidentiality apply to a PRYTF certificate in the same manner as the rules would apply to a GRO permit. Regarding confidentiality, the confidentiality rules relating to an applicant for a permit, a permit holder, or former permit holder also apply to an applicant for a PRYTF certificate, a holder of a PRYTF certificate, or a former PRYTF certificate holder.

Proposed new §745.9085 (1) lists the enforcement actions HHSC may impose against a PRYTF, including (A) a denial of a PRYTF certificate; (B) a refusal to renew a PRYTF certificate; (C) an administrative penalty; and (D) a civil penalty; and (2) clarifies that an enforcement action against a PRYTF certificate is separate from an action taken against a GRO license.

Proposed new §745.9087 establishes that HHSC may deny a PRYTF certificate for ineligibility based on (1) a provision in Texas Health and Safety Code Chapter 577A; or (2) HHSC's evaluation of an application under the criteria described in new §745.9063.

Proposed new §745.9089 establishes that HHSC may refuse to renew a PRYTF certificate for a reason listed under current §745.8605 or if: (1) the PRYTF did not submit a complete renewal application; (2) the PRYTF is not accredited; (3) the GRO does not have a current license to operate; (4) the GRO is not approved to provide treatment services to children with an emotional disorder; (5) the PRYTF has not paid an administrative penalty; (6) the PRYTF has not submitted the renewal fee; or (7) the PRYTF does not meet a statute, rule, or minimum standard.

Proposed new §745.9091 establishes (1) the meaning of an administrative review; (2) that an administrative review may be requested for the (A) denial of a PRYTF certificate; (B) refusal to renew a PRYTF certificate; or (C) citation of a deficiency; (3) that an administrative review may be requested according to Chapter 745, Subchapter M; and (4) the process for conducting an administrative review.

Proposed new §745.9093 (1) establishes that HHSC may impose and collect administrative penalties against a PRYTF for a violation of a statute, rule, or minimum standard; (2) clarifies that each day a violation continues is a separate violation for imposing a penalty; and (3) includes a chart that provides the maximum amount of the penalty based on the number of individuals under the care of the PRYTF when the violation occurred.

Proposed new §745.9095 establishes that HHSC may impose a civil penalty against a PRYTF for a violation of a statute, rule, or minimum standard.

Proposed new §745.9097 establishes that a PRYTF has the right to a due process hearing before the State Office of Administrative Hearings for the (1) denial of a PRYTF certificate; (2) refusal to renew a PRYTF certificate; or (3) imposition of an administrative penalty.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do have foreseeable implications relating to costs of state government. The costs are for IT improvements to the Child Care Licensing Automated Support Systems to allow operations to apply for a PRYTF certificate, collect associated fees, issue a certificate, complete the required inspections, evaluate compliance with the rules annually, renew the certificate, issue administrative penalties, allow providers to submit certain information associated with the certificate in their online provider account, and identify on the Search Texas Child Care website whether a GRO has this certificate. Funds for these improvements were appropriated in the 88th Legislature, Regular Session, 2023.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of

\$4,712,356 in fiscal year (FY) 2024, \$0 in FY 2025, \$0 in FY 2026, \$0 in FY 2027, and \$0 in FY 2028.

Trey Wood has also determined that for each year of the first five years that the rules will be in effect, there will be an estimated increase in revenue to state government as a result of enforcing and administering the rules as proposed. A GRO that chooses to apply for a PRYTF certificate must pay a \$890 initial application fee and then a \$740 renewal application fee. HHSC cannot estimate the increase in revenue because HHSC is unable to anticipate how many GROs will apply for a PRYTF certificate.

There are no foreseeable implications relating to costs or revenues of local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will create a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will require an increase in fees paid to HHSC;
- (5) the proposed rules will create a new regulation;
- (6) the proposed rules will expand 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the PRYTF program is voluntary and as such does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

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; do not impose a cost on regulated persons because it is a voluntary program; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be the creation of a voluntary certificate program that will provide families with additional, quality options for youth in need of residential care in a non-psychiatric hospital setting. The new program will encourage existing providers to meet these voluntary standards while also incentivizing new facilities to open in Texas, thereby expanding capacity.

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 the rules create a voluntary PRYTF program that does not mandate the imposition of fees, require a GRO to purchase curriculum or equipment, or require a GRO to alter current staffing patterns.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerry Williams by email at Gerry.Williams@hhs.texas.gov.

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R072" in the subject line.

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

26 TAC §745.31, §745.37

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The amendments affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.31. What operations does [the] Licensing [Division] regulate?

(a) We regulate child day care and residential child care, [including child-placing agencies,] unless we determine your operation is exempt from regulation.

(b) Residential child-care operations include:

(1) Child-placing agencies that verify foster homes and approve adoptive homes; and

(2) General residential operations, which we may also certify as a psychiatric residential youth treatment facility (PRYTF) as defined at §745.9051 of this chapter (relating to What do the following words and terms mean when used in this subchapter?).

(c) For a PRYTF, we regulate the operation's care of young adults 18 to 21 years of age in addition to child care.

§745.37. What specific types of operations does Licensing regulate?

The charts in paragraphs (1) and (2) [(1), (2), and (3)] of this section list the types of operations for child day care and residential child care that we regulate. [Child-placing agencies and foster homes verified by a child-placing agency are included in the residential child-care chart.]

[(1) Types of Child Day-Care Operations before September 1, 2003.]

[Figure: 40 TAC §745.37(1)]

(1) [(2)] Types of Child Day-Care Operations: [en and after September 1, 2003.]

Figure: 26 TAC §745.37(1)

[Figure: 40 TAC §745.37(2)]

(2) [(3)] Types of Residential Child-Care Operations:[-]

Figure: 26 TAC §745.37(2)

[Figure: 40 TAC §745.37(3)]

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 O. PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITY

DIVISION 1. DEFINITIONS FOR LICENSING

26 TAC §745.9051

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9051. What do the following terms mean when used in this subchapter?

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

- (1) Individual--A person who is 21 years of age or younger.
- (2) Psychiatric health treatments and services--In addition to basic child-care services, a specialized type of child-care services provided by a certified psychiatric residential youth treatment facility to treat and support individuals who have a severe emotional disturbance.
- (3) Psychiatric Residential Youth Treatment Facility (PYRTF)--As defined at Texas Health and Safety Code §577A.001(3), a private facility that provides psychiatric health treatments and services in a residential, non-hospital setting exclusively to individuals and is licensed as a general residential operation.
- (4) Severe emotional disturbance--As defined at Texas Health and Safety Code §577A.001(4), a mental, behavioral, or emotional disturbance of sufficient duration to result in functional impairment that substantially interferes with or limits an individual's role or ability to function in family, school, or community activities.

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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DIVISION 2. APPLICATION PROCESS

26 TAC §§745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9053. What requirements must a general residential operation meet before applying for a psychiatric residential youth treatment facility (PRYTF) certificate?

- (a) Before applying for a PRYTF certificate a general residential operation must:
 - (1) Have a current initial or full license as a general residential operation;
 - (2) Have Licensing's approval to provide treatment services to children with an emotional disorder, as provided in §748.63 of

this title (relating to Can I provide each type of service that Licensing regulates?); and

- (3) Be accredited by:
 - (A) The Joint Commission;
 - (B) The Commission on Accreditation of Rehabilitation Facilities;
 - (C) The Council on Accreditation; or
 - (D) Another accreditation organization whose standards relate to the care of children and young adults receiving mental health services in a residential setting and is approved by Licensing.

(b) To meet the accreditation requirement under subsection (a)(3) of this section, a general residential operation:

- (1) May obtain accreditation for:
 - (A) The entire general residential operation, including the PRYTF; or
 - (B) Only the part of the general residential operation where the PRYTF will operate;

(2) May have an initial, provisional, full, or other type of accreditation that is appropriate to the accreditation organization.

§745.9055. What does a completed application for a psychiatric residential youth treatment facility (PRYTF) certificate include?

- (a) A general residential operation must submit:
 - (1) A PRYTF certificate application (Form 2973, Psychiatric Residential Youth Treatment Facility Application);
 - (2) A General Residential Operations - Additional Operation Plan (Form 2960, Application for a License to Operate a Residential Child Care Facility, Attachment C) that describes and includes the capacity of the children to be served by the general residential operation, including any children and young adults that the PRYTF will serve;
 - (3) An updated floor plan of the building and surrounding space the entire operation will use, including dimensions of the indoor space and the specific areas to be used by the PRYTF;
 - (4) Additional written policies required in §748.4821 of this title (relating to What additional policies must I submit as part of the application process for a psychiatric residential youth treatment facility (PRYTF) certificate?); and
 - (5) The PRYTF certificate application fee.

(b) The operation may submit an updated General Residential Operations - Additional Operation Plan (Form 2960, Attachment C) if the operation is already licensed to provide treatment services to children with emotional disorders.

§745.9057. How do the public notice and hearing requirements apply to an application for a psychiatric residential youth treatment facility (PRYTF) certificate?

- (a) A general residential operation that is applying for a PRYTF certificate must comply with the rules in Subchapter D, Division 4 of this chapter (relating to Public Notice and Hearing Requirements for Residential Child-Care Operations).
- (b) The initial public notice and hearing, or a subsequent public notice and hearing, of the general residential operation must describe and include the capacity of the children and young adults the PRYTF will serve.

(c) If the general residential operation does not comply with the public notice and hearing requirements, we may deny the operation a PRYTF certificate.

§745.9059. How long does Licensing have to review an application for a psychiatric residential youth treatment facility (PRYTF) certificate?

(a) We have 21 calendar days after receiving your application for a PRYTF certificate to review the paperwork, unless there is good cause to exceed this timeframe.

(b) After we review your application, we will notify you in writing that:

(1) There is good cause to delay the timeframe for making a determination on your application, consistent with §745.327 of this chapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?);

(2) Your operation is ineligible to receive a PRYTF certificate because it does not meet one or more of the requirements under §745.9053(a) of this division (relating to What requirements must a general residential operation meet before applying for a psychiatric residential youth treatment facility (PRYTF) certificate?);

(3) Your application is complete and accepted for processing; or

(4) Your application is incomplete. The notification letter will:

(A) Identify any application materials submitted that do not show compliance with relevant statutes, rules, or minimum standards; and

(B) Explain what the operation must do to complete the application.

(c) If your application is not complete by the first anniversary of the date you submitted your application for a PRYTF certificate, we will close your application and you must submit a new application, materials, and a PRYTF certificate application fee.

§745.9061. How long does Licensing have to determine whether to issue a psychiatric residential youth treatment facility (PRYTF) certificate after accepting my application?

(a) We determine whether to issue a PRYTF certificate no later than two months after we accept the application, unless there is good cause to exceed this timeframe consistent with §745.327 of this chapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?).

(b) You may file a complaint regarding timeframes according to §745.325 of this chapter (relating to How do I file a complaint regarding timeframes for processing my application?).

§745.9063. What factors will Licensing consider when evaluating an application for a psychiatric residential youth treatment facility (PRYTF) certificate?

When we determine whether to issue a PRYTF certificate, we will consider:

(1) The application and any information submitted with the application, including:

(A) All parts of the Additional Operation Plan required in §745.9055(a)(2) of this division (relating to What does a completed application for a psychiatric residential youth treatment facility (PRYTF) certificate include?);

(B) Evidence of community support for, or opposition to, the general residential operation being certified as a PRYTF; and

(C) The impact statement from the school district likely to be affected by the population of children and young adults to be served by the PRYTF, including information relating to any financial impact on the district that may result from an increase in enrollment.

(2) The on-site inspection to determine compliance with relevant statutes, rules, and minimum standards;

(3) Any information that we gather through the application process, including any written comments and written information submitted to us during the process that we consider to be relevant to the decision to issue the PRYTF certificate; and

(4) If a public hearing is required in §745.273 of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?):

(A) Any written comments and written information that interested parties provide at a public hearing; and

(B) The Verbatim Record and summary Report of Public Comment from the Community, as required in §745.275 of this chapter (relating to What are the specific requirements for a public notice and hearing?).

§745.9065. For what reason may Licensing deny a psychiatric residential youth treatment facility (PRYTF) certificate based on the results of a required public hearing?

If a public hearing is required in §745.273 of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?), we may deny you a PRYTF certificate if we determine that:

(1) The community has insufficient resources to support the children or young adults that you propose to serve;

(2) Issuing the PRYTF certificate would adversely affect the children or young adults you propose to serve;

(A) By significantly increasing, in the local school district, the ratio of students enrolled in a special education program to students enrolled in a regular education program; or

(B) By significantly impacting the local school district;

or

(3) Issuing the PRYTF certificate would have a significant adverse impact on the community and limit opportunities for social interaction for the children or young adults that you propose to serve.

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

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DIVISION 3. RENEWALS

26 TAC §§745.9067, 745.9069, 745.9071, 745.9073

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9067. When do I need to apply to renew my psychiatric residential youth treatment facility (PRYTF) certificate?

(a) You must apply to renew your PRYTF certificate every two years after the date we issue the certificate.

(b) You must still timely apply to renew your PRYTF certificate, even if:

(1) There is a pending civil or administrative penalty against the PRYTF; or

(2) The general residential operation or PRYTF is under an enforcement action.

(c) During the year that you must renew your PRYTF certificate, your renewal period:

(1) Begins 60 calendar days before the anniversary of when we issued your PRYTF certificate; and

(2) Ends on the date of the anniversary.

(d) If you are late in applying for renewal of your PRYTF certificate, you have 30 additional calendar days after the renewal period to apply for renewal.

§745.9069. What does a completed renewal application for a psychiatric residential youth treatment facility (PRYTF) certificate include?

You must submit a completed PRYTF renewal application, which includes:

(1) Timely submitting a renewal application as required by §745.9067 of this division (relating to When do I need to apply to renew my psychiatric residential youth treatment facility (PRYTF) certificate?);

(2) Verification that the following information is current and accurate:

(A) The list of controlling persons at your operation; and

(B) The list of governing body's members, such as officers and owners, if applicable;

(3) A statement as to whether your operation continues to need any existing waivers and variances that you also want to apply to your care of children and young adults receiving psychiatric health treatments and services;

(4) Validation on your provider website the list of persons who require a background check because of their association with your operation;

(5) Verification of the ongoing accreditation of the PRYTF; and

(6) A PRYTF certificate renewal fee.

§745.9071. What happens after Licensing receives my renewal application?

(a) After receiving your renewal application, we evaluate whether:

(1) You completed the renewal application as required by §745.9069 of this division (relating to What does a completed renewal application for a psychiatric residential youth treatment facility (PRYTF) certificate include?);

(2) Your general residential operation license is current and approved to provide treatment services to children with emotional disorders;

(3) You have paid each administrative penalty that you owe after waiving or exhausting any due process provided under Texas Health and Safety Code §571.025; and

(4) The PRYTF meets the statutory, rule, and minimum standard requirements after we inspect your PRYTF.

(b) Within 30 calendar days of receiving your renewal application, we will send you written notice that:

(1) We have renewed your PRYTF certificate;

(2) Your PRYTF renewal application is incomplete because it did not meet one or more of the renewal application requirements in subsection (a) of this section; or

(3) We refuse to renew your PRYTF certificate because:

(A) You did not submit a completed PRYTF renewal application;

(B) Your PRYTF is no longer accredited as required by §748.4823(a) of this title (relating to When must I notify Licensing about accreditation changes regarding the psychiatric residential youth treatment facility (PRYTF)?);

(C) You do not have a general residential operation license;

(D) Your general residential operation is not approved to provide treatment services to children with emotional disorders;

(E) You did not pay the PRYTF certificate renewal fee;

(F) You did not pay an administrative penalty that you owe after waiving or exhausting any due process provided under Texas Health and Safety Code §571.025; or

(G) After inspecting the PRYTF, we determine that it does not meet the statute, rule, and minimum standard requirements.

(c) If your PRYTF renewal application is incomplete, the written notice will include:

(1) Our determination that you did not meet one or more of the renewal application requirements in subsection (a) of this section; and

(2) A list of the requirements that you must complete before we can renew the PRYTF certificate.

(d) If you submitted an incomplete PRYTF renewal application during the renewal period, you may attempt to submit the missing information until your PRYTF certificate expires.

(e) If you submitted an incomplete PRYTF renewal application during the late renewal period, you have 15 calendar days to submit a completed application from the date we determine that your renewal application was incomplete.

§745.9073. When does my psychiatric residential youth treatment facility (PRYTF) certificate expire?

(a) Your PRYTF certificate expires if:

(1) You do not submit your PRYTF renewal application during the renewal period or late renewal period;

(2) You submit your PRYTF renewal application during the renewal period, you were notified that your application was incomplete, and you do not submit a completed renewal application before the end of the late renewal period; or

(3) You submit your PRYTF renewal application during the late renewal period, you were notified that your application was incomplete, and you do not submit a completed renewal application within 15 calendar days after notification.

(b) If your PRYTF certificate expires:

(1) Within 24 hours, you must inform the following persons that your PRYTF certificate has expired:

(A) All parents of children receiving psychiatric health treatments and services; and

(B) Young adults and any guardians of the young adults receiving psychiatric health treatments and services;

(2) You must immediately:

(A) Discharge and stop providing care to the young adults 18 to 21 years of age receiving psychiatric health treatments and services unless the young adult meets the requirements of §748.1931 of this title (relating to After a child in my care turns 18 years old, may the person remain in my care?);

(B) For children receiving psychiatric health treatments and services:

(i) Enroll the child into your general residential operation, if appropriate; or

(ii) Discharge the child to the child's parents.

(3) Before you can operate again as a PRYTF, you must submit a new PRYTF application, materials, and PRYTF certificate application fee.

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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DIVISION 4. FEES

26 TAC §745.9075

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well

as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9075. What fees must I pay to apply for and maintain a psychiatric residential youth treatment facility (PRYTF) certificate?

In addition to the fees required by §745.509 of this chapter (relating to What fees must I pay to apply for and maintain a license for an operation?), the following chart contains non-refundable fees applicable to a PRYTF, when the fees are due, and the consequences for failure to pay on time:

Figure: 26 TAC §745.9075

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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DIVISION 5. INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY

26 TAC §745.9077

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9077. How do the provisions in Subchapter K of this chapter apply to a psychiatric residential youth treatment facility (PRYTF)?

The rules in Subchapter K of this chapter (relating to Inspections, Investigations, and Confidentiality) apply to a PRYTF certificate in the same manner as the rules would apply for a general residential operation permit, including:

(1) For an inspection or investigation in a PRYTF;

(2) Relating to confidentiality, which apply to an applicant for a PRYTF certificate, holder of a PRYTF certificate, or former holder of a PRYTF certificate as if a PRYTF certificate is a permit; and

(3) Technical assistance provided to a PRYTF.

