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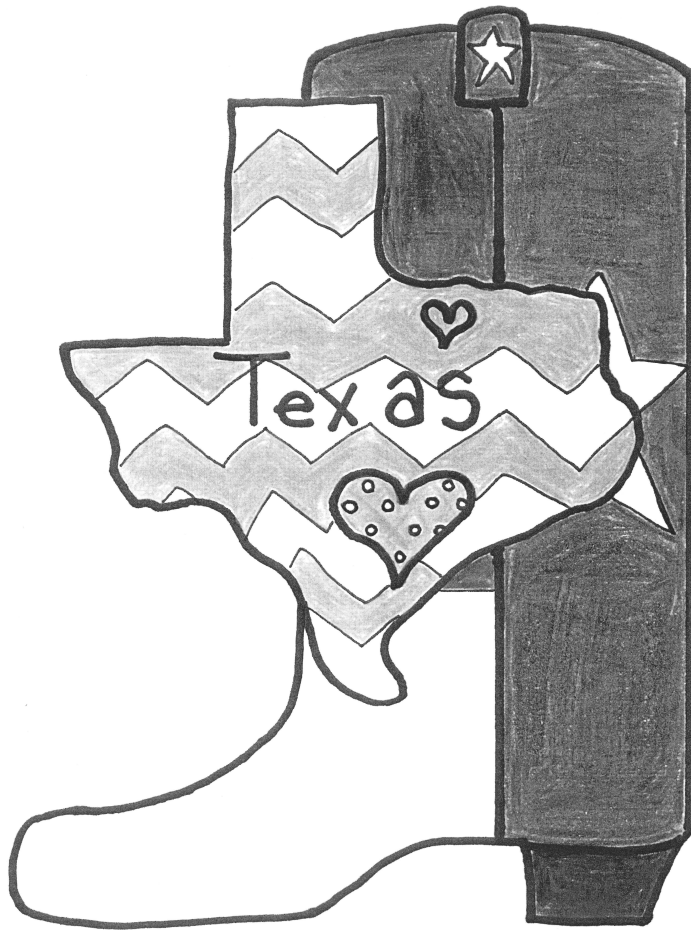
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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 18, 2024

Appointed to the Texas State Board of Plumbing Examiners for a term to expire September 5, 2029, James R. "Ron" Ainsworth of Boerne, Texas (Mr. Ainsworth is being reappointed).

Appointed to the Texas State Board of Plumbing Examiners for a term to expire September 5, 2029, William K. "Bill" Klock of Austin, Texas (Mr. Klock is being reappointed).

Appointed to the Texas State Board of Plumbing Examiners for a term to expire September 5, 2029, Norma A. Yado of McAllen, Texas (Ms. Yado is being reappointed).

Appointments for April 23, 2024

Appointed to the Texas Racing Commission for a term to expire February 1, 2025, Jason E. Boatright of Dallas, Texas (replacing Ronald F. Ederer of Corpus Christi, whose term expired).

Appointments for April 24, 2024

Appointed to the Texas Municipal Retirement System Board of Trustees for a term to expire February 1, 2027, Tricia H. Mirabelle of Cedar Park, Texas (replacing Anali Alanis of Pharr, who resigned).

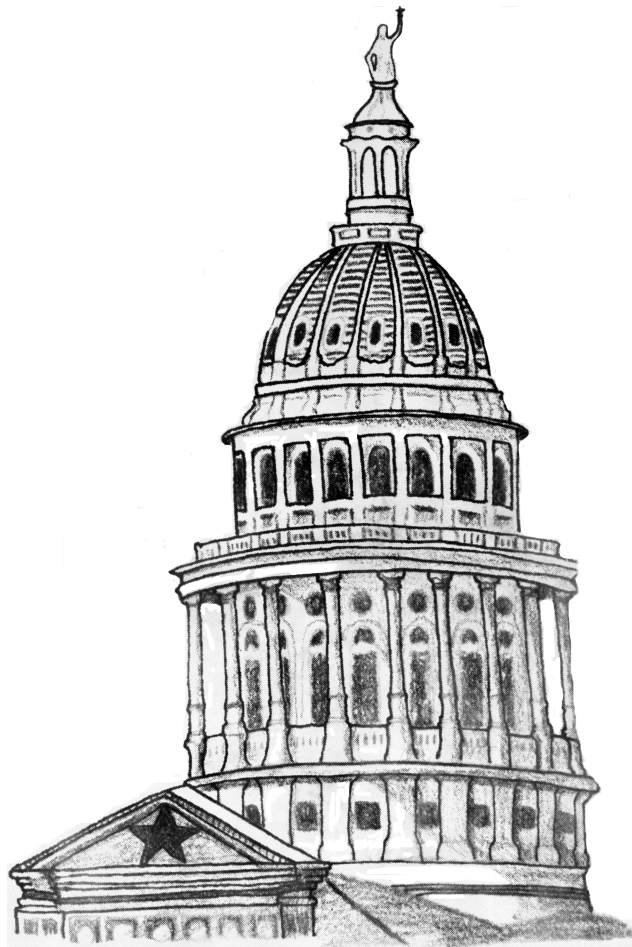
Appointed to the Texas Municipal Retirement System Board of Trustees for a term to expire February 1, 2029, Tomás "Tommy" Gonzalez of Midland, Texas (replacing Juan D. "Johnny" Huizar of Pleasanton, whose term expired).

Appointed to the Texas Municipal Retirement System Board of Trustees for a term to expire February 1, 2029, Roel "Roy" Rodriguez of McAllen, Texas (replacing Jesus A. Garza of Victoria, whose term expired).

Greg Abbott, Governor

TRD-202401727





THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Opinions

Opinion No. KP-0462

The Honorable Franklin McDonough

31st Judicial District Attorney

Post Office Box 1592

Pampa, Texas 79066

Re: Whether a constable may simultaneously serve as a municipal court judge (RQ-0517-KP)

SUMMARY

Texas Constitution, article XVI, section 40, prohibits one person from holding more than one office of emolument at the same time. An individual may not simultaneously serve as a compensated municipal judge and a constable.

While it is for the State Commission on Judicial Conduct to discipline judges, certain canons of the State Code of Judicial Conduct likely prevent a municipal judge from simultaneously holding a position as a law enforcement officer. In particular, the State Commission on Judicial Conduct has issued a public statement condemning the practice of a judicial officer concurrently serving as a law enforcement officer due to separation-of-powers concerns.

The common-law doctrine of incompatibility prohibits the simultaneous holding of two offices with conflicting loyalties. As a peace officer,

the constable's duties could require the constable to appear before the municipal judge as magistrate, rendering the two positions incompatible. Moreover, such concurrent service implicates the concerns raised by the State Commission on Judicial Conduct. Accordingly, a court would likely conclude that a municipal judge may not simultaneously serve as a constable.

Under either article XVI, section 40, or common-law incompatibility, acceptance of a second office incompatible with the first office results in effective resignation from the first office. Thus, when the individual at issue accepted the incompatible office of municipal judge he effectively resigned from the office of constable.

A municipal judge is not required to comply with the provision in Canon 5(3) of the State Code of Judicial Conduct calling for a judge to resign from judicial office before becoming a candidate in a contested election for a non-judicial office.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202401725

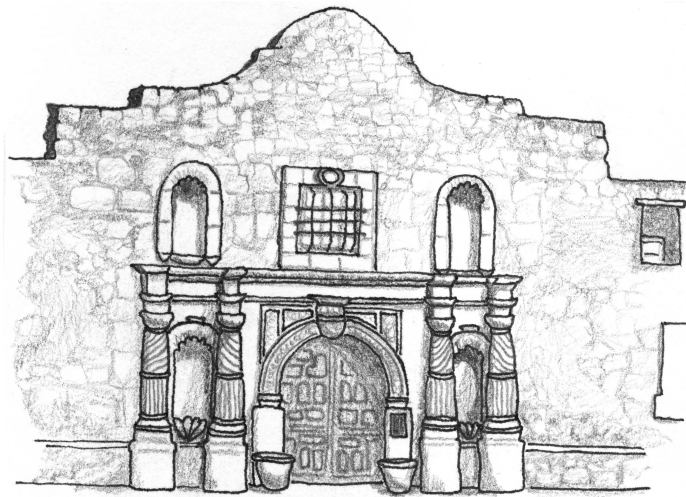
Justin Gordon

General Counsel

Office of the Attorney General

Filed: April 24, 2024





PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.304, concerning Direct Care Staff Spending Requirement on or after September 1, 2023; §355.306, concerning Cost Finding Methodology; §355.307, concerning Reimbursement Setting Methodology; and §355.308, concerning Direct Care Staff Rate Component; the repeal of §355.309, concerning Performance-based Add-on Payment Methodology; and §355.314, concerning Supplemental Payments to Non-State Government-Owned Nursing Facilities; and new §355.318, concerning Reimbursement Setting Methodology for Nursing Facilities on or after September 1, 2025; and §355.320, concerning Nursing Care Staff Rate Enhancement Program for Nursing Facilities on or after September 1, 2025.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the 2024-25 General Appropriations Act (GAA), House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, Health and Human Services Commission, Rider 25). Rider 25 provides appropriations for HHSC to "develop and implement a Texas version of the Patient Driven Payment Model (PDPM) methodology for the reimbursement of long-term stay nursing facility services in the Medicaid program to achieve improved care for long-term stay nursing facility services, excluding services provided by a pediatric care facility or any state-owned facilities."

The proposal amends §355.304, concerning Direct Care Staff Spending Requirement on or after September 1, 2023, to specify how the spending requirement will operate under PDPM Long-Term Care (LTC). The proposal amends the title of §355.306 to "Cost Finding Methodology before September 1, 2025," and revises the rule text to replace "Rate Analysis Department" with "Provider Finance Department." The title of §355.307 is amended to "Reimbursement Setting Methodology before September 1, 2025" and the title of §355.308 is amended to "Direct Care Staff Rate Component before September 1, 2025." The revised titles clarify that the rules are in effect until September 1, 2025, when the PDPM LTC methodology is implemented. The proposal repeals §355.309, concerning Performance-based Add-on Payment Methodology and §355.314, concerning Supplemental Payments to Non-State

Government-Owned Nursing Facilities, as these rules are no longer applicable to nursing facility reimbursement. Finally, the proposal adds new rules §355.318, concerning Reimbursement Setting Methodology for Nursing Facilities on or after September 1, 2025, and §355.320, concerning Nursing Care Staff Rate Enhancement Program for Nursing Facilities on or after September 1, 2025. The new rules operationalize the rider requirements, enabling HHSC to implement PDPM LTC.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.304 updates references and adds new definition "nursing care staff base rate" to subsection (b). The proposed amendment also adds new subsection (k), which outlines how the spending requirements for September 1, 2023, will operate under PDPM LTC once it is implemented. Formatting edits are made to account for the addition of a definition.

The proposed amendment to §355.306 changes the title to "Cost Finding Methodology before September 1, 2025," and revises the rule text to replace "Rate Analysis Department" with "Provider Finance Department." Other edits are made to hyphenate terms and correct punctuation.

The proposed amendment to §355.307 changes the title to "Reimbursement Setting Methodology before September 1, 2025."

The proposed amendment to §355.308 changes the title to "Direct Care Staff Rate Component before September 1, 2025."

The proposal repeals §355.309 and §355.314, because these rules no longer apply to nursing facility reimbursement.

Proposed new §355.318(a) introduces the new PDPM LTC methodology. Subsection (b) defines terms used in the rule. Subsection (c) outlines the PDPM LTC classification system. Subsection (d) defines the PDPM LTC rate components and specifies cost categories included in each of the rate components. Subsection (e) outlines reimbursement determination for total per diem rates, including base rate calculation, calculation of all rate components, and the HIV/AIDS rate add-on. Subsection (f) defines reimbursement for hospice care in a nursing facility. Subsection (g) revises the cost finding methodology currently described under §355.306 and outlines how it will operate under PDPM LTC. The proposal also limits the costs associated with contracted management fees to ensure that they are reasonable. Subsection (h) defines the reimbursement methodology for special reimbursement classes of nursing facilities (without change according to §355.307). Subsection (i) incorporates and updates language outlining reimbursement for nurse aide training and competency evaluation costs. Subsection (j) specifies that adopted rates are limited to available levels of appropriated state and federal funds.

Proposed new §355.320 changes the name of the Direct Care Staff Enhancement Program specified in §355.308 to the Nurs-

ing Care Staff Enhancement Program to align with rate components under PDPM LTC. The amendment incorporates revisions to the program. Subsection (a) introduces the Nursing Care Staff Rate Enhancement Program for nursing facilities on or after September 1, 2025. Subsection (b) defines terms used in the rule. Subsection (c) outlines the enrollment process for new facilities willing to participate in the Nursing Care Staff Rate Enhancement Program. Subsection (d) outlines reporting requirements for participants in the rate enhancement program. Subsection (e) outlines vendor hold payments for participating facilities. Subsection (f) defines requirements for completion of staffing and compensation reports for the rate enhancement program. Subsection (g) outlines rate enhancement program enrollment limitations. Subsection (h) determines the nursing care staff component enhancements. Subsection (i) outlines the process for granting nursing care staff rate enhancement. Subsection (j) outlines how the total nursing rate component is determined for each participating facility. Subsection (k) establishes nursing care staff spending requirements for participating facilities and describes how recoupment is calculated. The proposal sets new requirements that no longer include staffing requirements associated with Licensed Vocational Nurse (LVN) equivalent minutes, as outlined in §355.308(j). Subsection (l) explains the process for mitigating recoupment of funds described in §355.320(k). Subsection (m) discusses adjustments to spending requirements. Subsection (n) outlines the process for voluntary withdrawal from the rate enhancement program. Subsection (o) outlines how HHSC notifies participating facilities about recoupments based on Annual Staffing and Compensation Reports. Subsection (p) outlines the reporting process for facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination. The proposal also establishes responsibility for the reporting requirement for a new owner. Subsection (q) defines undocumented nursing care staff and contract labor compensation costs as unallowed in case a facility fails to document staff spending. Subsection (r) outlines the process of informal reviews and formal appeals for participating facilities. Subsection (s) outlines participation in the Nursing Care Staff Rate Enhancement Program if a facility's contract is canceled. Subsection (t) outlines how HHSC determines a facility's compliance with spending requirements in the aggregate for entities that control more than one participating nursing facility contract. Subsection (u) outlines the Medicaid Swing Bed Program for Rural Hospitals. Subsection (v) outlines how HHSC will notify providers about a lack of available funds for participation in the rate enhancement program.

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, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$39,468,477 GR (\$99,920,196 AF) in FY 2026, \$39,468,477 GR (\$99,920,196 AF) in FY 2027, \$39,468,477 GR (\$99,920,196 AF) in FY 2028, \$39,468,477 GR (\$99,920,196 AF) in FY 2029, \$39,468,477 GR (\$99,920,196 AF) in FY 2028, \$39,468,477 GR (\$99,920,196 AF) in FY 2030.

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 not expand, limit, or 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 no adverse economic effect on small businesses, micro-businesses, or rural communities. HHSC does not anticipate additional costs as a result of the proposed rules. Rider 25 of the 2024-2025 GAA provides additional appropriations for nursing facility reimbursements under the proposed methodology. The proposed methodology does not include specific changes to direct care staffing ratios, training, or assumed compensation. The proposed methodology will use a new classification system for assigning residents to certain care groups. The assessment requirements are the same for both the current and the proposed methodologies and use the Minimum Data Set Resident Assessment Instrument.

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

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of the Provider Finance Department, has determined that for each year of the first five years the rules are in effect, the public benefit will be to improve care for long-term stay nursing facility services and incentivize client care and quality of services.

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 rate increases are anticipated to offset any economic costs to comply with the rules.

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 HEARING

A public hearing to receive comments on the proposal will be held on May 21, 2024, at 9:00 AM at the HHSC's Public Hearing Room 125W in the John H. Winters Building located at 701 W. 51st Street, Austin, Texas 78751.

Please contact the HHSC Provider Finance Department Long-Term Services and Supports at PFD-LTSS@hhs.texas.gov or (512) 730-7401, if you have questions.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or street address 4601 W. Guadalupe Street, Austin, Texas 78751; or by email to PFD-LTSS@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 24R019" in the subject line.

1 TAC §§355.304, 355.306 - 355.308, 355.318, 355.320

STATUTORY AUTHORITY

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

The amendments and new sections affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.304. Direct Care Staff Spending Requirement on or after September 1, 2023.

(a) (No change.)

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

(1) Direct care staff base rate--The direct care staff base rate is calculated in accordance with §355.308(k) of this subchapter [chapter] (relating to Direct Care Staff Rate Component before September 1, 2025).

(2) Direct care staff cost center--This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(3) Nursing care staff base rate--The nursing care staff base rate is calculated in accordance with §355.318(d) of this subchapter

(relating to Reimbursement Setting Methodology for Nursing Facilities on or after September 1, 2025).

(4) [(3)] Rate year--The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(5) [(4)] Responsible entity--The contracted provider, owner, or legal entity that received the revenue to be recouped is responsible for the repayment of any recoupment amount.

(c) - (j) (No change.)

(k) Transition to Patient Driven Payment Model (PDPM) for Long-Term Care (LTC). Effective September 1, 2025, HHSC will utilize the PDPM LTC reimbursement methodology for nursing facilities as described in §355.318 of this subchapter. HHSC will adopt new rates for PDPM LTC with the intent of supporting the new classification system and maintaining the September 1, 2023, direct care rate increases as part of the nursing rate component. HHSC will hold providers accountable to nursing care staff spending requirements under the PDPM LTC as follows.

(1) HHSC will transition direct care rates to the nursing component under PDPM LTC as follows.

(A) HHSC will calculate a nursing component base rate as specified in §355.318 of this subchapter. The nursing component base rate will be proportional to the direct care rate component revenue effective August 31, 2023 and any additional revenue appropriated for direct care.

(B) HHSC will reallocate the portion of the direct care component of the RUG-III rates associated with increases effective September 1, 2023, described in subsection (d) of this section, to the nursing rate component of the PDPM LTC rates. Reallocation will be proportional based on the case-mix indices (CMI) applicable to the nursing case-mix classifiers.

(2) Nursing care staff base rate spending floor under PDPM LTC will be calculated as follows.

(A) HHSC will calculate a nursing care staff base rate spending floor by multiplying accrued Medicaid fee-for-service and managed care nursing care staff revenues proportional to the nursing staff base rate specified in paragraph (1)(A) of this subsection by 0.70 for each provider.

(B) Accrued allowable Medicaid nursing care staff expenses for the rate year will be compared to the base rate spending floor from subparagraph (A) of this paragraph. If the base rate spending floor is less than the accrued allowable Medicaid nursing care staff expenses, HHSC or its designee will notify the provider as specified in subsection (g) of this section. There will be no recoupment associated with a provider's failure to meet the nursing care base rate spending floor specified in this paragraph.

(3) Total Nursing Care Spending Floor will be calculated as follows.

(A) At the end of the rate year, HHSC will calculate the nursing care spending floor by multiplying accrued Medicaid fee-for-service and managed care nursing care staff revenues proportional to the nursing care staff rate increases specified in paragraph (1)(B) of this subsection by 0.90 and the nursing care staff base rate spending floor as specified in paragraph (2)(A) of this subsection.

(B) Accrued allowable Medicaid nursing care staff expenses for the rate year will be compared to the total nursing care staff spending floor from subparagraph (A) of this paragraph. If the nursing care spending floor is less than the accrued allowable Medicaid nursing

care staff expenses, HHSC or its designee will recoup the difference between the nursing care spending floor and the accrued allowable Medicaid nursing care staff expenses from providers whose Medicaid nursing care staff spending is less than their nursing care spending floor.

(4) At no time will a provider's nursing care rates after recoupment be less than the nursing care base rates as defined in paragraph (1)(A) of this subsection.

(5) For participants in the nursing care staff enhancement program, HHSC will calculate spending requirements as specified under §355.320(k) of this subchapter (relating to Nursing Care Staff Rate Enhancement Program for Nursing Facilities on or after September 1, 2025).

§355.306. *Cost Finding Methodology before September 1, 2025.*

(a) - (f) (No change.)

(g) Allowable appraised property values. Allowable appraised property values are determined as follows:

(1) Proprietary facilities. The allowable appraised values of proprietary facilities to be reported on Texas Medicaid cost reports are determined from local property taxing authority appraisals. The year of the property appraisal must be the calendar year within which the provider's cost report fiscal year ends, or the prior calendar year.

(2) Tax-exempt [Tax exempt] facilities. The allowable appraised property values for tax-exempt [tax exempt] facilities are determined as follows.

(A) Tax-exempt [Tax exempt] facilities provided an appraisal from their local property taxing authority. Tax-exempt [Tax exempt] facilities provided an appraisal from their local property taxing authority must report this appraised value on their Texas Medicaid cost report. The year of the property appraisal must be the calendar year within which the provider's cost report fiscal year ends, or the prior calendar year.

(B) Tax-exempt [Tax exempt] facilities not provided an appraisal from their local property taxing authority. Tax-exempt [Tax exempt] facilities not provided an appraisal from their local property taxing authority because of an "exempt" status must provide documentation received from the local taxing authority certifying exemption for the current reporting period and must contract with an independent appraiser to appraise the facility land and improvements. These independent appraisals must meet the following criteria.

(i) The appraisal must value land and improvements using the same basis used by the local taxing authority under Texas laws regarding appraisal methods and procedures.

(ii) The appraisal must be updated every five years, with the initial appraisal setting the five-year interval.

(I) Facilities achieving exempt status during their fiscal year ending in calendar year 1997 or a subsequent year must submit an initial appraisal to HHSC's Provider Finance [Rate Analysis] Department as part of their cost report for the fiscal year during which the exempt status was achieved. This appraisal must be reflective of the facility's appraised value during that fiscal year.

(II) If a facility is reappraised due to improvements or reconstruction as defined in clause (iii) of this subparagraph, a new five-year interval will be set.

(iii) Facilities making capital improvements[,] or requiring reconstruction due to fire, flood, or other natural disaster, when the improvements or reconstruction cost more than \$2,000 per licensed

bed, may contract with an independent appraiser to have land and improvements reappraised within the cost reporting period in which the improvements are [improvement(s) is] placed into service.

(iv) If for any reason an appraisal becomes available from the local taxing authority for a provider who previously lacked such an appraisal, the provider must report, on the next Texas Medicaid cost report submitted, the local taxing authority's appraised values instead of the independent appraisal values.

(3) Governmental facilities. Governmental facilities are exempt from the requirement to report an appraised property value.

(h) (No change.)

§355.307. *Reimbursement Setting Methodology before September 1, 2025.*

(a) - (f) (No change.)

§355.308. *Direct Care Staff Rate Component before September 1, 2025.*

(a) - (dd) (No change.)

§355.318. *Reimbursement Setting Methodology for Nursing Facilities on or after September 1, 2025.*

(a) Introduction. The Texas Health and Human Services Commission (HHSC) establishes the Patient Driven Payment Model (PDPM) for Long-Term Care (LTC) described in this section to reimburse nursing facilities on or after September 1, 2025. The PDPM LTC methodology will be implemented pending necessary system modifications.

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

(1) Brief interview for mental status (BIMS)--BIMS is a mandatory tool used to screen and identify the cognitive condition of residents upon admission into a nursing facility. BIMS is a part of minimum data set (MDS) assessment data. It is used to determine if a resident has a severe cognitive impairment, which necessitates additional reimbursement under the PDPM LTC classification system.

(2) Case-mix classifiers--These classifiers are codes based on MDS assessment data used to differentiate between case-mix index (CMI)-adjusted groups for the nursing and non-therapy ancillary (NTA) rate components.

(3) Case-mix index (CMI)--CMI is a relative value based on assessment data used to assign nursing facility residents to a diagnosis-related group for CMI-adjusted rate components.

(4) Minimum data set (MDS) assessment data--MDS is clinical assessment data collected by Medicare and Medicaid-certified nursing facilities as a part of a federally mandated process. MDS assessment data provide a comprehensive evaluation of each resident's functional capabilities, comorbidities, and health conditions and are used to determine case-mix classifiers and PDPM LTC groups.

(5) Patient Driven Payment Model (PDPM) Long-Term Care (LTC) classification system--This classification system is used to classify Medicaid recipients who reside in a nursing facility into 1 of 36 PDPM LTC groups based on MDS assessment data. If MDS assessment data is unavailable or invalid, a resident is assigned to 1 of 2 default groups.

(6) Patient Driven Payment Model (PDPM) Long-Term Care (LTC) default group--A default group assigns a temporary

classification when MDS assessment data is incomplete or in error or when an MDS assessment is missing.

(7) Patient Driven Payment Model (PDPM) Long-Term Care (LTC) group--Each group represents a unique combination, including a nursing case-mix classifier, an NTA case-mix classifier, and a BIMS classification. PDPM LTC groups are used to calculate total per diem rates under the PDPM LTC classification system.

(c) PDPM LTC classification. HHSC reimbursement rates for nursing facilities vary according to the assessed characteristics of Medicaid recipients based on MDS assessment data.

(1) In each of the PDPM LTC groups, nursing facility residents are classified according to one of six nursing case-mix classifiers; one of three NTA case-mix classifiers; and a BIMS classification, which indicates if a resident has severe cognitive impairment. For the case-mix adjusted rate components, the CMI is assigned based on relevant MDS assessment data. The nursing and NTA case-mix classifiers and the BIMS classification are described below.

(A) Nursing case-mix classifiers. A resident is assigned to one of six nursing case-mix classifications based on their level of acuity and the level of nursing care needed to address their health conditions effectively.

(B) NTA case-mix classifiers. A resident is assigned one of three NTA case-mix classifications based on the presence of certain conditions or the need for certain extensive services found to be correlated with increases in NTA costs.

(C) BIMS classification. A resident is assigned as qualifying for additional BIMS reimbursement if MDS assessment data indicates a severe cognitive impairment.

(2) PDPM LTC default groups are assigned using the lowest CMI among nursing case-mix classifiers, the lowest CMI among NTA case-mix classifiers, and without a BIMS classification of severe cognitive impairment. Both default groups will be reimbursed at the same total rate.

(d) PDPM LTC rate components. Total per diem PDPM LTC rates consist of the following four rate components. Costs used in HHSC's determination of the following rate components are subject to the cost-finding methodology as specified in subsection (g) of this section.

(1) Nursing rate component. This rate component includes compensation costs for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; restorative aides; nurse aides performing nursing-related duties for Medicaid contracted beds; certified social worker and social service assistant wages; and other direct care non-professional staff wages, including medical records staff compensation and benefits.

(A) Compensation to be included for these employee staff types is the allowable compensation defined in §355.103(b)(1) of this chapter (relating to Specifications for Allowable and Unallowable Costs) that is reported as either wages (including payroll taxes and workers' compensation) or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this chapter to be reported as costs applicable to specific cost report line items are not to be included in this cost center.

(B) Nursing staff who also have administrative duties not related to nursing must properly direct charge their compensation to each type of function performed based on daily time sheets maintained throughout the entire reporting period.

(C) Nurse aides must meet the qualifications specified under 26 TAC §556.3 (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) to be included in this rate component. Nurse aides include certified nurse aides and nurse aides in training.

(D) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes (such as federal payroll tax, Medicare, and federal and state unemployment insurance) and who perform tasks routinely performed by employees. Allowable contract labor costs are defined in §355.103(b)(3) of this chapter.

(E) For facilities providing care to children with tracheostomies requiring daily care as described in §355.307(b)(3)(G) of this chapter (relating to Reimbursement Setting Methodology before September 1, 2025), staff required by 26 TAC §554.901(15)(C)(iii) (relating to Quality of Care) performing nursing-related duties for Medicaid contracted beds are included in the nursing rate component.