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DIVISION 6. ENFORCEMENT

26 TAC §§745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9085. Overview of Enforcement Actions.

(a) The Texas Health and Human Services Commission may impose the following enforcement actions against a psychiatric residential youth treatment facility (PRYTF):

(1) A denial of a PRYTF certificate;

(2) A refusal to renew a PRYTF certificate;

(3) An administrative penalty under Texas Health and Safety Code §571.025; and

(4) A civil penalty under Texas Health and Safety Code §571.023.

(b) An enforcement action taken against a PRYTF certificate is separate from an action taken against a general residential operation license.

§745.9087. Denial of certificate.

The Texas Health and Human Services Commission (HHSC) may deny a psychiatric residential youth treatment facility (PRYTF) certificate if HHSC determines ineligibility based on:

(1) A provision in Texas Health and Safety Code Chapter 577A; or

(2) HHSC's evaluation of your application under the criteria described in §745.9063 of this subchapter (relating to What factors will Licensing consider when evaluating an application for a psychiatric residential youth treatment facility (PRYTF) certificate?).

§745.9089. Refusal To Renew.

The Texas Health and Human Services Commission (HHSC) may refuse to renew a psychiatric residential youth treatment facility (PRYTF) certificate for a reason listed in §745.8605 of this chapter (relating to When can Licensing recommend or impose an enforcement action against my operation) or if:

(1) The PRYTF did not submit a complete renewal application, timely or otherwise, according to §745.9069 of this subchapter (relating to What does a completed renewal application for a psychiatric residential youth treatment facility (PRYTF) certificate include?:)

(2) The PRYTF was not accredited at the time of the renewal;

(3) The general residential operation does not have a current license to operate at the time of the renewal, including if:

(A) HHSC revokes your license;

(B) HHSC refuses to renew your license;

(C) You voluntarily close your operation;

(D) HHSC suspends your license; or

(E) You voluntarily suspend your license;

(4) The general residential operation is not approved to provide treatment services to children with an emotional disorder at the time of renewal;

(5) The PRYTF has not paid an administrative penalty after waiving or exhausting any due process provided under Texas Health and Safety Code §571.025;

(6) The PRYTF has not timely submitted the renewal fee to HHSC; or

(7) The PRYTF does not meet:

(A) A provision in Texas Health and Safety Code Chapter 577A;

(B) A rule in this subchapter; or

(C) A minimum standard in Chapter 748, Subchapter W of this title (relating to Additional Requirements for Operations that Provide Psychiatric Health Treatments and Services).

§745.9091. Administrative Review.

(a) An administrative review is an informal review to determine whether a decision or action was appropriate under applicable laws and rules. An administrative review is not a formal hearing.

(b) An administrative review may be requested to dispute the following in relation to a psychiatric residential youth treatment facility (PRYTF) certificate:

(1) The denial of a PRYTF certificate;

(2) The refusal to renew a PRYTF certificate; or

(3) The citation of a deficiency of a statute, rule, or minimum standard.

(c) An administrative review must be requested in accordance with Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

(d) The administrative review process and all administrative review requirements will be conducted in accordance with Subchapter M of this chapter.

§745.9093. Administrative Penalties.

(a) The Texas Health and Human Services Commission (HHSC) may impose and collect an administrative penalty against a psychiatric residential youth treatment facility (PRYTF) for a violation of:

- (1) A provision in Texas Health and Safety Code Chapter 577A;
- (2) A rule in this subchapter; or
- (3) A minimum standard in Chapter 748, Subchapter W of this title (relating to Additional Requirements for Operations that Provide Psychiatric Health Treatments and Services).

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) HHSC imposes an administrative penalty based on the number of individuals under the care of the PRYTF when the violation occurred:

Figure: 26 TAC §745.9093(c)

§745.9095. Civil Penalties.

The Texas Health and Human Services Commission (HHSC) may impose a civil penalty against a psychiatric residential youth treatment facility (PRYTF) according to Texas Health and Safety Code §571.023 for a violation of:

- (1) A provision in Texas Health and Safety Code Chapter 577A; or
- (2) A rule adopted under Texas Health and Safety Code Chapter 577A, including:
 - (A) A rule in this subchapter; or
 - (B) A minimum standard in Chapter 748, Subchapter W of this title (relating to Additional Requirements for Operations that Provide Psychiatric Health Treatments and Services).

§745.9097. State Office of Administrative Hearings (SOAH).

A psychiatric residential youth treatment facility (PRYTF) has the right to a due process hearing before the SOAH in accordance with Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings) for:

- (1) The denial of a PRYTF certificate;
- (2) The refusal to renew a PRYTF certificate; or
- (3) The imposition of an administrative penalty.

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 April 10, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§746.123, 746.605, 746.1301, 746.1309, 746.1403, 746.1801, 746.2101, 746.2105, 746.2109, 746.2113, 746.2115, 746.3701, 746.4971, 746.5001, 746.5013, and 746.5017; new §§746.1325, 746.5009, and 746.5011; and repeal of §746.2103.

BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding §341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

HHSC Child Care Regulation (CCR) is proposing new and amended rules in Chapter 746 that will (1) add definitions and requirements related to water safety, including (A) water safety training for employees, substitutes, volunteers, and contractors, and (B) the use of a personal flotation device for children who access swimming pools via their licensed child-care center; and (2) update references to bodies of water and wading pools to be consistent with HSC §341.0646(a). CCR is also proposing to repeal one rule that established a grandfather clause related to child to caregiver ratios for splashing and wading activities because the need for the grandfather clause has expired.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.123 (1) adds definitions for "body of water," "personal flotation device," "swimming pool," and "wading pool"; (2) adds the rule title to a reference in the definition of "caregiver"; (3) updates the definition of "water activities" to remove the terms "splashing pools" and "bodies of water"; and (4) updates the numbering of the definitions accordingly.

The proposed amendment to §746.605 (1) moves requirements related to water activity participation to the end of the list of required admission information; (2) renumbers the rule accordingly; and (3) clarifies that if a child-care center allows a child to access a swimming pool a parent is required to indicate at admission whether the child is (A) able to swim competently as defined by the American Red Cross, or (B) requires a personal flotation device because the child is unable to swim competently or is at risk of injury or death when swimming or otherwise accessing a body of water.

The proposed amendment to §746.1301 adds to the chart of training requirements for employees, caregivers, and directors (1) the word "safety" to the transportation training requirements to be consistent with the rule content for that training; and (2) a new water safety training requirement for a center that allows a child to access a swimming pool at or away from the center. The chart specifies that the director and each employee who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed amendment to §746.1309 clarifies that water safety training is exclusive of the 24 clock hours of annual required training for caregivers.

Proposed new §746.1325 adds a requirement for water safety training if a child-care center allows a child to access a swimming pool at or away from the center. The rule requires the training for each employee who accompanies a child to a swimming pool before the employee accompanies the child to a swimming pool and for each child-care center director. The rule also clarifies that water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

The proposed amendment to §746.1403 adds to the chart of training requirements for substitutes, volunteers, and contractors (1) the word "safety" to the transportation training requirements to be consistent with the rule content for that training; and (2) a new water safety training requirement for a center that allows a child to access a swimming pool at or away from the center. The chart specifies that each substitute, volunteer, and contractor who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed amendment to §746.1801 (1) updates language and reorganizes the rule for better readability; (2) updates a reference; and (3) replaces the title of rule references that include the language "splashing/wading" to "wading."

The proposed amendment to §746.2101 (1) removes references to "splashing" in the rule title and within the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; (3) updates a reference; and (4) updates language for better readability.

The proposed repeal of §746.2103 deletes the rule as no longer necessary because the rule established a grandfather clause that is no longer necessary.

The proposed amendment to §746.2105 (1) removes language indicating that a swimming pool has a depth of more than two feet of water; and (2) updates a reference.

The proposed amendment to §746.2109 (1) updates the rule title to reflect that a lifeguard must be on duty when children are swimming in 18 inches, rather than two feet, of water; and (2) updates language for better readability.

The proposed amendment to §746.2113 clarifies that each caregiver counted in the child to caregiver ratio for swimming in 18 inches or more of water must be able to swim and be prepared to do so in an emergency.

The proposed amendment to §746.2115 updates language for better readability.

The proposed amendment to §746.3701 (1) updates language for better readability; and (2) updates the list of vessels containing water that must be inaccessible to all children to (A) add wading pools, and (B) remove pools, ponds, and creeks as they are included in the definition of the previously listed "bodies of water".

The proposed amendment to §746.4971 updates the title of a cross-referenced subchapter.

The title of Subchapter V is updated to remove the term "splashing."

The proposed amendment to §746.5001 (1) updates the rule title; (2) reorganizes rule references for better readability; and (3) removes language indicating that a swimming pool has a depth of more than two feet of water.

Proposed new §746.5009 outlines the additional safety precautions a child-care center must take for a child in care who is unable to swim competently or at risk of injury or death when swimming. The rule requires the child-care center to do the following before the child enters a swimming pool: (1) provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD); (2) ensure the child is wearing the PFD; and (3) ensure the PFD is properly fitted and fastened for the child.

Proposed new §746.5011 clarifies that a child-care center is not required to provide a PFD to a child who is unable to swim competently or is at risk of injury or death when swimming or ensure the child is wearing a PFD if (1) the child is actively participating in swim instruction or a competition; and (2) the child-care center ensures the child is supervised in accordance with §746.1205 during the instruction or competition.

The proposed amendment to §746.5013 (1) removes the term "splashing" from the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; and (3) updates the title of a rule reference.

The proposed amendment to §746.5017 (1) updates the rule title; (2) updates language for better readability; (3) removes references to "lakes," "ponds," and "rivers" from the list of water bodies a child cannot swim in as they are included in the definition of a "body of water"; and (4) removes a reference to "wading pool" as a wading pool is not considered a "body of water".

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 and micro-businesses, but there will not be an adverse economic effect on rural communities.

Texas Government Code Chapter 2006 defines a small business as one that is for-profit with fewer than 100 employees. A mi-

cro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2022 CCR Data Book, there are approximately 8,087 Licensed Child-Care Centers required to comply with the rules. CCR conducted a survey of licensed child-care operations in 2019 to determine which operations met the definition of a small or micro-business and received responses from approximately nine percent of Licensed Child-Care Centers. Based on the results from that survey, CCR estimates that 59 percent of the centers (or 4,771 centers) are for profit. Of those centers, approximately 99 percent of the centers (or 4,724 centers) have less than 100 employees and qualify as small businesses and approximately 77 percent of those small businesses (or 3,637 centers) have less than 20 employees and qualify as micro-businesses.

There is a projected economic impact on small businesses and micro-businesses from proposed §746.5009. This economic impact, however, is limited to child-care centers that offer children access to a swimming pool, either onsite or during field trips where water activities take place. Based on data collected in November 2023 for Fiscal Year 2022, 197 child-care centers have a swimming pool on the premises and 3,270 child-care centers offer water activities (to include swimming pools, wading pools, and sprinkler play). However, CCR does not have data regarding how many of these child-care centers are a small business or a micro-business. With regards to water activities, CCR does not collect data regarding the type of water activities a child-care center provides or whether those activities take place onsite or during field trips. Although HHSC can assume the 197 child-care centers with a pool on the premises that are a small business or a micro-business will be required to comply with the proposed rule, HHSC is unable to determine the number of child-care centers whose water activities include access to a swimming pool during field trips. Therefore, HHSC does not have enough information to determine the total number of child-care centers operating as a small business or micro-business that will be required to comply with the proposed rule.

Section 746.5009 requires a licensed child-care center to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a swimming pool a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care center depending on the number of enrolled children who are unable to swim competently or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care centers may choose to obtain PFDs through organizations that provide them at no cost. These factors, coupled with HHSC's inability to determine the number of child-care centers that offer access to a swimming pool during field trips, renders HHSC unable to determine economic costs for persons required to comply with the rule as proposed.

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 children who access swimming pools via their licensed child-care center.

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 and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) improve the safety of children enrolled in licensed child-care centers who access swimming pools; and (2) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the rules require child-care centers to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a body of water a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care operation depending on the number of enrolled children who are unable to swim or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care operations may choose to obtain PFDs through organizations that provide them at no cost. As a result, HHSC does not have sufficient information to determine economic costs for persons required to comply with the rules as proposed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R074" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §746.123

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.123. What do certain words and terms mean when used in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) **Activity plan**--A written plan that outlines the daily routine and activities in which a group of children will engage while in your care. The plan is designed to meet the children's cognitive, language, social, emotional, and physical developmental strengths and needs.

(2) **Activity space**--An area or room used for children's activities, including areas separate from a group's classroom.

(3) **Administrative and clerical duties**--Duties that involve the operation of a child-care center, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(4) **Admission**--The process of enrolling a child in a child-care center. The date of admission is the first day the child is physically present in the center.

(5) **Adult**--A person 18 years old and older.

(6) **Age-appropriate**--Activities, equipment, materials, curriculum, and environment, including the child's assigned classroom, that are developmentally consistent with the developmental or chronological age of the child being served.

(7) **Alternate care program**--A program in which no child is in care for more than five consecutive days, and no child is in care for more than 15 days in one calendar month, regardless of the duration of each stay.

(8) **Attendance**--When referring to a child's attendance, the physical presence of a child at the child-care center's program on any given day or at any given time, as distinct from the child's enrollment in the child-care center.

(9) **Body of water**--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D (relating to Sanitation and Safety of Facilities Used by Public).

(10) [(9)] **Bouncer seat**--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(11) [(10)] **Caregiver**--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and

protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in paragraph (20) [(19)] of this section and Subchapter D, Division 5 of this chapter (relating to Substitutes, Volunteers, and Contractors).

(12) [(11)] **Certified Child-Care Professional Credential**--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(13) [(12)] **Certified lifeguard**--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but the permit holder must be able to document that the certificate is current, relevant to the type of water activity in which children will engage, and represents the type of training described.

(14) [(13)] **CEUs**--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(15) [(14)] **Child**--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(16) [(15)] **Child-care center**--A child-care facility that is licensed to care for seven or more children for less than 24 hours per day, at a location other than the permit holder's home. If you were licensed before September 1, 2003, the location of the center could be in the permit holder's home.

(17) [(16)] **Child-care program**--The services and activities provided by a child-care center.

(18) [(17)] **Child Development Associate Credential**--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(19) [(18)] **Clock hour**--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals as specified in §746.1317(a) of this chapter (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §746.1317(a) and (b) of this chapter, or self-study training.

(20) [(19)] **Contract service provider**--A person or entity contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(21) [(20)] **Corporal punishment**--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting with a hand or instrument, slapping, pinching, shaking, biting, or thumping a child.

(22) [(21)] **Days**--Calendar days, unless otherwise stated.

(23) [(22)] Employee--A person a child-care center employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the child-care center staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, the director, and the owner, if the owner is ever on site at the center or transports a child.

(24) [(23)] Enrollment--The list of names or number of children who have been admitted to attend a child-care center for any given period of time; the number of children enrolled in a child-care center may vary from the number of children in attendance on any given day.

(25) [(24)] Entrap--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(26) [(25)] Field trips--Activities conducted away from the child-care center.

(27) [(26)] Food service--The preparation or serving of meals or snacks.

(28) [(27)] Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(29) [(28)] Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(30) [(29)] Grounds--Includes any parcel of land where the child-care center is located and any building, other structure, body of water, play equipment, street, sidewalk, walkway, driveway, parking garage, or parking lot on the parcel. Also referred to as "premises" in this chapter.

(31) [(30)] Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(32) [(31)] Hazardous materials--Any substance or chemical that is a health hazard or physical hazard, as determined by the Environmental Protection Agency. Also referred to as "toxic materials" and "toxic chemicals" in this chapter.

(33) [(32)] Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(34) [(33)] Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(35) [(34)] High school equivalent--

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(36) [(35)] Individual activities--Opportunities for the child to work independently or to be away from the group but supervised.

(37) [(36)] Infant--A child from birth through 17 months.

(38) [(37)] Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(39) [(38)] Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(40) [(39)] Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care center building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(41) [(40)] Local sanitation official--A sanitation official designated by the city or county government.

(42) [(41)] Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(43) [(42)] Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your center voluntarily closes or must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions).

(44) Personal flotation device (PFD)--A United States Coast Guard approved life jacket.

(45) [(43)] Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases the child's heart rate and breathing rate.

(46) [(44)] Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in vigorous physical activity.

(47) [(45)] Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(48) [(46)] Premises--See the term "grounds" and its definition in this section.

(49) [(47)] Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title.

(50) [(48)] Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(51) [(49)] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(52) [(50)] Sanitize--The use of a disinfecting product that provides instructions specific for sanitizing and is registered by the Environmental Protection Agency (EPA) to substantially reduce germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labeling instructions for sanitizing or disinfecting, depending on the surface (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). If you use bleach instead of an approved disinfecting product, you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a bleach solution for at least two minutes;

(D) Rinsing with cool water only those items that children are likely to place in their mouths; and

(E) Allowing the surface or item to air-dry.

(53) [(51)] School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

(54) [(52)] Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(55) [(53)] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(56) [(54)] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(57) [(55)] Special care needs--A child with special care needs is a child who has:

(A) A chronic physical, developmental, behavioral, or emotional condition or a disability and who also requires assistance

beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, comprehension, emotional regulation, self-help, social skills, emotional well-being, seeing, hearing, and breathing; or

(B) A limitation due to an injury, illness, or allergy.

(58) [(56)] State or local fire authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors. Also referred to as "fire marshal" in this chapter.

(59) Swimming Pool--An artificial body of water with a water depth of more than 18 inches that is maintained or used expressly for public or private recreational purposes, swimming, diving, aquatic sports or activities, or therapeutic purposes.

(60) [(57)] Toddler--A child from 18 months through 35 months.

(61) [(58)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(62) Wading pool--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D.

(63) [(59)] Water activities--Related to the use of swimming pools, ~~[splashing pools,]~~ wading pools, or sprinkler play~~;~~ ~~or other bodies of water~~.

(64) [(60)] Weather permitting--Weather conditions that do not pose any concerns for health and safety, such as a significant risk of frostbite or heat-related illness. This includes adverse weather conditions in which children may still play safely outdoors for shorter periods with appropriate adjustments to clothing and any necessary access to water, shade, or shelter.

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 April 12, 2024.

TRD-202401552

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

26 TAC §746.605

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a)

requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.605. *What admission information must I obtain for each child?* You must obtain at least the following information before admitting a child to care:

- (1) The child's name and birth date;
- (2) The child's home address and telephone number;
- (3) Date of the child's admission to the child-care center;
- (4) Name and address of parents [parent(s)];
- (5) Telephone numbers at which parents [parent(s)] can be reached while the child is in care;
- (6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;
- (7) Names and telephone numbers of persons other than a parent to whom the child may be released;
- (8) Permission for transportation, if provided;
- (9) Permission for field trips, if provided;
- ~~[(10) Permission for participation in water activities, if provided, if provided, including whether the child is able to swim without assistance;]~~
- (10) ~~[(11)]~~ Name, address, and telephone number of the child's physician or an emergency-care facility;
- (11) ~~[(12)]~~ Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;
- (12) ~~[(13)]~~ A statement of the child's special care needs, which must include:
 - (A) Any limitations or restrictions on the child's activities;
 - (B) Special care the child requires, including:
 - (i) Any reasonable accommodations or modifications;
 - (ii) Any adaptive equipment provided for the child, including instructions for how to use the equipment; and
 - (iii) Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; and
 - (C) Any medications prescribed for continuous, long-term use;
- (13) ~~[(14)]~~ The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;
- (14) ~~[(15)]~~ Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; ~~[and]~~
- (15) ~~[(16)]~~ The child's allergies and a completed food allergy emergency plan for the child, if applicable; ~~and~~ [-]
- (16) Permission for participation in water activities, if provided. If you allow a child to access a swimming pool, the parent must also indicate whether the child:

(A) Is able to swim competently, as defined by the American Red Cross; or

(B) Requires a personal flotation device because the child is:

(i) Unable to swim competently, as defined by the American Red Cross; or

(ii) At risk of injury or death when swimming or otherwise accessing a body of water.