(F) For facilities providing care for qualifying ventilator-dependent residents as described in §355.307(b)(3)(F) of this chapter, Registered Respiratory Therapists and Certified Respiratory Therapy Technicians are included in the nursing rate component.

(G) Nursing facility administrators and assistant administrators are not included in the nursing rate component.

(H) Staff members performing more than one function in a facility without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. If this highest level of licensure or certification is not that of an RN, LVN, medication aide, restorative aide, or certified nurse aide, the staff member is not to be included in the nursing rate component but rather in the rate component where staff members with that licensure or certification status are typically reported.

(I) Paid feeding assistants are not included in the nursing rate component. Paid feeding assistants are intended to supplement certified nurse aides, not to be a substitute for certified or licensed nursing staff.

(2) NTA rate component. This rate component includes costs of providing care to residents with certain comorbidities or the use of certain extensive services. This rate component includes central supply costs, including central supply staff compensation and benefits; ancillary costs, including ancillary staff compensation and benefits; diagnostic laboratory and radiology costs; durable medical equipment purchase, rent, or lease costs; oxygen costs; drugs and pharmaceuticals; therapy consultant costs; and other ancillary supplies and services purchased by a nursing facility.

(3) BIMS rate component. This rate component includes additional staff costs associated with providing care to residents with severe cognitive impairment.

(4) Non-Case-Mix rate component. The Non-Case-Mix rate component includes the following cost areas.

(A) Dietary costs, including food service and nutritionist staff expenses and supplies.

(B) The administration and operations cost includes compensation and benefits for the following staff: laundry and housekeeping staff, maintenance and transportation staff, administrator and assistant, other administrative personnel, activity director and assistant, and central office staff. Administration and operations also include operations supply costs; building repair and maintenance costs; laundry and housekeeping supply costs; transportation and vehicle depreciation costs; utilities, telecommunications, and technology

costs; contracted management costs; insurance costs, excluding liability insurance reimbursed under §355.312 of this subchapter (relating to Reimbursement Setting Methodology--Liability Insurance Costs).

(C) The fixed capital asset costs, including the cost categories listed below:

- (i) building and building equipment depreciation and lease expense;
- (ii) mortgage interest;
- (iii) land improvement depreciation; and
- (iv) leasehold improvement amortization.

(e) Reimbursement determination. HHSC calculates methodological PDPM LTC rates for each rate component as defined below.

(1) Calculation of the nursing rate component. HHSC determines a per diem cost for the nursing component by calculating a median of the allowable nursing costs defined in subsection (d)(1) of this section from the most recently examined cost report database, weighted by the total nursing facility units of service from the same cost report database, adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter (relating to Determination of Inflation Indices) and multiplied by 1.07.

(2) Calculation of the NTA rate component. HHSC determines a per diem cost for the NTA component by calculating a median of allowable NTA costs as defined in subsection (d)(2) of this section from the most recently examined cost report database, weighted by the total nursing facility units of service from the same cost report database, adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter and multiplied by 1.07.

(3) Calculation of CMI-adjusted rate components. HHSC adjusts the nursing component and the NTA component by the most recent corresponding CMI established for PDPM Medicare available for the rate year, as determined by the Medicare Skilled Nursing Facility (SNF) Prospective Payment System (PPS). The CMI-adjusted rate components are calculated as follows.

(A) Calculation of the total nursing rate component. HHSC will calculate CMI-adjusted nursing rate components for each nursing case-mix classifier by multiplying the result from paragraph (1) of this subsection by a CMI specific to each nursing case-mix classifier. There is one CMI per each nursing case-mix classifier.

(B) Calculation of the total NTA rate component. HHSC will calculate CMI-adjusted NTA rate components for each NTA case-mix classifier by multiplying the result from paragraph (2) of this subsection by a CMI specific to each NTA case-mix classifier. There is one CMI per each NTA case-mix classifier.

(4) Calculation of the BIMS rate component. This rate component is calculated at 5 percent of the nursing rate component established for a nursing case-mix classifier associated with the highest CMI.

(5) Calculation of the non-case mix rate component. HHSC determines a per diem cost for the non-case mix rate component by the following.

(A) HHSC calculates a median of allowable dietary costs defined in subsection (d)(4)(A) of this section from the most recently examined cost report database, weighted by the total nursing facility units of service from the same cost report database, adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter and multiplied by 1.07.

(B) HHSC calculates a median of the allowable administration and operations costs defined in subsection (d)(4)(B) of this section from the most recently examined cost report database, weighted by the total nursing facility units of service from the same cost report database, adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter and multiplied by 1.07.

(C) HHSC calculates a median of allowable fixed capital costs defined in subsection (d)(4)(C) of this section from the most recently examined cost report database, weighted by the total nursing facility units of service from the same cost report database, adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter and multiplied by 1.07.

(D) HHSC sums the results from subparagraphs (A) - (C) of this paragraph for the total non-case mix rate component.

(6) Total per diem rate determination. For each of the PDPM LTC groups and default groups, the recommended total per diem rate is determined as the sum of the following four rate components:

- (A) Nursing rate component;
- (B) NTA rate component;
- (C) BIMS rate component; and
- (D) Non-Case Mix rate component.

(7) HIV/AIDS Add-on. According to the Texas Health and Safety Code (THSC) §81.103, it is prohibited to input selected International Classification of Diseases, Tenth Revision (ICD-10) diagnosis codes for human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) in the MDS assessment data. PDPM LTC methodology establishes a special per diem add-on intended to reimburse nursing facilities for enhanced nursing and NTA costs associated with providing care to a resident with an HIV/AIDS diagnosis. The total HIV/AIDS add-on is a sum of the amounts discussed as follows.

(A) The nursing rate component per PDPM LTC group assigned to a qualifying resident will receive an 18 percent add-on amount.

(B) The NTA rate component amount will receive an add-on amount, which is calculated as the difference between the resident's NTA rate component amount based on their assigned NTA case-mix classifier and the NTA rate component amount associated with the NTA case-mix classifier with the highest CMI.

(f) Reimbursement for Hospice care in a nursing facility. Following 26 TAC §266.305 (relating to General Contracting Requirements), the Medicaid Hospice Program pays the Medicaid hospice provider a hospice-nursing facility rate that is no less than 95 percent of the Medicaid nursing facility rate for each individual in a nursing facility to take into account the room and board furnished by the facility.

(g) Cost finding methodology.

(1) Cost reports. A nursing facility provider must file a cost report unless:

(A) the provider meets one or more of the conditions in §355.105(b)(4)(D) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); or

(B) the cost report would represent costs accrued during a time period immediately preceding a period of decertification if the

decertification period was greater than either 30 calendar days or one entire calendar month.

(2) Communication. When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for one of the reasons stated in paragraph (1) of this subsection.

(3) Exclusion of and adjustments to certain reported expenses. Providers are responsible for eliminating unallowable expenses from the cost report. HHSC reserves the right to exclude any unallowable costs from the cost report and to exclude entire cost reports from the reimbursement determination database if there is reason to doubt the accuracy or allowability of a significant part of the information reported.

(A) Cost reports included in the database used for reimbursement determination.

(i) Individual cost reports will not be included in the database used for reimbursement determination if:

(I) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(II) an HHSC examiner determines that reported costs are not verifiable.

(ii) If all cost reports submitted for a specific facility are disqualified through the application of subparagraph (A)(i)(I) or (II) of this paragraph, the facility will not be represented in the reimbursement database for the cost report year in question.

(B) Occupancy adjustments. HHSC adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. HHSC adjusts the target occupancy rate to the lower of:

(i) 85 percent; or

(ii) the overall average occupancy rate for contracted beds in facilities included in the rate base during the cost reporting periods included in the base.

(4) Cost projections. HHSC projects certain expenses in the reimbursement base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective reimbursement applies as specified in §355.108 of this chapter.

(5) In addition to the requirements of §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs) and §355.103 of this chapter (relating to Specifications for Allowable and Unallowable costs), the following apply to costs for nursing facilities.

(A) Medical costs. The costs for medical services and items delineated in 26 TAC §554.2601 (relating to Vendor Payment (Items and Services Included)) are allowable. These costs must also comply with the general definition of allowable costs as stated in §355.102 of this chapter.

(B) Chaplaincy or pastoral services. Expenses for chaplaincy or pastoral services are allowable costs.

(C) Voucherable costs. Any expenses directly reimbursable to the provider through a voucher payment and any expenses in excess of the limit for a voucher payment system are unallowable costs.

(D) Preferred items. Costs for preferred items that are billed to the recipient, responsible party, or the recipient's family are not allowable costs.

(E) Preadmission Screening and Annual Resident Review (PASARR) expenses. Any expenses related to the direct delivery of specialized services and treatment required by PASARR for residents are unallowable costs.

(F) Advanced Clinical Practitioner (ACP) or Licensed Professional Counselor (LPC) services. Expenses for services provided by an ACP or LPC are unallowable costs.

(G) Limits on contracted management fees. To ensure that the results of HHSC's cost analyses accurately reflect the costs that an economical and efficient provider must incur, HHSC may place upper limits on contracted management fees and expenses included in the non-case mix rate component. HHSC sets upper limits at the 90th percentile of all costs per unit of service as reported by all contracted facilities using the cost report database immediately preceding the database used to establish reimbursements in subsection (e) of this section.

(h) Special Reimbursement Class. HHSC may define special reimbursement classes, including experimental reimbursement classes of service to be used in research and demonstration projects on new reimbursement methods and reimbursement classes of service, to address the cost differences of a select group of recipients. Special classes may be implemented on a statewide basis, may be limited to a specific region of the state, or may be limited to a selected group of providers. Reimbursement for the Pediatric Care Facility Class is calculated as specified in §355.316 of this chapter (relating to Reimbursement Methodology for Pediatric Care Facilities).

(i) Nurse aide training and competency evaluation costs.

(1) HHSC reimburses nursing facilities for the actual costs of training and testing nurse aides. Payments are based on cost reimbursement vouchers that are to be submitted quarterly. Allowable costs are limited to those costs incurred for training for:

(A) actual training course expenses up to a set amount determined by HHSC per nurse aide;

(B) competency evaluation; or

(C) supplies and materials used in the nurse aide training not already covered by the training course fee.

(2) Nurse aide salaries while in training are factored into the vendor rate and are not to be included in the reimbursement voucher.

(3) Training program costs that exceed the HHSC cost ceiling must have prior approval from HHSC before costs can be reimbursed. A written request to HHSC must include:

(A) name and vendor number of the facility;

(B) description of the training program for which the facility is seeking reimbursement approval, including:

(i) name, telephone number, and address of the NATCEP;

(ii) whether the NATCEP is facility or non-facility-based; and

(iii) name of the NATCEP director;

(C) an explanation of why the cost for the NATCEP exceeds the reimbursement ceiling and the explanation must include:

(i) a completed nurse aide unit cost calculation form for a facility-based NATCEP; or

(ii) a breakdown of the nurse aide unit cost by the instructor fees and training materials for a non-facility-based NATCEP; and

(D) an explanation of why the nursing facility cannot use a training program at or below the reimbursement ceiling and what steps the facility has taken to explore more cost-efficient training courses and the explanation must include:

(i) the availability of NATCEPs, such as the location or the frequency of training offered, in the geographic region of the facility;

(ii) the name and address of each NATCEP that the facility has explored as a provider of nurse aide training; and

(iii) the cost per nurse aide for each NATCEP identified in subparagraph (C)(i) or (ii) of this paragraph.

(4) All prior approval requests, as outlined in paragraph (3) of this subsection, must be submitted to HHSC and HHSC:

(A) may request additional information to evaluate a reimbursement request; and

(B) will make the final decision on a reimbursement request.

(5) All nurse aide training courses must be approved by HHSC before costs associated with them can be reimbursed.

(6) Nursing facilities are responsible for tracking and documenting nurse aide training costs for each nurse aide trained. All documentation is subject to HHSC audits. If substantiating documentation for amounts billed to HHSC cannot be verified, HHSC will immediately recoup funds paid to the facility.

(7) Individuals who have completed a NATCEP may be directly reimbursed for costs incurred in completing a NATCEP. The individual must meet all of the conditions specified in subparagraphs (A) - (E) of this paragraph.

(A) The individual must not have been employed at the time of completing the NATCEP.

(B) The individual must have been employed by or received an offer of employment from a nursing facility no later than 12 months after successfully completing the NATCEP.

(C) The individual must have been employed by the facility for no less than 6 months.

(D) The nursing facility must not have claimed reimbursement for training expenses for the individual.

(E) The individual must be listed on the current Nurse Aide Registry.

(8) Individuals must submit cost reimbursement vouchers to HHSC with proof that the individual has been employed by a facility for no less than 6 months.

(9) Individuals who leave nursing facility employment before accruing the required 6 months of employment, as specified in paragraph (7)(C) of this subsection, may receive 50 percent reimbursement as long as the individual was employed for no less than 3 months.

(10) Reimbursement to individuals may not exceed the HHSC reimbursement limit described in paragraph (1)(A) of this subsection.

(j) Adopted rates are limited to available levels of appropriated state and federal funds.

§355.320. Nursing Care Staff Rate Enhancement Program for Nursing Facilities on or after September 1, 2025.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) establishes the Nursing Care Staff Rate Enhancement Program for Nursing Facilities on or after September 1, 2025. The Nursing Care Staff Rate Enhancement Program for Nursing Facilities established under this section will be implemented pending implementation of Patient Driven Payment Model (PDPM) for Long-Term Care (LTC), as specified in §355.318 of this subchapter (relating to Reimbursement Setting Methodology for Nursing Facilities on or after September 1, 2025).

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

(1) Combined entity--Combined entities consist of one or more commonly owned corporation and one or more limited partnership, where the general partner is controlled by the same person as the commonly owned corporation.

(2) Commonly owned corporations--Commonly owned corporations are two or more corporations where five or fewer identical persons who are individuals, estates, or trusts control greater than 50 percent of the total voting power in each corporation.

(3) Control--The entity has greater than 50 percent ownership.

(4) Enrollment contract amendment--An acceptable enrollment contract amendment is defined as a legible document requesting a change in enrollment status that has been completed according to instructions, signed by an authorized representative per the HHSC signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC within 30 days of HHSC's notification to the facility that an enrollment contract amendment must be submitted.

(A) An initial enrollment contract amendment is required from each facility choosing to participate in the Nursing Care Staff Rate Enhancement Program.

(B) Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, or a participant can request to change its enhancement level) during any open enrollment period.

(C) Nonparticipants and participants requesting to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during any single open enrollment period unless HHSC waives such limits.

(D) Requests to modify a facility's enrollment status during an open enrollment period must be received by HHSC by the last day of the open enrollment period as per paragraph (8) of this subsection.

(i) If the last day of the open enrollment period falls on a weekend, national holiday, or state holiday, then the first business day following the last day of the open enrollment period is the final day the enrollment contract amendment will be accepted.

(ii) An enrollment contract amendment that is not received by the stated deadline will not be accepted.

(iii) A facility from which HHSC has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period, within available funds. The

facility will continue at that level of enrollment until the facility notifies HHSC following subsection (n) of this section that it no longer wishes to participate, or until the facility's enrollment is limited according to subsection (g) of this section.

(E) If HHSC determines that funds are not available to continue participation at the level in effect during the open enrollment period, facilities will be notified as per subsection (v) of this section.

(5) Entity--An entity is a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(6) Nursing care staff base rate--The nursing care staff base rate is equal to the adopted nursing rate component as specified in §355.318 of this subchapter.

(7) Nursing care staff cost center--The nursing care staff cost center is equal to the PDPM LTC nursing rate component as specified in §355.318 of this subchapter.

(8) Open enrollment--Open enrollment begins on the first day of July and ends on the thirty-first day of July, preceding the rate year for which payments are being determined. HHSC notifies providers of open enrollment via email sent to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC by the last day of the open enrollment period through HHSC's enrollment portal or another method designated by HHSC. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. If open enrollment has been postponed or canceled, HHSC will notify providers by email before the first day of July. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(9) Rate year--The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(10) Responsible entity--The contracted provider, owner, or legal entity that received the recouped revenue is responsible for the repayment of any recoupment amount.

(11) Staffing and compensation report--A staffing and compensation report is a report reflecting the provider's activities while delivering contracted services from the first day through the last day of the rate year or provider's cost report year while participating in the Nursing Care Staff Rate Enhancement Program. Staffing and compensation reports and cost reports functioning as staffing and compensation reports will include any information required by HHSC to implement the Nursing Care Staff Rate Enhancement Program. Staffing and compensation reports must be submitted annually or as specified in subsection (d) of this section. Cost and accountability reports requested by HHSC are considered staffing and compensation reports, and preparers must complete mandatory training requirements per §355.102(d) of this subchapter (relating to General Principles of Allowable and Unallowable Costs). Staffing and compensation reports will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (k) of this section. Participating facilities failing to submit an acceptable annual staffing and compensation report within 60 days of the end of the rate year will be placed on vendor hold until an acceptable report is received and processed by HHSC.

(c) Enrollment for new facilities. For purposes of this section, for each rate year, a new facility is defined as a facility delivering its first day of service to a Medicaid recipient after the first day of the open enrollment period as defined in subsection (b)(8) of this section.

Facilities that underwent an ownership change are not considered new facilities. New facilities will receive the nursing rate component as determined in §355.318 of this subchapter with no enhancements. For new facilities specifying their desire to participate in an acceptable enrollment contract amendment, the nursing rate component is adjusted as specified in subsection (j) of this section, effective on the first day of the month following receipt by HHSC of the acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited as per subsection (g) of this section during the most recent enrollment, enrollment for new facilities will be subject to that same limitation.

(d) Reporting requirements.

(1) All participating facilities will provide HHSC, in a method specified by HHSC, an annual staffing and compensation report reflecting the activities of the facility while delivering contracted services from the first day through the last day of the rate year.

(2) When a participating facility changes ownership, the prior owner must submit a staffing and compensation report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (k) of this section. The new owner will be required to submit a staffing and compensation report covering the period from the day after the date recognized by HHSC or its designee as the ownership change effective date to the end of the rate year.

(3) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a staffing and compensation report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (k) of this section.

(4) Participating facilities who voluntarily withdraw from participation as per subsection (n) of this section must submit a staffing and compensation report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the rate year to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsection (k) of this section.

(5) When a participating facility changes ownership, the prior owner must submit a staffing and compensation report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (k) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the ownership change effective date to the end of the facility's fiscal year.

(6) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a staffing and compensation report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (k) of this section.

(7) Participating facilities who voluntarily withdraw from participation as per subsection (n) of this section must submit a staffing and compensation report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the facility's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any re-

coumpment amounts as described in subsection (k) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoumpment amounts.

(8) For new facilities, as defined in subsection (c) of this section, the reporting period will begin with the effective date of participation in enhancement.

(9) Existing facilities that become participants in the enhancement as a result of the open enrollment process described in subsection (b)(8) of this section on any day other than the first day of their fiscal year are required to submit a staffing and compensation report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the facility's fiscal year. This report will be used as the basis for determining any recoumpment amounts as described in subsection (k) of this section.

(10) A participating provider that is required to submit a staffing and compensation report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable services to Medicaid recipients during the reporting period.

(11) Reports must be received before the date the provider is notified of compliance with spending requirements for the report in question as per subsection (k) of this section.

(12) HHSC may require other staffing and compensation reports from all facilities as needed.

(e) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a timely report as described in subsection (d) of this section. This vendor hold will remain in effect until HHSC receives an acceptable report.

(1) Participating facilities that do not submit an acceptable report completed in compliance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures), will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to immediate recoumpment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants, and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoumpment from subsection (k) of this section. If an acceptable report is not received within 365 days of the due date, the recoumpment will become permanent, and if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(2) Participating facilities with an ownership change or contract termination that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question. These facilities will be subject to an immediate recoumpment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants, and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoumpment from subsection (k) of this section. If an acceptable report is not received within 365 days of the change of ownership or contract termination date, the recoumpment will become permanent, and if all funds associated with participation during the

reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(f) Completion of Reports. All staffing and compensation reports must be completed in compliance with the provisions of §§355.102 - 355.105 of this chapter (relating to General Principles of Allowable and Unallowable Costs; Specifications for Allowable and Unallowable Costs; Revenues; and General Reporting and Documentation Requirements, Methods, and Procedures, respectively) and may be reviewed or audited in accordance with §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). All staffing and compensation reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) of this chapter.

(g) Enrollment limitations. A facility will not be enrolled in the Nursing Care Staff Rate Enhancement Program at a level higher than the level it achieved on its most recently available audited staffing and compensation report. HHSC will notify a facility of its enrollment limitations (if any) before the first day of the open enrollment period.

(1) Notification of enrollment limitations. The enrollment limitation level is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost and accountability reports. STAIRS will generate an email to the entity contact, indicating that the facility's enrollment limitation level is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type.

(2) Enrollment after a limitation. At no time will a facility be allowed to enroll in the enhancement program at a level higher than its current level of enrollment plus three additional levels unless otherwise instructed by HHSC.

(3) New owners after a change of ownership. Enhancement levels for a new owner after a change of ownership will be determined according to subsection (s) of this section. A new owner will not be subject to enrollment limitations based on the prior owner's performance. This exemption from enrollment limitations does not apply in cases where HHSC or its designee has approved a successor-liability-agreement that transfers responsibility from the former owner to the new owner.

(4) New facilities. A new facility's enrollment will be determined according to subsection (c) of this section.

(h) Determination of nursing care staff component enhancements. HHSC will determine a per diem add-on payment for each nursing rate component enhancement level using data from sources such as cost reports, surveys, or other relevant sources and considering the quality of care, labor market conditions, economic factors, and budget constraints. The nursing rate component enhancement add-ons will be determined on a per-unit-of-service basis. Add-on payments may vary by enhancement level.

(i) Granting of nursing staff rate enhancements. HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (g) of this section, into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly requested enhancements. Newly requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year, desiring to be granted additional enhancements. Using the process described herein, HHSC first determines the distribution of carry-over enhancements. If HHSC determines that funds are not available to carry over some or all pre-existing enhancements, facilities will be notified as per subsection (v) of this section. If funds are available after the

distribution of carry-over enhancements, HHSC then determines the distribution of newly requested enhancements. HHSC may not distribute newly requested enhancements to facilities owing funds identified for recoupment from subsection (k) of this section.

(1) HHSC determines projected Medicaid units of service for facilities requesting each enhancement option and multiplies this number by the rate add-on associated with that enhancement option as determined in subsection (h) of this section.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds:

(A) if the product is less than or equal to available funds, all requested enhancements are granted; or

(B) if the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based on an examination of existing staffing levels and staffing needs, HHSC may grant certain enhancement options priority for distribution.

(3) Notification of granting of enhancements. Participating facilities are notified of the status of their request for rate enhancements in a manner determined by HHSC.

(4) In cases where more than one enhanced rate level is in effect during the reporting period, the spending requirement will be based on the weighted average enhanced rate level in effect during the reporting period calculated as follows.

(A) Multiply the first enhanced rate level in effect during the reporting period by the most recently available reliable Medicaid days of service utilization data for the time period the first enhanced rate level was in effect.

(B) Multiply the second enhanced rate level in effect during the reporting period by the most recently available reliable Medicaid days of service utilization data for the time period the second enhanced rate level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available reliable Medicaid days of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(j) Determine each participating facility's total nursing rate component. Each participating facility's total nursing rate component will be equal to the nursing care staff base rate as defined in subsection (b)(6) of this section, plus any add-on payments associated with staffing enhancements selected by and awarded to the facility during open enrollment. HHSC will determine a per diem add-on payment for each enhanced staffing level informed by analysis of the most recently available reliable data relating to staff compensation levels and available appropriations for the program as specified in subsection (h) of this section.

(k) Spending requirements for participants. Participating facilities are subject to a nursing care staff spending requirement with recoupment calculated as follows.

(1) Effective September 1, 2023, HHSC will complete calculations associated with nursing care rate increases and spending requirements in compliance with §355.304 of this subchapter (relating to Direct Care Staff Spending Requirement on or after September 1, 2023).

(2) At the end of the rate year, a spending floor will be calculated by multiplying accrued Medicaid fee-for-service and managed care nursing care staff revenues by 0.70.

(3) Accrued allowable Medicaid nursing care staff fee-for-service expenses for the rate year will be compared to the spending floor from paragraph (2) of this subsection. HHSC or its designee will recoup the difference between the spending floor and accrued allowable Medicaid nursing care staff fee-for-service expenses from facilities whose Medicaid nursing care staff spending is less than their spending floor.

(4) At no time will a participating facility's nursing care rates after spending recoupment be less than the nursing care staff base rates.

(l) Dietary and Fixed Capital Mitigation. Recoupment of funds described in subsection (k) of this section may be mitigated by high dietary and fixed capital expenses as follows.

(1) Calculate dietary cost deficit. At the end of the facility's rate year, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If costs are greater than revenues, the dietary per diem cost deficit will be equal to the difference between accrued, allowable Medicaid dietary per diem costs and accrued Medicaid dietary per diem revenues. If costs are less than revenues, the dietary cost deficit will be equal to zero.

(2) Calculate dietary revenue surplus. At the end of the facility's rate, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If revenues are greater than costs, the dietary per diem revenue surplus will be equal to the difference between accrued Medicaid dietary per diem revenues and accrued, allowable Medicaid dietary per diem costs. If revenues are less than costs, the dietary revenue surplus will be equal to zero.

(3) Calculate fixed capital cost deficit. At the end of the facility's rate year, accrued Medicaid fixed capital asset per diem revenues will be compared to accrued, allowable Medicaid fixed capital asset per diem costs. Allowable fixed capital asset costs are defined in §355.318(d)(4)(C) of this subchapter. If costs are greater than revenues, the fixed capital cost per diem deficit will be equal to the difference between accrued, allowable Medicaid fixed capital per diem costs and accrued Medicaid fixed capital per diem revenues. If costs are less than revenues, the fixed capital cost deficit will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85 percent are adjusted to the cost per diem the facility would have accrued had it maintained an 85 percent occupancy rate throughout the rate year.

(4) Calculate fixed capital revenue surplus. At the end of the facility's rate year, accrued Medicaid fixed capital asset per diem revenues will be compared to accrued, allowable Medicaid fixed capital asset per diem costs. Allowable fixed capital asset costs are defined in §355.318(d)(4)(C) of this subchapter. If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85 percent are adjusted to the cost per diem the facility would have accrued had it maintained an 85 percent occupancy rate throughout the rate year.

(5) Mitigation of a dietary per diem cost deficit. Facilities with a dietary per diem cost deficit will have their dietary per diem cost deficit reduced by their fixed capital per diem revenue surplus, if any.

Any remaining dietary per diem cost deficit will be capped at \$2.00 per diem.

(6) Mitigation of a fixed capital cost per diem deficit. Facilities with a fixed capital cost per diem deficit will have their fixed capital cost per diem deficit reduced by their dietary revenue per diem surplus, if any. Any remaining fixed capital per diem cost deficit will be capped at \$2.00 per diem.

(7) Recoupment calculation. Each facility's recoupment, as calculated in subsection (k) of this section, will be reduced by the sum of that facility's dietary per diem cost deficit as calculated in paragraph (5) of this subsection and its fixed capital per diem cost deficit as calculated in paragraph (6) of this subsection.

(m) Adjusting spending requirements. Facilities that determine that they will not be able to meet their spending requirements from subsection (k) of this section may request a reduction in their spending requirements and associated rate add-on. These requests will be effective on the first day of the month following approval of the request.

(n) Voluntary withdrawal. Facilities wishing to withdraw from participation must notify HHSC in writing by certified mail and the request must be signed by an authorized representative as designated per the HHSC signature authority designation form applicable to the provider's contract or ownership type. Facilities voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. The participation end date for facilities voluntarily withdrawing from the program will be effective on the date of the withdrawal, as determined by HHSC.

(o) Notification of recoupment based on annual staffing and compensation report or cost report. The estimated amount to be recouped is indicated in STAIRS. STAIRS will generate an email to the entity contact, indicating that the facility's estimated recoupment is available for review. If HHSC's subsequent review of the staffing and compensation report results in report adjustments that change the amount to be repaid to HHSC or its designee, the facility's entity contact will be notified by email that the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC or its designee will recoup any amount owed from a facility's vendor payments following the date of the initial or subsequent notification.

(p) Change of ownership and contract terminations.

(1) Facilities required to submit a staffing and compensation report due to a change of ownership or contract termination as described in subsection (d) of this section will have funds held as per 26 TAC §554.210 (relating to Change of Ownership and Notice of Changes) until HHSC receives an acceptable staffing and compensation report and funds identified for recoupment from subsection (k) of this section are repaid to HHSC or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this chapter (relating to Informal Reviews and Formal Appeals). HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity, as defined in subsection (b)(10) of this section, will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity and will bar the responsible entity from receiving any new contracts with HHSC or its designees until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (o) of this section before the

recoupment of owed funds, placement of vendor hold, and barring of new contracts.

(2) Participation in the Nursing Care Staff Rate Enhancement Program transfers to the new owner as defined in 26 TAC §554.210 when there is a change of ownership. The new owner is responsible for the reporting requirements in subsection (d) of this section for any reporting period days occurring after the change. If the change of ownership occurs during an open enrollment period as defined in subsection (b)(8) of this section, then the owner recognized by HHSC or its designee on the last day of the enrollment period may request to modify the enrollment status of the facility.

(q) Failure to document staff spending. Undocumented nursing care staff and contract labor compensation costs will be disallowed and will not be used in the determination of nursing care staff costs per unit of service.

(r) Appeals. The subject matter of informal reviews and formal appeals is limited as per §355.110(a)(3) of this chapter.

(s) Contract cancellations. If a facility's Medicaid contract is canceled before the first day of an open enrollment period as defined in subsection (b)(8) of this section, and the facility is not granted a new contract until after the last day of the open enrollment period, participation in the Nursing Care Staff Rate Enhancement Program as it existed before the cancellation date of the facility's contract will be reinstated when the facility is granted a new contract. The contract must be under the same ownership, and reinstatement is subject to the availability of funding. Any enrollment limitations from subsection (g) of this section that would have applied to the canceled contract will apply to the new contract.

(t) Determination of compliance with spending requirements in the aggregate.

(1) Aggregation. For an entity, commonly owned corporation, or combined entity that controls more than one participating nursing facility contract, compliance with the spending requirements detailed in subsection (k) of this section can be determined in the aggregate for all participating nursing facility contracts controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating contract, or the effective date of the termination of its last participating contract rather than requiring each contract to meet its spending requirement individually. Corporations that do not meet the definitions under subsection (b) of this section are not eligible for aggregation to meet spending requirements.

(2) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request in a manner prescribed by HHSC when each staffing and compensation report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(3) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporation must submit a separate request for aggregation for each reporting period.

(4) Ownership changes or terminations. Nursing facility contracts that change ownership or terminate, effective after the end of the applicable reporting period but before the determination of compliance with spending requirements as per subsection (k) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(u) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes nursing care to a Medicaid recipient under 26 TAC §554.2326 (relating to Medicaid Swing Bed Program for Rural Hospitals), HHSC or its designee pays the hospital using the same procedures, the same case-mix methodology, and the same PDPM LTC rates that HHSC authorizes for reimbursing nursing facilities receiving the nursing rate component with no enhancement levels. These hospitals are not subject to the staffing and spending requirements detailed in this section.

(v) Notification of lack of available funds. If HHSC determines that funds are not available to continue participation for facilities from which it has not received an acceptable request to modify their enrollment by the last day of an enrollment period as per subsection (b)(8) of this section or to fund carry-over enhancements as per subsection (i) of this section, HHSC will notify providers in a manner determined by HHSC that such funds are not available.

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 18, 2024.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 867-7817



1 TAC §355.309, §355.314

STATUTORY AUTHORITY

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

The repeals affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.309. Performance-based Add-on Payment Methodology.

§355.314. Supplemental Payments to Non-State Government-Owned Nursing Facilities.

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

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.201

The Finance Commission of Texas (commission) proposes amendments to §86.201 (relating to Documentary Fee) in 7 TAC Chapter 86, concerning Retail Creditors.

The rule at §86.201 relates to documentary fees for retail installment transactions under Texas Finance Code, Chapter 345. In general, the purpose of the proposed rule changes to 7 TAC §86.201 is to adjust the maximum documentary fee amount under the rule.

The Office of Consumer Credit Commissioner (OCCC) distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received three written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Texas Finance Code, Chapter 345 governs retail installment transactions to purchase goods other than motor vehicles. Under Texas Finance Code, §345.251(a), a retail seller may charge a documentary fee in a retail installment transaction to purchase a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle. Under Texas Finance Code, §345.251(b)(2), the documentary fee "may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, subject to a reasonable maximum amount set by rule by the finance commission."

Currently, §86.201 describes the maximum documentary fee in a Chapter 345 retail installment transaction. The rule distinguishes between retail installment transactions for covered land vehicles (i.e., motorcycles, mopeds, all-terrain vehicles, boat trailers, and towable recreational vehicles) and covered watercraft (i.e., boats and boat motors). Current §86.201(c) contains a \$125 maximum documentary fee for the purchase of one or more covered land vehicles. Current §86.201(d) contains a \$125 maximum documentary fee for the purchase of one or more covered watercraft. Current §86.201(e) contains a \$175 maximum documentary fee for the purchase of one or more covered land vehicles and one or more covered watercraft.

In 2013, the commission adopted the \$125 and \$175 amounts in §86.201. The amounts have not been adjusted since then. As the commission explained in its preamble to the 2013 adoption, the rule's fee amounts and terminology are intended to correspond to different sets of titling and registration requirements. Land vehicles are subject to titling and registration requirements administered by the Texas Department of Motor Vehicles (TxDMV) under Texas Transportation Code, Chapters 501 and 502. Watercraft are subject to titling and registration requirements administered by the Texas Parks and Wildlife Department (TPWD) under Texas Parks and Wildlife Code, Chapter 31. As the commission explained, the higher \$175 amount for the purchase of both types of vehicles "is intended to compensate the

retail creditor for the documents and procedures that are necessary to title items with both TxDMV and TPWD." 38 TexReg 5707 (Aug. 30, 2013).

Proposed amendments throughout §86.201 would adjust the maximum documentary fee for a Chapter 345 retail installment transaction. A proposed amendment to §86.201(c) would adjust the documentary fee for a covered land vehicle from \$125 to \$200. A proposed amendment to §86.201(d) would adjust the documentary fee for covered watercraft from \$125 to \$200. A proposed amendment to §86.201(e) would adjust the documentary fee for both a covered land vehicle and covered watercraft from \$175 to \$250.

The commission and the OCCC believe that now is an appropriate time to revisit the maximum documentary fee amounts in §86.201 and to adjust them. The \$75 adjustment corresponds to a similar adjustment recently proposed by the commission in published amendments to 7 TAC §84.205 (relating to Documentary Fee), concerning documentary fees for motor vehicles. See 49 TexReg 1173 (Mar. 1, 2024). The proposed amendments to §84.205 would adjust the motor vehicle documentary fee amount considered reasonable from \$150 to \$225. That proposal was based on the OCCC's ongoing review of documentary fee cost analyses, as well as documentary fee amounts found to be reasonable in a recent contested case.

The commission and the OCCC believe that a corresponding \$75 adjustment is appropriate for covered land vehicles and watercraft under §86.201. The \$200 amount is appropriate because these vehicles are subject to similar document-related requirements that apply to motor vehicles; many, but not all, of the motor vehicle document requirements apply to vehicles under §86.201. For example, vehicles under §86.201 are subject to titling and registration requirements (as described earlier in this preamble) but generally are not subject to the requirements to provide a new car window sticker or a used car buyers guide. See 15 U.S.C. §1232 (requirement to provide new car window sticker applies to automobiles), Federal Trade Commission Used Car Rule, 16 C.F.R. §455.1(d)(2) (requirement to provide used car buyers guide applies to certain motorized vehicles other than motorcycles).

In informal precomments, stakeholders expressed general support for the proposed amendments. Two boating trade associations filed precomments supporting the proposed amendments. A third informal precomment was filed on behalf of a motorcycle trade association, a recreational vehicle association, and two boating trade associations. This precomment stated that the associations support the proposed amendments and stated: "We can confirm that our dealers conduct the same required administrative work to complete transactions as do automobile dealers: vehicle titling (which sometimes requires in-person visits to county offices), vehicle registration, submitting taxes, obtaining and mailing license plates, ensuring liens are correctly recorded and released, verifying a trade-in's value and whether it has open recalls, etc." The precomment also stated: "Costs have increased since 2013 due to general inflation, specific cost increases and heightened state and federal regulatory requirements. We have seen increased costs across multiple categories, including wages (up over 50% in some labor markets), real property leasing rates, technology (with specific new hardware, software and printers now mandated) and postage."

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implica-

tions for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will ensure that retail sellers may charge a documentary fee that reflects costs for handling and processing documents in a retail installment transaction for the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle.

The OCCC does not anticipate that the proposed rule changes will result in economic costs to persons who are required to comply with the proposed rule changes.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rule will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §86.201 by adjusting the maximum documentary fee amount. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The OCCC does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule amendments are proposed under Texas Finance Code, §345.251(b)(2), which authorizes the Finance Commission to adopt a rule establishing a reasonable maximum documentary fee amount, and Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to enforce Texas Finance Code, §345.251. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 345.

§86.201. *Documentary Fee.*

(a) Purpose. The purpose of this section is to specify the maximum documentary fee in a retail installment transaction for the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle, as provided by Texas Finance Code, §345.251.

(b) Definitions.

(1) All-terrain vehicle--Has the meaning provided by Texas Transportation Code, §551A.001(1).

(2) Boat--A vessel, as described by Texas Parks and Wildlife Code, §31.003(2).

(3) Boat motor--An outboard motor, as described by Texas Parks and Wildlife Code, §31.003(13).

(4) Covered land vehicle--A motorcycle, moped, all-terrain vehicle, boat trailer, or towable recreational vehicle.

(5) Covered watercraft--A boat or boat motor.

(6) Moped--Has the meaning provided by Texas Transportation Code, §541.201(8).

(7) Motorcycle--Has the meaning provided by Texas Transportation Code, §541.201(9).

(8) Retail installment contract--Has the meaning provided by Texas Finance Code, §345.001(6) and refers to one or more instruments entered into that evidence a secured or unsecured retail installment transaction for the sale of goods under Texas Finance Code, Chapter 345.

(9) Towable recreational vehicle--Has the meaning provided by Texas Finance Code, §348.001(10-a).

(c) Contract for covered land vehicles only. For a retail installment contract for the purchase of one or more covered land vehicles, the reasonable maximum amount of the documentary fee is \$200 [~~\$125~~].

(d) Contract for covered watercraft only. For a retail installment contract for the purchase of one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$200 [~~\$125~~].

(e) Contract for both covered land vehicles and covered watercraft. For a retail installment contract for the purchase of one or more covered land vehicles and one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$250 [~~\$175~~].

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 19, 2024.

TRD-202401663

Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 936-7660



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. ARCHIVES AND HISTORICAL RESOURCES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.51, §2.52

The Texas State Library and Archives Commission (commission) proposes amendments to Title 13, Chapter 2, §2.51, Public Record Fees, and §2.52, Customer Service Policies.

BACKGROUND. The commission proposes to amend §2.51 regarding fees for public records provided through its public services, which include the State Archives and the library services provided to the public, and §2.52 regarding the commission's public services customer service policies. The amendments to both rules are necessary to update and modernize the rules and simplify the language for clarity.

EXPLANATION OF PROPOSED AMENDMENTS. Proposed amendments to §2.51 update and clarify language for readability and consistency with other commission rules and delete language that is unnecessary, either because it is obsolete or because it is repetitive of other portions of the rule or existing law and therefore not necessary in the rule.

References to the commission are changed to "agency" throughout the rule for consistency with the commission's other rules and in accordance with the definitions of "commission" and "agency" in Chapter 2. The proposed update to the legal citation in subsection (a) ensures any changes to that chapter are automatically included in the commission's rule. The requirement to review the fee schedule annually is proposed for deletion as the agency continuously reviews and updates the fee schedule for any applicable changes. The fee schedule restates fees noted in other portions of this rule, in rules of the Office of Attorney General, or in statute. Proposed amendments to subsection (b)(6) simplify the language regarding third party access charges. As of the date of this proposal, the agency does not provide any services with third party access charges. Should such a charge become applicable in the future, the agency would charge a patron for the patron's access to such system or service. The commission proposes to delete subsection (c), as there is no need to restate copyright law in administrative rule. Finally, the commission proposes to delete subsection (d) as it is redundant of subsection (a).

Proposed amendments to §2.52 would change the name of the section to Patron Registration and Customer Service and simplify and clarify the rule language. The proposed amendments to subsection (a) clarify that any individual aged 17 or older who wishes to access materials in the State Archives or access certain library services, including borrowing items from the agency's circulating collections, interlibrary loan, and remote access to TexShare databases, must register in person each year by presenting a current government-issued photo identification, signing a registration agreement, and providing contact information. The proposed amendments also clarify that patrons of the State Archives must also comply with the commission's rule regarding access to archival state records and other historical resources, §10.2. The proposed amendments simplify the language noting that only individuals are eligible for patron registration and deletes subsection (a)(4) as it is unnecessary given the identification of services that require registration in subsection (a)(1).

Proposed amendments to subsections (b) and (c) streamline language and simplify the subsections. Subsections (d) and (e) are proposed for deletion as the rule's applicability and services requiring registration are noted in subsection (a)(1). Subsection (f) is proposed for deletion as it is obsolete. Finally, proposed amendments to subsection (g), which would become subsection (d) once amended, simplify and clarify the language regarding what might lead to suspension of a patron's borrowing privileges and add language noting that any individual who has been suspended may appeal to the director and librarian in compliance with the commission's protest procedure rule.

FISCAL IMPACT. Jelain Chubb, Division Director of State Archives, has determined that for each of the first five years the proposed amendments are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering these amended rules, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Chubb has determined that for each of the first five years the proposed amendments are in effect, the anticipated public benefit will be increased clarity regarding fees for public records and the process and requirements for accessing the State Archives or other specified services provided by the agency.

There are no anticipated economic costs to persons required to comply with the proposed amendments.

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The rules as proposed for amendment do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the rules as proposed for amendment will be in effect, the commission has determined the following:

1. The rules as proposed for amendment will not create or eliminate a government program;
2. Implementation of the rules as proposed for amendment will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the rules as proposed for amendment will not require an increase or decrease in future legislative appropriations to the commission;
4. The proposal will not require an increase or decrease in fees paid to the commission;
5. The proposal will not create new regulations;

6. The proposal will not expand, limit, or repeal an existing regulation;

7. The proposal will not increase the number of individuals subject to the proposed rules' applicability; and

8. The proposal will not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the proposed rules do not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §552.230, which authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied; §603.004, which authorizes the state librarian to charge for a photographic copy a fee determined by the commission with reference to the amount of labor, supplies, and materials required; and, more specifically, §441.193, which provides that the commission shall adopt rules regarding public access to archival state records and other historical resources in the possession of the commission; and §441.196, which provides the commission may sell copies of state archival records and other historical resources in its possession at a price not exceeding 25 percent above the cost of publishing or producing the copies.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.51. Public Record Fees.

(a) The agency [Texas State Library] will charge the fees established by the Office of the Attorney General in Texas Administrative Code, Title 1, Part 3, Chapter 70 [at ~~1~~ TAC §§70.1 - 70.12] (relating to Cost of Copies of Public Information) and the amounts described in subsection (b) of this section for providing any person the following:

- (1) Reproductions of materials from its collections of library and archival materials that are maintained for public reference;
- (2) Copies of public records of other agencies stored in the State Records Center; and
- (3) Records of the agency [~~commission~~].

(b) The agency [Texas State Library] will maintain a fee schedule outlining the charges for providing information to any individual [~~and review the schedule annually~~]. In addition to the fees described in subsection (a) of this section and listed on the fee schedule, the agency [~~library~~] will charge as follows:

- (1) Certification of copies is \$5.00 per instrument, which may include several pages with certification required only once. If certification is requested on each page, the cost is \$5 per instrument if the instrument consists of 5 pages or less or \$1 per page if the instrument consists of more than 5 pages.

(2) If a customer requests items printed from digital information resources, the items will be billed at the page rate for paper copies.

(3) If a customer requests printing of large format materials held in the Texas State Archives, the charge will be assessed at an established rate available on the agency fee schedule.

(4) The charge for duplication of non-standard materials from the archival collections is the actual commercial reproduction cost plus 25% of that cost.

(5) If any materials must first be digitized prior to duplication, an additional fee to cover the cost of digitization, available on the agency fee schedule, will be charged.

(6) A customer will be billed for any third-party [third party] access or use charges, if applicable. [Examples of services where use charges might occur include, but are not limited to:]

[(A) Digital information resources available through online services; or]

[(B) Document delivery or interlibrary loan services for providing materials or copies.]

(7) The minimum charge for any service requiring preparation of an invoice is \$1.00.

[(e) Reproduction of copyrighted materials will be carried out in conformance with the copyright law of the United States (Title 17, United States Code).]

[(d) The library will charge for labor, overhead, computer programming, computer resource time, and remote document retrieval, when applicable, as authorized by the rules established by the Office of the Attorney General.]

(c) [(e)] The agency [library] will not provide copies of or access to the records of other entities [agencies] housed in the State Records Center without written permission of the entity [agency].

§2.52. *Patron Registration and Customer Service [Policies].*

(a) Registration.

(1) Any person 17 years of age or older wishing to access materials in the State Archives or access certain library services, including, but not limited to, borrowing items from the agency's circulating collections, interlibrary loan, and remote access to TexShare databases, must register with the agency in person each year by presenting a current government-issued photo identification, signing a registration agreement, and providing their name, home address, telephone number, and e-mail address, if applicable or required for specific services. [Texas state employees and persons affiliated with state or local governments in Texas; staff of public, academic, special, or school libraries; and faculty or students of graduate schools of library and information science in Texas must register each year in person, by telecommunications or mail. Registration includes providing the following information:]

[(A) place of employment or study, address, and telephone number;]

[(B) home address and telephone number; and]

[(C) driver's license or date of birth.]

(2) Patrons of the State Archives must also comply with §10.2 of this title (relating to Public Access to Archival State Records and Other Historical Resources). [Others must register each year in person, presenting valid photo identification with a current address, sign a registration agreement, and provide the information detailed in

paragraph (1) of this subsection. The signed registration is kept on file. Registration must be renewed annually by presenting current photo identification with an address and provide the information detailed in paragraph (1) of this subsection.]

(3) Only individuals are eligible for patron registration. Entities of any type or groups of individuals are not eligible for patron registration. [No corporations, libraries, or groups may register; only individuals who are 16 years or older may register. However, persons under age 16 are welcome to use the services if supervised by an adult. Persons age 12 or younger are not admitted in the State Archives reference room; however, they may use other services and facilities of the library under supervision of a registered customer.]

[(4) Customers without acceptable photo identification or other information may be registered temporarily for supervised use of materials at the library; however, customers without a verified work or home address in Texas may not check out circulating materials.]

(b) Loans of Circulating Items [Loan Periods].

(1) The loan period for circulating items borrowed by patrons is four weeks. Loans may be renewed once for one four-week period if the item has not been reserved by another patron. Overdue materials may be renewed if they are less than 4 weeks overdue. [Loans of circulating items are four weeks with the following exceptions:]

[(A) Video materials are loaned for three weeks.]

[(B) Materials are loaned to other libraries for five weeks.]

[(C) Collection development materials are loaned for eight weeks.]

(2) The loan period for materials loaned to other libraries through the interlibrary loan program is eight weeks. [Renewal of loans:]

[(A) Loans may be renewed once for four weeks if there are no reserves on the item.]

[(B) Customers may renew loans in person, by telecommunications or mail.]

[(C) Libraries may renew interlibrary loans once if there are no reserves on the item.]

[(D) Overdue materials may be renewed if they are less than 4 weeks overdue.]

(3) There is no limit on the number of circulating items a patron may borrow except for reels of microfilm, which are limited to a maximum of five reels of microfilm at one time. [Number of items per customer:]

[(A) The number of circulating items that may be borrowed at one time is not limited, except that a customer may only borrow six reels of microfilm at one time.]

[(B) Additional restrictions apply to the State Archives. Only one box, one pension application, case file, bill file, or map may be used at a table at a time. No more than five volumes may be on a table at a time. Only one folder may be removed from a box at a time. Added materials may be requested and kept on a book truck or at a staff member's desk.]

(c) Overdue and Lost Items.

(1) Patrons [Customers] are responsible for items checked out in their name until they are returned to the circulation desk of the collection from which they were borrowed. Items must [may] be returned in person at the Lorenzo de Zavala State Archives and Library

Building, 1201 Brazos, Austin, Texas 78701-1938. [by either of the following:]

[(A) United States mail services to Texas State Library, Box 12927, Austin, Texas 78711-2927;]

[(B) interagency mail or commercial delivery services to Texas State Library, Lorenzo de Zavala State Archives and Library Building, 1201 Brazos, Austin, Texas 78701-1938.]

(2) There is no fine for overdue items.

(3) The agency will assess patrons for the cost of replacement of lost items. Replacement cost is based on the current price of the item. [The costs of replacement are assessed for lost items.]

(4) The agency will send a patron an invoice for the replacement cost of an item when it is six weeks overdue. [An invoice for the value of an item is sent when it is six weeks overdue.]

[(5) For government publications the replacement cost is the current price or \$.10 per page.]

[(d) Subsections (b) and (c) of this section are not applicable to the loan of materials from the commission's Talking Book Program. The loan policies of the program are administered according to guidelines set by the National Library Service of the Library of Congress.]

[(e) Services Requiring Registration. Customers must be registered to check out materials; request interlibrary loans of materials; use password services; or receive services for fees.]

[(f) Password Services. Some information services provided by telecommunications are limited to state employees or to staff of participating libraries and require a valid password for access.]

(d) [(g) Suspension of Service.

(1) The agency may permanently suspend a patron's borrowing privileges if the patron fails to return materials within eight weeks of the due date more than two times. [Borrowing privileges may be suspended permanently for failures to return materials within eight weeks of the due date more than two times.]

(2) The agency may suspend all services to a patron for six months if the patron smokes (including tobacco, vaping, or e-cigarettes) in an agency facility or brings any type of food, gum, candy, throat lozenges, or liquid into an agency reading or reference room. [Services at the library may be suspended for six months for smoking in a facility of the commission or eating or drinking in a reading or reference room.]

(3) The agency may permanently suspend all services to a patron if the patron exhibits behavior the agency considers threatening, harassing, or obscene toward agency staff or other patrons or if a patron steals, damages, or destroys any item in the State Archives or any other property of the agency. [Services at the library may be permanently suspended for behavior that is threatening, harassing, or obscene toward staff or other customers. If the service can be provided through an alternate method that eliminates the problem behavior, for example mail instead of telephone or telephone rather than at the library, the service will be provided.]

(4) Any individual who has been suspended under this subsection may appeal the decision by filing a protest with the director and librarian in compliance with §2.55 of this title (relating to Protest Procedure). [Theft or destruction of state resources or property will result in permanent suspension of all services immediately.]

[(5) Prior to a permanent suspension of service, a customer will be notified in writing of the problem and provided an opportunity to respond by a certain date if the customer has a known postal or e-mail

address. A temporary suspension will be imposed until a decision has been reached.]

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 17, 2024.

TRD-202401636

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5460



CHAPTER 10. ARCHIVES AND HISTORICAL RESOURCES

13 TAC §10.2

The Texas State Library and Archives Commission (commission) proposes amendments to Title 13, Chapter 10, §10.2, Public Access to Archival State Records and Other Historical Resources.

BACKGROUND. Government Code, §441.190 authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records. The statute further directs the commission to pay particular attention to the maintenance and storage of archival and vital state records and authorizes the commission to adopt rules as it considers necessary to protect those records. In addition, and more specifically, Government Code, §441.193 authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission. The proposed amendments are necessary to update and clarify the language of the rule and add a reference to §2.52, the commission's rule regarding patron registration and customer service, which is also proposed for amendment in this issue of the *Texas Register*.

EXPLANATION OF PROPOSED AMENDMENTS. A proposed amendment to subsection (a)(1) would add a reference to §2.52, proposed to be renamed Patron Registration and Customer Service. A proposed amendment to subsection (a)(3) adds "government-issued" before "photo identification" for consistency with the proposed amendments to §2.52. The other proposed amendments to the section would clarify who is required to register as a patron and change the word "survival" to "preservation" for consistency with the agency's mission.

FISCAL IMPACT. Jelain Chubb, State Archivist, has determined that for each of the first five years the proposed amendments are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the amended rule, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Chubb has determined that for each of the first five years the proposed amendments are in effect, the anticipated public benefit will be increased clarity regarding the commission's rules related to access to the State Archives. There are no anticipated economic costs to persons required to comply with the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employ-

ment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendments will be in effect, the commission has determined the following:

1. The rule as proposed for amendment will not create or eliminate a government program;
2. Implementation of the rule as proposed for amendment will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the rule as proposed for amendment will not require an increase or decrease in future legislative appropriations to the commission;
4. The proposal will not require an increase or decrease in fees paid to the commission;
5. The proposal will not create a new regulation;
6. The proposal will not expand, limit, or repeal an existing regulation;
7. The proposal will not increase the number of individuals subject to the proposed rule's applicability, as amended; and
8. The proposal will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the proposed amendment does not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed under Government Code, §441.190; which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital state records; and §441.193, which authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter L, Preservation and Management of State Records and Other Historical Resources.

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

§10.2. Public Access to Archival State Records and Other Historical Resources.

(a) Public access to archival state records and other historical resources in the possession of the agency will be granted under the following conditions, subject to subsection (b) of this section and §2.52 of this title (relating to Patron Registration and Customer Service).

(1) Access to archival state records and other historical resources maintained in Austin will be provided in the State Archives Reading Room of the Lorenzo de Zavala State Archives and Library Building.

(2) Access to archival state records and other historical resources maintained at the Sam Houston Regional Library and Research Center in Liberty, Texas will be provided in the Center's Reading Room.

(3) Registration and presentation of a current government-issued photo identification is required to use original archival state records and other resources.

(4) Researchers aged 17 and older may use original archival state records and other resources. Researchers between the ages of 13 and 16 are permitted to use original archival state records and other resources if supervised by a registered patron 17 or older [an adult]. One registered researcher [adult] per researcher between the ages of 13 and 16 is required. Children aged 12 and under are not permitted to use original archival state records or historical resources.

(5) All registered researchers [and supervising adults, if applicable,] must agree to and comply with the Reading Room Policies and instructions as provided by staff members.

(6) Access will be granted during business hours for each location as posted on the agency's website or as may be amended from time to time by additional notice.

(7) Request for access to archival state records or other historical resources must be submitted on a material request form whether the request is a Research Request or a Public Information Act (PIA) Request.