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 D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §§746.1301, 746.1309, 746.1325

STATUTORY AUTHORITY

The amendments 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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new section affect Texas Government Code §531.0055 and HRC §42.042.

§746.1301. *What are the training requirements for employees, caregivers, and directors?*

(a) Employees, caregivers, and directors must complete the following training requirements.

Figure: 26 TAC §746.1301(a)

[Figure: 26 TAC §746.1301(a)]

(b) If a caregiver or employee does not yet have a current certificate in pediatric CPR as required in (a)(4)(A) in Figure: 26 TAC §746.1301(a), at least one caregiver or employee with a current certificate must also be on the premises with the caregiver.

§746.1309. *What areas of training must the annual training for caregivers cover?*

(a) The 24 clock hours of annual training must be relevant to the age of the children for whom the caregiver provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

- (1) Child growth and development;

- (2) Guidance and discipline;
- (3) Age-appropriate curriculum; and
- (4) Teacher-child interaction.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

- (1) Factors indicating a child is at risk for abuse or neglect;
- (2) Warning signs indicating a child may be a victim of abuse or neglect;
- (3) Procedures for reporting child abuse or neglect; and
- (4) Community organizations that have training programs available to employees, children, and parents.

(d) If a caregiver provides care for children younger than 24 months of age, one clock hour of the annual training hours must cover the following topics:

- (1) Recognizing and preventing shaken baby syndrome and abusive head trauma;
- (2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and
- (3) Understanding early childhood brain development.

(e) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

- (1) Emergency preparedness;
- (2) Preventing and controlling the spread of communicable diseases, including immunizations;
- (3) Administering medication, if applicable, including compliance with §746.3803 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);
- (4) Preventing and responding to emergencies due to food or an allergic reaction;
- (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
- (6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(f) The remaining annual training hours must be in one or more of the following topics:

- (1) Care of children with special needs;
- (2) Child health (for example, nutrition and physical activity);
- (3) Safety;
- (4) Risk management;
- (5) Identification and care of ill children;
- (6) Cultural diversity for children and families;
- (7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular age group the caregiver is assigned (for example, caregivers assigned to an infant or toddler group should receive training on biting and toilet training);

(9) Planning developmentally appropriate learning activities;

(10) Observation and assessment;

(11) Attachment and responsive care giving; and

(12) Minimum standards and how they apply to the caregiver.

(g) At least five of the 24 required annual training hours must come from instructor-led training. The remaining 19 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.

(h) The 24 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, pediatric first-aid [first aid] and pediatric CPR training, transportation safety training, water safety training, and high school child-care work-study classes.

§746.1325. What additional training must an employee and director have if the child-care center allows a child to access a swimming pool at or away from the center?

(a) If the child-care center allows a child to access a swimming pool at or away from the center, annual water safety training is required for:

(1) Each employee prior to accompanying a child to a swimming pool; and

(2) Each child-care center director.

(b) Water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

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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DIVISION 5. SUBSTITUTES, VOLUNTEERS, AND CONTRACTORS

26 TAC §746.1403

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.1403. *What are the training requirements for substitutes, volunteers, and contractors?*

(a) Substitutes, volunteers, and contractors must complete the following training requirements.
Figure 26 TAC §746.1403(a)
[Figure 26 TAC §746.1403(a)]

(b) If the person does not complete the pre-service training within the 90-day period as specified in (a)(2)(C)(ii) in Figure: 26 TAC §746.1403(a), the person must cease performing any caregiver duties at the center until the person completes the pre-service training.

(c) If a substitute, volunteer, or contractor who is counted in the child to caregiver ratio does not yet have a current certificate in pediatric CPR, as required in (a)(4)(A) in Figure: 26 TAC §746.1403(a), at least one caregiver or employee with a current certificate must also be on the premises with the substitute, volunteer, or contractor.

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SUBCHAPTER E. CHILD/CAREGIVER RATIOS AND GROUP SIZES
DIVISION 4. RATIOS FOR FIELD TRIPS
26 TAC §746.1801

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.1801. *Do I need additional caregivers when I take children away from the child-care center for field trips or walks?*

(a) When children are on a field trip and are mixing with children and adults who are not from your child-care center, such as during [including but not limited to,] trips to the skating rink, shopping center, public or amusement park, you must meet the following child/caregiver ratio:

Figure: 26 TAC §746.1801(a)

[Figure: 40 TAC §746.1801(a)]

(b) The child/caregiver ratio for a field trip to a location where children mix with non-center children and adults [trips] may include adult volunteers or child-care center employees who do not meet the minimum qualifications for caregivers specified in Subchapter D of this chapter (relating to Personnel) if [are not qualified as caregivers only for trips when children are mixing with non-center children and adults, as long as] you maintain at least the classroom child/caregiver ratio required in the following, as applicable:

(1) Division 2 of this subchapter (relating to Classroom Ratios and Group Sizes for Centers Licensed to Care for 13 or More Children); or

(2) Division 3 of this subchapter (relating to Classroom Ratios and Group Sizes for Centers When 12 or Fewer Children are in Care) [with qualified caregivers].

(c) When children are on a walk or field trip in an enclosed, controlled area, such as [including but not limited to,] specially arranged trips for children in your child-care center only to a [the] fire station, library, or museum [class for children in your child-care center only], you must maintain at least the classroom child/caregiver ratio. Refer to §746.2101 of this subchapter [title] (relating to Must I have additional caregivers for wading [splashing/wading] activities?) and §746.2105 of this subchapter [title] (relating to What are the child/caregiver ratios for swimming activities?) for child/caregiver ratios for wading [splashing/wading] and swimming activities when children are not mixing with other children and adults.

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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DIVISION 7. RATIOS FOR WATER ACTIVITIES

26 TAC §§746.2101, 746.2105, 746.2109, 746.2113, 746.2115

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments affect Texas Government Code §531.0055 and HRC §42.042.

§746.2101. *Must I have additional caregivers for wading [splashing/wading] activities?*

(a) The maximum number of children one caregiver can supervise while children use a [splashing or] wading pool [(two feet of

water or less)] is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 26 TAC §746.2101(a)

[Figure: 40 TAC §746.2101(a)]

(b) When children are using a wading pool while mixing with children and adults who are not from your child-care center [during splashing or wading activities], you must follow the child/caregiver ratios for field trips as specified in §746.1801 of this subchapter [title] (relating to Do I need additional caregivers when I take children away from the child-care center for field trips or walks?) [must be followed].

§746.2105. *What are the child/caregiver ratios for swimming activities?*

(a) When your child-care center uses a swimming pool [~~more than two feet of water~~], there must be at least two caregivers supervising the children if four or more children are swimming.

(b) The maximum number of children one caregiver can supervise while children are swimming is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 26 TAC §746.2105(b)

[Figure: 40 TAC §746.2105(b)]

§746.2109. *Must a certified lifeguard be on duty when children are swimming in more than 18 inches [~~two feet~~] of water?*

A [~~Yes. When children are swimming in more than two feet of water,~~ a] certified lifeguard must be on duty at all times when children are swimming in more than 18 inches of water.

§746.2113. *Must persons who are counted in the child/caregiver ratio during swimming know how to swim?*

[~~Yes.~~] Each caregiver [~~person~~] included in the child/caregiver ratio for swimming in 18 inches [~~two feet~~] or more of water must be able to swim and must be prepared to do so in an emergency.

§746.2115. *May I include volunteers or child-care employees who do not meet minimum qualifications for caregivers in the child/caregiver ratio for water activities?*

You [~~Yes. To meet the child/caregiver ratio for splashing/wading and swimming activities,~~ you] may include adult volunteers and adult child-care center employees who do not meet the minimum qualifications for caregivers specified in Subchapter D of this chapter (relating to Personnel) to meet the child/caregiver ratio for swimming and wading activities, provided that:

(1) You maintain at least the classroom child/caregiver ratios required in this subchapter with caregivers who do meet the minimum qualifications for caregivers;

(2) All persons included in the ratios for water activities must be able to swim and must be prepared to do so in an emergency; and

(3) You ensure compliance with all other minimum standards, including, but not limited to, standards relating to supervision, discipline and guidance.

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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26 TAC §746.2103

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The repeal affects Texas Government Code §531.0055 and HRC §42.042.

§746.2103. *Will I be given an opportunity to comply with the minimum standards for splashing/wading activities, if my child-care center was licensed before September 1, 2003?*

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 S. SAFETY PRACTICES

DIVISION 1. SAFETY PRECAUTIONS

26 TAC §746.3701

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.3701. *What safety precautions must I take to protect children in my child-care center?*

All areas accessible to a child must be free from hazards including[, but not limited to,] the following:

(1) Electrical outlets accessible to a child younger than five years must have childproof covers or safety outlets;

(2) 220-volt electrical connections within a child's reach must be covered with a screen or guard;

(3) Air conditioners, electric fans, and heaters must be mounted out of all children's reach or have safeguards that keep any child from being injured;

(4) Glass in sliding doors must be clearly marked with decals or other materials placed at children's eye level;

(5) Play materials and equipment must be safe and free from sharp or rough edges and toxic paints;

(6) Poisonous or potentially harmful plants must be inaccessible to all children;

(7) Bottle warmers must be inaccessible to all children and used only according to manufacturer instructions;

(8) All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside;

(9) All bodies of water, wading pools [~~such as pools~~], hot tubs, [~~ponds, creeks,~~] birdbaths, fountains, buckets, and rain barrels must be inaccessible to all children; and

(10) All televisions must be anchored, so they cannot tip over. A television may be anchored to a rolling cart, if [~~as long as~~] it is anchored in a way that the cart will not tip over.

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 U. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT DIVISION 7. INFLATABLES

26 TAC §746.4971

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.4971. *May I use inflatable active play equipment?*

You may use inflatable equipment both at and away from your child-care center if you follow these guidelines:

(1) You use enclosed inflatables (such as bounce houses or moon bounces) according to the manufacturer's instructions;

(2) You use open inflatables (such as obstacle courses, slides, or games) according to the manufacturer's label and instructions for the user; and

(3) Inflatables that include water activity also comply with all applicable requirements in Subchapter V of this chapter (relating to Swimming Pools, Wading [~~Wading/Splashing~~] Pools, and Sprinkler Play).

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

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SUBCHAPTER V. SWIMMING POOLS, WADING/SPLASHING POOLS, AND SPRINKLER PLAY

26 TAC §§746.5001, 746.5009, 746.5011, 746.5013, 746.5017 STATUTORY AUTHORITY

The amendments 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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new sections affect Texas Government Code §531.0055 and HRC §42.042.

§746.5001. *What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?*

In addition to complying with the child/caregiver ratios specified in §746.2105 of this chapter [~~title~~] (relating to What are the child/caregiver ratios for swimming activities?) and other safety requirements specified in §746.2109 of this chapter (relating to Must a certified lifeguard be on duty when children are swimming in more than 18 inches of water) and §746.2113 of this chapter [~~title~~] (relating to [~~Must a certified lifeguard be on duty when children are swimming in more than two feet of water?~~ and] Must persons who are counted in the child/caregiver ratio during swimming know how to swim?), you must comply with the following safety precautions when any child uses a swimming pool [~~(more than two feet of water)~~] both at and away from your child-care center:

- (1) A minimum of two life-saving devices must be available;
- (2) One additional life-saving device must be available for each 2,000 square feet of water surface;
- (3) Drain grates must be in place, in good repair, and must not be able to be removed without using tools;
- (4) Pool chemicals and pumps must be inaccessible to any child;
- (5) Machinery rooms must be locked when any child is present;
- (6) Employees must be able to clearly see all parts of the swimming area;
- (7) The bottom of the pool must be visible at all times;
- (8) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in a pool; and
- (9) All indoor/outdoor areas must be free of furniture and equipment that any child could use to scale a fence or barrier or release a lock.

§746.5009. What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?

Before a child who is unable to swim competently or who is at risk of injury or death when swimming enters a swimming pool, you must:

- (1) Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- (2) Ensure the child is wearing the PFD; and
- (3) Ensure the PFD is properly fitted and fastened for the child.

§746.5011. Must I provide a personal flotation device (PFD) to a child in care who is unable to swim competently or who is at risk of injury or death when swimming when the child is participating in swim instruction or a competition?

You are not required to provide the child with a PFD or ensure the child is wearing the device if:

- (1) The child is actively participating in swim instruction or a competition; and
- (2) You ensure that the child is supervised in accordance with §746.1205 of this chapter (relating to What responsibilities does a caregiver have when supervising a child or children?) during the instruction or competition.

§746.5013. What are the safety requirements for wading pools?

(a) Wading [Wading/splashing] pools [(two feet of water or less)] at your child-care center must be:

- (1) Stored out of children's reach when not in use;
- (2) Drained at least daily and sanitized; and
- (3) Stored so they do not hold water.

(b) You must comply with the safety precautions specified in §746.5001 of this subchapter [title] (relating to What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?) when using wading [wading/splashing] pools away from your child-care center.

§746.5017. Can a child [children] in my care swim in a body of water other than a swimming pool; such as a lake, pond, or river?

You [No, you] must not allow a child [children] to swim in a [lake, pond, river, or a] body of water other than a swimming pool [or wading pool] that complies with the rules specified in this subchapter.

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§747.123, 747.605, 747.1303, 747.1305, 747.1309, 747.2001, 747.2005, 747.2009, 747.2013, 747.2015, 747.3501, 747.4751, 747.4801, 747.4813, and 747.4817; and new §§747.1323, 747.4811 and 747.4812.

BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding §341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

HHSC Child Care Regulation (CCR) is proposing new and amended rules in Chapter 747 that will (1) add definitions and requirements related to water safety, including (A) water safety training for caregivers, and (B) the use of a personal flotation device for children who access swimming pools via their licensed or registered child-care home; and (2) update references to bodies of water and wading pools to be consistent with HSC §341.0646(a).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §747.123 (1) adds definitions for "body of water," "personal flotation device," "swimming pool," and "wading pool"; (2) updates the definition of "water activities" to remove the terms "splashing pools" and "bodies of water"; and (3) updates the numbering of the definitions accordingly.

The proposed amendment to §747.605 (1) moves requirements related to water activity participation to the end of the list of required admission information; (2) renumbers the rule accordingly; and (3) clarifies that if a child-care home allows a child to access a swimming pool a parent is required to indicate at admission whether the child is (A) able to swim competently as defined by the American Red Cross, or (B) requires a personal flotation device because the child is unable to swim competently or is at risk of injury or death when swimming or otherwise accessing a body of water.

The proposed amendment to §747.1303 (1) removes duplicative language; (2) updates punctuation; (3) updates a rule reference

to add the title of the rule; and (4) adds to the chart of training requirements for caregivers (A) the word "safety" to the transportation training requirements to be consistent with the rule content for that training, and (B) a new water safety training requirement for a child-care home that allows a child to access a swimming pool at or away from the home. The chart specifies that each primary caregiver and substitute or assistant caregiver who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed amendment to §747.1305 clarifies that water safety training is exclusive of the annual required training for substitute and assistant caregivers.

The proposed amendment to §747.1309 clarifies that water safety training is exclusive of the 30 clock hours of annual required training for the primary caregiver.

Proposed new §747.1323 adds a requirement for water safety training if a child-care home allows a child to access a swimming pool at or away from the home. The rule requires the training for each substitute or assistant caregiver who accompanies a child to a swimming pool before the caregiver accompanies the child to a swimming pool and for the primary caregiver. The rule also clarifies that water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

The proposed amendment to §747.2001 (1) removes references to "splashing" in the rule title and within the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; and (3) updates a reference.

The proposed amendment to §747.2005 (1) removes language indicating that a swimming pool has a depth of more than two feet of water; and (2) updates a reference.

The proposed amendment to §747.2009 (1) updates the rule title to reflect that a lifeguard must be on duty when children are swimming in 18 inches, rather than two feet, of water; and (2) updates language for better readability.

The proposed amendment to §747.2013 clarifies that each caregiver counted in the child to caregiver ratio for swimming in 18 inches or more of water must be able to swim and be prepared to do so in an emergency.

The proposed amendment to §747.2015 updates language for better readability.

The proposed amendment to §747.3501 (1) updates language for better readability; and (2) updates the list of vessels containing water that must be inaccessible to all children to (A) add wading pools, and (B) remove pools, ponds, and creeks as they are included in the definition of the previously listed "bodies of water."

The proposed amendment to §747.4751 updates the title of a cross-referenced subchapter.

The title of Subchapter V is updated to remove the term "splashing."

The proposed amendment to §747.4801 (1) updates the rule title; (2) reorganizes rule references for better readability; and (3) removes language indicating that a swimming pool has a depth of more than two feet of water.

Proposed new §747.4811 outlines the additional safety precautions a child-care home must take for a child in care who is unable to swim competently or at risk of injury or death when swim-

ming. The rule requires the child-care home to do the following before the child enters a swimming pool: (1) provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD); (2) ensure the child is wearing the PFD; and (3) ensure the PFD is properly fitted and fastened for the child.

Proposed new §747.4812 clarifies that a child-care home is not required to provide a PFD to a child who is unable to swim competently or is at risk of injury or death when swimming or ensure the child is wearing a PFD if (1) the child is actively participating in swim instruction or a competition; and (2) the child-care home ensures the child is supervised in accordance with §747.1503 during the instruction or competition.

The proposed amendment to §747.4813 (1) removes the term "splashing" from the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; and (3) updates the title of a rule reference.

The proposed amendment to §747.4817 (1) updates the rule title; (2) updates language for better readability; (3) removes references to "lakes," "ponds," and "rivers" from the list of water bodies a child cannot swim in as they are included in the definition of a "body of water"; and (4) removes a reference to "wading pool" as a wading pool is not considered a "body of water".

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 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 and micro-businesses, but there will not be an adverse economic effect on rural communities.

Texas Government Code Chapter 2006 defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2022 CCR Data Book, there are approximately 4,177 Licensed and Registered Child-Care Homes required to comply with the rules. These homes are lim-

ited to caring for a maximum of 12 children. CCR assumes that all Licensed and Registered Child-Care Homes (4,177 homes) are for-profit homes with less than 20 employees and qualify as small businesses and micro-businesses.