(b) The agency may restrict access to any original archival state record or other historical resource in its possession and provide only copies if, in the opinion of the state archivist, such access would compromise the continued preservation [survival] of the original item. The state archivist will consider the following factors in the consideration of requests for access to original archival state records or other historical resources:

(1) physical condition of the archival state record or resource;

(2) availability of a digital or other facsimile copy of the archival state record or resource;

(3) the intrinsic or monetary value of the item to the State; and

(4) any other factor that, in the opinion of the state archivist, may compromise the continued preservation [survival] of the original item.

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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TRD-202401634

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5460



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §§73.10, 73.26, 73.80, 73.110, 73.111

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 73, §§73.10, 73.26, and 73.80, and new rules at 16 TAC, Chapter 73, §73.110 and §73.111, regarding the Electricians program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 73, implement Texas Occupations Code, Chapter 1305, Electricians.

The proposed rules implement House Bill (HB) 1391, 88th Legislature, Regular Session (2023). HB 1391 provides a new pathway to a residential wireman license for students who complete a focused career and technology education (CTE) program (also known as a "career and technical education" program) offered by a Texas high school or institution of higher education. The bill requires the Department to establish standards by rule for the essential knowledge and skills used to build these programs.

Members of the Electrical Safety and Licensing Advisory Board, along with Department staff and representatives from Texas State Technical College, identified an existing series of rules approved by the State Board of Education (SBOE) setting out the essential knowledge and skills for a series of courses in electrical technology. After spending several meetings reviewing the educational requirements of these courses and obtaining valuable insight from Texas Education Agency (TEA) staff regarding the time and practical requirements of each, the group decided upon four SBOE-approved courses that provide the essential classroom and practical training needed for a student to become competent as a residential wireman. These courses are identified in §73.110 of the proposed rules.

The proposed rules recognize that while a student must complete certain coursework in a classroom setting, hands-on instruction is of paramount importance in the learning experience. Thus, at least 80% of classroom time in two courses - Electrical Technology I and II - must be spent on hands-on or lab work. Additionally, four credits of course credit in a "practicum" setting are required. Students will earn these credits by working outside of the classroom under the supervision of a licensed master electrician on behalf of a licensed electrical contractor. The proposed rules also require schools to provide a student with course credit

for appropriate work performed outside of the program, such as through an after-school or summer job.

HB 1391 also requires the Department to verify that CTE programs offered by institutions of higher education or private high schools are similar to those offered by public high schools. Section 73.111 thus requires institutions of higher education or private high schools to request a determination from the Department that their programs meet the standards set by §73.110.

Lastly, the proposed rules implement HB 1391's requirement that the Department waive license renewal fees for instructors of CTE programs.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Electrical Safety and Licensing Advisory Board on March 28, 2024. The Advisory Board recommended adding language to §73.110(b) to state that CTE programs may not offer course credit by examination, to add a reference to the Extended Practicum in Construction Technology course to §73.110(b)(4), and to make any necessary corrections. With these changes, the Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §73.10 to add necessary definitions of "career and technology education program" and "institution of higher education." The remaining definitions are renumbered.

The proposed rules amend §73.26 to add subsection (d), which requires an applicant for a residential wireman license who has completed a CTE program to verify completion in a form acceptable to the department.

The proposed rules amend §73.80 to add two subsections. New §73.80(f) sets the cost of a determination under new §73.111 at \$90. New §73.80(g) provides that the Department will waive the renewal fee for a master electrician, journeyman electrician, or residential wireman who instructs a CTE program.

The proposed rules create new §73.110, which outlines the requirements governing CTE programs.

Subsection (a) is simply explanatory and states the Department's obligations regarding CTE programs under HB 1391. Subsection (b) is the centerpiece of new §73.110. This subsection states that CTE programs must be designed to ensure that students obtain the essential skills and knowledge outlined in several cross-referenced rules of the Texas Education Agency (TEA). Paragraphs (b)(1) through (b)(4) provide the cross-references to those rules and specify the number of academic credits required to be dedicated to each set of essential skills and knowledge.

Subsection (b) also requires schools that offer CTE courses to provide a substantial amount of practical instruction. This subsection mandates that hands-on instruction, including lab work, be provided to students for at least 80% of total time spent in the classroom covering the topics in the Electrical Technology I and II courses. This requirement is vital to ensure that students have ample training on safety, tools, methods, and equipment under proper supervision before performing work outside of the classroom. Subsection (b) further ensures that students receive adequate instruction by prohibiting a CTE program from granting students course credit by examination.

Paragraph (b)(4) requires a CTE program to include four credits of "practicum" experience, in addition to the classroom portions required by paragraphs (b)(1) through (b)(3). In a practicum setting, students will work - with or without pay, depending on the arrangement - outside of the classroom under the supervision of a licensed master electrician while performing work on behalf of a licensed electrical contractor. Recognizing that some part of a student's time in a practicum will be dedicated to consultation with school administrators, proposed §73.110(b)(4)(A) requires that at least 80% of practicum time be spent outside of the classroom and working under the supervision of a licensed master electrician on behalf of a licensed electrical contractor.

Because a student's academic schedule may not have room for four hours in a practicum setting, §73.110(b)(4)(B) includes HB 1391's requirement that a school provide course credit for appropriate work performed by the student outside of the program. This provision states that a school must implement procedures to ensure that students who work outside of the program - after school hours, on weekends, or as a summer job, for example - are able to receive course credit toward the practicum component for that work.

Subsections (c) and (d) of proposed §73.110 simply implement HB 1391's requirements that CTE courses be instructed by a department-licensed master electrician, journeyman electrician, or residential wireman, and that CTE courses offered by an institution of higher education be no more stringent than a course offered by a public high school. Subsection (e) states that the Department will recognize a CTE course offered by an institution of higher education or private high school if it substantially complies with §73.110. Lastly, subsection (f) repeats HB 1391's requirement that hours spent completing a CTE program may not be credited toward another type of electrical license.

Lastly, proposed new §73.111 sets out the procedures for an institution of higher education or private high school to request a determination from the Department that its CTE program meets the standards of §73.110. Subsection (a) requires these schools to request a determination and specifies the items to be included in the request. Once a school has received a determination of substantial compliance, subsection (b) simply requires schools to notify the Department of major changes to its program. Rounding out the proposed rules, subsections (c) and (d) specify that the Department may rescind its determination if a program is not in compliance with §73.110, and that such a determination is not a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that there could be a potential loss to state revenues for each year of the first five years the proposed rules are in effect as a result of enforcing or administering the proposed rules. Because the proposed rules require the Department to waive license renewal fees for instructors of CTE programs, this represents a potential loss of revenue. However, because it is unknown how many licensees will instruct CTE programs, this loss cannot currently be estimated.

Mr. Couvillon has also determined that there could be a potential *gain* to state revenues for each year of the first five years the

proposed rules are in effect as a result of enforcing or administering the proposed rules. The proposed rules require an institution of higher education or private high school to request a determination from the Department regarding its program's compliance with proposed new §73.110. The fee for requesting the determination will be \$90 (see the proposed amendment to §73.80, above). As it is unknown how many schools will implement CTE programs and therefore request these determinations, the potential gain to revenues cannot currently be estimated.

There could also be a potential gain to state revenues due to an increase in the number of applicants for a residential wireman license. Again, because it is unknown how many new applications the Department will receive, the potential gain to revenues cannot currently be estimated.

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 not result in costs to local governments. However, local governments could see increases in revenues due to increased numbers of students paying tuition to local colleges in order to participate in CTE programs. Because it is unknown how many students will seek out these programs, the potential increase in revenue cannot currently be estimated.

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 Texas 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 from having access to an increased number of competent and experienced residential electricians. The proposed rules will also ensure that students enrolled in CTE programs receive consistent and practical instruction, thus protecting public health and safety. In addition, the waiver of license renewal fees will serve as an incentive to licensees to participate in and guide CTE programs.

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 may be economic costs to persons who are required to comply with the proposed rules.

The only cost directly imposed by the proposed rules is the one-time fee of \$90 required to be paid by an institution of higher education or private school along with its request for a determination under proposed §73.111. The school will then have an ongoing requirement to notify the Department of any substantial change to the program, but this should not entail a cost.

Additionally, any institution of higher education or private school offering a CTE program that does not meet the standards in the proposed rules will be required to modify the program before it will be recognized by the Department. Because the potential cost would vary depending on the program, it cannot therefore be estimated.

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 have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. However, the proposed rules fall under the exceptions for rules that are necessary to protect the health, safety, and welfare of the residents of this state, and that are necessary to implement legislation (see Government Code §2001.0045(c)(6) and (9), respectively). 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 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 require an increase in fees paid to the agency. The proposed rules will require an institution of higher education or private high school offering a CTE program to request a determination from the Department, and pay the requisite fee, to ensure the program meets the standards established by the proposed rules.
5. The proposed rules create a new regulation. The proposed rules create new §73.110 and §73.111, which set out the standards for CTE programs offered throughout Texas and require certain schools offering these programs to request a determination from the Department regarding compliance.
6. The proposed rules expand an existing regulation by allowing a person who completes a CTE program to become eligible to apply for a residential wireman license.
7. The proposed rules increase the number of individuals subject to the rules' applicability. The proposed rules require certain applicants for a residential wireman electrical license to verify completion of a CTE program.
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 Texas Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 1305, 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 1305. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1391, 88th Legislature, Regular Session (2023).

§73.10. Definitions.

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

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

(3) Career and technology education program--An educational program, defined in §1302.5037(a)(1) of the Act, focused on electrical training and either:

(A) offered by a public high school under Subchapter F, Chapter 29, Education Code; or

(B) offered by a private high school or institution of higher education and determined by the department to be similar to a program described by subparagraph (A) of this paragraph.

(4) [(3)] Employee--An individual who performs tasks assigned to him by his employer. The employee is subject to the deduction of social security and federal income taxes from his pay. An employee may be full time, part time, or seasonal.

(5) [(4)] Employer--One who employs the services of employees, pays their wages, deducts the required social security and federal income taxes from the employee's pay, and directs and controls the employee's performance.

(6) [(5)] Filed--A document is deemed to have been filed with the department on the date that the document has been received by the department or, if the document has been mailed to the department, the date a postmark is applied to the document by the U.S. Postal Service.

(7) [(6)] General Supervision--Exercise of oversight by a master electrician on behalf of an electrical contractor, or electrical sign contractor, or by a master sign electrician on behalf of an electrical sign contractor of performance by all classes of electrical licensees of electrical work bearing responsibility for the work's compliance with applicable codes under Texas Occupations Code, Chapter 1305.

(8) [(7)] On-Site Supervision--Exercise of supervision of electrical work or electrical sign work by a licensed individual other than an electrical apprentice. Continuous supervision of an electrical apprentice is not required, though the on-site supervising licensee is responsible for review and inspection of the electrical apprentice's work to ensure compliance with any applicable codes or standards.

(9) [(8)] Electrical Contractor--A person, or entity, licensed as an electrical contractor, that is in the business of performing "Electrical Contracting" as defined by Texas Occupations Code, §1305.002(5).

(10) [(9)] Master Electrician--An individual, licensed as a master electrician, who on behalf of an electrical contractor, electrical sign contractor, or employing governmental entity, performs "Electrical Work" as defined by Texas Occupations Code, §1305.002(11).

(11) [(10)] Journeyman Electrician--An individual, licensed as a journeyman electrician, who works under the general supervision of a master electrician, on behalf of an electrical contractor, or employing governmental entity, while performing "Electrical Work" as defined by Texas Occupations Code, §1305.002(11).

(12) [(11)] Electrical Apprentice--An individual, licensed as an apprentice who works under the on-site supervision of a master electrician, journeyman electrician, or residential wireman, on behalf of an electrical contractor or employing governmental entity performing "Electrical Work" as defined by Texas Occupations Code, §1305.002(11).

(13) [(12)] Electrical Sign Contractor--A person, or entity, licensed as an electrical sign contractor, that is in the business of performing "Electrical Sign Contracting" as defined by Texas Occupations Code, §1305.002(9).

(14) Institution of higher education--An "institution of higher education" or a "private or independent institution of higher education," as those terms are defined by §61.003, Education Code.

(15) [(13)] Master Sign Electrician--An individual, licensed as a master sign electrician, who, on behalf of an electrical sign contractor, performs "Electrical Sign Work" as defined in paragraph (20) [(18)].

(16) [(14)] Journeyman Sign Electrician--An individual, licensed as a journeyman sign electrician, who works under the general supervision of a master electrician or a master sign electrician, on behalf of an electrical sign contractor, while performing "Electrical Sign Work" as defined in paragraph (20) [(18)].

(17) [(15)] Residential Wireman--An individual, licensed as a residential wireman, who works under the general supervision of a master electrician, on behalf of an electrical contractor, or employing governmental entity, while performing electrical work that is limited to electrical installations in single family and multifamily dwellings not exceeding four stories, as defined by Texas Occupations Code, §1305.002(13).

(18) [(16)] Maintenance Electrician--An individual, licensed as a maintenance electrician, who works under the general supervision of a master electrician, on behalf of an electrical contractor, or employing governmental entity while performing "Electrical Maintenance Work" as defined in paragraph (19) [(17)].

(19) [(17)] Electrical Maintenance Work--The replacement, or repair of existing electrical appurtenances, apparatus, equipment, machinery, or controls used in connection with the use of electrical energy in, on, outside, or attached to a building, residence, structure, property, or premises. All replacements or repairs must be of the same rating and type as the existing installation. No improvements may be made that are necessary to comply with applicable codes under

Texas Occupations Code, Chapter 1305. Electrical maintenance work does not include the installation of any new electrical appurtenances, apparatus, equipment, machinery, or controls beyond the scope of any existing electrical installation.

(20) [(18)] Electrical Sign Work--Any labor or material used in manufacturing, installing, maintaining, extending, connecting or reconnecting an electrical wiring system and its appurtenances, apparatus or equipment used in connection with signs, outline lighting, awnings, signals, light emitting diodes, and the repair of existing outdoor electric discharge lighting, including parking lot pole lighting. This also includes the installation of an electrical service integral to an isolated sign and/or outline lighting installation.

(21) [(19)] Work Involved in the Manufacture of Electrical Equipment--Work involved in the manufacture of electrical equipment includes on and off-site manufacture, commissioning, testing, calibration, coordination, troubleshooting, evaluation, repair or retrofits with components of the same ampacity, maintenance and servicing of electrical equipment within their enclosures performed by authorized employees, or authorized representatives of electrical equipment manufacturers and limited to the type of products they manufacture.

(22) [(20)] Electrical Sign Apprentice--An individual, licensed as an electrical sign apprentice who works under the on-site supervision of a master electrician, a master sign electrician, or a journeyman sign electrician, on behalf of an electrical sign contractor performing "Electrical Sign Work" as defined by this chapter.

(23) [(21)] On-the-job Training--Training or experience gained under the supervision of an appropriate licensee, as prescribed by Texas Occupations Code Chapter 1305, while performing electrical work as defined by Texas Occupations Code, §1305.002(11).

(24) [(22)] Residential Appliance Installer--An individual, licensed as a residential appliance installer, who on behalf of a residential appliance installation contractor, performs electrical work that is limited to residential appliance installation including residential pool-related electrical installation and maintenance as defined by Texas Occupations Code, §1305.002(12-b).

(25) [(23)] Residential Appliance Installation Contractor--A person or entity licensed as a residential appliance installation contractor, that is in the business of residential appliance installation including pool-related electrical installation and maintenance as defined by Texas Occupations Code §1305.002(12-d).

(26) [(24)] Residential Appliance--Electrical equipment that performs a specific function, and is installed as a unit in a dwelling by direct connection to an existing electrical circuit, such as water heaters, kitchen appliances, or pool-related electrical device. The term does not include general use equipment such as service equipment, other electrical power production sources, or branch circuit overcurrent protection devices not installed in the listed appliance or listed pool-related electrical device.

(27) [(25)] Offer to perform--To make a written or oral proposal, to contract in writing or orally to perform electrical work or electrical sign work, to advertise in any form through any medium that a person or business entity is an electrical contractor, electrical sign contractor, or residential appliance installation contractor or that implies in any way that a person or business entity is available to contract for or perform electrical work, electrical sign work, or residential appliance installation work.

(28) [(26)] Electro Mechanical Integrity--The condition of an electrical product, electrical system, or electrical equipment installed in accordance with its intended purpose and according to standards at least as strict as the standards provided by the National

Electrical Code, the manufacturer's specifications, any listing or labeling on the product, and all other applicable codes or ordinances.

(29) [(27)] Journeyman Lineman--An individual who engages in electrical work involving the maintenance and operation of equipment associated with the transmission and distribution of electricity from the electricity's original source to a substation for further distribution.

(30) [(28)] Journeyman Industrial Electrician--An individual who engages in electrical work exclusively at a business that operates a chemical plant, petrochemical plant, refinery, natural gas plant, natural gas treating plant, pipeline, or oil and gas exploration and production operation.

§73.26. *Documentation of Required On-The-Job Training.*

(a) - (c) (No change.)

(d) An applicant for a residential wireman license who has completed a career and technology program must verify completion by submitting verification in a form acceptable to the department.

§73.80. *Fees.*

(a) - (e) (No change.)

(f) The fee for a determination under §73.111 is \$90.

(g) The department will waive the license renewal fee for a master electrician, journeyman electrician, or residential wireman who provides proof, in a manner prescribed by the department, of having served as an instructor of a course within a career and technology education program for at least one academic semester.

§73.110. *Career and Technology Education Program Requirements.*

(a) Texas Occupations Code Section §1305.157 provides a pathway to the residential wireman license for persons who complete a career and technology education program. Pursuant to §1305.1575, the department is required to:

(1) establish standards for the essential knowledge and skills of career and technology education programs offered in Texas public high schools; and

(2) determine on a case-by-case basis whether educational programs offered by private high schools and institutions of higher education are similar to career and technology education programs offered in Texas public high schools.

(b) A career and technology education program must be designed to ensure that students obtain the essential knowledge and skills set out in the following cross-referenced rules of the Texas Education Agency. The minimum number of academic semesters required for each course is also noted. Students enrolled in courses identified in paragraphs (2) and (3) below must be provided hands-on practical instruction, including interactive lab work, for at least 80 percent of total classroom time. A career and technology education program may not allow students to obtain credit by examination.

(1) Principles of Construction; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.43; one credit.

(2) Electrical Technology I; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.57; one credit.

(3) Electrical Technology II; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.58; two credits.

(4) Practicum in Construction Technology and Extended Practicum in Construction Technology; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §§130.64 and 130.69; four total credits.

(A) At least 80 percent of a student's time in a practicum must be spent outside of the classroom and working under the supervision of a department-licensed master electrician, on behalf of a department-licensed electrical contractor.

(B) A high school or institution of higher education offering a career and technology education program under this section must implement procedures allowing a student to earn course credit for work performed outside of the classroom under the supervision of a department-licensed master electrician and on behalf of a department-licensed electrical contractor.

(c) A career and technology education program will not be recognized by the department unless it is instructed by a department-licensed master electrician, journeyman electrician, or residential wireman.

(d) A career and technology education program offered by an institution of higher education may not be more stringent than a program offered by a public high school.

(e) The department will recognize an educational program offered by a private high school or institution of higher education as a "career and technology education program" if the department determines that the educational program substantially complies with the requirements of this section.

(f) Hours spent completing a program described by this section may not be credited toward any on-the-job training required to apply for another type of license under this chapter.

§73.111. *Compliance with Career and Technology Education Program Requirements.*

(a) A private high school or institution of higher education that implements an educational program under §73.110 must request a determination whether the program substantially complies with that section's requirements by:

(1) submitting the request in a manner prescribed by the department;

(2) providing copies of course materials requested by the department;

(3) providing the names and license numbers of all master electricians, journeyman electricians, or residential wiremen who will be supervising or instructing students; and

(4) paying the applicable fee.

(b) After receiving a positive determination under subsection (a), a private high school or institution of higher education must inform the department, in a manner prescribed by the department, of any substantial change to the program.

(c) Upon a finding that an educational program does not substantially comply with §73.110, the department may rescind its determination.

(d) A determination or decision under this section is not a contested case under Texas Government Code, Chapter 2001, and may not be appealed.

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 19, 2024.

TRD-202401665



CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §§75.10, 75.25, 75.30, 75.70, 75.80, 75.120, 75.124, 75.125

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 75, §§75.10, 75.25, 75.30, 75.70, 75.80, and 75.120, and new rules at 16 TAC, Chapter 75, §75.124 and §75.125, regarding the Air Conditioning and Refrigeration Contractors program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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

The proposed rules implement House Bill (HB) 1859, 88th Legislature, Regular Session (2023). HB 1859 provides a new pathway to an air conditioning and refrigeration technician certification for students who complete a focused career and technology education (CTE) program (also known as a "career and technical education" program) offered by a Texas high school or institution of higher education. The bill requires the Department to establish standards by rule for the essential knowledge and skills used to build these programs.

Members of the Air Conditioning and Refrigeration Contractors Advisory Board, along with Department staff and representatives from Texas State Technical College, identified an existing series of rules approved by the State Board of Education (SBOE) setting out the essential knowledge and skills for a series of courses in air conditioning and refrigeration technology. After spending several meetings reviewing the educational requirements of these courses and obtaining valuable insight from Texas Education Agency (TEA) staff regarding the time and practical requirements of each, the group decided upon four SBOE-approved courses that provide the essential classroom and practical training needed for a student to become competent as a certified technician. These courses are identified in §75.124 of the proposed rules.

The proposed rules recognize that while a student must complete certain coursework in a classroom setting, hands-on instruction is of paramount importance in the learning experience. Thus, at least 80% of classroom time in two courses - Heating, Ventilation, and Air Conditioning Technology I and II - must be spent on hands-on or lab work. Additionally, three credits of course credit in a "practicum" setting are required. Students will earn these credits by working outside of the classroom under the supervision of a licensed air conditioning and refrigeration contractor. The proposed rules also require schools to provide a student with course credit for appropriate work performed outside of the program, such as through an after-school or summer job.

HB 1859 also requires the Department to verify that CTE programs offered by institutions of higher education or private high schools are similar to those offered by public high schools. Section 75.125 thus requires institutions of higher education or private high schools to request a determination from the Department that their programs meet the standards set by §75.124.

Lastly, several other changes required by HB 1859 are implemented in these proposed rules:

- Lowering the minimum age of a registered technician to 16 years of age (from 18);

- Requiring in-person supervision of a registered technician under the age of 18;

- For a person seeking to become a certified technician, removing the requirement that the certification training program has to have been completed within the preceding four years;

- Waiving license renewal fees for instructors of CTE programs; and

- Providing instructors of these programs with continuing education credits.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Air Conditioning and Refrigeration Contractors Advisory Board on March 27, 2024. The Advisory Board recommended adding language to §75.124(b) to state that CTE programs may not offer course credit by examination, to add a reference to the Extended Practicum in Construction Technology course to §75.124(b)(4), and to make any necessary corrections. With these changes, the Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §75.10 to add and clarify definitions. The definition for "career and technology education program" is a necessary inclusion to implement HB 1859 and distinguish it from the "certification training program" created by HB 3029, 85th Regular Session (2017). The proposed rules amend the definition of "certification training program" to make this distinction clearer. The proposed rules also add definitions of "institution of higher education" and "in-person supervision" to §75.10. Both are necessary to implement HB 1859.

The proposed rules amend §75.25 to add subsection (g), which allows an air conditioning and refrigeration contractor to receive up to two hours of continuing education credit per academic semester for instructing a CTE program.

The proposed rules amend §75.30(a)(6) to reword the exemption applicable to students enrolled in CTE programs.

The proposed rules add §75.70(a)(12), which requires an air conditioning and refrigeration contractor to provide in-person supervision, either personally or via a certified technician, to a person under the age of 18 who is acting or offering to act as an air conditioning and refrigeration technician.

The proposed rules amend §75.80 to add two subsections. New §75.80(e) sets the cost of a determination under new §75.125 at \$90. New §75.80(f) provides that the Department will waive the renewal fee for an air conditioning and refrigeration contractor or certified technician who instructs a CTE program. Existing §75.80(e) has been moved to new §75.80(g).

The proposed rules amend §75.120(a)(1) to clarify that a person who completes a CTE program is eligible to apply for an air conditioning and refrigeration technician certification. Additionally, the proposed rules amend §75.120(a)(1)(B) (formerly §75.120(a)(1)(A)) to remove unnecessary language and remove the requirement that a certification training program have been completed within the past 48 months.

The proposed rules create new §75.124, which outlines the requirements governing CTE programs. Subsection (a) is simply explanatory and states the Department's obligations regarding CTE programs under HB 1859. Subsection (b) is the centerpiece of new §75.124. This subsection states that CTE programs must be designed to ensure that students obtain the essential skills and knowledge outlined in several cross-referenced rules of the Texas Education Agency (TEA). Subsection (b)(1) - (4) provides the cross-references to those rules and specify the number of academic credits required to be dedicated to each set of essential skills and knowledge.

Subsection (b) also requires schools that offer CTE courses to provide a substantial amount of practical instruction. This subsection mandates that hands-on instruction, including lab work, be provided to students for at least 80% of total time spent in the classroom covering topics in the Heating, Ventilation, and Air Conditioning I and II courses. This requirement is vital to ensure that students have ample training on safety, tools, methods, and equipment under proper supervision before performing work outside of the classroom. Subsection (b) further ensures that students receive adequate instruction by prohibiting a CTE program from granting students course credit by examination.

Subsection (b)(4) requires a CTE program to include three credits of "practicum" experience, in addition to the classroom portions required by subsection (b)(1) - (3). In a practicum setting, students will work - with or without pay, depending on the arrangement - outside of the classroom under the supervision of a licensed air conditioning and refrigeration contractor. Recognizing that some part of a student's time in a practicum will be dedicated to consultation with school administrators, proposed §75.124(b)(4)(A) requires that at least 80% of practicum time be spent outside of the classroom and working under the supervision of a licensed air conditioning and refrigeration contractor.

Because a student's academic schedule may not have room for three hours in a practicum setting, §75.124(b)(4)(B) includes HB 1859's requirement that a school provide course credit for appropriate work performed by the student outside of the program. This provision states that a school must implement procedures to ensure that students who work outside of the program - after school hours, on weekends, or as a summer job, for example - are able to receive course credit toward the practicum component for that work.

Subsections (c) and (d) of proposed §75.124 simply implement HB 1859's requirements that CTE courses be instructed by department-licensed air conditioning and refrigeration contractors or certified technicians, and that CTE courses offered by an institution of higher education be no more stringent than a course offered by a public high school. Lastly, subsection (e) states that the Department will recognize a CTE course offered by an institution of higher education or private high school if it substantially complies with §75.124.

Finally, proposed new §75.125 sets out the procedures for an institution of higher education or private high school to request a determination from the Department that its CTE program

meets the standards of §75.124. Subsection (a) requires these schools to request a determination and specifies the items to be included in the request. Once a school has received a determination of substantial compliance, subsection (b) simply requires schools to notify the Department of major changes to its program. Rounding out the proposed rules, subsections (c) and (d) specify that the Department may rescind its determination if a program is not in compliance with §75.124, and that such a determination is not a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that there could be a potential loss to state revenues for each year of the first five years the proposed rules are in effect as a result of enforcing or administering the proposed rules. Because the proposed rules require the Department to waive license renewal fees for instructors of CTE programs, this represents a potential loss of revenue. However, because it is unknown how many licensees will instruct CTE programs, this loss cannot currently be estimated.

Mr. Couvillon has also determined that there could be a potential *gain* to state revenues for each year of the first five years the proposed rules are in effect as a result of enforcing or administering the proposed rules. The proposed rules require an institution of higher education or private high school to request a determination from the Department regarding its program's compliance with proposed new §75.124. The fee for requesting the determination will be \$90 (see the proposed amendment to §75.80, above). As it is unknown how many schools will implement CTE programs and therefore request these determinations, the potential gain to revenues cannot currently be estimated.

There could also be a potential gain to state revenues due to an increase in the number of applicants for an air conditioning and refrigeration technician registration or certification. Again, because it is unknown how many new applications the Department will receive, the potential gain to revenues cannot currently be estimated.

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 not result in costs to local governments. However, local governments could see increases in revenues due to increased numbers of students paying tuition to local colleges in order to participate in CTE programs. Because it is unknown how many students will seek out these programs, the potential increase in revenue cannot currently be estimated.

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 Texas 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 from having access to an increased number of competent and experienced air conditioning and refrigeration profession-

als. The proposed rules will also ensure that students enrolled in CTE programs receive consistent and practical instruction, thus protecting public health and safety. In addition, the waiver of license renewal fees and reduction of continuing education hours will serve as an incentive to licensees to participate in and guide CTE programs. Lastly, requiring licensees to supervise registered technicians under the age of 18 in person will provide younger technicians with invaluable feedback and instruction before being sent out on the job on their own as adults.

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 may be economic costs to persons who are required to comply with the proposed rules.

The only cost directly imposed by the proposed rules is the one-time fee of \$90 required to be paid by an institution of higher education or private school along with its request for a determination under proposed §75.125. The school will then have an ongoing requirement to notify the Department of any substantial change to the program, but this should not entail a cost.

Additionally, any institution of higher education or private school offering a CTE program that does not meet the standards in the proposed rules will be required to modify the program before it will be recognized by the Department. Because the potential cost would vary depending on the program, it cannot therefore be estimated.

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 have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. However, the proposed rules fall under the exceptions for rules that are necessary to protect the health, safety, and welfare of the residents of this state, and that are necessary to implement legislation (see Government Code §2001.0045(c)(6) and (9), respectively). 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 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 require an increase in fees paid to the agency. The proposed rules will require an institution of higher education or private high school offering a CTE program to request a determination from the Department, and pay the requisite fee, to ensure the program meets the standards established by the proposed rules.

5. The proposed rules create a new regulation. The proposed rules create new §§75.124 and 75.125, which set out the standards for CTE programs offered throughout Texas and require certain schools offering these programs to request a determination from the Department regarding compliance.

6. The proposed rules expand an existing regulation by allowing a person who completes a CTE program to become eligible to apply for a technician certification.

7. The proposed rules increase the number of individuals subject to the rules' applicability. The proposed rules require licensees to provide in-person supervision at all times to a person who is younger than 18 years of age and is acting or offering to act as a registered technician.

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 Texas Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

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

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1859, 88th Legislature, Regular Session (2023).

§75.10. *Definitions.*

The following words and terms have the following meanings as used in this chapter:

(1) - (9) (No change.)

(10) Career and technology education program--An educational program, defined in §1302.5037(a)(1) of the Act, focused on air conditioning and refrigeration and:

(A) offered by a public high school under Subchapter F, Chapter 29, Education Code; or

(B) offered by a private high school or institution of higher education and determined by the department to be similar to a program described by subparagraph (A) of this paragraph.

(11) [(10)] Certification training program--A program of education and training, defined in §1302.002(5-c)(B) of the Act and further addressed in §75.122, accepted or approved by the department and consisting of at least 2,000 hours of a combination of classroom instruction and supervised practical experience.

(12) [(11)] Certification training program provider--A person providing or offering to provide a certification training program.

(13) [(12)] Certified technician--A person granted an air conditioning and refrigeration technician certification by the department pursuant to §75.120, and §1302.5036 and §1302.5055 of the Act.

(14) [(13)] Certified technician (legacy)--A person granted a certified technician designation by the department pursuant to §75.28, and §1302.508 of the Act, as continued by House Bill 3029 §18, 85th Leg., R.S. (2017).

(15) [(14)] Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

(16) [(15)] Cryogenics--Refrigeration that deals with producing temperatures ranging from:

(A) - (D) (No change.)

(17) [(16)] Department--The Texas Department of Licensing and Regulation.

(18) [(17)] Design of a system--Making decisions on the necessary size of equipment, number of grilles, placement and size of supply and return air ducts, and any other requirements affecting the ability of the system to perform the function for which it was designed.

(19) [(18)] Direct supervision--Directing and verifying the design, installation, construction, maintenance, service, repair, alteration, or modification of an environmental air conditioning, refrigeration, process cooling, or process heating product or equipment to assure mechanical integrity. Verification may include, but is not limited to:

(A) - (C) (No change.)

(20) [(19)] Employee--An individual who performs tasks assigned by an employer, and who is subject to the employer's control in all aspects of job performance, except that a licensed air conditioning and refrigeration contractor remains responsible for all air conditioning work he or she performs. An employee's wages are subject to deduction of federal income taxes and social security payments. An employee may be full time, part time, or seasonal. Simultaneous employment with a temporary employment agency, a staff leasing agency, or other employer does not affect an employee's status for the purpose of this chapter.

(21) [(20)] Executive Director--The executive director of the department.

(22) [(21)] Full time employee--An employee who is present on the job either 40 hours a week, or at least 80% of the time the company is offering air conditioning and refrigeration contracting services to the public, whichever is less.

(23) In-person supervision--Supervision of air conditioning and refrigeration maintenance work provided while physically present at the same location as the person being supervised.

(24) Institution of higher education--An "institution of higher education" or a "private or independent institution of higher education," as those terms are defined by §61.003, Education Code.

(25) [(22)] Licensee--An individual holding a contractor's license of the class and endorsement appropriate to the work performed under the Act and this chapter.

(26) [(23)] Offering to perform--Making a written or oral proposal, contracting in writing or orally to perform air conditioning and refrigeration work, or advertising in any form through any medium that a person or business entity is an air conditioning and refrigeration contractor, or that implies in any way that a person or business entity is available to contract for or perform air conditioning and refrigeration work.

(27) [(24)] Permanent office--Any location, which must be identified by a street address, or other data identifying a rural location, from which a person or business entity conducts the business of an air conditioning and refrigeration contracting company. A location not open to the public, or not located within the state, may serve as a permanent office so long as the department and consumers have access to the licensee required by §1302.252 of the Act to be employed in each permanent office.

(28) [(25)] Portable--Able to be easily transported and readily used as an entire system, without need for dismantling or assembly in whole or in part, or addition of parts, components, or accessories.

(29) [(26)] Primary process medium--A refrigerant or other primary process fluid that is classified in the current ANSI/ASHRAE Standard 34 as Safety Group A1, A2, B1, or B2. Safety Groups A3 and B3 refrigerants are specifically excluded.

(30) [(27)] Proper installation, and service--Installing, servicing, repairing, and maintaining air conditioning and refrigeration equipment in accordance with:

(A) - (D) (No change.)

(31) [(28)] Registrant--A person who is registered with the department as a technician under the Act and this chapter.

(32) [(29)] Repair work--Diagnosing and repairing problems with air conditioning, commercial refrigeration, or process cooling or heating equipment, and remedying or attempting to remedy the problem. Repair work does not mean simultaneous replacement of the condensing unit, furnace, and evaporator coil.

(33) [(30)] Self-contained--Constructed so that all required parts, components, and accessories of the air conditioning or heating system are included within the same enclosure.

(34) [(31)] System balancing--A process of adjusting, regulating, or proportioning air distribution equipment or any activity beyond system testing.

(35) [(32)] System testing--Assessing or measuring the performance of the air distribution equipment or air conditioning and refrigeration duct system through equipment that can be attached externally to the system. Testing does not include opening, adjusting,

or balancing equipment or ducts or any activity beyond assessing the system through the use of external equipment. Testing does not include testing fire and smoke dampers.

(36) [(33)] Total replacement of a system--Simultaneous replacement of the condensing unit, the evaporator coil, the furnace, if applicable, and the air handling unit, or replacement of a package system.

§75.25. *Continuing Education.*

(a) - (f) (No change.)

(g) A licensee who provides proof, in a manner prescribed by the department, of having served as an instructor of a course within a career and technology education program may receive two hours of continuing education for each completed academic semester of instruction. A maximum of two hours of continuing education credit may be claimed by the licensee per academic semester.

§75.30. *Exemptions.*

(a) The Act and this chapter do not apply to those persons exempt under Occupations Code, Chapter 1302, with the following clarifications:

(1) - (5) (No change.)

(6) a student enrolled in a certification training program or career and technology education program who acts or offers to act as an air conditioning and refrigeration technician solely as part of the program and is enrolled at a public high school or an institution of higher education [is either younger than 18 years of age or is enrolled at a secondary school].

(b) (No change.)

§75.70. *Responsibilities of the Contractor/Licensee.*

(a) The licensee must:

(1) - (10) (No change.)

(11) only use licensed contractors, registered technicians, certified technicians, or students meeting the requirements of §75.30(a)(6) to perform maintenance work; [and]

(12) at all times provide in-person supervision, either directly or via a certified technician, to a person who is younger than 18 years of age and acting or offering to act on behalf of the licensee as an air conditioning and refrigeration technician; and

(13) [(12)] upon request from the applicant or the department, verify information within the licensee's knowledge regarding the practical experience of an applicant claiming to have worked under the supervision of the licensee[s] on a form designated by the department. The licensee must provide information requested by the department within fifteen (15) calendar days of the request. The verified information must include, but is not limited to:

(A) - (C) (No change.)

(b) - (j) (No change.)

§75.80. *Fees.*

(a) - (d) (No change.)

[(e) Late renewal fees for licenses and registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).]

(e) The fee for a determination under §75.125 is \$90.

(f) The department will waive the renewal fee for an air conditioning and refrigeration contractor or certified technician who provides proof, in a manner prescribed by the department, of having served

as an instructor of a course within a career and technology education program for at least one academic semester.

(g) Late renewal fees for licenses and registrations issued under this chapter are provided under §60.83.

§75.120. *Certified Technician--Application and Eligibility Requirements.*

(a) To obtain an air conditioning and refrigeration technician certification, an applicant must:

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

(3) at the time of application, have either:

(A) completed a career and technology education program;

(B) [(A)] completed a [department-accepted or approved] certification training program [within the previous 48 months]; or

(C) [(B)] performed 24 months of air conditioning and refrigeration-related work:

(i) - (ii) (No change.)

(4) - (6) (No change.)

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

§75.124. *Career and Technology Education Program Requirements.*

(a) Sections 1302.5036 and 1302.5037 of the Act provide a pathway to an air conditioning and refrigeration technician certification for persons who complete a career and technology education program. Pursuant to §1302.5037, the department is required to:

(1) establish standards for the essential knowledge and skills of career and technology education programs offered in Texas public high schools; and

(2) determine on a case-by-case basis whether educational programs offered by private high schools and institutions of higher education are similar to career and technology education programs offered in Texas public high schools.

(b) A career and technology education program must be designed to ensure that students obtain the essential knowledge and skills set out in the following cross-referenced rules of the Texas Education Agency. The minimum number of academic credits required for each course is also noted. Students enrolled in courses identified in paragraphs (2) and (3) below must be provided hands-on practical instruction, including interactive lab work, for at least 80 percent of total classroom time. A career and technology education program may not allow students to obtain credit by examination.

(1) Principles of Construction; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.43; one credit.

(2) Heating, Ventilation, and Air Conditioning and Refrigeration Technology I; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.59; one credit.

(3) Heating, Ventilation, and Air Conditioning and Refrigeration Technology II; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.60; two credits. Instruction regarding sheet metal and fiberglass ductwork, described in §130.60(c)(14) and (15), is optional.

(4) Practicum in Construction Technology and Extended Practicum in Construction Technology; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.64 and §130.69; three total credits.

(A) At least 80 percent of a student's time in a practicum must be spent outside of the classroom and working under the supervision of a department-licensed air conditioning and refrigeration contractor.

(B) A high school or institution of higher education offering a career and technology education program under this section must implement procedures allowing a student to earn course credit for work performed outside of the classroom under the supervision of department-licensed air conditioning and refrigeration contractor.

(c) A career and technology education program will not be recognized by the department unless it is instructed by:

(1) a department-licensed air conditioning and refrigeration contractor; or

(2) a certified technician whose certification was issued on or after September 1, 2018.

(d) A career and technology education program offered by an institution of higher education may not be more stringent than a program offered by a public high school.

(e) The department will recognize an educational program offered by a private high school or institution of higher education as a "career and technology education program" for purposes of §75.120 if the department determines that the educational program substantially complies with the requirements of this section.

§75.125. Request for Determination of Compliance with §75.124.

(a) A private high school or institution of higher education that implements an educational program under §75.124 must request a determination whether the program substantially complies with that section's requirements by:

(1) submitting the request in a manner prescribed by the department;

(2) providing copies of course materials requested by the department;

(3) providing the names and license numbers of all air conditioning and refrigeration contractors or certified technicians who will be supervising or instructing students; and

(4) paying the applicable fee.

(b) After receiving a positive determination under subsection (a), a private high school or institution of higher education must inform the department, in a manner prescribed by the department, of any substantial change to the program.

(c) Upon a finding that an educational program does not substantially comply with §75.124, the department may rescind its determination.

(d) A determination or decision under this section is not a contested case under Texas Government Code, Chapter 2001, and may not be appealed.

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 19, 2024.

TRD-202401664

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: June 2, 2024

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

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A, §1.10, concerning handling requests for information under the Public Information Act. Specifically, this repeal will remove a rule that is unnecessary because the process of handling such a request is governed by statute under Chapter 552 of the Texas Government Code.

This rule is outdated and largely restates the statute, and where there is additional direction, it deals with internal procedures, which is not the function of administrative rules.

The Coordinating Board has the authority to repeal this rule under its general rulemaking authority granted by Texas Education Code, Section 61.027.

Nichole Bunker-Henderson, General Counsel, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Nichole Bunker-Henderson, General Counsel, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the repeal a rule that is unnecessary because the process for handling a request for information is set forth in Chapter 552 of the Texas Government Code. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rule will not create or eliminate a government program;
- (2) implementation of the rule will not require the creation or elimination of employee positions;
- (3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will not create a new rule;

- (6) the rule will not limit an existing rule;
- (7) the rule will not change the number of individuals subject to the rule; and
- (8) the rule will not affect this state's economy.

Comments on the proposal may be submitted to Kimberly Fuchs, Assistant General Counsel, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Kimberly.Fuchs@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.027, which provides the Coordinating Board with the authority to adopt and publish rules in accordance with Texas Government Code Chapter 2001.

The proposed repeal affects the public information process.

§1.10. Administration of the Open Records Act.

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-202401598

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 427-6271



SUBCHAPTER T. WORKFORCE EDUCATION COURSE MANUAL ADVISORY COMMITTEE

19 TAC §§1.220 - 1.223, 1.225, 1.226

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter T, §§1.220 - 1.223, 1.225 and 1.226, concerning the Workforce Education Course Manual Advisory Committee. Specifically, this amendment will revise and clarify the purpose and tasks assigned to the committee.

The advisory committee is created to provide advice to the Coordinating Board regarding content, structure, currency and presentation of the Workforce Education Course Manual (WECM) and its courses; coordinate field engagement in processes, maintenance, and use of the WECM; and provide assistance in identifying new courses, new programs of study, developments within existing programs represented by courses in the manual, vertical and horizontal alignment of courses within programs, and obsolescence of programs of study and courses.

Rule 1.220, Authority and Specific Purposes, is amended to assign the Workforce Education Course Manual (WECM) Advisory Committee responsibilities to coordinate field engagement in maintaining the WECM, to identify new courses, and to identify new programs of study. This amendment removes the responsibility of the WECM Advisory Committee to make recommendations.

Rule 1.221, Definitions, is amended to provide clarity regarding the use of the term Board.

Rule 1.222, Committee Membership and Officers, is amended to provide the full title of Texas Education Code. The amendment also removes reference to workforce education and adds career and technical education, which includes workforce education and continuing education to align with the terminology in §§2.320 - 2.330 of this title (relating to Career and Technical Education Course Maintenance and Approval).

Rule 1.223, Duration, is amended to change the year that the WECM Advisory Committee will be abolished.

Rule 1.225, Tasks Assigned to the Committee, is amended to provide clarity regarding the specific tasks for which the WECM Advisory Committee is responsible. The amendment removes the responsibility to approve local need course requests and adds responsibilities related to the process of career and technical education course maintenance and approval as specified in §§2.320 - 2.330 of this title (relating to Career and Technical Education Course Maintenance and Approval).

Rule 1.226, Report to the Board; Evaluation of Committee Costs and Effectiveness, is amended to remove the requirement for the WECM Advisory Committee to report recommendations to the Board. This amendment aligns with the proposed amendment to §1.225 of this title (relating to Tasks Assigned to the Committee).

Lee Rector, Associate Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Lee Rector, Associate Commissioner for Workforce Education, has also determined that for each year of the first five years the public benefit anticipated as the result of adopting this rule is the advisory committee will provide clarity to career and technical education courses through the review, development, revision, and deletion of courses from the Workforce Education Course Manual. This rule also clarifies the advisory committee's role, and the process through which the career and technical education courses are reviewed for relevancy to the workforce's needs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and

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

Comments on the proposal may be submitted to Lee Rector, Associate Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at rulescomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, §130.001, which provides the Coordinating Board with the authority to adopt rules and regulations for public junior colleges; and §61.026, granting the Coordinating Board authority to establish advisory committees.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter T.

§1.220. Authority and Specific Purposes of the Workforce Education Course Manual Advisory Committee.

(a) Authority: The authority for this subchapter is provided in the Texas Education Code, §130.001.

(b) Purposes. The Workforce Education Course Manual (WECM) Advisory Committee is created to provide the Board with advice ~~and recommendations~~ regarding content, structure, currency and presentation of the Workforce Education Course Manual (WECM) and its courses; coordinating ~~recommendations regarding~~ field engagement in processes, maintenance, and use of the WECM; and assistance in identifying new courses, new programs of study, developments within existing programs represented by courses in the manual, vertical and horizontal alignment of courses within programs, and obsolescence of programs of study and courses.

§1.221. Definition [Definitions].

The word and term "Board" shall mean the governing body of the agency known as the Texas Higher Education Coordinating Board, when used in this subchapter, unless the context clearly indicates otherwise. ~~[The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:]~~

~~[(1) Board—The Texas Higher Education Coordinating Board.]~~

~~[(2) Commissioner—The Commissioner of Higher Education, the Chief Executive Officer of the Board.]~~

§1.222. Committee Membership and Officers.

(a) Membership shall consist of faculty and administrators from public community, state, and technical colleges with demonstrated leadership in career and technical education ~~[workforce education]~~.

(b) Membership on the committee shall include: representatives from public community, state, and technical colleges as defined in Texas Education Code [TEC], §61.003; and

(1) one (1) ex-officio representative from the Texas Association of College Technical Educators (TACTE), nominated by the TACTE Board; and

(2) one (1) ex-officio representative from the Texas Administrators of Continuing Education (TACE), nominated by the TACE Board; and

(3) one (1) ex-officio representative from the Texas Association of College Registrars and Admissions Officers (TACRAO), nominated by the TACRAO Board.

(c) The number of committee members shall not exceed twenty-four (24).

(d) Members of the committee shall select the chair and vice-chair who will each serve two-year terms. The vice-chair shall succeed as the presiding chair every two years.

(e) Members shall serve staggered terms of up to three years except an individual who serves first as vice-chair and then chair, who will serve a term of four years.

§1.223. Duration.

The committee shall be abolished no later than January 31, 2029 ~~[2025]~~, in accordance with Texas Government Code, §2110.008. It may be reestablished by the Board.

§1.225. Tasks Assigned to the Committee.

Tasks assigned the committee include ~~recommendations concerning~~:

(1) the review ~~addition~~ of courses in ~~to~~ the workforce education course manual;

(2) the development of courses to be added to the workforce education course manual;

(3) ~~[(2)]~~ the deletion of courses from the workforce education course manual;

(4) ~~[(3)]~~ the revision of courses in the workforce education course manual;

~~[(4) the approval of local need course requests; and]~~

(5) determining the schedule and Classification of Instructional Program code for career and technical education course maintenance reviews and workshops;

~~[(5) other activities necessary for the maintenance of the workforce education course manual.]~~

(6) conducting career and technical education course maintenance reviews and workshops;

(7) transmitting any course that is revised or developed during a career and technical education course maintenance workshop to the Assistant Commissioner for consideration for approval, as specified in §2.322(1) and §2.328 of this title (relating to Definitions and Career and Technical Education Course Approval, respectively); and

(8) undertaking other activities necessary for the maintenance of the workforce education course manual.

§1.226. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The committee chairperson shall report ~~[any recommendations]~~ to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6344

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CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§2.3, 2.5, 2.7 - 2.9

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter A, §§2.3, 2.5, and 2.7 - 2.9, concerning general provisions which sets out the policies and procedures institutions must follow to make administrative requests related to academic planning, policy, and programs. Specifically, proposed amendments will improve the administrability of chapter 2.

Rule 2.3, Definitions, list definitions broadly applicable to all subchapters in chapter 2. The proposed amendments add definitions for community and technical education program and course approval and provide alignment with federal definitions for doctoral degree programs. These definitions are aligned to those that appear throughout Board rules, including in the chapter 13 funding rules and in other subchapters that apply to program approval. Rule 2.3(22) is added to specify the Higher Education Regions of the state are those adopted by the Comptroller of Public Accounts. This revision clarifies the regions by placing them in rule and make them uniform across agencies.

Rule 2.5, General Criteria for Program Approval, contains a list of general criteria broadly applicable to all new program requests. The revisions include adding a criterion for program approval of consideration of whether the program provides a credential of value based on the methodology for funding set out in Board rules. The proposed amendments also clarify that a joint degree program may be approved as a substantive revision to an existing program if at least one of the programs is already approved.

Rule 2.7, Informal Notice and Comment on Proposed Local Programs, creates an opportunity for institutions of higher education to submit a comment related to program proposals submitted by nearby institutions. This notice and comment period provides a mechanism for the Board to collect information related to whether the program is needed by the state and local community and whether it unnecessarily duplicates existing offerings. The proposed amendments provide clarity on the notification and opportunity to comment on new degree programs.

Rule 2.8, Time Limit on Implementing Approved New Programs or Administrative Changes, establishes a time limit on the effectiveness of Board approvals. This provision ensures that the information used to grant the approval, including program need, remains current before a program is implemented. Proposed amendments will allow institutions to request an extension on program implementation and authorize the Commissioner to grant the extension for good cause.

Rule 2.9, Revisions and Modifications to an Approved Program, describes the process institutions must follow to notify the Coordinating Board about substantive and non-substantive revisions and modifications to approved programs and administrative structure. The proposed amendment will change the approval level for substantive revisions and modifications of approved degree programs. The amendments provide greater process and clarity for creation of a joint degree program and specificity as to which revisions require additional approval by the Board or Commissioner.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is improving administrability of the Coordinating Board's existing program approval process. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0512, which provides the Coordinating Board with the authority to authorize new academic programs; and Section 61.003 which contains several definitions for terms used throughout this chapter. Other relevant provisions of law include Texas Education Code, Section 130.001, which grants the Coordinating Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges; and Sections 130.001 - 130.312, which provides authority to authorize baccalaureate degrees at public junior colleges.

The proposed amendments affect Texas Education Code Sections 61.003, 61.0512, 130.001, and 130.301-130.312.

§2.3. Definitions.

The following words and terms, when used in this chapter [subchapter], shall have the following meanings, unless otherwise defined in the subchapter:

(1) Academic Associate Degree--A type of degree program generally intended to transfer to an upper-level baccalaureate program that will satisfy the lower-division requirements for a baccalaureate degree in a specific discipline. The Academic Associate Degree includes, but is not limited to, the Associate of Arts (A.A.), Associate of Science (A.S.) or Associate of Arts in Teaching (A.A.T.) degrees.

(2) Academic Course Guide Manual (ACGM)--The manual that provides the official list of approved courses for general academic transfer to public universities offered for funding by public community, state, and technical colleges in Texas.

(3) Academic Program or Programs--A type of credential primarily consisting of course content intended to prepare students for study at the bachelor's degree or higher.

(4) Administrative Unit--A department, college, school, or other unit at an institution of higher education, which has administrative authority over degree or certificate programs.

(5) Applied Associate Degree--A type of degree program designed to lead the individual directly to employment in a specific career. The Applied Associate Degree Program includes, but is not limited to, the Associate of Applied Arts (A.A.A.) or Associate of Applied Science (A.A.S.).

(6) Applied Baccalaureate Degree Program--Builds on an Associate of Applied Science (A.A.S.) degree, combined with enough additional core curriculum courses and upper-level college courses to meet the minimum semester credit hour requirements for a bachelor's degree. The degree program is designed to grow professional management skills of the learner and meet the demand for leadership of highly technical professionals in the workplace. May be called a Bachelor of Applied Arts and Science (B.A.A.S.), Bachelor of Applied Technology (B.A.T.) or Bachelor of Applied Science (B.A.S.).

(7) Assistant Commissioner--In this subchapter or a subchapter that cross-references to the provisions of this subchapter, Assistant Commissioner means the Assistant, Associate, or Deputy Commissioner designated by the Commissioner.

(8) [(7)] Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(9) [(8)] Board Staff--Staff of the Texas Higher Education Coordinating Board who perform the Texas Higher Education Coordinating Board's administrative functions and services.

[(9)] Career and Technical/Workforce Program--An applied associate degree program or a certificate program for which semester credit hours, quarter credit hours, or continuing education units are awarded, and which is intended to prepare students for immediate employment or a job upgrade in a specific occupation.]

(10) Career and Technical Education Certificate--A postsecondary credential, other than a degree, which a student earns upon successful completion of a workforce or continuing education program offered by an institution of higher education. Courses that comprise career and technical education certificates are listed in the Workforce Education Course Manual and the Academic Course Guide Manual and are subject to Board approval. For purposes of this chapter, career and technical education certificate means a certificate program as defined in Texas Education Code, §61.003(12)(C).

(11) Career and Technical Education Course--A college-level workforce or continuing education course offered by an institution of higher education which earns either semester credit hours or continuing education units toward satisfaction of a requirement necessary to obtain an industry-recognized credential, certificate, or applied

associate degree. Career and technical education courses are listed in the Workforce Education Course Manual.

(12) [(10)] Certificate program--Certificate means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle the student to a certificate or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level. Under this chapter, certificate includes a post-baccalaureate certificate and excludes an associate degree unless otherwise provided. [Unless otherwise specified in these rules for purposes of this chapter, certificate means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle the student to a certificate or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level. Under this chapter, certificate includes a post-baccalaureate certificate and excludes an associate degree unless otherwise provided.]

(13) [(11)] CIP Codes--See "Texas Classification of Instructional Programs (CIP) Coding System."

(14) [(12)] Commissioner--The Commissioner of Higher Education.

(15) [(13)] Contact hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

(16) [(14)] Continuing Education Unit (CEU)--Basic unit for continuing education courses. One continuing education unit (CEU) is 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(17) [(15)] Credential--A grouping of subject matter courses or demonstrated mastery of specified content which entitles a student to documentary evidence of completion. This term encompasses certificate programs, degree programs, and other kinds of formal recognitions such as short-term workforce credentials or a combination thereof.

(18) [(16)] Degree Program--Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle that student to an associate's, bachelor's, master's, research doctoral, or professional practice doctoral degree.

(19) [(17)] Degree Title--Name of the degree and discipline under which one or more degree programs may be offered. A degree title usually consists of the degree designation (e.g., Bachelor of Science, Master of Arts) and the discipline specialty (e.g., History, Psychology).

[(18)] Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.]

(20) [(19)] Embedded Credential--A course of study enabling a student to earn a credential that is wholly embedded within a degree program.