There is a projected economic impact on small businesses and micro-businesses from proposed §747.4811. This economic impact, however, is limited to child-care homes that offer children access to a swimming pool, either onsite or during field trips where water activities take place. Based on data collected in November 2023 for Fiscal Year 2022, 170 child-care homes have a swimming pool on the premises and 1,084 child-care homes offer water activities (to include swimming pools, wading pools, and sprinkler play). With regards to water activities, CCR does not collect data regarding the type of water activities a child-care home provides or whether those activities take place onsite or during field trips. Although HHSC can assume the 170 child-care homes with a pool on the premises will be required to comply with the proposed rule, HHSC is unable to determine the number of child-care homes whose water activities include access to a swimming pool during field trips. Therefore, HHSC does not have enough information to determine the total number of child-care homes operating as a small business or micro-business that will be required to comply with the proposed rule.

Section 747.4811 requires a child-care home to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a swimming pool a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care home depending on the number of enrolled children who are unable to swim competently or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care homes may choose to obtain PFDs through organizations that provide them at no cost. These factors, coupled with HHSC's inability to determine the number of child-care homes that offer access to a swimming pool during field trips, renders HHSC unable to determine economic costs for persons required to comply with the rule as proposed.

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 children who access swimming pools via their licensed or registered child-care home.

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 and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) improve the safety of children enrolled in licensed and registered child-care homes who access swimming pools; and (2) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the rules require child-care homes to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a body of water a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care operation depending on the number of enrolled children who are unable to swim or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care operations may choose to obtain PFDs through organizations that provide them at no cost. As a result, HHSC does not have sufficient information to determine economic costs for persons required to comply with the rules as proposed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@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 23R074" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §747.123

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.123. *What do certain words and terms mean when used in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) **Activity plan**--A written plan that outlines the daily routine and activities in which a group of children will engage while in your care. The plan is designed to meet the children's []cognitive, social, language, emotional, and physical developmental strengths and needs.

(2) **Activity space**--An area or room used for children's activities.

(3) **Administrative and clerical duties**--Duties that involve the operation of a child-care home, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(4) **Admission**--The process of enrolling a child in a child-care home. The date of admission is the first day the child is physically present in the home.

(5) **Adult**--A person 18 years old and older.

(6) **After-school hours**--Hours before and after school, and days when school is not in session, such as school holidays, summer vacations, and teacher in-service days.

(7) **Age-appropriate**--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the developmental or chronological age of the child being served.

(8) **Attendance**--When referring to a child's attendance, the physical presence of a child at the child-care home on any given day or at any given time, as distinct from the child's enrollment in the child-care home.

(9) **Body of water**--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D (relating to Sanitation and Safety of Facilities Used by Public).

(10) [(9)] **Bouncer seat**--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement[;] or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(11) [(10)] **Caregiver**--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel).

(12) [(11)] **Certified Child-Care Professional Credential**--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(13) [(12)] **Certified lifeguard**--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate is current, relevant to the type of water activity in which children will engage, and representative of the type of training described.

(14) [(13)] **CEUs--Continuing education units**. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(15) [(14)] **Child**--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(16) [(15)] **Child-care home**--A registered or licensed child-care home, as specified in §747.113 of this chapter (relating to What is a registered child-care home?) or §747.115 of this chapter (relating to What is a licensed child-care home?). This term includes the program, home, grounds, furnishings, and equipment.

(17) [(16)] **Child-care program**--The services and activities provided by a child-care home.

(18) [(17)] **Child Development Associate Credential**--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(19) [(18)] **Clock hour**--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals as specified in §747.1315(a) of this chapter (relating to Must child-care training meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §747.1315(a) and (b) of this chapter, or self-study training.

(20) [(19)] **Corporal punishment**--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting with a hand or instrument, slapping, pinching, shaking, biting, or thumping a child.

(21) [(20)] **Days**--Calendar days, unless otherwise stated.

(22) [(21)] **Employee**--An assistant caregiver, substitute caregiver, or any other person a child-care home employs full-time or part-time to work for wages, salary, or other compensation, including kitchen staff, office staff, maintenance staff, or anyone hired to transport a child.

(23) [(22)] **Enrollment**--The list of names or number of children who have been admitted to attend a child-care home for any given period of time; the number of children enrolled in a child-care home may vary from the number of children in attendance on any given day.

(24) [(23)] **Entrap**--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(25) [(24)] **Field trips**--Activities conducted away from the child-care home.

(26) [(25)] **Food service**--The preparation or serving of meals or snacks.

(27) [(26)] **Frequent**--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see

§745.601 of this title (relating to What words must I know to understand this subchapter?).

(28) [(27)] Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(29) [(28)] Grounds-- Includes any parcel of land where the home of the primary caregiver is located and any building, other structure, body of water, play equipment, street, sidewalk, walkway, driveway, parking garage, or parking lot on the parcel. Also referred to as "premises" in this chapter.

(30) [(29)] Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(31) [(30)] Hazardous materials--Any substance or chemical that is a health hazard or physical hazard, as determined by the Environmental Protection Agency. Also referred to as "toxic materials" and "toxic chemicals" in this chapter.

(32) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(33) [(31)] Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(34) [(33)] High school equivalent--

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(35) [(34)] Individual activities--Opportunities for the child to work independently or to be away from the group but supervised.

(36) [(35)] Infant--A child from birth through 17 months.

(37) [(36)] Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(38) [(37)] Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this

type of training include[.] classroom training, web-based online facilitated learning, video-conferencing, or other group learning experiences.

(39) [(38)] Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care home, building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(40) [(39)] Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(41) [(40)] Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when you:

(A) Home voluntarily closes;

(B) Home must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Home must close because its permit is automatically revoked according to the Human Resources Code §§42.048(e), 42.052(i), or 42.054(f).

(42) Personal flotation device (PFD)--A United States Coast Guard approved life jacket.

(43) [(41)] Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases the child's heart rate and breathing rate.

(44) [(42)] Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in vigorous physical activity.

(45) [(43)] Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(46) [(44)] Premises--See the term "grounds" and its definition in this section.

(47) [(45)] Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see §745.601 of this title.

(48) [(46)] Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(49) [(47)] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(50) [(48)] Sanitize--The use of a disinfecting product that provides instructions specific for sanitizing and is registered by the En-

vironmental Protection Agency (EPA) to substantially reduce germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing or disinfecting, depending on the surface (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). If you use bleach instead of an approved disinfecting product, you must follow these steps in order:

- (A) Washing with water and soap;
- (B) Rinsing with clear water;
- (C) Soaking in or spraying on a bleach solution for at least two minutes;
- (D) Rinsing with cool water only those items that children are likely to place in their mouths; and
- (E) Allowing the surface or item to air-dry.

(51) [(49)] School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

(52) [(50)] Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(53) [(51)] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(54) [(52)] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(55) [(53)] Special care needs--A child with special care needs is a child who has:

(A) A chronic physical, developmental, behavioral, or emotional condition or a disability and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, comprehension, emotional regulation, self-help, social skills, emotional well-being, seeing, hearing, and breathing; or

(B) A limitation due to an injury, illness, or allergy.

(56) [(54)] State or local fire authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors. Also referred to as "fire marshal" in this chapter.

(57) Swimming Pool--An artificial body of water with a water depth of more than 18 inches that is maintained or used expressly for public or private recreational purposes, swimming, diving, aquatic sports or activities, or therapeutic purposes.

(58) [(55)] Toddler--A child from 18 months through 35 months.

(59) [(56)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are

treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(60) Wading pool--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D.

(61) [(57)] Water activities--Related to the use of swimming pools, ~~splashing pools,~~ wading pools, or sprinkler play, ~~or other bodies of water~~.

(62) [(58)] Weather permitting--Weather conditions that do not pose any concerns for health and safety such as significant risk of frostbite or heat-related illness. This includes adverse weather conditions in which children may still play safely outdoors for shorter periods with appropriate adjustments to clothing and any necessary access to water, shade, or shelter.

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 April 12, 2024.

TRD-202401544

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269

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SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

26 TAC §747.605

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.605. *What admission information must I obtain for each child?*

You must obtain at least the following information before admitting a child to the child-care home:

- (1) The child's name and birth date;
- (2) The child's home address and telephone number;
- (3) Date of the child's admission to the child-care home;
- (4) Name and address of parents [parent(s)];
- (5) Telephone numbers at which parents [parent(s)] can be reached while the child is in care;
- (6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;

(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided, including any authorized pick-up and drop-off locations;

(9) Permission for field trips, if provided;

~~[(10) Permission for participation in water activities, if provided, including whether the child is able to swim without assistance;]~~

(10) ~~[(11)]~~ Name, address, and telephone number of the child's physician or an emergency-care facility;

(11) ~~[(12)]~~ Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(12) ~~[(13)]~~ A statement of the child's special care needs, which must include:

(A) Any limitations or restrictions on the child's activities;

(B) Special care the child requires, including:

(i) Any reasonable accommodations or modifications;

(ii) Any adaptive equipment provided for the child, including instructions for how to use the equipment; and

(iii) Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; and

(C) Any medications prescribed for continuous, long-term use;

(13) ~~[(14)]~~ The name and telephone number of the school a school-age child attends;

(14) ~~[(15)]~~ Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; ~~[and]~~

(15) ~~[(16)]~~ The child's allergies and a completed food allergy emergency plan for the child, if applicable; ~~and~~ [-]

(16) Permission for participation in water activities, if provided. If you allow a child to access a swimming pool, the parent must also indicate whether the child:

(A) Is able to swim competently, as defined by the American Red Cross; or

(B) Requires a personal flotation device because the child is:

(i) Unable to swim competently, as defined by the American Red Cross; or

(ii) At risk of injury or death when swimming or otherwise accessing a body of water.

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 April 12, 2024.
TRD-202401545

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: May 26, 2024
For further information, please call: (512) 438-3269

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SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §§747.1303, 747.1305, 747.1309, 747.1323 STATUTORY AUTHORITY

The amendments 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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new section affect Texas Government Code §531.0055 and HRC §42.042.

§747.1303. What training must I ensure that my caregivers have within certain timeframes?

You must make sure that each caregiver has the training within the timeframe required in the following chart:

Figure: 26 TAC §747.1303

~~[Figure: 26 TAC §747.1303]~~

§747.1305. What areas of training must the annual training for substitute and assistant caregivers cover?

(a) Each caregiver counted in the child/caregiver ratio on more than ten separate occasions in one training year, as specified in §747.1311 of this division (relating to When must the annual training be obtained?) must obtain annual training relevant to the age of the children for whom the caregiver provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum; and
- (4) Teacher-child interaction.

(c) If your home provides care for a child younger than 24 months, one hour of the annual training hours must cover all the following topics:

- (1) Recognizing and preventing shaken baby syndrome and abusive head trauma;
- (2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and
- (3) Understanding early childhood brain development.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

- (1) Emergency preparedness;
 - (2) Preventing and controlling the spread of communicable diseases, including immunizations;
 - (3) Administering medication, if applicable, including compliance with §747.3603 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);
 - (4) Preventing and responding to emergencies due to food or an allergic reaction;
 - (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
 - (6) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).
- (e) The remaining annual training hours must be in one or more of the following topics:
- (1) Care of children with special needs;
 - (2) Child health (for example, nutrition and physical activity);
 - (3) Safety;
 - (4) Risk management;
 - (5) Identification and care of ill children;
 - (6) Cultural diversity for children and families;
 - (7) Professional development (for example, effective communication with families and time and stress management);
 - (8) Topics relevant to the particular ages of children in care (for example, caregivers working with infants or toddlers should receive training on biting and toilet training);
 - (9) Planning developmentally appropriate learning activities;
 - (10) Observation and assessment;
 - (11) Attachment and responsive care giving; and
 - (12) Minimum standards and how they apply to the caregiver.
- (f) For an assistant caregiver or substitute caregiver described in §747.1303(3)(B) of this division (relating to What training must I ensure that my caregivers have within certain timeframes?), at least three of the required 15 annual training hours must come from instructor-led training. The remaining 12 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.
- (g) For an assistant caregiver or substitute caregiver described in §747.1303(4)(B) of this division, at least five of the required 24 annual training hours must come from instructor-led training. The remaining 19 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.
- (h) Annual training is exclusive of any requirements for orientation, pediatric first aid and pediatric CPR training, transportation safety training, water safety training, and any training received through a high school child-care work-study program.

§747.1309. *What areas of training must the annual training for the primary caregiver cover?*

- (a) You must obtain at least 30 clock hours of training each year relevant to the age of the children for whom you provide care.
- (b) At least six clock hours of the annual training hours must be in one or more of the following topics:
 - (1) Child growth and development;
 - (2) Guidance and discipline;
 - (3) Age-appropriate curriculum; and
 - (4) Teacher-child interaction.
- (c) If your home provides care for children younger than 24 months, one hour of the annual training hours must cover all the following topics:
 - (1) Recognizing and preventing shaken baby syndrome;
 - (2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and
 - (3) Understanding early childhood brain development.
- (d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:
 - (1) Emergency preparedness;
 - (2) Preventing and controlling the spread of communicable diseases, including immunizations;
 - (3) Administering medication, if applicable, including compliance with §747.3603 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);
 - (4) Preventing and responding to emergencies due to food or an allergic reaction;
 - (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
 - (6) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).
- (e) If you have:
 - (1) Five or fewer years of experience as a primary caregiver in a licensed or registered child-care home, you must complete at least six of the annual training hours in management techniques, leadership, or staff supervision; or
 - (2) More than five years of experience as a primary caregiver in a licensed or registered child-care home, you must complete at least three of the annual training hours in management techniques, leadership, or staff supervision.
- (f) The remainder of annual training hours must be selected from the training topics specified in §747.1305(e) of this chapter (relating to What areas of training must the annual training for substitute and assistant caregivers cover?).
- (g) You may obtain clock hours or CEUs from the same sources as other caregivers.

(h) You may not earn training hours by presenting training to other caregivers.

(i) At least six of the required 30 annual training hours must come from instructor-led training. The remaining 24 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.

(j) The 30 clock hours of annual training are exclusive of any requirements for the Licensing pre-application course, pediatric first aid and pediatric CPR training, ~~and~~ transportation safety training, and water safety training.

§747.1323. What additional training must an employee and caregiver have if the child-care home allows a child to access a swimming pool at or away from the home?

(a) If the child-care home allows a child to access a swimming pool at or away from the home, annual water safety training is required for:

(1) Each substitute or assistant caregiver prior to accompanying a child to a swimming pool; and

(2) The primary caregiver.

(b) Water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

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

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Karen Ray

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For further information, please call: (512) 438-3269



SUBCHAPTER E. CHILD/CAREGIVER

RATIOS AND GROUP SIZES

DIVISION 5. RATIOS FOR WATER

ACTIVITIES

26 TAC §§747.2001, 747.2005, 747.2009, 747.2013, 747.2015

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments affect Texas Government Code §531.0055 and HRC §42.042.

§747.2001. Must I have additional caregivers for wading [wading/splashing] activities?

(a) Whenever children use a wading [or splashing] pool [~~two feet of water or less~~], you must use the child/caregiver ratio for wading [wading/splashing] activities for all children in care.

(b) If there is more than one child under 24 months in care, a second adult must be present.

(c) The maximum number of children one caregiver can supervise while children use a [splashing or] wading pool [~~two feet of water or less~~] is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 26 TAC §747.2001(c)

[Figure: 40 TAC §747.2001(e)]

§747.2005. What are the child/caregiver ratios for swimming activities?

(a) When your child-care home uses a swimming pool [~~more than two feet of water~~] and four or more children are swimming, there must be at least two caregivers present supervising the children who are swimming.

(b) The maximum number of children one caregiver can supervise while children are swimming is based on the age of the youngest child in the group. You must use the following child/caregiver ratio for swimming activities:

Figure: 26 TAC §747.2005(b)

[Figure: 40 TAC §747.2005(b)]

§747.2009. Must I have a certified lifeguard on duty when children are swimming in more than 18 inches [~~two feet~~] of water?

A [Yes. When children are swimming in more than two feet of water, a] certified lifeguard must be on duty at all times when children are swimming in more than 18 inches of water.

§747.2013. Must persons who are counted in the child/caregiver ratio during swimming know how to swim?

[Yes.] Each caregiver [person] included in the child/caregiver ratio for swimming in 18 inches or more [~~two feet~~] of water [or more] must be able to swim and must be prepared to do so in an emergency.

§747.2015. May I include volunteers or household members who do not meet minimum qualifications for caregivers in the child/caregiver ratio for water activities?

You [Yes. To meet the child/caregiver ratio for splashing/wading and swimming activities, you] may include adult volunteers and adult household members who do not meet the minimum qualifications for caregivers specified in Subchapter D of this chapter (relating to Personnel) to meet the child/caregiver ratio for swimming and wading activities, provided that:

(1) You maintain at least the child/caregiver ratios required in Division 2 of this subchapter (relating to Regular Ratios and Group Sizes in the Registered Child-Care Home), or Division 3 of this subchapter (relating to Regular Ratios and Group Sizes in the Licensed Child-Care Home), as applicable, with caregivers who do meet the minimum qualifications for caregivers;

(2) All persons included in the ratios for water activities must be able to swim and must be prepared to do so in an emergency; and

(3) You ensure compliance with all other minimum standards, including, but not limited to, standards relating to supervision, discipline, and guidance.

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 S. SAFETY PRACTICES
DIVISION 1. SAFETY PRECAUTIONS**

26 TAC §747.3501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.3501. *What safety precautions must I take to protect children in my child-care home?*

All areas accessible to a child must be free from hazards including[, but not limited to,] the following:

- (1) Electrical outlets accessible to a child younger than five years must have child-proof covers or safety outlets;
- (2) 220-volt electrical connections within any child's reach must be covered with a screen or guard;
- (3) Air conditioners, electric fans, and heaters must be mounted out of all children's reach or have safeguards that keep any child from being injured;
- (4) Glass in sliding doors must be clearly marked with decals or other materials placed at children's eye level;
- (5) Play materials and equipment must be safe and free from sharp or rough edges and toxic paints;
- (6) Poisonous or potentially harmful plants must be inaccessible to children;
- (7) Bottle warmers must be inaccessible to all children and used only according to manufacturer instructions;
- (8) All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside; and
- (9) All bodies of water, wading pools [such as, pools], hot tubs, [ponds, creeks,] birdbaths, fountains, buckets, and rain barrels[,] must be inaccessible to children.

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 U. INDOOR AND OUTDOOR
ACTIVE PLAY SPACE AND EQUIPMENT
DIVISION 5. INFLATABLES**

26 TAC §747.4751

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.4751. *May I use inflatable active play equipment?*

You may use inflatable equipment both at and away from your child-care home if you follow these guidelines:

- (1) You use enclosed inflatables (such as bounce houses or moon bounces/walks) according to the manufacturer's instructions;
- (2) You use open inflatables (such as obstacle courses, slides, or games) according to the manufacturer's label and instructions for the user; and
- (3) Inflatables that include water activity also comply with all applicable requirements in Subchapter V of this chapter (relating to Swimming Pools, Wading [Wading/Splashing] Pools, and Sprinkler Play).

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

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**SUBCHAPTER V. SWIMMING POOLS,
WADING [WADING/SPLASHING] POOLS, AND
SPRINKLER PLAY**

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment and new sections affect Texas Government Code §531.0055 and HRC §42.042.

§747.4801. What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?

In addition to complying with the child/caregiver ratios specified in §747.2005 of this chapter [title] (relating to What are the child/caregiver ratios for swimming activities?) and other safety requirements specified in §747.2009 of this chapter (relating to Must I have a certified lifeguard on duty when children are swimming in more than 18 inches of water?) and §747.2013 of this chapter [title] (relating to [Must I have a certified lifeguard on duty when children are swimming in more than two feet of water? and] Must persons who are counted in the child/caregiver ratio during swimming know how to swim?), you must comply with the following safety precautions when any child uses a swimming pool [(more than two feet of water)] both at and away from your child-care home:

- (1) A minimum of two life-saving devices must be available;
- (2) One additional life-saving device must be available for each 2,000 square feet of water surface;
- (3) Drain grates must be in place, in good repair, and must not be able to be removed without using tools;
- (4) Pool chemicals and pumps must be inaccessible to any child;
- (5) Machinery rooms must be locked when a child is present;
- (6) Caregivers must be able to clearly see all parts of the swimming area;
- (7) The bottom of the pool must be visible at all times; and
- (8) An adult must be present who is able to immediately turn off the pump and filtering system when a child is in a pool.

§747.4811. What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?

Before a child who is unable to swim competently or who is at risk of injury or death when swimming enters a swimming pool, you must:

- (1) Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- (2) Ensure the child is wearing the PFD; and
- (3) Ensure the PFD is properly fitted and fastened for the child.

§747.4812. Must I provide a personal flotation device (PFD) to a child in care who is unable to swim competently or who is at risk of

injury or death when swimming when the child is participating in swim instruction or a competition?

You are not required to provide the child with a PFD or ensure the child is wearing the device if:

(1) The child is actively participating in swim instruction or a competition; and

(2) You ensure that the child is supervised in accordance with §747.1503 of this chapter (relating to What responsibilities does a caregiver have when supervising a child or children?) during the instruction or competition.

§747.4813. What are the safety requirements for wading pools?

(a) Wading [Wading/splashing] pools [(two feet of water or less)] used at your child-care home must be:

- (1) Stored out of children's reach when not in use;
- (2) Drained and sanitized at least daily; and
- (3) Stored so they cannot hold water.

(b) You must comply with the safety precautions specified in §747.4801 of this subchapter [title] (relating to What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?) when using wading [wading/splashing] pools away from your child-care home.

§747.4817. Can a child [children] in my care swim in a body of water other than a swimming pool[, such as a lake, pond, or river]?

You [No, you] must not allow a child [children] to swim in a [lake, pond, river, or a] body of water other than a swimming pool [or wading pool] that complies with the rules specified in this subchapter.

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 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §§748.61; and new §§748.4801, 748.4803, 748.4805, 748.4807, 748.4809, 748.4821, 748.4823, 748.4825, 748.4831, 748.4833, 748.4841, 748.4843, 748.4845, 748.4847, 748.4851, 748.4861, 748.4863, 748.4865, 748.4867, 748.4869, and 748.4881, in Texas Administrative Code, Title 26, Chapter 748, Minimum Standards for General Residential Operations, Subchapter B, Definitions and Services, and new Subchapter W, Additional Requirements for Operations that Provide Psychiatric Health Treatments and Services.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 3121, 87th Legislature, Regular Session, 2021, which created Texas

Health and Safety Code Chapter 577A, Psychiatric Residential Youth Treatment Facilities. Chapter 577A mandates HHSC Child Care Regulation (CCR) to create a voluntary process whereby a general residential operation may be certified as a psychiatric residential youth treatment facility (PRYTF) to provide treatments and services to individuals 21 years of age or younger with a severe emotional disturbance. Section 577A.004 requires HHSC to adopt rules, including the establishment of application and renewal fees, to implement the chapter; and Section 577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Accordingly, CCR is proposing amended rules in Chapter 748, Subchapter B to update the types of services CCR regulates to include treatment services for individuals who are 21 of age or younger with a severe emotional disturbance that are admitted to a certified PRYTF. In addition, CCR is proposing new rules in Chapter 748, Subchapter W to (1) define terms and explain the scope of the rules; (2) add requirements for policies, notifications and postings, including requiring ongoing accreditation; (3) require a treatment director; (4) update the training requirements for a caregiver and certain employees; (5) update the child to caregiver ratio during night-sleeping hours; and (6) add admission criteria and specific requirements for plans of care.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.61 adds individuals who are 21 years of age or younger with a severe emotional disturbance who are admitted to a certified PRYTF as a type of treatment service for children with emotional disorders.

Proposed new §748.4801 defines the terms "individual," "psychiatric health treatments and services," "psychiatric residential youth treatment facility (PRYTF)," and "severe emotional disturbance."

Proposed new §748.4803 clarifies that if an operation provides psychiatric health treatments and services as a certified PRYTF, the PRYTF must meet the additional rules in this subchapter.

Proposed new §748.4805 clarifies that an operation required to comply with the rules in this subchapter must also meet the other rules in this chapter that apply to all operations unless the rule has been replaced by a rule in §748.4809.

Proposed new §748.4807 clarifies that the rules in this chapter that apply to a PRYTF as noted in new §748.4805 also apply to the care of a young adult 18 to 21 years of age whom the general residential operation has admitted for psychiatric health treatments and services.

Proposed new §748.4809 provides an itemized list of rules in this subchapter that replace other rules in this chapter.

Proposed new §748.4821 describes the additional policies that a general residential operation must submit as a part of the application process for a PRYTF certificate, including (1) how the PRYTF will provide 24-hour medical and emergency services, including nursing services; and (2) how caregivers will supervise young adults sharing restrooms and indoor and outdoor activity areas with children in the general residential operation, including the PRYTF.

Proposed new §748.4823 requires a PRYTF to always meet accreditation requirements and notify CCR within two days of being informed that the accreditation requirements will no longer be met.

Proposed new §748.4825 requires a PRYTF to post the PRYTF certificate in a prominent and publicly accessible place.

Proposed new §748.4831 establishes that a PRYTF must have a treatment director that is a full-time employee of the general residential operation.

Proposed new §748.4833 describes the qualifications for a treatment director that provides or oversees psychiatric health treatments and services under this subchapter.

Proposed new §748.4841 establishes the pre-service experience requirements for a caregiver providing psychiatric health treatments and services, which requires 40 hours of certain relevant supervised caregiver experience before being the only caregiver responsible for the individual.

Proposed new §748.4843 requires an additional four hours of suicide prevention training for (1) caregivers, before the caregiver may be counted in the child to caregiver ratio if any individual in the group is receiving psychiatric health treatments and services; and (2) certain employees, within 90 days of beginning certain job duties related to individuals receiving psychiatric health treatments and services.

Proposed new §748.4845 requires each caregiver providing psychiatric health treatments and services to individuals to have first aid with rescue breathing and choking and pediatric and adult cardiopulmonary resuscitation (CPR) within 90 days of employment. At least one person counted in the child to caregiver ratio must be certified in first-aid and CPR at all times.

Proposed new §748.4847 requires (1) a caregiver providing psychiatric health treatments and services to complete 50 annual training hours; and (2) a caregiver providing psychiatric health treatments and services and an employee with job duties related to individuals receiving psychiatric youth treatments and services to have (A) five total hours of annual suicide prevention training; and (B) two hours of annual training on administering psychotropic medication.

Proposed new §748.4851 lowers the child to caregiver ratio during sleeping hours for operations that offer psychiatric health treatments and services from 15:1 (if the caregiver is awake) or 10:1 (if the caregiver is asleep) to 6:1 (and the caregiver must always remain awake). This ratio also applies to young adults 18 to 21 years of age that are receiving psychiatric health treatments and services.

Proposed new §748.4861 establishes the admission criteria for psychiatric health treatments and services, including requiring the individual to (1) be 21 years of age or younger; (2) be diagnosed with a severe emotional disturbance; (3) need residential psychiatric treatment under the direction of a physician; and (4) be referred to the PRYTF by a licensed mental health professional.

Proposed new §748.4863 establishes the requirements for when individuals receiving different types of services may live in the same living quarters. Compared to §748.1201, which this rule replaces as noted in new §748.4809, this rule requires that young adults 18 to 21 years of age receiving psychiatric health treatments and services that are not in the care of the Texas Department of Family and Protective Services and did not come immediately from another residential child-care operation must (1) receive therapeutic services separately from children admitted to the general residential operation, including the PRYTF; (2) have separate living quarters; and (3) not use other areas of the

operation, except restrooms and outdoor and indoor activity areas may be shared under a policy required by new §748.4821.

Proposed new §748.4865 adds requirements to the preliminary service plan for individuals receiving psychiatric health treatments and services, including (1) therapeutic needs; (2) family engagement activities; (3) plans to consult with qualified professionals; and (4) nursing care.

Proposed new §748.4867 adds requirements to the initial service plan for individuals receiving psychiatric health treatments and services, including (1) one-to-one therapy; (2) family engagement activities; (3) consultation services with qualified professionals; (4) 24-hour nursing services; and (5) direct care and supervision services, supportive services for daily living and safety, and positive behavior management services.

Proposed new §748.4869 establishes who should be involved in the development of an initial service plan. Compared to §748.1339, which this rule replaces as noted in new §748.4809, this rule requires the service planning team for individuals receiving psychiatric health treatment service to include a licensed psychiatrist or physician.

Proposed new §748.4881 establishes that after a child in the care of a PRYTF turns 18, the young adult may remain in care until the young adult's 22nd birthday.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do have foreseeable implications relating to costs of state government. The costs are for IT improvements to the Child Care Licensing Automated Support Systems to allow operations to apply for a PRYTF certificate, collect associated fees, issue a certificate, complete the required inspections, evaluate compliance with the rules annually, renew the certificate, issue administrative penalties, allow providers to submit certain information associated with the certificate in their online provider account, and identify on the Search Texas Child Care website whether a general residential operation has this certificate. Funds for these improvements were appropriated in the 88th Legislature, Regular Session, 2023.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$4,712,356 in fiscal year (FY) 2024, \$0 in FY 2025, \$0 in FY 2026, \$0 in FY 2027, and \$0 in FY 2028.

Trey Wood has also determined that for each year of the first five years that the rules will be in effect, there will be an estimated increase in revenue to state government as a result of enforcing and administering the rules as proposed. A general residential operation that chooses to apply for a PRYTF certificate must pay a \$890 initial application fee and then a \$740 renewal application fee. HHSC cannot estimate the increase in revenue because HHSC is unable to anticipate how many general residential operations will apply for a PRYTF certificate.

There are no foreseeable implications relating to costs or revenues of local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will create a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will require an increase in fees paid to HHSC;

(5) the proposed rules will create a new regulation;

(6) the proposed rules will expand 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because the PRYTF program is voluntary and as such does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

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; do not impose a cost on regulated persons because it is a voluntary program; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that will create of a voluntary certification program that will provide families with additional, quality options for youth in need of residential care in a non-psychiatric hospital setting. The new program will encourage existing providers to meet these voluntary standards while also incentivizing new facilities to open in Texas, thereby expanding capacity.

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 the rules create a voluntary PRYTF program that does not mandate the imposition of fees, require a general residential operation to purchase curriculum or equipment, or require a general residential operation to alter current staffing patterns.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerry Williams by email at Gerry.Williams@hhs.texas.gov.

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CRRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rules 23R072" in the subject line.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 2. SERVICES

26 TAC §748.61

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The amendment affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.61. *What types of services does Licensing regulate?*

We regulate the following types of services:

(1) Child-Care Services--Services that meet a child's basic need for shelter, nutrition, clothing, nurture, socialization and interpersonal skills, care for personal health and hygiene, supervision, education, and service planning;

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and [~~and/or~~] support children:

(A) With an Emotional Disorder [~~Disorders~~] who have a:

(i) Current Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) [~~current DSM-5~~] diagnosis, such as mood disorders, psychotic disorders, or dissociative disorders, and demonstrate two or more of the following:

(I) [(†)] Major self-injurious actions, including a suicide attempt within the last 12 months;

(II) [(‡)] Difficulties that present a significant risk of harm to others, including frequent or unpredictable physical aggression; or

(III) [(‡‡)] An additional DSM-5 diagnosis of substance-related or [~~and/or~~] addictive disorder with severe impairment; or

(ii) Severe emotional disturbance as defined by §748.4801 of this chapter (relating to What do the following terms mean when used in this subchapter?) who are admitted to a certified psychiatric residential youth treatment facility also defined at §748.4801 of this chapter, in addition to young adults 18 to 21 years of age who also qualify for these services;

(B) With a DSM-5 diagnosis of Intellectual Disability that is characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(C) With a DSM-5 diagnosis of Autism Spectrum Disorder that is characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(D) With Primary Medical Needs, who cannot live without mechanical supports or the services of others because of life-threatening conditions, including:

(i) The inability to maintain an open airway without assistance, which [~~This~~] does not include the use of inhalers for asthma;

(ii) The inability to be fed except through a feeding tube, gastric tube, or a parenteral route;

(iii) The use of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or

(iv) Multiple physical disabilities including sensory impairments; and

(E) Determined to be a trafficking victim, including a child:

(i) Determined to be a trafficking victim as the result of a criminal prosecution or who is currently alleged to be a trafficking victim in a pending criminal investigation or prosecution;

(ii) Identified by the parent or agency that placed the child in the operation as a trafficking victim; or

(iii) Determined by the operation to be a trafficking victim based on reasonably reliable criteria, including one or more of the following:

(I) The child's own disclosure as a trafficking victim;

(II) The assessment of a counselor or other professional; or

(III) Evidence that the child was recruited, harbored, transported, provided to another person, or obtained for the purpose of forced labor or commercial sexual activity; and

(3) Additional Programmatic Services, which include:

(A) Emergency Care Services--A specialized type of child-care services designed and offered to provide short-term child care to children who, upon admission, are in an emergency constituting an immediate danger to the physical health or safety of the child or the child's offspring;

(B) Transitional Living Program--A residential services program designed to serve children 14 years old or older for whom the service or treatment goal is basic life skills development toward independent living, which [A transitional living program] includes basic life skills training and the opportunity for children to practice those skills and [A transitional living program] is not an independent living program;

(C) Assessment Services Program--Services to provide an initial evaluation of the appropriate placement for a child to ensure that appropriate information is obtained [in order] to facilitate service planning;

(D) Therapeutic Camp Services--A camping program to augment an operation's treatment services with an experiential curriculum exclusively for a child with an emotional disorder who has difficulty functioning in his home, school, or community and is [Therapeutic camp services are] only available to children 13 years old and older; and

(E) Respite Child-Care Services--See §748.73 of this title (relating to What are respite child-care 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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Karen Ray

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SUBCHAPTER W. ADDITIONAL
REQUIREMENTS FOR OPERATIONS
THAT PROVIDE PSYCHIATRIC HEALTH
TREATMENTS AND SERVICES
DIVISION 1. DEFINITIONS AND SCOPE

26 TAC §§748.4801, 748.4803, 748.4805, 748.4807, 748.4809
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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4801. What do the following terms mean when used in this subchapter?

In this subchapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) Individual--A person who is 21 years of age or younger.

(2) Psychiatric health treatments and services--In addition to basic child-care services, a specialized type of child-care services provided by a certified psychiatric residential youth treatment facility to treat and support individuals who have a severe emotional disturbance.

(3) Psychiatric Residential Youth Treatment Facility (PYRTF)--As defined at Texas Health and Safety Code §577A.001(3), a private facility that provides psychiatric health treatments and services in a residential, non-hospital setting exclusively to individuals and is licensed as a general residential operation.

(4) Severe emotional disturbance--As defined at Texas Health and Safety Code §577A.001(4), a mental, behavioral, or emotional disturbance of sufficient duration to result in functional impairment that substantially interferes with or limits an individual's role or ability to function in family, school, or community activities.

§748.4803. When am I required to meet the additional rules of this subchapter?

If you provide psychiatric health treatments and services to individuals as a certified psychiatric residential youth treatment facility, you must meet the additional rules in this subchapter.

§748.4805. In addition to the rules in this subchapter, what other rules in this chapter apply to a psychiatric residential treatment facility (PRYTF)?

In addition to complying with the rules in this subchapter, a PRYTF must comply with all other rules in this chapter that apply to all operations, unless any such rule is replaced by a rule in this subchapter, as noted in §748.4809 of this division (relating to What rules in this subchapter replace other rules in this chapter?).

§748.4807. How do the rules in this subchapter apply to the care of a young adult 18 to 21 years of age at a psychiatric residential treatment facility (PRYTF)?

The rules in this chapter that apply to a PRYTF as noted in §748.4805 of this division (relating to In addition to the rules in this subchapter, what other rules in this chapter apply to a psychiatric residential youth treatment facility (PRYTF)?) also apply to the care of a young adult 18 to 21 years of age whom you have admitted for psychiatric health treatments and services.

§748.4809. What rules in this subchapter replace other rules in this chapter?

A psychiatric residential youth treatment facility (PRYTF) is not required to comply with other rules in this chapter if the rule has been replaced in this subchapter, as specified in this chart:

Figure: 26 TAC §748.4809

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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DIVISION 2. POLICIES, NOTIFICATIONS, AND POSTINGS

26 TAC §§748.4821, 748.4823, 748.4825

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4821. What additional policies must I submit as part of the application process for a psychiatric residential youth treatment facility (PRYTF) certificate?

You must develop written policies that address:

(1) How your PRYTF will provide 24-hour medical and emergency services, including 24-hour nursing services.

(2) How caregivers will supervise young adults 18 to 21 years of age receiving psychiatric health treatments and services when sharing restrooms or indoor and outdoor activity areas with children in the general residential operation, including the PRYTF.

§748.4823. When must I notify Licensing about accreditation changes regarding the psychiatric residential youth treatment facility (PRYTF)?

(a) You must always meet the accreditation requirement of §745.9053 of this title (relating to What requirements must a general residential operation meet before applying for a psychiatric residential youth treatment facility (PRYTF) certificate?).

(b) You must notify us within two days if your accreditation organization informs you that it has taken or will take an action that will result in your PRYTF no longer meeting the accreditation require-

ment of §745.9053 of this title for any period. Such an action includes revoking, suspending, or refusing to renew your accreditation.

§748.4825. Where must I post the psychiatric residential youth treatment facility (PRYTF) certificate?

You must post your PRYTF certificate in a prominent and publicly accessible place where employees, children, young adults, parents, and others will be able to view it easily.

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DIVISION 3. PERSONNEL

26 TAC §§748.4831, §748.4833

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4831. Must a psychiatric residential youth treatment facility (PRYTF) have a treatment director?