(21) [(20)] Field of Study Curriculum--A set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution, as defined in chapter 4, subchapter B, §4.23(7) of this title (relating to Definitions).

(22) Higher Education Regions--The Board adopts the economic regions of this state as defined by the Texas Comptroller of Public Accounts as the higher education state uniform service regions.

(23) [(21)] Master's Degree Program--The first graduate level degree, intermediate between a Baccalaureate degree program and Doctoral degree program.

(24) [(22)] New Content--As determined by the institution, content that the institution does not currently offer at the same instructional level as the proposed program. A program with sufficient new content to constitute a 'significant departure' from existing offerings under 34 CFR §602.22(a)(1)(ii)(C) meets the 50% new content threshold.

(25) [(23)] Pilot Institution--Public junior colleges initially authorized to offer baccalaureate degrees through the pilot initiative established by SB 286 (78R - 2003). Specifically, the four pilot institutions are Midland College, South Texas College, Brazosport College, and Tyler Junior College.

(26) [(24)] Planning Notification--Formal notification that an institution intends to develop a plan and submit a degree program proposal or otherwise notify the Board of intent to offer a new degree program.

(27) [(25)] Professional Practice Doctoral Degree--Certain degree programs that prepare students for a career as a practitioner in a particular profession, including certain credential types that are required for professional licensure. [For the purpose of this chapter, the term refers specifically to the following degrees: Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Podiatric Medicine (D.P.M.), Doctor of Veterinary Medicine (D.V.M.) and Juris Doctor (J.D.).]

(28) [(26)] Program Inventory--The official list of all degree and certificate programs offered by a public community college, university, or health-related institution, as maintained by Board Staff.

(29) [(27)] Public Health-Related Institution--Public health-related institutions that are supported by state funds.

(30) [(28)] Public Junior College--A public institution of higher education as defined in Tex. Educ. Code §61.003(2).

(31) [(29)] Public Two-year College--Any public junior college, public community college, public technical institute, or public state college as defined in Tex. Educ. Code §61.003(16).

(32) [(30)] Public University--A general academic teaching institution as defined by Tex. Educ. Code §61.003(3).

(33) Research Doctoral Degree--An academic degree that typically represents the highest level of formal study or research in a given field and that requires completion of original research.

(34) [(31)] Semester Credit Hour, or Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, which is typically offered over a 15-week period in a semester system or a 10-week period in a quarter system.

(35) [(32)] Texas Classification of Instructional Programs (CIP) Coding System--The Texas adaptation of the federal Classification of Instructional Programs taxonomy developed by the National Center for Education Statistics and used nationally to classify instructional programs and report educational data. The 8-digit CIP codes define the authorized teaching field of the specified program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(36) [(33)] Texas Core Curriculum--Curriculum required at each institution of higher education students are required to complete as required by 19 TAC §4.23(3).

(37) [(34)] Texas Success Initiative (TSI)--A comprehensive program of assessment, advising, developmental education, and other strategies to ensure college readiness. The rules governing the Texas Success Initiative are established in Chapter 4, Subchapter C. [The TSI Assessment shall be the sole assessment instrument as specified in 19 TAC §4.56 of this title (relating to Assessment Instrument).

The passing standards for the authorized TSI Assessment are established in 19 TAC §4.57 of this title (relating to College Ready Standards).]

(38) [(35)] Tracks of Study--Specialized areas of study within a single degree program.

(39) [(36)] Transcriptable Minor--A transcriptable minor is a group of courses around a specific subject matter marked on the student's transcript. The student must declare a minor for the minor to be included on the student's transcript. The student cannot declare a minor without also being enrolled in a major course of study as part of a baccalaureate degree program.

(40) [(37)] Workforce Education Course [Guide] Manual (WECM)--An online database composed of the Board's official statewide inventory of career technical/workforce education courses available for two-year public colleges to use in certificate and associate degree programs.

§2.5. General Criteria for Program Approval.

(a) In addition to any criteria specified in statute or this chapter for a specific program approval, the Assistant Commissioner, Commissioner, or Board, as applicable, shall consider the following factors:

(1) Evidence that the program is needed by the state and the local community, as demonstrated by student demand for similar programs, labor market information, and value of the credential;

(2) Whether the program unnecessarily duplicates programs offered by other institutions of higher education or private or independent institutions of higher education, as demonstrated by capacity of existing programs and need for additional graduates in the field;

(3) Comments provided to the Board from institutions notified under §2.7 of this subchapter;

(4) Whether the program has adequate financing from legislative appropriation, funds allocated by the Board, or funds from other sources;

(5) Whether the program's cost is reasonable and provides a value to students and the state when considering the cost of tuition, source(s) of funding, availability of other similar programs, and the earnings of students or graduates of similar credential programs in the state to ensure the efficient and effective use of higher education resources;

(6) Whether the program provides a credential of value as defined in chapter 13, subchapter S, of Board Rules [has necessary faculty and other resources including support staff to ensure student success];

(7) Whether and how the program aligns with the metrics and objectives of the Board's Long-Range Master Plan for Higher Education;

(8) Whether the program has necessary faculty and other resources including support staff to ensure student success;

(9) [(8)] Whether the program meets academic or workforce standards specified by law or prescribed by Board rule, including rules adopted by the Board for purposes of this section [; or workforce standards established by the Texas Workforce Investment Council]; and

(10) [(9)] Past compliance history and program quality of the same or similar programs, where applicable.

(b) In the event of conflict between this rule and a more specific rule regarding program approval, the more specific rule shall control.

(c) A request for approval of a joint degree program that does not have one or more existing degree programs that previously has been approved is considered a new degree program and is subject to new degree program approval requirements.

§2.7. *Informal Notice and Comment on Proposed Local Programs.*

(a) As soon as practicable, but not later than the sixtieth day after an institution submits an administratively complete application for approval, Board Staff shall provide informal notice and opportunity for comment to ~~[other]~~ institutions of higher education ~~[in the local community]~~ that offer substantially similar programs in the region, as defined by the Board, where the program will be delivered.

(b) Board Staff shall provide notification of the applicant institution's request for approval and allow not fewer than thirty days for a noticed institution to provide comments to Board Staff regarding:

(1) State or local need for the proposed program; or

(2) Evidence of whether the program unnecessarily duplicates programs offered by public, private, or independent institutions in the Higher Education Regions that offer substantially similar programs.

(c) When considering whether to approve a program requiring approval under this chapter, the Assistant Commissioner, Commissioner, or Board shall consider the comments that the noticed institutions provide to the Board under this section.

(d) An institution may submit a Public Information Request to receive a copy of all institutional comments received during the 30-day comment period.

§2.8. *Time Limit on Implementing Approved New Programs or Administrative Changes.*

(a) Unless otherwise stipulated at the time of approval, if an approved new degree program is not established within two years of approval, that approval is no longer valid. ~~[An institution may submit a request to the Assistant Commissioner for approval to lengthen that time limit by one additional year for a compelling academic reason. The Assistant Commissioner has discretion to approve or deny the request.]~~

(b) An institution may submit a request to the Assistant Commissioner for approval to lengthen that time limit in subsection (a) by up to five years from the approval date. The request must include a description of the good cause or compelling academic reason for extending the program implementation timeline. [Unless otherwise stipulated at the time of approval, if approved administrative changes are not implemented within two years of approval, that approval is no longer valid.]

(c) The Commissioner has discretion to approve or deny the request if the Commissioner determines there is good cause for the extension, and it is in the best interest of the students to be served by the program.

(d) Unless otherwise stipulated at the time of approval, if the institution does not implement the approved administrative changes within two years of approval, that approval is no longer valid.

(e) ~~[(e)]~~ Provisions of this section apply to all approvals and changes under this chapter.

§2.9. *Revisions and Modifications to an Approved Program.*

(a) Substantive revisions and modifications that materially alter the nature of the program, physical location, or modality of deliv-

ery, as determined by the ~~[Assistant]~~ Commissioner, include, but are not limited to:

(1) Closing the program in one location and moving it to a second location; ~~[and]~~

(2) Changing the funding from self-supported, as defined in subchapter O of this chapter (relating to Approval Process and Required Reporting for Self-Supporting Degree Program), to formula-funded or vice versa;

(3) Adding a new formula-funded or self-supported track to an existing program; and

(4) Creating a joint program that includes one or more existing approved degree programs.

(b) For a program that initially required Board Approval beginning as of September 1, 2023, and doctoral and professional programs approved by the Board on or before September 1, 2023, any substantive revision or modification to that program will require Board Approval under §2.4 of this subchapter. For all other programs, including programs that initially required Board Approval prior to September 1, 2023, any substantive revision or modification will require Assistant Commissioner Approval under §2.4(a)(2) of this subchapter.

(c) Non-substantive revisions and modifications that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner, include, but are not limited to:

(1) Increasing the number of semester credit hours of a program for reasons other than a change in programmatic accreditation requirements;

(2) Consolidating a program with one or more existing programs;

(3) Offering a program in an off-campus face-to-face format;

(4) Altering any condition listed in the program approval notification;

(5) Changing the CIP Code of the program;

(6) Increasing the number of semester credit hours if the increase is due to a change in programmatic accreditation requirements;

(7) Reducing the number of semester credit hours, so long as the reduction does not reduce the number of required hours below the minimum requirements of the institutional accreditor, program accreditors, and licensing bodies, if applicable;

(8) Changing the Degree Title or Designation; and

(9) Other non-substantive revisions that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner.

(d) The non-substantive revisions and modifications in subsection (c)(1) - (5) of this section are subject to Assistant Commissioner Approval Regular Review under §2.4 of this subchapter. All other non-substantive revisions and modifications are subject to Assistant Commissioner Approval Expedited Review under §2.4(a)(2)(B) of this subchapter.

(e) The following program revisions or modifications require Notification Only under §2.4(1) of this subchapter:

(1) A public university or [Public universities and] public health-related institution [institutions] shall [must] notify the Coordinating Board of changes to administrative units, including creation,

consolidation, or closure of an administrative unit. Coordinating Board Staff will update the institution's Program Inventory pursuant to this notification.

(2) All institutions shall [~~must~~] notify the Coordinating Board of the intent to offer an approved program through distance education following the procedures in §2.206 of this chapter (relating to Distant Education Degree or Certificate Program Notification).

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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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



SUBCHAPTER C. PRELIMINARY PLANNING PROCESS FOR NEW DEGREE PROGRAMS

19 TAC §2.41

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter C, §2.41, concerning the preliminary planning process for new degree programs. Specifically, the proposed amendments will include adding language to make clear this section applies to proposed degree programs.

Texas Education Code, §61.0512(b), requires institutions to notify the Coordinating Board prior to beginning preliminary planning for a new degree program. An institution is planning for a new degree program if it takes any action that leads to the preparation of a proposal for a new degree program.

Rule 2.41, Planning Notification: Notice of Intent to Plan, provides the information required for preliminary Planning Notifications for proposed degree programs. This rule also outlines Board requirements for providing labor market and other relevant information to institutions following submission of the Planning Notification.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is improving the administrability of the Board's existing certificate approval process. There

are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, §61.0512(b), which requires Institutions to notify the Board prior to beginning preliminary planning for a new degree program.

The proposed amendments affect Texas Education Code, §61.0512(b).

§2.41. Planning Notification: Notice of Intent to Plan.

(a) Prior to the institution seeking approval for a new degree program from its governing board, each institution's Chief Academic Officer, or delegate, shall provide notification to Board Staff of the institution's intent to engage in planning for a new degree program. The Planning Notification shall contain the following information:

- (1) The proposed title of the degree;
- (2) The proposed degree designation;
- (3) The proposed CIP Code; and
- (4) Anticipated date of submission.

(b) Not later than sixty days after Board Staff receives the Planning Notification, Board Staff shall provide the [~~to that~~] institution a report including available labor market information and other relevant data to inform the institution's planning for the proposed program[; including data about the number of similar programs approved in an area likely to be served by the applicant institution].

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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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182

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SUBCHAPTER M. APPROVAL PROCESS FOR LOCAL NEEDS COURSES

19 TAC §§2.290 - 2.297

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter M, §§2.290 - 2.297, concerning Career and Technical Education Local Need course approval. Specifically, this new subchapter will clarify the local need course development and approval process.

The Coordinating Board proposes the establishment of the career and technical education local need course approval subchapter to better define the criteria for a local need course and the process for which an institution receives approval of the course for use in a career and technical education program at their institution. Approval of a local need course is how a new course is added to the Workforce Education Course Manual database when there is no course in the database to address a specific local workforce need. The Coordinating Board maintains a list of approved programs in a Program Inventory for each public junior, technical and state college, and the list of approved courses in the Workforce Education Course Manual for use by public junior, technical, and state colleges during program development. Establishing an approval procedure for courses ensures the accuracy of the inventories, which is necessary for the Board to carry out its duties.

Rule 2.290, Purpose, provides clarity to the institution on the process to receive local need course approval.

Rule 2.291, Authority, states the authority, which is based on Texas Education Code, §130.001(b)(3), and the purpose of maintaining a list of approved programs in a Program Inventory for each public junior, technical and state college, and the list of approved courses in the Workforce Education Course Manual (WECM) for use by public junior, technical, and state colleges during program development. Establishing this local need course approval rule will ensure that accurate inventories of courses will be maintained by the Coordinating Board for use by institutions.

Rule 2.292, Applicability, establishes that this subchapter will apply to all public two-year institutions seeking approval of a proposed local need course.

Rule 2.293, Definitions, paragraph (2) ("Career and Technical Education Course") provides the definition of a Career and Technical Education (CTE) course. Paragraph (4) ("Local Need Course") defines a local need course and where the course will be inventoried for use by an institution. Paragraph (5) ("Special Topics Course") provides the definition of a special topics course and clarification on the difference between a career and technical education local need course in the WECM and a special topics course. Paragraph (6) ("Workforce Education Course Manual (WECM)") defines the Workforce Education Course Manual and the use of the courses in certificate and program development.

Rule 2.294, Local Need Course Approval Requirements, provides clarity to the institution on the requirements of local need course approval, as well as the location of the course in the WECM database once the course is approved. The proposed local need course approval process brings approval of new

courses for inclusion in the WECM in line with standard approval processes for new programs in the Coordinating Board's Chapter 2 rules.

Rule 2.295, Administrative Completeness, defines the application, process, and timeline for the institution to submit a local need course for approval. This provision clearly sets out required elements of an application for a local need course approval and gives institutions notice as to anticipated timelines for the Coordinating Board to deem an application complete.

Rule 2.296, Criteria for Proposed Course Approval, defines the factors to submit an application and the elements needed in a local need course for approval. These criteria ensure that the Coordinating Board does not approve duplicative course entries in the WECM database and requires institutions to provide sufficient descriptive information about the proposed course for the Coordinating Board to maintain and administer courses in WECM.

Rule 2.297, Effective Date of Rules, defines the date of rule implementation. The delayed effective date of the rules gives institutions advance notice of the Coordinating Board's changing requirements and allows the agency time to align internal administrative processes with changing procedural requirements.

Lee Rector, Associate Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Lee Rector, Associate Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is to provide clarification and process for a local need course to be approved and included in the WECM database to be utilized by the submitting institution for use in a career and technical education program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Lee Rector, Associate Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at rulescomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, §130.001(b)(3), to support Texas Education Code, §61.0512, which gives the Coordinating Board authority to approve new degree or certificate programs. The rules are also proposed under the authority of Texas Education Code chapter 130A which provides funding to public junior colleges for approved courses and programs.

The proposed new section affects Texas Education Code, §§51.4034 and 130A.

§2.290. Purpose.

The purpose of this subchapter is to establish the process for approval of a proposed local need course submitted by a public junior, technical, or state college for inclusion in the Workforce Education Course Manual.

§2.291. Authority.

The authority for this subchapter is provided in the Texas Education Code, §130.001(b)(3), to support Texas Education Code, §61.0512, which gives the Board authority to approve new degree or certificate programs. The Board maintains a list of approved programs in a Program Inventory for each public junior, technical and state college, and the list of approved courses in the Workforce Education Course Manual for use by public junior, technical, and state colleges during program development. Establishing an approval procedure for courses ensures the accuracy of the inventories, which is necessary for the Board to carry out its duties under Texas Education Code, §61.0512.

§2.292. Applicability.

This subchapter applies to all public two-year institutions seeking approval of a proposed local need course.

§2.293. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. The definitions in §2.2 of this chapter (relating to Definitions), apply for this subchapter unless a more specific definition for the same term is indicated in this rule.

(1) Assistant Commissioner--In this subchapter means the Assistant, Associate, or Deputy Commissioner designated by the Commissioner.

(2) Career and Technical Education Course--A college-level workforce or continuing education course offered by an institution of higher education which earns either semester credit hours or continuing education units toward satisfaction of a requirement necessary to obtain an industry-recognized credential, certificate, or applied associate degree. Career and technical education courses are listed in the Workforce Education Course Manual.

(3) Institution--A public two-year institution of higher education, including a public junior, technical, or state college.

(4) Local Need Course--A course that is not contained in the Workforce Education Course Manual database and for which approval is requested by a specific institution. A Local Need Course, upon approval, is added to the institution's course inventory in the Workforce Education Course Manual database for use in a career and technical education program. A Special Topics Course is excluded from this definition.

(5) Special Topics Course--A course that is for temporary use or transitional content. A Special Topics Course should be used

only when course content and end of course outcomes do not exist in a career and technical education course contained in the Workforce Education Course Manual database. A Special Topics Course may address recently identified current events, knowledge, and skills pertinent to the technical area and relevant to the occupational development of the student.

(6) Workforce Education Course Manual (WECM)--An online database composed of the Board's statewide inventory of approved career and technical education courses and local need courses available for institutions to use in industry-recognized credentials, certificates, and applied associate degree programs.

§2.294. Local Need Course Approval Requirements.

(a) The Board requires an institution to obtain approval of a proposed local need course for inclusion in the Workforce Education Course Manual database and the institution's course inventory. An institution shall designate a proposed local need course as offering semester credit hours or continuing education units.

(b) Course Approval Process.

(1) Course Approval. A proposed local need course may be approved by the Assistant Commissioner if the course is administratively complete as described in §2.295 of this subchapter (relating to Administrative Completeness) and meets all the requirements established by §2.296 of this subchapter (relating to Criteria for Proposed Course Approval).

(2) If the Assistant Commissioner recommends denial of a proposed local need course or does not take action to approve the proposed course within sixty (60) days of Board Staff's determination that the course proposal is administratively complete, then the proposed local need course approval will be subject to the process for Commissioner approval. The Commissioner's decision is final and may not be appealed.

(3) Upon approval, a local need course will be listed in local need course section of the WECM database and available to the institution for use in a career and technical education certificate or applied associate degree.

§2.295. Administrative Completeness.

(a) An institution must submit a fully completed application for each proposed course for which approval is required that includes:

(1) each required element in §2.296 of this subchapter (relating to Criteria for Proposed Course Approval); and

(2) the required Coordinating Board form for the proposed course approval.

(b) Board Staff shall determine whether an application is administratively complete and notify the institution not later than the thirtieth business day after receipt.

(c) If Coordinating Board Staff determines that the application is incomplete or additional information or documentation is needed, the institution must respond with all the requested information or documentation within thirty (30) business days, or the request will be deemed incomplete and returned to the institution.

(d) An institution may resubmit an application that was returned as incomplete as soon as it has obtained the requested information or documentation. This submission will be considered a new application.

§2.296. Criteria for Proposed Course Approval.

In addition to any administrative completeness criteria specified in statute or this chapter for approval of a proposed course, the Assistant

Commissioner shall ensure the application satisfies the following factors:

(1) There is no career and technical education course in the WECM database that database that has equivalent end of course outcomes to the proposed course.

(2) The proposed course is designated as either semester credit hours or continuing education units and assigned actual contact hours.

(3) The submission for consideration of the proposed course is complete and includes:

(A) The course title that is related to the course content;

(B) A six-digit CIP code,;

(C) A course description;

(D) The type of instruction;

(E) Suggested prerequisite, if applicable;

(F) A justification of the need for the course;

(G) End of course outcomes;

(H) Contact information for the individual authorized to request approval of the proposed course; and

(I) Contact information for the individual who is authorized to respond to questions regarding the submission.

§2.297. Effective Date of Rules.

This subchapter applies to a local need course for which an institution seeks approval on or after September 1, 2024.

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-202401591

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 427-6344



SUBCHAPTER N. CAREER AND TECHNICAL EDUCATION COURSE MAINTENANCE AND APPROVAL

19 TAC §§2.320 - 2.330

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter N, §§2.320 - 2.330, concerning the process for maintenance and approval of a career and technical education course in the Workforce Education Course Manual (WECM). Specifically, this new subchapter will clarify the career and technical education course maintenance and approval process, including but not limited to the review, revision, addition and archival of courses in the WECM. The subchapter also clarifies the role of the WECM Advisory Committee in maintenance and approval of a career and technical education course for the WECM. Ensuring that the WECM database contains an up-to-date listing of courses is critical, as this listing represents

the courses public two-year institutions may use without prior approval from the Coordinating Board. The procedures were previously specified in the Coordinating Board's Guidelines for Instructional Programs in Workforce Education. The Coordinating Board is updating, streamlining, and clarifying these processes and procedure in rule to provide additional oversight and clarity for institutions of higher education.

Rule 2.320, Purpose, provides clarity to the field on the process of career and technical education maintenance and approval.

Rule 2.321, Authority, establishes the authority for this subchapter under Texas Education Code, §§61.0512 and 130.001.

Rule 2.322, Definitions, establishes standard definitions for roles and career and technical and workforce education terms necessary for the subchapter. Several definitions relate to relevant entities or persons with decision-making capacity or expertise relevant for the career and technical education course approval process. For example, paragraph (1) ("Assistant Commissioner") defines the various leadership positions that may be designated by the Commissioner for approvals. Paragraph (4) ("Institution") provides the definition of the public two-year higher education institutions the rule applies. Paragraph (8) ("Subject Matter Expert") defines the institution representative with expertise in the discipline and to be able to provide input on course content in a career and technical education course during course revision and development. Subject matter experts have business and industry experience in the discipline and can define the knowledge and skills needed to meet industry needs. Paragraph (9) ("Workforce Education Course Manual (WECM) Advisory Committee") defines the role of the advisory committee regarding the WECM database. The WECM advisory committee provides a feedback mechanism to the Coordinating Board on courses in the WECM database. The advisory committee provides a process to maintain courses in the database to stay current with industry-defined knowledge and skills.

Rule 2.322, Definitions, also contains definitions for concepts and terms specific for career and technical and workforce education. Paragraph (2) ("Career and Technical Education Course") provides the definition of a Career and Technical Education (CTE) course approved in the WECM. CTE courses are placed together in a sequence to develop a program at an institution. Paragraph (3) ("End of Course Outcomes") defines what the student will be able to demonstrate they have learned during a course and are written by subject matter experts during course revision or development. End of course outcomes are developed by subject matter experts at different instructional skill levels of introduction, intermediate and advanced level to provide a progression of skills as a student completes a program. Paragraph (5) ("Local Need Course") defines where the course will be inventoried for use by an institution. Local Need courses are developed by an institution when a skillset is needed to meet local industry needs, and a course is not available in the WECM database with the end of course outcomes to meet that need. Paragraph (6) ("Rubric") defines what the rubric is and what a rubric is used to label in a WECM course. Rubrics are developed to provide a group of courses to define a discipline with introduction, intermediate and advanced end of course outcomes. The courses are typically selected from a single rubric by the institution to develop a logically sequenced program for a discipline. Paragraph (7) ("Special Topics Course") provides the definition of a special topics course and clarification on the difference between a career and technical education course, and special topics course in the WECM. Special Topics courses

are used to incorporate transitional or emerging content into a program.

Paragraph (10) ("Workforce Education Course Manual (WECM) Database") defines the Workforce Education Course Manual database and the use of the career and technical education courses in certificate and program development. WECM database is the repository of approved career and technical education courses used during revision or development in programs at an institution.

Rule 2.323, Career and Technical Education Course Maintenance Process, gives an overview of the basic components of the course maintenance process as a whole. Paragraph (1) ("Career and Technical Education Course Maintenance Addition") defines how a course is developed for the WECM database. Courses are developed by subject matter experts to meet industry-defined skill and knowledge requirements. A local need course used by four or more institutions may be added to the WECM database so other colleges can access it to use in their programs. Paragraph (2) ("Career and Technical Education Course Maintenance Archival") relates to archival, which is the process to remove unused, obsolete, or duplicate courses in the WECM database. WECM database course frequency data is reviewed by the team of subject matter experts and decisions are made to archive a course if the course has had no institution use the course in the previous five years. Paragraph (3) ("Career and Technical Education Course Maintenance Review") is the starting point to the course maintenance process on whether a course in the WECM database needs to stay in the WECM database as presented, whether the course needs to be revised or whether the course needs to be archived. Several factors are considered by subject matter experts during the review process of a current career and technical education course. Based on the factors defined in the section the subject matter experts provide feedback on whether the course needs to continue to be included in the WECM database. Paragraph (4) ("Career and Technical Education Course Maintenance Revision") describes how the subject matter experts decide whether a course needs to be revised to stay current with industry-defined skills and knowledge. When a course is revised subject matter experts revise the career and technical education course to stay current with industry-defined skills and knowledge. Paragraph (5) ("Career and Technical Education Course Maintenance Workshop") is performed on a schedule cycle developed by the WECM advisory committee based on Classification of Instructional Program (CIP) code. Subject matter experts participate in the workshop to review career and technical education courses in their discipline. CTE courses are reviewed for currency with industry-defined skill and knowledge, then revised if necessary to meet industry-defined skill and knowledge. During a career and technical education course maintenance workshop a course may be added based on defined factors to meet industry-defined standards, or a course may be archived during a WECM maintenance workshop after review by subject matter experts and there is compelling evidence the course is no longer needed.

Rule 2.324, Career and Technical Education Course Maintenance Review, defines the review process cycle and factors to consider prior to scheduling a course maintenance review workshop. The schedule for course review is developed by the WECM Advisory Committee based on Classification of Instructional Program (CIP) code. The rule also lists additional factors that may elicit a course maintenance review workshop sooner than the scheduled cycle. The WECM Advisory Committee develops the schedule of career and technical education course

maintenance review workshops based on the listed criteria. The rule also describes the participants for the course maintenance review workshop and defines the tasks the participants in the workshop must carry out.

Rule 2.325, Career and Technical Education Course Maintenance Revision, describes the process for revising a current course. Subject matter experts review each course in a discipline to see if the course meets current industry-defined skill and knowledge requirements. The rule describes which course elements the team of subject matter experts may recommend for revision and the process for adopting and presenting recommendations to the WECM Advisory Committee and Assistant Commissioner for final approval.

Rule 2.326, Career and Technical Education Course Maintenance Addition, describes the process for adding a course to the WECM database. After the review of all courses in a discipline subject matter experts may recommend the addition of a course based on factors/triggers listed in §2.324(b). The rule defines the required elements of a new course as listed in §2.329, as well as the process for the subject matter experts to adopt a recommendation for course addition, present the recommendation to the WECM Advisory Committee, and transmit the recommendation to the Assistant Commissioner for approval.

Rule 2.327, Career and Technical Education Course Maintenance Archival, describes how a course may be archived in the WECM database, removing it from the list of courses an institution may use. After the review of all courses in a discipline subject matter experts may recommend archival of a course to remove an unused, obsolete, or duplicate course from the WECM database. The recommendation from subject matter experts is based on a course duplicated in the WECM database, lack of usage based on the Coordinating Board course frequency data shared with subject matter experts on the discipline during a course maintenance review workshop or a course no longer meeting current industry-defined skill and knowledge. The rule allows for a phase-out period, defining the length of time an archived course will remain active in the WECM database and allowing the institutions time to remove the course from their program.