A PRYTF must have a treatment director that is a full-time employee of the general residential operation.

§748.4833. What qualifications must a treatment director for a psychiatric residential youth treatment facility have?

A treatment director who provides or oversees psychiatric health treatments and services under this subchapter must:

(1) Be a licensed psychiatrist, psychologist, or physician;

(2) Have a master's degree in a human services field from an accredited college or university and three years of experience providing treatment services for children or young adults with an emotional disorder, including one year in a residential setting; or

(3) Be a licensed master social worker, licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist, and have three years of experience providing treatment services for children or young adults with an emotional disorder, including one year in a residential setting.

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DIVISION 4. TRAINING

26 TAC §§748.4841, 748.4843, 748.4845, 748.4847

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4841. What are the pre-service experience requirements for a caregiver providing psychiatric health treatments and services?

(a) A caregiver responsible for an individual receiving psychiatric health treatments and services must have a minimum of 40 hours of supervised caregiver experience in:

(1) Your operation providing treatment services to children with an emotional disorder;

(2) Another general residential operation providing treatment services to children with an emotional disorder;

(3) A psychiatric residential youth treatment facility providing psychiatric health treatments and services to children or young adults; or

(4) A residential or hospital setting providing direct care, supervision, guidance, and protection of children or young adults with a severe emotional disturbance.

(b) Until a caregiver has the minimum amount of supervised child-care experience as specified in subsection (a) of this section, the caregiver:

(1) May not be assigned as the only caregiver responsible for a group of individuals if any individual in the group is receiving psychiatric health treatments and services;

(2) Must be always supervised by another caregiver who has already satisfied the 40-hour experience requirement; and

(3) Must have their supervised child-care experience documented in the appropriate personnel record.

§748.4843. What additional pre-service training requirements apply to a caregiver or an employee at a psychiatric residential youth treatment facility (PRYTF)?

(a) In addition to the types of pre-service training and hours at §748.863(a) of this chapter (relating to What are the pre-service training requirements for a caregiver?), a caregiver must complete four hours of suicide prevention training before the caregiver may be counted in the child to caregiver ratio if any individual in the group is receiving psychiatric health treatments and services.

(b) In addition to the types of pre-service training and hours at §748.864(a) of this chapter (relating to What are the pre-service training requirements for an employee?), a child-care administrator, professional level service provider, treatment director, and case manager must complete four hours of suicide prevention training within 90 days of beginning job duties that include:

(1) Providing services to or planning services for individuals receiving psychiatric youth treatments and services; or

(2) Managing or overseeing employees that provide services to or plans services for individuals receiving psychiatric youth treatments and services.

(c) A caregiver or employee (child-care administrator, professional level service provider, treatment director, and case manager) does not have to complete the four hours of suicide prevention training if the caregiver or employee has documentation that it was completed during the last 12 months.

(d) You must document the exemption factor in the appropriate personnel record.

§748.4845. Who must have first-aid and CPR training in a psychiatric residential youth treatment facility (PRYTF)?

(a) Caregivers providing psychiatric health treatments and services to individuals must have a current certificate of training with an expiration or renewal date in:

(1) First-aid with rescue breathing and choking, which may be through instructor-led training or self-instructional training; and

(2) Pediatric and adult cardiopulmonary resuscitation (CPR).

(b) Each caregiver must be certified in first aid and CPR within 90 days of employment.

(c) At least one person counted in the child to caregiver ratio must be certified in first aid and CPR at all times.

§748.4847. What additional annual training requirements apply to a caregiver or an employee at a psychiatric residential youth treatment facility (PRYTF)?

(a) A caregiver providing psychiatric health treatments and services to an individual in a PRYTF must complete 50 annual training hours.

(b) In addition to the one hour of annual suicide prevention training required in §748.125(c) of this chapter (relating to What is the model suicide prevention, intervention, and postvention policy?):

(1) A caregiver must complete four additional hours of annual suicide prevention training for a total of five hours of annual suicide prevention training if the caregiver provides care to an individual receiving psychiatric health treatments and services; and

(2) A child-care administrator, professional level service provider, treatment director, and case manager must complete four additional hours of annual suicide prevention training for a total of five

hours of annual suicide prevention training if the employee is or will be:

(A) Providing services to or planning services for individuals receiving psychiatric youth treatments and services; or

(B) Managing or overseeing other employees that provide services to or plans services for individuals receiving psychiatric youth treatments and services.

(c) In addition to the specific types of annual training and hours required in §748.930(b) of this chapter (relating to What are the annual training requirements for a caregiver?), a caregiver providing psychiatric health treatments and services to an individual must complete two hours of annual training on administering psychotropic medication.

(d) In addition to the specific types of annual training and hours required in §748.931(b) and (c) of this chapter (relating to What are the annual training requirements for an employee), a child-care administrator, professional level service provider, treatment director, and case manager must complete two hours of annual training on administering psychotropic medication if the employee is or will be:

(1) Providing services to or planning services for individuals receiving psychiatric youth treatments and services; or

(2) Managing or overseeing other employees that provide services to or plans services for individuals receiving psychiatric youth treatments and 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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DIVISION 5. CHILD TO CAREGIVER RATIO

26 TAC §748.4851

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4851. For purposes of the child to caregiver ratio, how many children can a single caregiver care for when a child receiving psychiatric health treatments and services is asleep at night?

(a) If any child in the group is receiving psychiatric health treatments and services, a single caregiver may care for a maximum of six children during the night-time sleeping hours.

(b) Caregivers must remain awake during night-time sleeping hours.

(c) This ratio also applies to any young adults 18 to 21 years of age who are receiving psychiatric health treatments and services under this subchapter.

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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DIVISION 6. ADMISSION AND SERVICE PLANS

26 TAC §§748.4861, 748.4863, 748.4865, 748.4867, 748.4869

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 system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4861. Whom may I admit for psychiatric health treatments and services?

You may only admit an individual for psychiatric health treatments and services who:

(1) Is 21 years of age or younger;

(2) Has been diagnosed with a severe emotional disturbance by a licensed mental health professional;

(3) Requires residential psychiatric treatment under the direction of a licensed physician to improve the individual's condition; and

(4) Was referred for treatment or services in a psychiatric residential youth treatment facility by a licensed mental health professional.

§748.4863. May individuals receiving different types of service live in the same living quarters?

(a) Except as provided by subsections (c) and (d) of this section, children receiving different types of service may reside in the same living quarters as long as:

(1) A professional level service provider completes an evaluation of the living quarters for each child that you place in the living quarters; and

(2) In each evaluation, the professional level service provider ensures that:

(A) There is no conflict of care with the best interests of any of the children placed in the living quarters;

(B) Placing the child with different service or treatment needs in the living quarters will not adversely impact the other children in the living quarters;

(C) The number of children in the living quarters is appropriate at all times based on the needs of all children in the living quarters;

(D) Caregivers can appropriately supervise all children in the living quarters at all times; and

(E) You can meet the needs of all children in the living quarters.

(b) If the treatment or service needs of any child in the living quarters changes, the professional level service provider must evaluate the needs of each child in the living quarters to ensure there is no conflict of care.

(c) Children admitted for emergency care services must receive any therapeutic services (such as group therapy or art therapy) separately from children admitted for non-emergency care and must have separate living quarters, such as a separate wing of an operation, or a separate cottage. You may combine children admitted for emergency care services with children in non-emergency care for meals, recreation, and transportation.

(d) Young adults 18 to 21 years of age receiving psychiatric health treatments and services that are not in the care of the Texas Department of Family and Protective Services and did not come immediately from another residential child-care operation:

(1) Must receive therapeutic services (such as group therapy or art therapy) separately from children admitted to the operation, including the psychiatric residential youth treatment facility (PRYTF);

(2) Must have separate living quarters, such as a separate wing of an operation, or a separate cottage; and

(3) Must not use an area of the general residential operation's building or grounds at the same time with children admitted to the operation, including the PRYTF, except restrooms and indoor and outdoor activity areas may be shared under a policy required by §748.4821 of this subchapter (relating to What additional policies must I submit as part of the application process for a psychiatric residential youth treatment facility (PRYTF) certificate?).

§748.4865. Are there additional requirements for a preliminary service plan when I admit an individual for psychiatric health treatments and services?

When you admit an individual for psychiatric health treatments and services, in addition to the requirements listed in §748.1331 of this chapter (relating to What are the requirements for a preliminary service plan?), the preliminary service plan for an individual receiving psychiatric health treatments and services must include:

(1) Therapeutic needs, including plans for psychiatric evaluation, the use of psychotropic medications, and one-to-one therapy;

(2) Family engagement activities;

(3) Plans to consult with qualified professionals, including case managers, primary care professionals, community-based mental health providers, school staff, and other support planners; and

(4) Nursing care.

§748.4867. Are there additional requirements for an initial service plan when I admit an individual for psychiatric health treatments and services?

(a) In addition to the requirements listed in (b)(2) in Figure: 26 TAC §748.1337(b) of this chapter (relating to What must a child's initial service plan include?), the initial service plan for an individual receiving psychiatric health treatments and services must include:

(1) One-to-one therapy;

(2) Family engagement activities;

(3) Consultation services with qualified professionals, including case managers, primary care professionals, community-based mental health providers, school staff, and other support planners;

(4) 24-hour nursing services, though services do not need to be onsite; and

(5) Direct care and supervision services, supportive services for daily living and safety, and positive behavior management services.

(b) You must document all professional consultations, examinations, recommendations, and treatment in the individual's record.

§748.4869. Who must be involved in developing an initial service plan?

(a) A service planning team must develop the service plan. The team must consist of:

(1) At least one of the individual's current caregivers;

(2) For a child, a person designated to make decisions regarding a child's participation in childhood activities; and

(3) At least one professional level service provider who provides direct services to the individual.

(b) Except as provided by subsection (c) of this section, if you are providing treatment services to a child, the team must also include two of the following professions:

(1) A licensed professional counselor;

(2) A psychologist;

(3) A psychiatrist or physician;

(4) A licensed registered nurse;

(5) A licensed masters level social worker;

(6) A licensed or registered occupational therapist; or

(7) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(c) If you are providing psychiatric health treatments and services to an individual, the team must include a licensed psychiatrist or physician and one of the following professionals:

(1) A licensed professional counselor;

(2) A psychologist;

- (3) A licensed registered nurse;
- (4) A licensed masters level social worker;
- (5) A licensed or registered occupational therapist; or
- (6) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(d) The individual and parents or guardian must be invited to a service planning meeting, so that they may participate and provide input into the development of the service plan.

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DIVISION 7. PROVIDING CARE TO CHILDREN AND ADULTS

26 TAC §748.4881

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4881. After a child in the care of a psychiatric residential youth treatment facility (PRYTF) turns 18 years old, may the young adult remain in care?

A child who turns 18 years old in the care of a PRYTF may remain in your care until the young adult's 22nd birthday.

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 April 10, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 365. RURAL WATER ASSISTANCE FUND

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §§365.2, 365.3, 365.5, 365.21 - 365.23, 365.41, and §§365.43 - 365.45.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

Chapter 365 contains the agency's programmatic rules related to the Rural Water Assistance Fund. The TWDB proposes to amend the rules to implement legislation and clarify the method in which interest rates will be set for loans when the source of funding is other than bond proceeds. Additionally, TWDB proposes to amend the rules to modernize the language, provide consistency with TWDB's general financial assistance programs' rules, and clarify requirements for borrowers.

Senate Bill 469, 88th R.S. (2023), amended Chapters 15 and 17 of the Water Code by adding a general definition of "rural political subdivision." This general definition replaces the current definition applicable to the Rural Water Assistance Fund. This rulemaking implements SB 469's definition of "rural political subdivision" applicable to the Rural Water Assistance Fund.

Senate Bill 28, 88th R.S. (2023), amended Chapter 15 of the Water Code to authorize the TWDB to use money in the Rural Water Assistance Fund to contract for outreach, financial, planning, and technical assistance to assist rural political subdivisions for a purpose described by Section 15.994 (Use of Fund), including obtaining and using financing from funds and accounts administered by TWDB. This rulemaking implements SB 28's expansion of allowable technical assistance applicable to the Rural Water Assistance Fund.

31 Texas Administrative Code §365.5 contains rules related to the setting of interest rates. The rule does not currently address how interest rates will be set for loans when the funding source is other than bond proceeds. This rulemaking proposes the Executive Administrator determine lending rate scales for loans funded by a source other than bond proceeds.

This rulemaking includes substantive and non-substantive changes and updates to make this chapter more consistent with TWDB rules and to clarify requirements for TWDB borrowers.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Chapter 365 Rural Water Assistance Fund

Subchapter A. Introductory Provisions

Section 365.2. Definitions of Terms.

The proposed amendment revises the definition of rural political subdivision in §365.2(6) to implement SB 469. The rule proposes to include as a rural political subdivision those municipalities with a population of 10,000 or less.

While the definition in SB 469 excluded municipalities with a population of 10,000 or less no part of the service area of which is located in an urban area with a population of more than 50,000, the definition in SB 469 also includes an entity that "demonstrates in a manner satisfactory to the board that the entity is rural." (See Texas Water Code §15.001(14)(B)(i) and (D) as added by Acts 2023, 88th Leg., R.S., Ch. 1064 (SB 469)). The TWDB interprets these two pieces together to include all municipalities with a population of 10,000 or less in the definition of "rural political subdivision."

Section 365.3. Use of Funds.

The proposed amendment revises §365.3(c) to implement SB 28's technical assistance requirements applicable to the Rural Water Assistance Fund, which broadens the TWDB's authority to provide technical assistance.

Section 365.5. Interest Rates for Loans.

The proposed amendment seeks to address the setting of interest rates for loans funded by a source other than bond proceeds. For loans funded by a source other than bond proceeds the Executive Administrator will determine the lending rate scale.

Subchapter B. Application Procedures.

Section 365.21. Preapplication Meeting.

The proposed amendment requires an applicant to schedule a preapplication conference with board staff.

Section 365.22. Application for Assistance.

The proposed amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, and clarifies requirements for borrowers. The amendment proposes to remove the requirement that an application be in writing and replace it with the requirement that an application be in the form and numbers prescribed by the executive administrator. The amendment clarifies what application information is required for the application to be considered administratively complete. The proposed amendment clarifies that the executive administrator may return an incomplete application. The amendment proposes to require an additional statement in the required application affidavit that the applicant is, or will come into, compliance with all material contracts.

Section 365.23. Pre-design Funding Option.

The proposed amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, and corrects citations.

Subchapter C. Closing and Release of Funds

Section 365.41. Loan Closing.

The proposed amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, and clarifies requirements for borrowers. The amendment proposes to require the transcript of proceedings within 60 days of closing.

Section 365.43. Release of Funds.

The proposed amendment modernizes the rule language, provides consistency with TWDB's general financial assistance pro-

grams' rules, clarifies requirements for borrowers, and corrects citations. The amendment proposes that for release of funds for building purposes, prior executive administrator approval is required if the applicant is relying on evidence of its legal authority to complete necessary acquisitions. The amendment proposes that for projects constructed through one or more construction contracts, the executive administrator may approve the release of funds only for a construction contract that has been approved for construction.

Section 365.44. Loan Agreements for Nonprofit Water Supply or Sewer Service Corporations.

The proposed amendment deletes the current list of information required and cites to §15.996 of the Water Code for applicable requirements.

Section 365.45. Engineering Design Approvals.

The amendment proposes to modernize the rules language, deletes the current list of information required, and cites to 31 Texas Administrative Code §363.41 for applicable contract document requirements.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments as the rules are necessary to implement legislation and participation in TWDB's financial assistance programs is voluntary. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies eligibility, requirements, and methodology for TWDB borrowers. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify eligibility, requirements, and methodology for TWDB borrowers.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §15.995. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government

Code, Chapter 2007. The specific purpose of this rule is to clarify eligibility, requirements, and methodology for TWDB borrowers. The proposed rules would substantially advance this stated purpose by aligning the rule's definitions and permissible use of funds with Water Code, Chapter 15, clarifying how interest rates will be set for TWDB borrowers, and providing greater consistency between TWDB program rules.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements the Rural Water Assistance Fund Program.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule is merely an amendment to conform with statutory changes and clarify program methodology. It does not require regulatory compliance by any persons or political subdivisions. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include Chapter 365 in the subject line of any comments submitted.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §§365.2, 365.3, 365.5

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to

adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.995.

This rulemaking affects Water Code, Chapter 15.

§365.2. *Definitions of Terms.*

Words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 15 or 17 and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Applicant--A rural political subdivision, including a rural political subdivision which has entered into an agreement with a Federal Agency or State Agency for the purpose of submitting a joint application.

(2) District--A conservation or reclamation district created under Texas Constitution, Section 52, Article III, or Section 59, Article XVI.

(3) Federal agency--An agency or other entity of the United States, including the United States Department of Agriculture or an agency or entity that is acting through or on behalf of that department.

(4) Fund--The Rural Water Assistance Fund.

(5) Nonprofit water supply or sewer service corporation--A water or sewer service corporation operating under Texas Water Code, Chapter 67.

(6) Rural political subdivision--

(A) A nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code or a[] district[] or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, no part of the service area of [municipality with a service area of 10,000 or less in population or that otherwise qualifies for financing from a federal agency or a county in] which is located in an [no] urban area with a population of more than [exceeds] 50,000 in population;

(B) a municipality;

(i) with a population of 10,000 or less; or

(ii) located wholly in a county in which no urban area has a population of more than 50,000;

(C) a county in which no urban area has a population of more than 50,000; or

(D) an entity that:

(i) is a nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code, a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a municipality, county, or other political subdivision of the state, or an interstate compact commission to which the state is a party; and

(ii) demonstrates in a manner satisfactory to the board that the entity is rural or the area to be served by the project is a wholly rural area despite not otherwise qualifying under subparagraph (A), (B), or (C) of this paragraph.

(7) State agency--An agency or other entity of the state, including the Texas Department of Agriculture and the Texas Department of Housing and Community Affairs and any agency or authority that is acting through or on behalf of the Texas Department of Agriculture or the Texas Department of Housing and Community Affairs.

§365.3. *Use of Funds.*

(a) The fund may be used to provide low-interest loans to rural political subdivisions for:

(1) water or water-related projects and for water quality enhancement projects, including but not limited to:

(A) the construction of infrastructure facilities for wholesale or retail water or sewer service;

(B) desalination projects;

(C) the purchase or lease of water well fields;

(D) property necessary for water well fields;

(E) the purchase or lease of rights to produce groundwater;

(F) onsite or wetland wastewater treatment facilities;

and

(G) the interim financing of construction projects;

(2) water projects included in the state water plan or a regional water plan;

(3) development of groundwater sources and acquisition of water rights, including groundwater and surface water rights;

(4) the acquisition of retail public utilities as defined by §13.002 of the Texas Water Code;

(5) the acquisition of water supply or sewer services facilities or systems owned by municipalities or other political subdivisions;

(6) construction, acquisition, or improvement of water and wastewater projects to provide services to an economically distressed area;

(7) planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project; and

(8) obtaining water or wastewater service supplied by other political subdivisions or financing the consolidation or regionalizing of neighboring political subdivisions, or both.

(b) The fund may be used to provide zero interest loans, negative interest loans, loan forgiveness, or grants for any purpose described in subsection (a) of this section under criteria developed by the board.

(c) The board may use money in the fund to contract for outreach, financial, planning, and technical assistance to assist rural political subdivisions [in obtaining and using financing from any source] for a purpose described by §15.994 of the Texas Water Code, including in obtaining and using financing from funds and accounts administered by the board.

(d) The fund may be used to buy down interest rates on loans.

(e) The fund may be used to finance a joint application submitted by a rural political subdivision and a federal agency, a state agency, or another rural political subdivision where the parties have entered into an agreement to submit a joint application for financial assistance.

(f) The fund may be used as a source of revenue for the repayment of principal and interest on water financial assistance bonds issued by the board if the proceeds of the sale of these bonds will be deposited into the fund.

§365.5. *Interest Rates for Loans.*

The procedure and method for setting fixed interest rates includes the following.

(1) The executive administrator will set fixed interest rates under this section for loans on a date that is five business days prior to the political subdivision's adoption of the ordinance or resolution authorizing its bonds and not more than 45 days before the anticipated closing of the loan from the board. After 45 days from the establishment of the interest rate of a loan, rates will be reconsidered, and may be extended only with the approval of the executive administrator.

(2) For loans from the Rural Water Assistance Fund, the executive administrator will set the interest rates in accordance with the following:

(A) to the extent that the source of funding is provided from bond proceeds issued through the Water Development Fund specifically designated for this fund, the lending rate scale(s) will be determined as provided under §363.33(b) of this title (relating to Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects); [øf]

(B) for loans where the interest rates calculated in subparagraph (A) of this paragraph results in a true interest cost that is less than the minimum true interest cost of the lending rate scale established for those funds, interest will be calculated at a rate increased to match the minimum true interest costs so the board may recover all costs attributed to the bonds sold by the board; [øf]

(C) for loans funded by the board with proceeds of bonds, the interest for which is intended to be tax exempt for purposes of federal tax law, the executive administrator will limit the interest set pursuant to this subsection at no higher than the rate permitted under federal tax law to maintain the tax exemption for the interest on the board's bonds; or [-]

(D) for loans funded without bond proceeds, the lending rate scale(s) will be determined by the executive administrator.

(3) The board, at its discretion, may require applicants to receive a portion of the project funding from other board loan programs.

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

Filed with the Office of the Secretary of State on April 12, 2024.

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Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-6072



SUBCHAPTER B. APPLICATION PROCEDURES

31 TAC §§365.21 - 365.23

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.995.

This rulemaking affects Water Code, Chapter 15.

§365.21. Preapplication Meeting.

An applicant seeking financial assistance must [~~should~~] schedule a preapplication conference with the board staff to obtain guidance and establish basic eligibility of the project and of the rural political subdivision for financial assistance.

§365.22. Application for Assistance.

(a) An [A rural political subdivision shall submit an] application must be in the form and numbers prescribed by the executive administrator [for financial assistance in writing].

(b) The executive administrator may request any additional information needed to evaluate the application and may return any incomplete applications.

(c) [~~(b)~~] The following information is required on all applications to the board for financial assistance to be considered an administratively complete application.

(1) General, fiscal and legal information required includes:

(A) the name and address of the rural political subdivision;

(B) a citation of the law under which the rural political subdivision operates and was created;

(C) the total cost of the project;

(D) the amount of financial assistance being requested;

(E) a description of the project;

(F) the name, address, email, and telephone number of the authorized representative, engineer, and any other consultant(s);

(G) the source of repayment and the status of legal authority to pledge selected revenues;

(H) the financing plan for repaying the total cost of the project;

(I) the rural political subdivision's default history;

(J) the most recent annual financial statements and latest monthly and year-to-date financial reports for the General Fund and Utility Fund of the political subdivision;

(K) a certified copy of a resolution of the rural political subdivision's governing body requesting financial assistance from the board, authorizing the submission of the application, and designating the authorized representative for executing the application, and for appearing before the board;

(L) a notarized affidavit from the authorized representative stating that:

(i) for a rural political subdivision, the decision to request financial assistance from the board was made in a public meeting held in accordance with the Open Meetings Act (Government Code, Chapter 551);

(ii) the information submitted in the application is true and correct according to the best knowledge and belief of the representative;

(iii) the applicant has no litigation or other proceedings pending or threatened against the applicant that would materially adversely affect the financial condition of the applicant or the ability of the applicant to issue debt;

(iv) the applicant has no pending, threatened, or outstanding judgments, orders, fines, penalties, taxes, assessment or

other enforcement or compliance issue of any kind or nature by EPA, the Texas Commission on Environmental Quality, Texas Comptroller, Texas Secretary of State, or any other federal, state or local government, except for such actions identified in the affidavit; ~~and~~

(v) the applicant is, or will become, in compliance with all material contracts; and

(vi) [(v)] the applicant is and must remain during the term of any financial assistance received from the board in compliance [with comply] with all applicable federal laws, rules, and regulations as well as the laws of this state and the rules and regulations of the board;

(M) any special request for repayment structure that reflects the particular needs of the rural political subdivision.

(2) Preliminary Engineering Feasibility Report [feasibility report]. An applicant must [shall] submit an engineering feasibility report in accordance with §363.13 of this title (relating to Preliminary Engineering Feasibility Report ~~Data~~).

(3) Environmental Assessment [assessment]. An applicant must [shall] submit an environmental assessment in accordance with §363.14 of this title (relating to Environmental Assessment).

(4) Required Water Conservation Plan [water conservation plan]. An applicant must [shall] submit a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan).

(5) Funding from Other Sources [other sources]. If additional funds are necessary to complete the project, or if the applicant has applied for or ~~and/or~~ received a commitment from any other funding agency for the project or any aspect of the project, an applicant must [shall] submit a listing of those sources, including total project costs, financing terms, and current status of the funding requests.

(6) Additional Application Information [application information]. An applicant must [shall] submit any additional information requested by the executive administrator as necessary to complete the financial, legal, engineering, and environmental reviews.

(d) ~~(e)~~ A rural political subdivision may enter into an agreement with a federal agency, a state agency, or another rural political subdivision to submit a joint application for financial assistance under this subchapter.

§365.23. *Pre-design Funding Option.*

(a) This loan application option will provide an eligible applicant that meets all applicable board requirements an alternative to secure a commitment and close a loan for the pre-design, design or building costs associated with a project. Under this option, a loan may be closed and funds necessary to complete planning and design activities released. If planning requirements have not been satisfied, design and building funds will be held or escrowed and released in the sequence described in this section. Following completion of planning activities and environmental assessment, the executive administrator may require the applicant to make changes in order to proceed with the project. If the portion of a project associated with funds in escrow cannot proceed, the loan recipient must [shall] use the escrowed funds to pay off the obligations to the board in inverse order of maturity.

(b) The executive administrator may recommend to the board the use of this section if, based on available information, there appear to be no significant permitting, social, environmental, engineering, or financial issues associated with the project. An application for pre-design funding may be considered by the board despite a negative recommendation from the executive administrator.

(c) Applications for pre-design funding must include the following information:

(1) for loans including building cost, a preliminary engineering feasibility report which will include at minimum: a description and purpose of the project; area maps or drawings as necessary to fully locate the project area(s); a proposed project schedule; estimated project costs and budget including sources of funds; current and future populations and projected water needs and sources; alternatives considered; and a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project;

(2) contracts for engineering services, which may be in draft form;

(3) evidence that an approved water conservation plan will be adopted prior to the release of loan funds;

(4) all information required in §365.22 ~~[\$384.22(b)(1)]~~ of this title (relating to Application for Assistance); and

(5) any additional information the executive administrator may request to complete evaluation of the application.

(d) After board commitment and completion of all closing and release prerequisites as specified in §365.41 ~~[\$384.41]~~ of this title (relating to Loan Closing), §365.42 ~~[\$384.42]~~ of this title (relating to Deed of Trust and Other Required Documentation), and §365.43 ~~[\$384.43]~~ of this title (relating to Release of Funds), funds will be released in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase;

(2) for design costs, after receipt of executed contracts for the design phase and upon approval of an engineering feasibility report as specified in §363.13 of this title (relating to Engineering Feasibility Data) and compliance with §363.14 of this title (relating to Environmental Assessment);

(3) for building costs, after issuance of any applicable permits, and after bid documents are approved and executed construction documents are contingently awarded.

(e) Board staff will use preliminary environmental data provided by the applicant, as specified in subsection (d) of this section and make a written report to the executive administrator on known or potential significant social or environmental concerns. Subsequently, these projects must have a favorable executive administrator's recommendation which is based upon a full environmental review during planning, as provided under §363.14 of this title.

(f) The executive administrator will advise the board concerning projects that involve major economic or administrative impacts to the applicant resulting from environmentally related special mitigative or precautionary measures from an environmental assessment under §363.14 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 April 12, 2024.

TRD-202401521

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SUBCHAPTER C. CLOSING AND RELEASE
OF FUNDS

31 TAC §§365.41, 365.43 - 365.45

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.995.

This rulemaking affects Water Code, Chapter 15.

§365.41. *Loan Closing.*

(a) Instruments Needed [needed] for Closing [closing]. The documents which shall be required at the time of closing [shall] include the following:

(1) if not closing under the pre-design funding option, evidence that requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the bond ordinance, order or resolution adopted by the governing body authorizing the issuance of debt to be sold to the board, or an executed promissory note and loan agreement, that is acceptable to the executive administrator and which must [shall] have sections providing as follows:

(A) if loan proceeds are to be deposited into an escrow account, at the closing on all or a portion of the loan or grant, then an escrow account must [shall] be created that must [shall] be separate from all other accounts and funds, as follows:

(i) the account must [shall] be maintained by an escrow agent as defined in §363.2 of this title (relating to Definitions of Terms);

(ii) funds must [shall] not be released from the escrow account without written approval by the executive administrator;

(iii) upon request of the executive administrator, the escrow account statements must [shall] be provided to the executive administrator;

(iv) the investment of any loan or grant proceeds deposited into an escrow account must [shall] be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code, Chapter 2256; and

(v) the escrow account must [shall] be adequately collateralized in a manner sufficient to protect the board's interest in the project and that complies with the Public Funds Collateral Act, Texas Government Code, Chapter 2257;

(B) that a construction account must [shall] be created, which must [shall] be separate from all other accounts and funds of the applicant;

(C) that a final accounting be made to the board of the total sources and authorized use of project funds within 60 days of the completion of the project and that any surplus loan funds be used in a manner as approved by the executive administrator;

(D) that an annual audit of the rural political subdivision, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant be provided annually to the executive administrator;

(E) that the rural political subdivision must [shall] fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the board's interest;

(F) that the rural political subdivision must [shall] document the adoption and implementation of an approved water conservation program for the duration of the loan, in accordance with §363.15 of this title;

(G) that the rural political subdivision must [shall] maintain current, accurate and complete records and accounts in accordance with generally accepted accounting principles necessary to demonstrate compliance with financial assistance related legal and contractual provisions;

(H) that the rural political subdivision covenants to abide by the board's rules and relevant statutes, including the Texas Water Code, Chapters 15 and 17;

(I) that the rural political subdivision or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the rural political subdivision's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the board and the beneficial owner of the rural political subdivision's obligations, if the board sells or otherwise transfers such obligations, and the beneficial owners of the board's obligations if the rural political subdivision is an obligated person with respect to such obligations under rule 15c2-12;

(J) that all payments must [shall] be made to the board via wire transfer or in a manner acceptable to the Executive Administrator at no cost to the board;

(K) that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(L) that insurance coverage be obtained and maintained in an amount sufficient to protect the board's interest in the project;

(M) that the rural political subdivision must [shall] establish a dedicated source of revenue for repayment; and

(N) any other recitals mandated by the executive administrator;

(3) evidence that the rural political subdivision has adopted a water conservation program in accordance with §363.15 of this title (relating to Required Water Conservation Plan);

(4) an unqualified approving opinions of the attorney general of Texas and a certification from the comptroller of public accounts that such debt has been registered in that office;

(5) if obligations are issued, an unqualified approving opinion by a recognized bond attorney acceptable to the executive admin-

istrator, or if a promissory note and loan agreement is used, an opinion from the corporation's attorney which is acceptable to the executive administrator;

(6) executed escrow agreement entered into by the entity and an escrow agent satisfactory to the executive administrator, in the event that funds are escrowed, or a certificate of trust as defined in §363.2 of this title, if applicable; and

(7) other or additional data and information, if deemed necessary by the executive administrator.

(b) Certified Transcript [transcript]. Within 60 days of closing, [At such time as available following the final release of funds] the rural political subdivision must [shall] submit a transcript of proceedings relating to the debt purchased by the board which must [shall] contain those instruments normally furnished a purchaser of debt.

(c) Additional Closing Requirements [closing requirements] for Bonds [bonds]. A rural political subdivision will [shall] be required to comply with the following closing requirements if the applicant issues obligations that are purchased by the board:

(1) all bonds must [shall] be closed in book-entry-only form;

(2) the rural political subdivision must [shall] use a paying agent/registrant that is a depository trust company (DTC) participant;

(3) the rural political subdivision must [shall] be responsible for paying all DTC closing fees assessed to the rural political subdivision by the board's custodian bank directly to the board's custodian bank;

(4) the rural political subdivision must [shall] provide evidence to the board that one fully registered bond has been sent to the DTC or to the rural political subdivision's paying agent/registrant prior to closing; and

(5) the rural political subdivision must [shall] provide a private placement memorandum containing a detailed description of the issuance of debt to be sold to the board that is acceptable to the executive administrator.

§365.43. *Release of Funds.*

(a) Release of Funds for Planning, Design, and Permits [funds for planning, design and permits]. Prior to the release of funds for planning, design, and permits, the rural political subdivision must [shall] submit for approval to the executive administrator the following documents:

(1) a statement as to sufficiency of funds to complete the activity;

(2) certified copies of each contract under which revenues for repayment of the rural political subdivision's debt will accrue;

(3) executed consultant contracts relating to services provided for planning, design, and [and/or] permits;

(4) unless funds are released under the pre-design funding option, evidence that the requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations; and

(5) other such instruments or documents as the board or executive administrator may require.

(b) Pre-design Funding [funding]. The funds needed for the total estimated cost of the engineering, planning, and design cost if the engineering feasibility report required under §363.13 of this title (relating to Preliminary Engineering Feasibility Data) and the environ-

mental assessment required under §363.14 of this title (relating to Environmental Assessment) have been approved, the cost of issuance associated with the loan, and any associated capitalized interest will be released to the loan recipient and the remaining funds will be escrowed to the escrow agent until all applicable requirements in subsections (a) and (c) of this section and §365.23 [§384.23] of this title (relating to Pre-design Funding Option) have been met.

(c) Release of Funds for Building Purposes [funds for building purposes]. Prior to the release of funds for building purposes, the rural political subdivision must [shall] submit for approval to the executive administrator the following documents:

(1) a tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;

(2) one executed original copy of each construction contract the effectiveness and validity of which is contingent upon the receipt of board funds;

(3) evidence that the necessary acquisitions of land, leases, easements and rights-of-way have been completed or, with prior approval by the executive administrator if all acquisitions have not been completed, evidence that the applicant has the legal authority necessary to complete the acquisitions;

(4) a statement as to sufficiency of funds if additional funds are necessary to complete the project;

(5) certified copies of each contract under which revenues to the project will accrue;

(6) evidence that all requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including permits and authorizations; and

(7) other such instruments or documents as the board or executive administrator may require.

(d) Water Rights Certification [rights certification]. Prior to release of construction funds, the executive administrator shall make a written finding that the applicant:

(1) has the necessary water rights authorizing the applicant to appropriate and use the water that the project will provide, if the applicant is proposing surface water development; or

(2) has the right to use water that the project will provide, if the applicant is proposing groundwater development.

(e) Release of Funds for Projects Constructed Through One or More Construction Contracts [funds for projects constructed through one or more construction contracts]. For projects constructed through one or more construction contracts, the executive administrator may approve the release of funds for all or a portion of the estimated project cost, provided all requirements of subsection (c) of this section have been met, only for the construction contract that has been approved for construction. [for at least one of the construction contracts.]

(f) Escrow of Funds [funds]. The executive administrator may require the escrow of an amount of project funding related to contracts which have not met the requirements of subsection (c) of this section at the time of loan closing.

(g) Release of Funds in Installments [funds in installments]. Funds may be released to rural political subdivisions in installments and pursuant to the provisions of this section.

§365.44. *Loan Agreements for Nonprofit Water Supply or Sewer Service Corporations.*

[(a)] The board may provide financial assistance to [an applicant that is] a nonprofit water supply or sewer service corporation by

entering into a loan agreement in accordance with §15.996 of the Water Code. [with the nonprofit water supply or sewer service corporation.]

[(b) In addition to executing a loan agreement, the applicant must execute a promissory note in the full amount of the loan.]

[(c) An applicant which utilizes the loan agreement option is not required to engage the services of a bond counsel or a financial advisor.]

[(d) The applicant must provide the board with an attorney's opinion as to the authority of the rural political subdivision to incur the debt.]

§365.45. *Engineering Design Approvals.*

A rural political subdivision must [shall] obtain executive administrative approval of contract documents, including engineering plans and specifications, prior to receiving bids and awarding the contract. The contract documents must [shall] be consistent with the engineering information submitted with the application and must contain the requirements in §363.41 of this title (relating to Engineering Design Approvals). [following:]

[(1) provisions assuring compliance with the board's rules and all relevant statutes;]

[(2) provisions providing for the rural political subdivision to retain a minimum of 5.0% of the progress payments otherwise due to the contractor until the building of the project is substantially complete and a reduction in retainage is authorized by the executive administrator;]

[(3) a contractor's act of assurance form to be executed by the contractor which shall warrant compliance by the contractor with all laws of the state and all rules and published policies of the board; and]

[(4) any additional information or conditions that may be requested by the executive administrator.]

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 April 12, 2024.

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Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-6072



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM 37 TAC §23.55

The Texas Department of Public Safety (the department) proposes amendments to §23.55, concerning Certified Emissions

Inspection Station and Inspector Requirements, by adding language which makes clear that emissions testing equipment must stay at the department-approved location and requiring that certified emissions inspection stations obtain and maintain a single static Internet Protocol (IP) address for purposes of the submission of vehicle emissions inspection results to the Texas Information Management System (TIMS) vehicle identification database. Requiring the use of a single static IP address will provide greater security and stability, decrease the potential for the interruption of service, reduce the potential for fraud, and enhance the department's oversight of the emissions inspection program.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that the proposed amendments may result in additional costs for small business and micro-business emission testing stations required to comply with the section as proposed, but there will be no adverse economic effect on rural communities.