Rule 2.328, Career and Technical Education Course Approval, defines the Coordinating Board individual designated by the Commissioner for approval of each career and technical education course to be included in the Workforce Education Course Manual (WECM) database. The rule states the process, criteria and timeline for course approval or denial. Final approval of the course will result in the addition of the course to the WECM database, permitting the institution to teach the course without prior approval from the Coordinating Board.

Rule 2.329, Criteria for Proposed Course Approval, describes the criteria used by the Coordinating Board for determining whether to approve a course for inclusion in the WECM database. These criteria include evaluating whether an equivalent WECM course already exists, whether the course is counted in semester credit hours or continuing education units, and whether the necessary course description elements are complete.

Rule 2.330, Effective Date of Rules, defines the date of rule implementation.

Lee Rector, Associate Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local

governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Lee Rector, Associate Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is to establish the process for maintenance and approval of a career and technical education course in the Workforce Education Course Manual database. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Lee Rector, Associate Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at rulescomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Sections 61.0512, 130.001(3) and 130A.

The proposed new section affects Texas Education Code, Section 51.4034.

§2.320. Purpose.

The purpose of this subchapter is to establish the process for maintenance and approval of a career and technical education course in the Workforce Education Course Manual database.

§2.321. Authority.

The authority for this subchapter is provided in the Texas Education Code, §130.001(3) to support Texas Education Code, §61.0512, which gives the Board authority to approve new degree or certificate programs. The Board maintains a list of approved programs in a Program Inventory for each public junior, technical and state college, and the list of approved courses in the Workforce Education Course Manual database for use by public junior, technical, and state colleges during program development. Establishing a course maintenance and approval procedure ensures the currency of course content and the accuracy of the list of courses in the Workforce Education Course Manual (WECM) database, which is necessary for the Board to carry out its duties under

Texas Education Code, §61.0512. WECM is part of financial reporting necessary to carry out Texas Education Code, Chapter 130A. Maintenance of WECM is necessary to carry out Texas Education Code, §51.4034.

§2.322. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. The definitions in §2.3 of this chapter (relating to Definitions), apply for this subchapter unless a more specific definition for the same term is indicated in this rule.

(1) Assistant Commissioner--In this subchapter means the Assistant, Associate, or Deputy Commissioner designated by the Commissioner.

(2) Career and Technical Education Course--A college-level workforce or continuing education course offered by an institution of higher education which earns either semester credit hours or continuing education units toward satisfaction of a requirement necessary to obtain an industry-recognized credential, certificate, or applied associate degree. Career and technical education courses are listed in the Workforce Education Course Manual (WECM).

(3) End of Course Outcomes--The specific and measurable statements that define the knowledge and skills learners will demonstrate by the completion of a course.

(4) Institution--In this subchapter means any public junior college, public community college, public technical institute, or public state college.

(5) Local Need Course--A course that is not contained in the Workforce Education Course Manual database and for which approval is requested by a specific institution. A Local Need Course, upon approval, is added to the institution's course inventory in the Workforce Education Course Manual database for use in a career and technical education program.

(6) Rubric--An identifier assigned to a career and technical education course for classifying, recording, and reporting workforce education courses. A rubric is not intended to drive the selection of course offerings but to serve as a guide once an institution has identified the course description and end of course outcomes.

(7) Special Topics Course--A course that is for temporary use or transitional content. A Special Topics course should be used only when course content and end of course outcomes do not exist in a career and technical education course contained in the Workforce Education Course Manual database. A Special Topics Course may address recently identified current events, knowledge, and skills pertinent to the technical area and relevant to the occupational development of the student.

(8) Subject Matter Expert--A public junior, technical or state college representative who is an expert in the knowledge, skills, and abilities of a specific career and technical education course.

(9) Workforce Education Course Manual (WECM) Advisory Committee--The WECM Advisory Committee provides the Coordinating Board with advice regarding the content, structure, and currency of courses in the WECM database, as established in chapter 1, subchapter T, of this title (relating to Workforce Education Course Manual Advisory Committee). The committee is responsible for field engagement in the maintenance and use of the WECM database and courses contained within the database.

(10) Workforce Education Course Manual (WECM) Database--An online database composed of the Coordinating Board's

statewide inventory of approved career and technical education courses available for Institutions to use in industry-recognized credentials, certificates, and applied associate degree programs.

§2.323. Career and Technical Education Course Maintenance Process.

The Career and Technical Education Course Maintenance Process includes the following:

(1) Career and Technical Education Course Maintenance Addition--The development and addition of a new career and technical education course to the WECM database. The content of the new course may be drawn from industry-defined skill and knowledge requirements or a local need course that is used by four or more institutions. The development of a course is performed by a team of subject matter experts.

(2) Career and Technical Education Course Maintenance Archival--The archiving of a career and technical education course to remove an unused, obsolete, or duplicate course from the WECM database. The review of a course to be archived is performed by a team of subject matter experts.

(3) Career and Technical Education Course Maintenance Review--The review of a course contained in the WECM database. The review of a course is performed by a team of subject matter experts.

(4) Career and Technical Education Course Maintenance Revision--The revision to a career and technical education course contained in the WECM database to ensure that content and outcomes align with current need and/or regulations. The revision of a course is performed by a team of subject matter experts.

(5) Career and Technical Education Course Maintenance Workshop--A workshop to determine the relevance and currency of a career and technical education course contained in the WECM database. The workshop shall be conducted by a team of subject matter experts. The WECM Advisory Committee shall determine the schedule and the Classification of Instructional Program code for each course to be reviewed. A course maintenance workshop may result in:

- (A) The revision of a career and technical education course;
- (B) The addition of a career and technical education course; or
- (C) The archiving of a career and technical education course.

§2.324. Career and Technical Education Course Maintenance Review.

(a) A team of subject matter experts must review a Career and Technical Education course every four years to ensure the currency of the course content. A team of subject matter experts may review a Career and Technical Education course more frequently as indicated by career and technical education course maintenances triggers.

(b) The WECM Advisory Committee shall consider several factors in determining the need to conduct a course maintenance review workshop, including:

- (1) Emerging and/or changing technologies;
- (2) Change in business/industry standards;
- (3) State or national credentialing requirements;
- (4) Employer-defined skill requirements;
- (5) Comments from one or more institutions;
- (6) Need identified by a statewide curriculum project;

(7) Coordinating Board request for a course maintenance review; or

(8) The timeline of a course's maintenance review cycle, as specified by a schedule developed by the WECM Advisory Committee.

(c) The WECM Advisory Committee will determine a schedule for career and technical education course maintenance review workshop in a designated Classification of Instructional Program code.

(d) A team of subject matter experts shall perform the review.

(e) The review shall determine:

(1) If a course will continue to be offered in the WECM database in its current form;

(2) If a course requires revision;

(3) If a course requires archiving;

(4) If a new course is necessary to address knowledge, skills, and abilities to meet the needs of business and industry;

(5) If two or more local need courses with similar end of course outcomes should be consolidated into one career and technical education course to address the needs of multiple institutions; or

(6) If two or more special topics courses with similar end of course outcomes should be consolidated into one career and technical education course to address the needs of multiple institutions.

§2.325. Career and Technical Education Course Maintenance Revision.

(a) Subject matter experts at a career and technical education course maintenance workshop may recommend revising a course in the WECM database.

(b) Revised course elements may include:

(1) End of course outcomes;

(2) Course description;

(3) Course title;

(4) Contact hour range;

(5) Semester credit hours or continuing education units;

(6) Classification of Instructional Program code; and

(7) Rubric.

(c) The team of subject matter experts may vote to recommend the elements to be revised and the final revisions to the WECM Advisory Committee.

(d) The team of subject matter experts shall present the revised course to the WECM Advisory Committee.

(e) The WECM Advisory Committee shall review the revised course and, following any action required based on the review, the Chair of the WECM Advisory Committee shall transmit the course on the requisite form to the Coordinating Board with a request for approval.

(f) An Assistant Commissioner must review and approve each career and technical education course submitted for inclusion in the WECM database as specified in §2.328 of this subchapter (relating to Career and Technical Education Course Approval).

(g) If approved, institutions may use the revised course when posted by the Coordinating Board in the WECM database.

§2.326. Career and Technical Education Course Maintenance Addition.

(a) Subject matter experts at a career and technical education course maintenance workshop may recommend adding a course to the WECM database.

(b) A new course shall include the following elements:

- (1) End of course outcomes;
- (2) Course description;
- (3) Course title;
- (4) Contact hour range;
- (5) Semester credit hours or continuing education units;
- (6) Classification of Instructional Program code; and
- (7) Rubric.

(c) The team of subject matter experts may vote to recommend the elements of the new course to the WECM Advisory Committee.

(d) The team of subject matter experts shall present the new course to the WECM Advisory Committee.

(e) The WECM Advisory Committee shall review the new course and, following any action required based on the review, the Chair of the WECM Advisory Committee shall transmit the course on the requisite form to the Coordinating Board with a request for approval.

(f) An Assistant Commissioner must review and approve each career and technical education course submitted for inclusion in the WECM database as specified in §2.328 of this subchapter (relating to Career and Technical Education Course Approval).

(g) If approved, institutions may use the new course when posted by the Coordinating Board in the WECM database.

§2.327. Career and Technical Education Course Maintenance Archival.

(a) Subject matter experts at a career and technical education course maintenance workshop may recommend archiving a course in the WECM database.

(b) A course may be archived if:

- (1) The end of course outcomes duplicate those of another course;
- (2) The course has not been used for five years, as determined by the Coordinating Board's Data Frequency Report; or
- (3) The course is composed of content that no longer meets the needs of industry.

(c) An archived course will remain active for a minimum of one year, beginning September 1 and ending August 31 of the following year.

(d) An institution shall not use an archived course in a career and technical education program after August 31 in the year after archival.

(e) A team of subject matter experts will identify courses that have not been used for five years or that are no longer relevant to the needs of industry for archiving each January. These courses are archived effective the following August 31st.

§2.328. Career and Technical Education Course Approval.

(a) An Assistant Commissioner must approve each career and technical education course for inclusion in the Workforce Education Course Manual (WECM) database.

(b) An Assistant Commissioner may approve a proposed career and technical education course if the course meets all the requirements established by §2.329 of this subchapter (relating to Criteria for Proposed Course Approval). If the Assistant Commissioner recommends denial of a proposed career and technical education course or does not take action to approve the proposed course within 60 days of Board Staff's determination that the proposed course approval request is administratively complete, then the proposed career and technical education course approval will be subject to the process for Commissioner Approval. The Commissioner's decision is final and may not be appealed.

(c) Upon approval, a career and technical education course will be listed in the WECM database.

(d) All courses in the WECM may be taught by any institution without prior approval by the Board. Courses in the WECM are valid for institutions to use in career and technical education programs.

(e) Approved career and technical education courses remain in the WECM database until they are archived.

§2.329. Criteria for Proposed Course Approval.

In addition to any administrative completeness criteria specified in statute or this chapter for approval of a proposed course, the Assistant Commissioner shall consider the following factors:

(1) There is no career and technical education course in the WECM database that has equivalent end of course outcomes to the proposed course.

(2) The proposed course is designated as either semester credit hours or continuing education units and assigned contact hours.

(3) The submission for consideration of the proposed course is complete and includes:

- (A) A course title;
- (B) A six-digit Classification of Instructional Program code;
- (C) A course description;
- (D) The type of instruction;
- (E) Suggested prerequisite, if applicable;
- (F) A justification of the need for the course; and
- (G) End of course outcomes.

§2.330. Effective Date of Rules.

This subchapter applies to a career and technical education course that is subject to course maintenance and approval on or after September 1, 2024.

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-202401592

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 427-6344

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CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER Q. FINANCIAL AID FOR SWIFT TRANSFER (FAST) PROGRAM

19 TAC §§13.501 - 13.503

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter Q, §§13.501 - 13.503, concerning the Financial Aid for Swift Transfer (FAST) Program. Specifically, this amendment will align definitions in the FAST program with those used in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter D, concerning Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges.

Rule 13.501 is amended to align the definitions of "career and technical education course," "credit," "dual credit course," "equivalent of a semester credit hour," and "semester credit hour." The definition of "school district" is added. These changes are proposed to ensure greater alignment between the definitions regarding dual credit enrollment occurring through the FAST program and the definitions regarding the requirements of dual credit partnerships. The definition of "charter school" is removed because the new definition of "school district" includes charter schools. This alignment of definitions does not change the underlying structure of the FAST Program.

Rules 13.502 and 13.503 are amended to align terminology in these sections with the above definitions. These amendments are proposed based on Texas Education Code, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the greater clarity provided in the rules by aligning definitions across multiple agency programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Charles.Contero-Puls@higher.ed.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 28.0095, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the FAST Program.

The proposed amendment affects Texas Education Code, Sections 28.0095 and 48.308.

§13.501. Definitions.

In addition to the words and terms defined in §13.1 of this chapter (relating to Definitions) the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In the event of conflict, the definitions in this subchapter shall control.

(1) Career and Technical Education Course--~~As defined in §4.83 of this title (relating to Definitions). [A workforce or continuing education college course offered by an institution of higher education for which a student may earn credit toward satisfaction of a requirement necessary to obtain an industry-recognized credential, certificate, or associate degree.]~~

~~[(A) A career and technical education course is listed in the Workforce Education Course Manual (WECM).]~~

~~[(B) For the purpose of this subchapter, this definition excludes:]~~

~~[(i) an avocational course;]~~

~~[(ii) a continuing education course that is ineligible for conversion as articulated college credit; and]~~

~~[(iii) a continuing education course that does not meet the institution's program or instructor accreditation standards.]~~

~~[(2) Charter School--A public charter school authorized to operate under Texas Education Code, Chapter 12.]~~

~~(2) [(3)] Credit--As defined in §4.83 of this title (relating to Definitions). [College credit earned through the successful completion of a college career and technical education or academic course that fulfills specific requirements necessary to obtain an industry-recognized credential, certificate, associate degree, or other academic degree.]~~

~~(3) [(4)] Dual Credit Course--As defined in §4.83 of this title (relating to Definitions). [A course that meets the following requirements:]~~

~~[(A) The course is offered pursuant to an agreement under §4.84 of this subchapter (relating to Institutional Agreements).]~~

~~[(B) A course for which the student may earn one or more of the following types of credit:]~~

~~[(i) joint high school and junior college credit under Texas Education Code, §130.008, or]~~

~~[(ii) another course offered by an institution of higher education, for which a high school student may earn semester~~

credit hours or equivalent of semester credit hours toward satisfaction of:]

~~{(I)}~~ a course defined in paragraph (1) of this section that satisfies a requirement necessary to obtain an industry-recognized credential, certificate, or an associate degree;]

~~{(II)}~~ a foreign language requirement at an institution of higher education;]

~~{(III)}~~ a requirement in the core curriculum, as that term is defined by Texas Education Code, §61.821, at an institution of higher education; or]

~~{(IV)}~~ a requirement in a field of study curriculum developed by the Coordinating Board under Texas Education Code, §61.823;]

(4) ~~{(5)}~~ Educationally Disadvantaged [disadvantaged]-As defined in Texas Education Code, §5.001(4), eligible to participate in the national free or reduced-price lunch program.

(5) ~~{(6)}~~ Equivalent of a Semester Credit Hour [semester credit hour] --As defined in §4.83 of this title (relating to Definitions). [A unit of measurement for a continuing education course, determined as a ratio of one continuing education unit to 10 contact hours of instruction, which may be expressed as a decimal. 1.6 continuing education units of instruction equals one semester credit hour of instruction. In a continuing education course, not fewer than 16 contact hours are equivalent to one semester credit hour.]

(6) ~~{(7)}~~ Program--The Financial Aid for Swift Transfer (FAST) Program.

(7) School District--As defined in §4.83 of this title (relating to Definitions).

(8) School Year--The twelve month-period of high school enrollment starting in August.

(9) Semester Credit Hour--As defined in §4.83 of this title (relating to Definitions). [A unit of measure of instruction, represented in intended learning outcomes and verified by evidence of student achievement, that reasonably approximates one hour of classroom instruction or direct faculty instruction and a minimum of two hours out of class student work for each week over a 15-week period in a semester system or the equivalent amount of work over a different amount of time. An institution is responsible for determining the appropriate number of semester credit hours awarded for its programs in accordance with Federal definitions, requirements of the institution's accreditor, and commonly accepted practices in higher education.]

§13.502. Eligible Institution.

(a) A public institution of higher education, as the term is defined in Texas Education Code, §61.003(8), is eligible to participate in the Program.

(b) A participating institution may not charge students attending high school in a Texas school district [or charter school] a tuition rate for dual credit courses in excess of the tuition rate outlined in §13.504 of this subchapter (relating to FAST Tuition Rate).

(c) A participating institution must ensure that an eligible student incurs no cost for their enrollment in any dual credit course at the institution. This includes, but is not limited to, tuition, fees, books, supplies, or other mandatory course-related expenses. This subsection does not prohibit a participating institution from charging a school district for course-related expenses, other than tuition, for an eligible student.

(d) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner prior to being approved to participate in the program.

§13.503. Eligible Students.

(a) A student is eligible to enroll at no cost to the student in a dual credit course under the program if the student:

(1) is enrolled in and eligible for Foundation School Program funding at a high school in a Texas school district [or charter school] under the rules of the Texas Education Agency;

(2) is enrolled in a dual credit course at a participating institution of higher education that has entered into a Dual Credit Agreement with the student's school district as set out in §4.84 of this title (relating to Institutional Agreements); and

(3) was educationally disadvantaged at any time during the four school years preceding the student's enrollment in the dual credit course described by paragraph (2) of this subsection, as certified to the institution by the eligible student's school district [or charter school], or other means authorized by rule.

(b) A school district's [or charter school's] notice to the institution regarding a student's status as educationally disadvantaged shall occur through the school district's [or charter school's] notice to the Texas Education Agency, unless otherwise provided by rule.

(c) A participating institution shall submit to the Coordinating Board identifying information, as outlined by the Coordinating Board, for students registered for or enrolled in dual credit courses. The Coordinating Board will compare the identifying information to data provided by the Texas Education Agency and will notify the institution as to which students fulfill the requirement outlined in subsection (a)(3) 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.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



CHAPTER 21. STUDENT SERVICES
SUBCHAPTER W. TEXAS WORKING
OFF-CAMPUS: REINFORCING KNOWLEDGE
AND SKILLS (WORKS) INTERNSHIP
PROGRAM

19 TAC §§21.700 - 21.707

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter W, §§21.700 - 21.707, concerning the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program. Specifically, this repeal will relocate these rules to another chapter, allowing the Coordinating Board to administer the Texas Working Off-Campus: Re-

enforcing Knowledge and Skills (WORKS) Internship Program. Texas Education Code, Chapter 56, Subchapter E-1, Section 56.0856, gives the Coordinating Board the authority to adopt rules to enforce, the requirements, conditions, and limitations provided by the subchapter.

Vanessa Malo, Director, Workforce Education Initiatives, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state government as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Vanessa Malo, Director, Workforce Education Initiatives, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of repealing this rule is improved organization in Texas Administrative Code, Title 19, Part 1, by grouping all grant-related rules in a single chapter. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Vanessa Malo, Director of Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Vanessa.Malo@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Chapter 56, Subchapter E-1, Section 56.0856, which provides the Coordinating Board with the authority to adopt rules to enforce, the requirements, conditions, and limitations provided by the subchapter.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter W, Sections 21.700 - 21.707., relating to the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program.

§21.700. Authority and Purpose of the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program.

§21.701. Definitions.

§21.702. Employer Eligibility and Participation Requirements.

§21.703. Employer Agreement.

§21.704. Employer Reimbursement.

§21.705. Qualified Internship Opportunity.

§21.706. Student Eligibility.

§21.707. Records Retention.

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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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 427-6267

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CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§23.1 - 23.3

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in, Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter A, §§23.1 - 23.3, concerning General Provisions. Specifically, this new section will create general provisions that apply to all education loan repayment programs administered by the Coordinating Board under Texas Administrative Code, Title 19, Part 1, Chapter 23.

Rule 23.1, Definitions, provides definitions for terminology that is common across all subchapters in Chapter 23. The definition for "Board," "Coordinating Board" and "Commissioner" are included to ensure consistency throughout the rules for education loan repayment programs. Texas Education Code, §§56.3575, 61.537, 61.608, 61.656, 61.9828, 61.9840, and 61.9959, provide the Coordinating Board with the authority to establish rules for the administration of the education loan repayment programs.

Rule 23.2, Eligible Lender and Eligible Education Loan, outlines the requirements that must be met for a loan to be considered eligible for repayment through any education loan repayment program in Chapter 23. This includes the requirements by which both the lender and the loan are assessed to determine eligibility. The requirements represent the consolidation of requirements outlined in the subchapters in Chapter 23 to ensure consistency across all programs. Additional details have been provided regarding the allowance for loans to be eligible for two different loan repayment programs if the other program is a federal program that requires a state matching requirement. Texas Education Code, §§56.3575, 61.537, 61.608, 61.656, 61.9828, 61.9840, and 61.9959, provide the Coordinating Board with the authority to establish rules for the administration of the education loan repayment programs.

Rule 23.3, Method of Disbursement, indicates that all education loan repayment program disbursements are made directly to the lender and that the Coordinating Board adheres to appropriate IRS reporting regulations. The Coordinating Board elects to disburse directly to the lender for all education loan repayment

programs, rather than co-payable to the lender and borrower, to create greater assurance that all disbursements will be appropriately applied to the eligible loans. The Coordinating Board's adherence to appropriate IRS regulations is placed in the general provisions to create greater transparency of this requirement across all education loan repayment programs. Texas Education Code, §§56.3575, 61.537, 61.608, 61.656, 61.9828, 61.9840, and 61.9959, provide the Coordinating Board with the authority to establish rules for the administration of the education loan repayment programs.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the greater transparency and consistency in the administration of the Coordinating Board's education loan repayment programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Charles.Contero-Puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Sections 56.3575, 61.537, 61.608, 61.656, 61.9828, 61.9840, and 61.9959, which provide the Coordinating Board with the authority to establish rules for the administration of the education loan repayment programs.

The proposed new sections affects Texas Administrative Code, Title 19, Part 1, Chapter 23.

§23.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. In the event of conflict, the definitions in this subchapter shall control.

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The commissioner of higher education.

(3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board and its staff.

§23.2. Eligible Lender and Eligible Education Loan.

The following requirements regarding eligible lenders and eligible education loans shall apply to all education loan repayment programs administered in this chapter, unless the subchapter clearly indicates otherwise.

(1) The Coordinating Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made.

(2) An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate, graduate, and professional education and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, or private foundation. Credit cards, equity loans and other similar personal loan products are not considered educational loans eligible for repayment.

(3) To be eligible for repayment, an education loan must:

(A) be evidenced by a promissory note for loans to pay for the cost of attendance for the undergraduate, graduate, or professional education of the individual applying for repayment assistance;

(B) not have been made during residency or to cover costs incurred after completion of graduate or professional education;

(C) not be in default at the time of the applicant's application;

(D) not have an existing obligation to provide service for loan forgiveness through another program, unless the program is a loan repayment assistance program funded by the federal government on the condition of matching state funds and that, by rule or exception, does not prohibit concurrent obligations for the same employment or service;

(E) not be subject to repayment through another student loan repayment or loan forgiveness program;

(F) not be subject to repayment as a condition of employment or through other repayment assistance provided by the applicant's employer while the applicant is participating in the program;

(G) if the loan was consolidated with other loans, the applicant must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for the applicant's undergraduate, graduate, or medical education; and

(H) not be an education loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative.

§23.3. Method of Disbursement.

The following requirements regarding method of disbursement shall apply to all education loan repayment programs administered in this chapter, unless the subchapter clearly indicates otherwise.

(1) The annual repayment(s) shall be in one or multiple disbursements made payable to the servicer(s) or holder(s) of the loan upon the eligible applicant's completion of each service period of qualifying employment.

(2) The Coordinating Board shall follow Internal Revenue Service requirements for reporting of loan repayment assistance to eligible applicants during each calendar year.

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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Nichole Bunker-Henderson

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



SUBCHAPTER G. NURSING FACULTY LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.190 - 23.192, 23.194

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter G, §§23.190 - 23.192 and 23.194, concerning the Nursing Faculty Loan Repayment Assistance Program. Specifically, this repeal will remove sections that will either be moved to other sections within the program or become redundant with the creation of a new Subchapter A in Chapter 23.

Texas Education Code, Section 61.9828, provides the Coordinating Board with the authority to adopt rules for the administration of the Nursing Faculty Loan Repayment Assistance Program. The repeal of these sections is necessary to reduce redundancy with new rules under the General Provisions, Subchapter A in Chapter 23, that will apply to the entire chapter.

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is the elimination of rules that will become redundant with new rules proposed for adoption in Chapter 23, Subchapter A, and with the redistribution of language into other subsections under Subchapter G. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Charles.Contero-Puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.9828, which provides the Coordinating Board with the authority to establish rules as necessary to administer the Nursing Faculty Loan Repayment Assistance Program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter G.

§23.190. *Eligible Lender and Holder.*

§23.191. *Eligible Education Loan.*

§23.192. *Repayment of Education Loans.*

§23.194. *Dissemination of Information.*

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

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

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Nichole Bunker-Henderson

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



SUBCHAPTER K. NURSE LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.300 - 23.305

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter K, §§23.300 - 23.305, concerning the Nurse Loan Repayment Assistance Program. Specifically, this subchapter establishes the program's authority and purpose, outlines definitions for necessary words and terms, and creates applicant eligibility criteria, ranking priorities, repayment assistance amounts, and limitations for the program.

The Coordinating Board is given authority to establish rules as necessary to administer the Nurse Loan Repayment Assistance Program under Texas Education Code, §61.656.

Rule 23.300, Authority and Purpose, establishes the authority and purpose of the program, which is to promote the health care needs of this state by encouraging qualified nurses to continue to practice in Texas. This addition is being proposed to clearly state the Coordinating Board's intentions in administering the program to conform with subchapters related to the agency's other financial aid programs.

Rule 23.301, Definitions, establishes necessary definitions for words and terms used in subsequent rules. This includes outlining various classifications of nurses based on state licensure standards, designating the number of hours needed to be full-time to conform to many employers' minimum standards, using Primary Care Health Professional Shortage Area scores as a proxy for nursing shortage in a given geography, and defining "rural county" based on a common definition in Texas law that is easily operationalized. This addition is being implemented to avoid ambiguity in the rules and to ensure the subchapter is administered consistently.

Rule 23.302, Applicant Eligibility, establishes eligibility criteria for applicants to the program, including employer verification of the applicant's employment as a nurse, documentation of licensure, information related to the applicant's eligible education loans, and any other documentation that may be required. This addition is being implemented to ensure state funds appropriated to this program are disbursed to persons currently employed as nurses in this state and that the Coordinating Board has the information needed to administer the program consistently and efficiently.

Rule 23.303, Applicant Ranking Priorities, establishes the prioritization criteria the Coordinating Board will use in the event that insufficient funds are available in a year to offer loan repayment assistance to all eligible applicants. Priority will be given based on a priority deadline set by the agency, to renewal applications versus initial-year applications, applications from nurses employed in rural counties, applications from nurses employed by or in Primary Care Health Professional Shortage Areas with higher scores, to different licensure classifications of nurses (prioritizing areas of greatest shortage statewide), and date of application submission. This addition is being implemented to ensure that limited state funds are being employed to have the greatest impact in promoting the health care needs of the state.