The estimated number of licensed emissions inspection stations as of January 22, 2024, is 5,205. There are at least 109 inspection stations with more than 20 licensed vehicle inspectors; the remaining 5,096 stations have fewer than 20 inspectors. It is not possible, however, to provide a definite number of employees as this number does not reflect the number of unregulated employees in addition to the licensed inspectors. The department has no data on the annual gross receipts of these businesses. Therefore, it is assumed that the majority of licensed emissions inspection stations are micro-businesses rather than small businesses, with 109 small businesses and 5,096 micro-businesses likely subject to the new rule. The department has tried to minimize costs to licensed emissions inspection stations businesses. The new proposed requirements are designed to be the minimum standard that will provide greater security and stability, decrease the potential for the interruption of service, reduce the potential for fraud, and protect the public health, safety, and environmental welfare of the state. The estimated economic impact for a single static IP address as an add-on to an existing internet service provider contract is \$15-\$20 per month. Assuming \$20 per month, the two year fiscal impact would be \$480 per inspection station.

Under Government Code §2006.002, the department must perform a regulatory flexibility analysis. The department considered alternatives such as not adopting amendments, gradually phasing in the requirement, or creating exceptions for smaller stations such as single owner/operator inspection stations. However, the department has rejected these three options for the following reasons. First, requiring a single, static IP address for the inspection stations prevents one method by which certain emissions inspection stations engage in fraudulent vehicle emissions inspections. Second, any delay in implementing this change enables the continuation of fraudulent activity, interferes with the administration of the emissions inspection program, and negatively affects air quality and public health. Finally, the inspection stations found to be committing fraudulent emissions inspections are disproportionately small, single owner stations with very few employees. The department, therefore, does not believe it is feasible to waive or limit the requirements of the proposed amendments for small or micro-business emission inspection stations. The economic impact of \$15-20 per month to

the small and micro-businesses is negligible in comparison to the benefit of the program and public health. In addition, Government Code §2006.002(c-1) does not require the department to consider alternatives that might minimize possible adverse impacts on small businesses, micro-businesses, or rural communities if the alternatives would not be protective of the health, safety, and environmental welfare of the state.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be enhanced administrative enforcement against vehicle inspectors and inspection station owners responsible for fraudulent vehicle emissions inspections and improved public health and safety, all while carefully considering potential costs to emission inspection stations consistent with department responsibilities.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and Texas Transportation Code, §548.258, which authorizes the Department of Public Safety to adopt rules to require an inspection station to use the state electronic Internet portal.

Texas Government Code, §411.004(3), and Texas Transportation Code §548.002, §548.003, §548.258, §548.301, §548.303, and §548.304 are affected by this proposal.

§23.55. Certified Emissions Inspection Station and Inspector Requirements.

(a) To be certified by the department as an emissions inspection station for purposes of the emissions inspection and maintenance (I/M) program, the station must:

- (1) be certified by the department as an official vehicle inspection station;
- (2) comply with this chapter, the DPS Training and Operations Manual for Vehicle Inspection Stations and Certified Inspectors, Texas Transportation Code, Chapter 547 and Chapter 548, and regulations of the department;
- (3) complete all applicable forms and reports as required by the department;
- (4) purchase or lease emissions testing equipment currently certified by the Texas Commission on Environmental Quality (TCEQ) to emissions test vehicles and maintain existing emissions testing equipment to meet the certification requirements of the TCEQ at the department-approved location unless otherwise authorized by the department;

(5) obtain and maintain in working order a secure internet connection with a single static Internet Protocol (IP) address to be used by all vehicle emissions analyzers at each department-approved location, connected to the Texas Information Management System (TIMS) vehicle identification database at all times for the purposes of performing [have a dedicated data transmission line for each vehicle emissions analyzer to be used to perform] vehicle emissions tests; and

(6) enter into and maintain a business arrangement with the TIMS [Texas Information Management System] contractor to obtain a telecommunications link to the TIMS [Texas Information Management System] vehicle identification database for each vehicle emissions analyzer to be used to inspect vehicles as described in the Texas I/M State Implementation Plan (SIP).

(b) All public certified emissions inspection stations in affected counties shall offer the onboard diagnostic (OBD) test.

(c) The fee for an emissions test must provide for one free retest for each failed initial emissions inspection, provided that the motorist has the retest performed at the same vehicle inspection station where the vehicle originally failed and the retest is conducted within 15 calendar days of the initial emissions test, not including the date of the initial emissions test.

(d) To qualify as a certified emissions inspector, an applicant must:

- (1) be certified by the department as an official vehicle inspector;
- (2) complete the training required for the vehicle emissions inspection program and receive the department's certification for such training;
- (3) comply with the DPS Training and Operations Manual for Official Vehicle Inspection Stations and Certified Inspectors, this chapter, and other applicable rules, regulations and notices of the department; and
- (4) complete all applicable forms and reports as required by the department.

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 April 12, 2024.

TRD-202401497

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.62

The Texas Department of Public Safety (the department) proposes an amendment to §23.62, concerning Violations and Penalty Schedule. The proposed rule amendment adds a violation to the administrative penalty schedule to conform with the proposed changes to §23.55, concerning Certified Emissions Inspection Station and Inspector Requirements.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be the enhancement of administrative enforcement against the vehicle inspectors and inspection station owners responsible for fraudulent vehicle emissions inspections.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand an existing regulation. The

proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and Texas Transportation Code, §548.405, which authorizes the Public Safety Commission to deny, revoke, or suspend a license.

Texas Government Code, §411.004(3), and Texas Transportation Code §548.002, §548.003, §548.301, §548.303, §548.304, and §548.405 are affected by this proposal.

§23.62. *Violations and Penalty Schedule.*

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

(c) Violation categories are as follows:

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

(3) Category C.

(A) - (M) (No change.)

(N) Failing to maintain compliance with the requirements of §23.55 of this title (relating to Certified Emissions Inspection Station and Inspector Requirements) at all times.

(4) - (5) (No change.)

(d) - (j) (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 April 12, 2024.

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D. Phillip Adkins
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 223. COMPLIANCE AND INVESTIGATIONS [DIVISION]

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative

Code (TAC) Chapter 223, Subchapter A, Fraud, Waste, or Abuse, §§223.1 - 223.3; new §223.5; and the repeal of Subchapter B, Risk-Based Monitoring and Preventing Fraudulent Activity, §223.101.

The proposed amendments would revise the title to Chapter 223 by removing the word "Division." The proposed amendments would also bring the rules into alignment with statute; clarify existing requirements; improve readability by using consistent terminology; update definitions, terms, and references; and more specifically describe the department's methods and procedures. Proposed new §223.5 is necessary to update the department's process for external risk-based monitoring regarding the external users of the department's Registration and Title System (RTS). Proposed new §223.5 would replace Subchapter B, §223.101.

EXPLANATION. The department is conducting a review of its rules in Chapter 223 in compliance with Government Code, §2001.039. Notice of the department's plan to review Chapter 223 is published in this issue of the *Texas Register*. As a part of the rule review, the department is proposing necessary revisions as detailed in the following paragraphs.

A proposed amendment would change the title to Chapter 223 to "Compliance and Investigations" by deleting the word "Division." In August of 2021, the department's Compliance and Investigations Division disbanded and became a part of the department's Enforcement Division.

Subchapter A. Fraud, Waste, or Abuse

Proposed amendments to §223.1 would clarify the purpose and scope of §223.3 and expand the scope of Subchapter A to include new §223.5 to replace §223.101, which is proposed for repeal. Section 223.3 authorizes county tax assessor-collectors and deputies to report to the department any suspected fraud, waste, or abuse relating to vehicle registration or titling; however, the deputies report suspected fraud, waste, or abuse to the county tax assessor-collector, who then reports it to the department. A proposed amendment to §223.1 would also delete subsection (b) because amended subsection (a) includes the necessary language regarding the purpose and scope of Subchapter A.

Proposed amendments to §223.2(b) would remove the definitions of "CID" and "Director" because both refer to the Compliance and Investigations Division, which has been disbanded and reorganized within the department's Enforcement Division. A proposed amendment to the definition of "county tax assessor-collector" in §223.2(b) would clarify the definition by referring to the person who serves as the assessor-collector of taxes for a Texas county under Article VIII, §14, of the Texas Constitution. A proposed amendment to the definition of "deputy" in §223.2(b) would clarify that Chapter 217 is in Title 43. A proposed amendment to the definition of "RTS" in §223.2(b) would replace the words "Texas Department of Motor Vehicle's" with the word "department's" because the word "department" is defined in Transportation Code, Chapter 501. Section 223.2(a) says the words and terms defined in Transportation Code, Chapter 501 have the same meaning when used in Chapter 223, with certain exceptions. Proposed amendments to §223.2(b) would also re-letter the subsection due to deletions.

A proposed amendment to §223.3(a) and (c) would delete the words "motor vehicle" from the term "motor vehicle dealer" because the word "dealer" is defined in Transportation Code, Chapter 501, but the term "motor vehicle dealer" is not defined in Chapter 501. Proposed amendments to §223.3 would replace

the acronym "CID" with the word "department" to reflect the reorganization within the department. Proposed amendments to §223.3(a) - (c) would remove the words "and possible investigation" as unnecessary. In addition to improving readability, proposed amendments to §223.3(b) would clarify and specify the information that must be included in the detailed narrative that a county tax assessor-collector must submit as part of a request to the department to review suspected fraud, waste, or abuse. A proposed amendment to §223.3(c) would add the word "possible" to be consistent with subsection (a), which includes the word "possible" when referring to suspected fraud, waste, or abuse. A proposed amendment to §223.3(c) would also delete an unnecessary comma. Proposed amendments to §223.3(d) would improve readability by using consistent terminology and removing unnecessary language.

Simultaneously with the proposed repeal of Subchapter B and §223.101, the department proposes new §223.5, which would rewrite, reorganize, clarify and specify the department's external risk-based monitoring system required by Transportation Code, §520.004(4). Proposed new §223.5 would subject all Texas county tax assessor-collectors, their contractor's staff, and their deputies, which are external RTS users, to periodic examination to determine whether to assign the RTS user a classification of priority or non-priority. Based on the examination, the department will classify each county tax assessor-collector, each of their contractor's staff, and each deputy as priority or non-priority for the purposes of prioritizing reviews to determine whether there is evidence of fraud by a county tax assessor-collector, their contractor's staff, or a deputy. This classification system will allow the department to determine how to use its limited resources most efficiently to investigate and prevent fraud.

Proposed new §223.5(a) would set out the factors the department considers in classifying a tax assessor-collector, their contractor's staff, or deputy as a priority or non-priority. These proposed factors would reflect the department's current practices in assessing whether to investigate a particular county tax assessor-collector, their contractor's staff, or deputy.

Proposed new §223.5(b) would document the department's goal that each county tax assessor-collector, each of their contractor's staff, or each deputy who is classified as a priority will be reviewed at least once per year; and if classified as a non-priority, a county tax assessor-collector, their contractor's staff person, or deputy will be reviewed at least once every two years. This goal would create predictability for the department, county tax assessor-collectors, their contractor's staff, and deputies; ensure that all county tax assessor-collectors, their contractor's staff, and deputies are reviewed regularly; and allow the department to prioritize its limited resources toward higher-priority reviews.

Proposed new §223.5(c) specifies that the examinations under this section may be virtual, on premises at the county tax assessor-collector's, their contractor's staff person's, or deputy's location, or a combination of both. Allowing virtual examinations would save the department resources and would be more convenient for county tax assessor-collectors.

Proposed new §223.5(d) would provide that the department may notify the county tax assessor-collector of possible fraudulent activity in the county tax assessor-collector's office when the department is authorized by law enforcement. This would clarify the limitations on the department's ability to update a county tax assessor-collector about a department investigation of their office.

Subchapter B. External Risk-Based Monitoring System

The department proposes the repeal of Subchapter B, including §223.101, because the risk-based system of monitoring and preventing fraudulent activity relating to vehicle registration and titling falls within the scope of Subchapter A, which is titled "Fraud, Waste, or Abuse." Also, the definitions in §223.2 apply to the entire Chapter 223, even though §223.2 is contained in Subchapter A. Simultaneously with the repeal of Subchapter B and §223.101, the department proposes new §223.5, which would rewrite, reorganize, clarify, and specify the department's external risk-based system of monitoring and preventing fraudulent activity relating to vehicle registration and titling.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments, new section, and repeal are in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Enforcement Division Director Corrie Thompson has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that for each year of the first five years the proposed amendments, new section, and repeal are in effect, the anticipated public benefit as a result of enforcing or administering the proposal will be the simplification, clarification, and streamlining of agency rules.

Anticipated Cost to Comply with the Proposal. Ms. Thompson anticipates that there will be no costs to comply with the proposed amendments, new section, and repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic impact on small businesses, micro-businesses, and rural communities because there are no anticipated economic costs for persons required to comply with the proposed amendments, new section, and repeal. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments, new section, and repeal are in effect, no government program would be created or eliminated. Implementation of the proposed revisions would not require the creation of new employee positions or elimination of existing employee positions. The proposed revisions would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed revisions do not create a new regulation; however, they expand an existing regulation regarding the department's external risk-based monitoring system of external users of RTS. The proposed revisions do not increase or decrease the number of

individuals subject to the rule's applicability. Lastly, the proposed revisions do not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on May 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. FRAUD, WASTE, OR ABUSE

43 TAC §§223.1 - 223.3

STATUTORY AUTHORITY.

The proposed amendments are proposed under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §520.010, which authorizes the department to perform an audit and investigation related to registration and titling services; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE.

The proposed amendments would implement Transportation Code, §520.004, §520.010 and Chapter 1002.

§223.1. Purpose and Scope.

[(a)] The purpose of this subchapter is to establish the following:

(1) procedures for county tax assessor-collectors and deputies to report suspected fraud, waste, or abuse to the department relating to vehicle registration or titling; and[-]

(2) a risk-based monitoring system for the department to monitor county tax assessor-collectors and their deputies who use RTS.

[(b) This subchapter applies to a county tax assessor-collector, an employee of a county tax assessor-collector, or a deputy, who wishes to report suspected fraud, waste, or abuse to the Texas Department of Motor Vehicles.]

§223.2. Definitions.

(a) The words and terms defined in Transportation Code, Chapter 501, have the same meaning when used in this chapter, except as otherwise provided by this chapter, unless the context clearly indicates otherwise.

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

[(1) CID--the Compliance and Investigations Division of the Texas Department of Motor Vehicles.]

(1) [(2)] County tax assessor-collector--the person who serves as the assessor-collector of taxes for a Texas county under Article VIII, §14, of the Texas Constitution, as well as [includes] an employee of a county tax assessor-collector.

(2) [(3)] Deputy--a full service deputy under Chapter 217, Subchapter H of this title (relating to Vehicle Titles and Registration).

~~[(4) Director--the director of the Compliance and Investigations Division.]~~

(3) [(5)] RTS--the department's [Texas Department of Motor Vehicle's] registration and title system.

§223.3. *Submission of Request.*

(a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee, [motor vehicle] dealer, deputy, or any person transacting motor vehicle-related business for or with the county may submit a request to the department [CHD] for review [and possible investigation]. The department [CHD] may forward a submission to an appropriate law enforcement entity.

(b) To submit a request to the department [CHD] for review [and possible investigation], the county tax assessor-collector must:

(1) request a rejection of the suspected transaction through a department regional service center; and

(2) mail or e-mail the following documents and information, as applicable, to the department [CHD] in an envelope or e-mail message marked "Red Flag":

(A) the original transaction;

(B) a detailed narrative, including:

(i) the name of a contact person with the county tax assessor-collector, including email address and phone number;

(ii) the name of the employee submitting the request [transaction to the CHD];

(iii) a statement as to why the transaction is suspect [was flagged];

(iv) information about the employee or deputy [if the employee or deputy is] suspected of committing fraud, waste, or abuse;

(v) any statements made by the customer submitting the suspect transaction;

(C) any available video surveillance footage; and

(D) any other relevant evidence or information pertaining to the transaction.

(c) If a deputy suspects possible fraud, waste, or abuse[,] by an employee, [motor vehicle] dealer, or any person transacting motor vehicle-related business for or with the deputy, the deputy must report the suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then submit a request to the department [CHD] for review [and possible investigation] in accordance with subsection (b) of this section.

(d) If the department [CHD] determines it will not open [conduet] an investigation after reviewing a submitted request [submitted by a county tax assessor-collector], the department [CHD] will notify [provide a notification to] the submitting county tax assessor-collector.

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) 465-4160



43 TAC §223.5

STATUTORY AUTHORITY.

The new provision is proposed under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §520.010, which authorizes the department to perform an audit and investigation related to registration and titling services; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE.

The proposed new provision would implement Transportation Code, §520.004, §520.010 and Chapter 1002.

§223.5. External Risk-Based Monitoring System.

(a) All county tax assessor-collectors, their contractor's staff, and the deputies who use RTS are subject to periodic examination by the department. As a result of the examination, the department will classify each county tax assessor-collector, each of their contractor's staff, and each deputy as priority or non-priority for the purposes of prioritizing reviews to determine whether there is evidence of fraud by the county tax assessor-collector, their contractor's staff, or a deputy. In classifying a county tax assessor-collector, their contractor's staff, or a deputy, the department may consider factors, including, but not limited to:

(1) referrals or complaints received from partner state agencies;

(2) referrals or complaints received from public safety agencies;

(3) the retirement, resignation, or impeachment of the county tax assessor-collector;

(4) a contingency that disrupted county motor vehicle title and registration operations, such as a natural disaster or the theft or the burglary of a county tax assessor-collector's premises;

(5) previous compliance review designations;

(6) previous instances of non-compliance; and

(7) a complaint filed through an internal reporting mechanism, such as a Red Flag referral, telephone call, or an email received by the department's Consumer Relations Division (CRD), or any other means of communication with the department.

(b) It is the department's goal to review each county tax assessor-collector, each of their contractor's staff, and each deputy as follows:

(1) if the county tax assessor-collector, their contractor's staff person, or deputy is classified as a priority, they will be reviewed at least once per year; or

(2) if the county tax assessor-collector, their contractor's staff person, or deputy is classified as a non-priority, they will be reviewed at least once every two years.

(c) Examinations under this section may be virtual, on premises at the county tax assessor-collector's, their contractor's staff person's, or deputy's location, or a combination of both.

(d) The department may notify the county tax assessor-collector of possible fraudulent activity in the county tax assessor-collector's office when the department is authorized by law enforcement.

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. RISK-BASED
MONITORING AND PREVENTING
FRAUDULENT ACTIVITY**

43 TAC §223.101

STATUTORY AUTHORITY.

The repeal is proposed under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §520.010, which authorizes the department to perform an audit and investigation related to registration and titling services; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The proposed repeal would implement Transportation Code, §520.004, §520.010 and Chapter 1002.

§223.101. *External Risk-Based Monitoring 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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