Rule 23.304, Amount of Repayment Assistance, establishes maximum annual loan repayment assistance amounts for nurses of different licensure classifications and to outline how these amounts can be prorated for eligible nurses working part-time. Establishing the annual maximum has been structured in a way that supports the Coordinating Board's efforts to allocate all money available to the board for the purpose of providing loan repayment assistance under this subchapter. This addition is being implemented to allow the greatest flexibility to the agency in administering the program, depending on the amount of available funds and number of eligible applicants each year.

Rule 23.305, Limitations, outlines limitations to the program. Subsection (a) relates to statutory requirements limiting the amount of assistance that can be offered to eligible persons for repayment for education loans for education received at an institution described by Texas Education Code, §61.651(1)(C). This addition is created to align with statutory changes made to

Texas Education Code, §61.656, in Senate Bill 25 during the 88th legislative session.

Subsection (c) establishes the number of years an individual may receive loan repayment assistance under this program. Three years was selected to align with other Loan Repayment Assistance Programs and to ensure consistent availability to the program for new applicants, reinforcing the program's ability to retain qualified nurses statewide.

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of adopting this rule is improved retention of qualified nurses practicing in the state. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Charles.Contero-Puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 61.656, which provides the Coordinating Board with the authority to establish rules as necessary to administer the program.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter K.

§23.300. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, chapter 61, subchapter L, Financial Aid for Professional Nursing Students and Vocational Nursing Students and Loan

Repayment Program for Certain Nurses. These rules establish procedures to administer Texas Education Code, §61.651 and §§61.654 - 61.659.

(b) Purpose. The purpose of the Nurse Loan Repayment Assistance Program is to promote the health care needs of this state by encouraging qualified nurses to continue to practice in Texas.

§23.301. Definitions.

In addition to the words and terms defined in §23.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Advanced Practice Nurse--A professional nurse, currently licensed in the State of Texas, who has been approved by the Texas Board of Nursing to practice as an advanced practice nurse based on completing an advanced educational program of study acceptable to the Texas Board of Nursing. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist.

(2) Full-Time--An average of at least 32 hours per week during the service period.

(3) Licensed Vocational Nurse--A person currently licensed by the Texas Board of Nursing to practice vocational nursing.

(4) Primary Care HPSA--Primary Care Health Professional Shortage Areas (HPSAs) designated by the U.S. Department of Health and Human Services (HHS) as having shortages of primary care providers and may be geographic (a county or service area), demographic (low-income population), or institutional (comprehensive health center, federally qualified health center, or other public facility), in compliance with the requirements of Section 332 of the Public Health Service Act, 90 Stat. 2270-2272 (42 U.S.C.A. 254e).

(5) Registered Nurse--A person currently licensed by the Texas Board of Nursing to practice professional nursing. For the purposes of this subchapter, an advanced practice nurse is not considered a registered nurse.

(6) Rural County--A county with a population of less than 50,000.

(7) Service Period--A period of 12 consecutive months qualifying an applicant for loan repayment.

§23.302. Applicant Eligibility.

To be eligible to receive loan repayment assistance, an applicant must submit to the Coordinating Board an application for enrollment in the program that includes:

(1) employer verification of the applicant's employment as a nurse in Texas for at least one service period and the person's current employment in Texas as of the date of the application, including the average number of hours per week the applicant worked during the last service period;

(2) documentation that the applicant is licensed by the Texas Board of Nursing as a Licensed Vocational Nurse, Registered Nurse, or Advanced Practice Nurse, with no restrictions; and

(3) a statement of the total amount of principal, accrued interest, fees, and other charges due on unpaid eligible education loans, as described in §23.2(c) of this chapter (relating to Eligible Lender and Eligible Education Loan), obtained for enrollment in a nursing degree or certificate program at:

(A) an institution of higher education, as defined in Texas Education Code, §61.003;

(B) a private or independent institution of higher education, as defined in Texas Education Code §61.003; or

(C) a college or university described by Texas Education Code, §61.651(1)(C); and

(4) any other document deemed necessary by the Coordinating Board.

§23.303. Applicant Ranking Priorities.

(a) If insufficient funds are available in a year to offer loan repayment assistance to all eligible applicants, then applications shall be ranked using priority determinations in the following order.

(1) The Coordinating Board may choose to post an application deadline, which will be posted on the program web page. In such a case, applications received prior to the application deadline will be given priority over applications received after the application deadline.

(2) Renewal applications shall be given priority over initial-year applications, unless a break in service period has occurred, in which case the application would be treated as an initial-year application for priority ranking.

(3) Applications for those employed in rural counties shall be given priority over those who are not employed in rural counties. In the case of applicants serving at multiple sites, an applicant who spends at least 75 percent of their work hours serving in rural counties is considered to be working in a rural county.

(4) Applications shall be ranked based on the Primary Care HPSA score in which the employer is located. Applications with the highest Primary Care HPSA score shall be given priority over applications with the next highest Primary Care HPSA score, and so on.

(5) Applications from Registered Nurses shall be given priority over applications from Licensed Vocational Nurses, who shall be given priority over applications from Advanced Practice Nurses.

(6) Applications shall be ranked based on the date of application submission. Applications from the group with the earliest application submission date shall be given priority over applications from the next earliest application submission date, and so on.

(b) In determining the Primary Care HPSA score, the following shall apply:

(1) If an applicant works for an agency located in a Primary Care HPSA that has satellite clinics and the nurse works in more than one of the clinics, the highest Primary Care HPSA score where the applicant works shall apply.

(2) If an applicant travels to make home visits, the applicant's agency base location and its Primary Care HPSA score shall apply.

(3) If an applicant works for different employers in multiple Primary Care HPSAs having different degrees of shortage, the location having the highest Primary Care HPSA score shall apply.

§23.304. Amount of Repayment Assistance.

Eligible education loans, as described in §23.2(3) of this chapter (relating to Eligible Lender and Eligible Education Loan), of eligible nurses shall be repaid under the following conditions:

(1) Taking into consideration the amount of available funding and the number of eligible applicants, the Coordinating Board will determine annual loan repayment assistance amounts for:

(A) Licensed Vocational Nurses;

(B) Registered Nurses; and

(C) Advanced Practice Nurses.

(2) Annual repayment(s) may be made for verified full-time or for verified part-time service. The amount of loan repayment assistance received by a nurse for part-time employment will be calculated by the Coordinating Board based on the proportion of hours worked by the nurse in comparison to the hours worked by a full-time nurse.

§23.305. Limitations.

(a) No more than 10 percent of the total amount of repayment assistance in a fiscal year may be offered to individuals for the repayment of eligible loans for education received at a college or university described by Texas Education Code, §61.651(1)(C).

(b) An individual's loan repayment assistance amount may not exceed the unpaid principal and interest owed on one or more eligible education loans, as defined in §23.2(3) of this chapter (relating to Eligible Lender and Eligible Education Loan).

(c) An individual shall not receive loan repayment assistance from the program for more than three service periods.

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-202401597

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 427-6365



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

The Texas Education Agency (TEA) proposes amendments to §§89.1001, 89.1005, 89.1075, 89.1076, 89.1085, 89.1090, 89.1092, and 89.1094, concerning special education general provisions and clarification of provisions in federal regulations and state law. The proposed amendments would clarify current program practices and requirements, including clarifying existing statutory obligations for school districts to extend their Child Find activities to residential facilities, as well as facilities under the direction and control of the Texas Juvenile Justice Department and the Texas Department of Criminal Justice when those facilities are located in the district's boundaries; reflecting the qualifications that instructional arrangements and settings listed in Texas Education Code (TEC), §48.102, must meet in order to be funded through the state special education allotment; adding an existing federal requirement for school districts to develop policies and procedures that implement the established state policies and procedures and an existing statutory requirement reminding transition and employment designees to complete required training; specifying interventions and sanctions that TEA may, or is required to, implement under state and federal law when noncompliance is identified; clarifying when the Texas School for the Blind and Visually Impaired (TSBVI) and the Texas School for the Deaf (TSD) are considered the resident

school district for purposes of §89.1085 and §89.1090; addressing transportation to and from TSBVI and TSD when students are expected to leave the residential campus setting; providing clarity and aligning with current expectations and nonpublic residential placement guidance; and clarifying the phrases "off-campus program" and "off-home campus."

BACKGROUND INFORMATION AND JUSTIFICATION: Section 89.1001 references the scope and applicability of commissioner rules associated with special education and related services. The proposed amendment to subsection (a) would align with current terminology and practices of federal law and add a reference to the State Board for Educator Certification.

The proposed amendment to §89.1001(c) would clarify existing statutory obligations for school districts to extend their Child Find activities to residential facilities, as well as facilities under the direction and control of the Texas Juvenile Justice Department and the Texas Department of Criminal Justice when those facilities are located in the district's boundaries.

Section 89.1005 reflects the qualifications that instructional arrangements and settings listed in TEC, §48.102, must meet in order to be funded through the state special education allotment.

Proposed new §89.1005(a) would identify definitions for terms used in the rule to provide clarity.

The proposed amendment to re-lettered §89.1005(c) would align with the wording in §89.1075, which is referenced in the subsection.

Proposed new §89.1005(d) would clarify the alignment between the rule and the Student Attendance Accounting Handbook adopted by reference in 19 TAC §129.1025.

Re-lettered §89.1005(e) would be amended to revise the descriptions of the instructional arrangements/settings listed in the rule. Following is a summary of the proposed changes to those descriptions.

Terminology in the mainstream description would be updated to the term "general education," which is more commonly used than "regular education." A statement would also be added that only monitoring a student's progress does not equate to a special education service.

The homebound description would be revised to adjust for more current circumstances in which homebound instruction might be required, and clarification would be added about the instances when children ages three through five could be classified under this setting. Information about serving infants and toddlers who have a visual impairment (VI), who are deaf or hard of hearing (DHH), or who are deafblind (DB) would be deleted and added to re-lettered subsection (f).

The hospital class setting would be revised for clarity based on questions received from stakeholders.

The speech therapy setting would be modified to clarify the current structures laid out in the Student Attendance Accounting Handbook.

Both resource room/services and self-contained would be aligned to reflect the differentiation in codes that the current Student Attendance Accounting Handbook uses.

Based on numerous questions from stakeholders, clarification would be added about when an instructional arrangement would be considered the off-home campus setting.

The nonpublic day school instructional arrangement/setting would be clarified to reference the alignment with §89.1094.

The vocational adjustment class description would be amended to better align with current practices.

Clarification about the residential care and treatment facility setting would be added based on requests from stakeholders.

The state school description would be modified to use the terminology of the TEC.

Re-lettered subsection (f) would be amended to clarify instances when a child from birth through age two who has a VI, is DHH, or is DB is entitled to enrollment in school districts and funding through the state special education allotment.

Additional edits would be made throughout §89.1005 to align with current terminology and for conciseness.

Section 89.1075 references general program requirements and local district procedures. The proposed changes would add an existing federal requirement for school districts to develop policies and procedures that implement the established state policies and procedures, a provision about prior written notice that is currently located in 19 TAC §89.1050, and an existing statutory requirement reminding transition and employment designees to complete required training. Additional revisions would be made for clarity and alignment with current law.

Section 89.1076 is related to interventions and sanctions that TEA may, or is required to, implement under state and federal law when noncompliance is identified. The proposed amendment would align terminology throughout the rule as well as add a federally required intervention to place specific conditions on funds or redirect funds.

Section 89.1085 addresses referrals to TSBVI and TSD. The proposed amendment would clarify that if a student is enrolled in an open-enrollment charter school and the student's ARD committee places a student in TSBVI or TSD, that school becomes the resident school district for purposes of §89.1085 and §89.1090.

Section 89.1090 references transportation to and from TSBVI and TSD when students are expected to leave the residential campus setting. The proposed amendment would clarify when a resident district would be required to cover transportation costs for a student placed at TSBVI or TSD. Transportation costs for students in other residential settings when placed by a student's ARD committee would likely be covered in those contracts for services. The section title would be modified to clarify that the rule pertains only to placements at TSBVI and TSD.

Section 89.1092 describes the requirements when a school district places a student in a residential placement for the provision of a free appropriate public education (FAPE) to a student. The proposed amendment would provide clarity and align with current expectations and nonpublic residential placement guidance. In addition, the proposed changes would include adding definitions for school district, nonpublic residential program, and nonpublic residential program provider; listing the requirements related to any nonpublic residential placement, including school district responsibilities prior to placement and during such placement; clarifying language related to notification; and expanding information on the approval process. The section title would also be modified to clarify the purpose of the rule.

Section 89.1094 refers to placement in off-campus programs. Based on requests for clarification from stakeholders related to

the phrases "off-campus program" and "off-home campus" as described in §89.1005, the section title would be modified to clarify these types of placements. The new title would be "Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE)," which would align with the wording in §89.1092 regarding nonpublic residential placement.

The proposed amendment to §89.1094(a) would address placements at nonpublic day schools; a county system operating under former TEC, §11.301; a regional education service center; or any other public or private entity with which a school district enters a contract for the provision of special education services in a facility not operated by a school district.

The placement requirements listed in §89.1094(b) would be amended for clarity and to reference criminal background checks and the requirement for the provider to develop policies, procedures, and operating guidelines to ensure the student maintains the same rights as other public school students while in this placement.

The proposed amendment to §89.1094(c), regarding notification, would provide clarity and alignment.

Proposed new §89.1094(d), regarding the approval process for a nonpublic residential program, would clarify TEA's authority to place conditions on a program provider, not reapprove an approval, or withdraw an approval from a program provider.

The proposed amendment to §89.1094(e), related to funding procedures, would provide clarity and reflect that contracts must not begin prior to August 1 and must not extend past July 31 of the following year.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, 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 expand existing regulations by increasing the required number of times a school district must contact residential facilities within the district's boundaries to conduct Child Find activities. It would also modify instructional arrangement descriptions and add specific descriptions for instructional arrangements associated with children from birth through

age two. In addition, it would add that open-enrollment charter schools can be considered a resident district for purposes of placement and transportation to the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, and a change to transportation responsibilities would require a resident district to cover transportation during any period at which all students are supposed to leave the residential campus. Likewise, proposed amendments would explicitly clarify requirements regarding the approval, contracting, and compliance monitoring processes when students with disabilities require a nonpublic day or residential placement, including requirements regarding criminal background checks, onsite visits, written verification that certain health and safety standards are met, and the requirement for the provider to develop policies, procedures, and operating guidelines to ensure the student maintains the same rights as other public school students while in this placement. It would also add a contract length requirement for these placements.

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 create a new regulation; would not limit or repeal 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: Mr. Porter has determined that for each year of the first five years the proposal is in effect, the following public benefits are anticipated as a result of enforcing the proposal. The proposed amendment to §89.1001 would align with current terminology and practices of federal law. It would clarify existing statutory obligations for school districts to extend their Child Find activities to residential facilities, as well as facilities under the direction and control of the Texas Juvenile Justice Department and the Texas Department of Criminal Justice when those facilities are in the district's boundaries.

The proposed amendment to §89.1005 would modify qualifications that instructional arrangements and settings listed in TEC, §48.102, must meet to be funded through the state special education allotment. The proposed amendment would also include term changes to provide clarity and alignment between this rule and the Student Attendance Accounting Handbook and incorporate current practices based on requests from stakeholders.

The proposed amendment to §89.1075 would include for practical reference the addition of an existing requirement that school districts develop policies and procedures that implement the established state policies and procedures and the statutory requirements for a district's transition and employment designee. The proposed amendment would also add a provision about prior written notice that is currently located in 19 TAC §89.1050 to this more appropriate rule and make revisions for clarity and alignment with current law.

The proposed amendment to §89.1076 would revise the criteria for interventions and sanctions that TEA is required to implement under state and federal law when noncompliance is identified. The criteria includes steps related to the appointment of a monitor and a conservator/management team and adds reference to the possibility of a federally required intervention to place specific conditions on funds.

The proposed amendment to §89.1085 would provide clarification that if a student is enrolled in an open-enrollment charter school and the student's ARD committee places a student in TS-BVI or TSD, that school becomes the resident school district for purposes of §89.1085 and §89.1090.

The proposed amendment to §89.1090 would provide clarification as to when a resident district would be required to cover transportation costs for a student placed at TSBVI or TSD.

The proposed amendment to §89.1092 would clarify and align the rule with current expectations, outline nonpublic residential placement guidance, and better describe the rule's purpose.

The proposed amendment to §89.1094 would clarify long-standing requests from stakeholders to differentiate the phrase "off-campus program" from "off-home campus" as described in §89.1005. A proposed title change would align with the wording in the nonresidential placement rule in §89.1092.

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.

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 May 3, 2024, and ends June 3, 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/). Public hearings will be conducted to solicit testimony and input on the proposed amendments at 9:30 a.m. on May 15 and 16, 2024. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/98675068834>. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to sped@tea.texas.gov. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Derek Hollingsworth, Special Populations Policy, Reporting, and Technical Assistance, Derek.Hollingsworth@tea.texas.gov.

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 1. GENERAL PROVISIONS

19 TAC §89.1001, §89.1005

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.008, which establishes contracts for services for residential placement; TEC, §29.010, which requires the agency to develop

and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.013, which requires the agency to establish procedures and criteria for the distribution of funds to school districts for noneducational community-based support services to certain students with disabilities to ensure they receive a free appropriate education in the least restrictive environment; TEC, §29.014, which establishes criteria for school districts that provide education solely to students confined to or educated in hospitals; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.003, which establishes requirements for support of students enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf; TEC, §30.005, which establishes a memorandum of understanding between the Texas Education Agency and the Texas School for the Blind and Visually Impaired; TEC, §30.021, which establishes a school for the blind and visually impaired in Texas; TEC, §30.051, which establishes the purpose for Texas School for the Deaf; TEC, §30.057, which establishes admission criteria for eligible students with disabilities to the Texas School for the Deaf; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §30.087, which establishes criteria for funding the cost of educating students who are deaf or hard of hearing; TEC, §39A.001, which establishes grounds for commissioner action; TEC, §39A.002, which establishes actions that the commissioner of education is authorized to take if a school district is subject to action under §39A.001; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.101, which defines the requirement for all children residing in the state between ages of 3-21 to have a free appropriate public education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR §300.115, which establishes criteria for a continuum of alternative placements; 34 CFR §300.116, which establishes criteria for determining the educational placement of a child with a disability; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.201, which establishes the requirement for local education agencies to have policies, procedures, and programs that are consistent with the state policies and procedures; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, 29.003, 29.005, 29.008, 29.010, 29.012, 29.013, 29.014, 30.002, 30.003, 30.005, 30.021, 30.051, 30.057, 30.083, 30.087, 39A.001, 39A.002, and 48.102, and 34 Code of Federal Regulations, §§300.8, 300.101, 300.111, 300.114, 300.115, 300.116, 300.121, 300.124, 300.129, 300.147, 300.149, 300.201, 300.500, and 300.600.

§89.1001. Scope and Applicability.

(a) Special education and related services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education, State Board for Educator Certification, [(SBOE)] and commissioner of education, and the [State Plan Under Part B of the] Individuals with Disabilities Education Act (IDEA).

(b) Education programs under the direction and control of the Texas Juvenile Justice Department, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.

(c) Residential facility refers to a facility defined by Texas Education Code, §5.001(8), which includes any person, facility, or entity that provides 24-hour custody or care of a person residing in the facility for detention, treatment, foster care, or any noneducational purpose. A school district must initiate Child Find outreach activities to locate, evaluate, and identify eligible students in any residential facility within its boundaries, including facilities or schools under the direction and control of the Texas Juvenile Justice Department or Texas Department of Criminal Justice. If a student is eligible, a school district must provide educational services to the student unless, after contacting the facility to offer educational services to eligible students with disabilities, the facility can demonstrate that educational services are provided by another educational program provider, such as a charter school, approved nonpublic school, or a facility operated private school. However, the district shall, at minimum, contact the facility at least twice per year to conduct Child Find activities and to offer services to eligible students with disabilities.

~~[(e) A school district having a residential facility that is licensed by appropriate state agencies and located within the district's boundaries must provide special education and related services to eligible students residing in the facility. If, after contacting the facility to offer services to eligible students with disabilities, the district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the district is not required to provide services. However, the district shall annually contact the facility to offer services to eligible students with disabilities.]~~

§89.1005. Instructional Arrangements and Settings.

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

(1) Instructional arrangement/setting. Instructional arrangement/setting refers to the arrangement listed in Texas Education Code (TEC), §48.102, and the weight assigned to it that is used to generate funds from the state special education allotment.

(2) Instructional day. Instructional day has the meaning assigned to it in §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

(b) [(a)] Each [local] school district must [shall be able to] provide special education and related services [with special education personnel] to eligible students with disabilities in order to meet the unique [special] needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118, and state law.

(c) [(b)] Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures), for the purpose of determining the student's instructional arrangement/setting, a student receiving special education and related services must have available an instructional day commensurate with that of students who are not receiving special education and related services. A student's admission, review, and dismissal (ARD) committee shall determine the length of the student's instructional day and will determine the student's instructional arrangement/setting based on the percentage of the student's instructional day that the student receives special education and related services in a setting other than general education [the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee].

(d) While this section uses the names of the instructional arrangements/settings as they are described in TEC, §48.102, there may be additional instructional arrangement/setting codes that are created by the Texas Education Agency (TEA) within the student attendance accounting requirements defined in §129.1025 of this title. While the codes may be titled differently, each will align to an arrangement/setting as described in this section and in TEC, §48.102.

(e) [(e)] Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education and related services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the general education [regular] classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services to the student and/or the student's general education [regular] classroom teacher(s) necessary to enrich the general education [regular] classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, educational aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her general education [regular] classroom teacher(s) regarding the student's progress in general [regular] education classes, staff development, and reduction of ratio of students to instructional staff. Monitoring student progress in and of itself is not a special education service; this cannot be listed as the only specially designed instruction documented in a student's IEP.

(2) Homebound. This instructional arrangement/setting, also referred to as home-based instruction, is for providing special education and related services to students who are served at their home for the following reasons [or hospital bedside] .

(A) Medical reasons. Homebound instruction is used for a student whose ARD committee has received medical documentation from a physician licensed to practice in the United States that the student is expected to incur full-day absences from school for a

minimum of four weeks for medical reasons, which could include psychological disorders, and the ARD committee has determined that this is the most appropriate placement for the student. The weeks do not have to be consecutive. For the ARD committee to approve this placement, the committee will review documentation related to anticipated periods of student confinement to the home, as well as whether the student is determined to be chronically ill or any other unique medical circumstances that would require this placement in order to provide a free appropriate public education (FAPE) to the student. Documentation by a physician does not guarantee the placement of a student in this instructional arrangement/setting, as the student's ARD committee shall determine whether the placement is necessary, and, if so, will determine the amount of services to be provided to the student at home in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (c) of this section.

[(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.]

(B) Children ages three through five years of age. Home-based instruction may be used for children ages three through five when determined appropriate by the child's ARD committee and as documented in the student's IEP. While this setting would generate the same weight as the homebound instructional arrangement/setting, the data on this setting may be collected differently than the medical homebound arrangement/setting.

[(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee.]

(C) Students confined to or educated in hospitals. This instructional arrangement/setting also applies to school districts described in TEC [Texas Education Code], §29.014.

(3) Hospital class. This instructional arrangement/setting is for providing special education and related services by school district personnel: [instruction in a classroom,]

(A) at a hospital or other medical facility; [] or

(B) at a residential care and treatment facility not operated by the school district. If a student [the students] residing in the facility is [are] provided special education and related services at a school district campus but the student's parent is not a school district resident, the student is considered to be in the residential care and treatment facility instructional arrangement/setting. If a student residing in the facility is provided special education and related services at a school district campus and the parent, including a surrogate parent, is a school district resident, the student's instructional arrangement/setting would be assigned based on the services that are provided at the campus on the same basis as a resident student residing with his or her parents [outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class] .

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a general [regular] education classroom or in a setting other than a general [regular] education classroom.

(A) When the only special education [or related] service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement. If a student's IEP indicates that a special education teacher is involved in the implementation of the student's IEP but there is no indication of how that teacher provides a special education service, the student is in the speech therapy instructional arrangement/setting.

(B) When a student receives speech therapy and a related service but no other special education service, the student is in the speech therapy instructional arrangement/setting.

(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than general [regular] education for less than 50% of the regular school day. For funding purposes, this will be differentiated between the provision of special education and related services to a student in a setting other than general education for less than 21% of the instructional day and special education and related services provided to a student in a setting other than general education for at least 21% of the instructional day but less than 50% of the instructional day.

(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a setting other than general education [self-contained program] for 50% or more of the regular school day on a regular school campus. For funding purposes, mild/moderate will be considered at least 50% but no more than 60% of the student's instructional day, and severe will be considered more than 60% of the student's instructional day.

(7) Off-home campus. This instructional arrangement/setting is for providing special education and related services to the following : [; including, but not limited to, students]

(A) a student at South Texas Independent School District or [and] Windham School District ; [;]

(B) [(A)] a student who is one of a group of students from one or more [than one] school districts [district] served in a single location in another school district when a FAPE [free appropriate public education] is not available in the [respective] sending district;

(C) [(B)] a student in a community setting, facility, or environment operated by a school district [(not operated by a school district)] that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives ; [; including]

(D) a student in a community setting or environment not operated by a school district that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals, with regularly scheduled instruction or direct involvement provided by school district personnel ; [or]

(E) a student in a facility not operated by a school district [(other than a nonpublic day school)] with instruction provided by school district personnel; or

(F) [(C)] a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.

(8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school when the school district is unable to provide a FAPE for the student. This instructional arrangement/setting includes the providers listed in §89.1094 of this title (relating to Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of FAPE) [for special education].

(9) Vocational adjustment class [class/program] . Although referred to as a class, this [This] instructional arrangement/setting is a support program for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's transition plan, as documented in the student's IEP, and may include special education services received in career and technical education work-based learning programs [individual transition goals and only after the school district's career and technical education classes have been considered and determined inappropriate for the student].

(10) Residential care and treatment facility (not school district resident). For purposes of this section, residential care and treatment facility refers to a facility at which a student with a disability currently resides, who was not placed at the facility by the student's ARD committee, and whose parent or guardian does not reside in the district providing educational services to the student. This instructional arrangement/setting is for providing special education [instruction] and related services to a student on a school district campus who resides in a residential [students who reside in] care and treatment facility [facilities] and whose parents do not reside within the boundaries of the school district that is providing educational services to the student [students]. [In order to be considered in this arrangement, the services must be provided on a school district campus.] If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement , or if the student resides at a state-supported living center, the instructional arrangement will be considered the state school arrangement/setting. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

(11) State school [State-supported living center] . This instructional arrangement/setting is for providing special education and related services to a student who resides at a state-supported living center when the services are provided at the state-supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

(f) [(d)] Children from birth through the age of two with visual impairments (VI), who are deaf or hard of hearing (DHH), or who are deaf blind (DB) must be enrolled at the parent's request by a school district when the district becomes aware of a child needing services. The appropriate instructional arrangement for students from birth through the age of two with VI, DHH, or DB [visual impairments or who are deaf or hard of hearing] shall be determined in accordance with the individualized family services plan [IFSP], current attendance guidelines, and the agreement memorandum between TEA [the Texas Education Agency (TEA)] and Texas Health and Human Services Commission Early Childhood Intervention (ECI) Services. However, the following guidelines shall apply.

(1) A home-based instructional arrangement/setting is used when the child receives services at home. This arrangement/setting would generate the same weight as the homebound instructional arrangement/setting, and average daily attendance (ADA) funding will depend on the number of hours served per week.

(2) A center-based instructional arrangement/setting is used when the child receives services in a day care center, rehabilitation center, or other school/facility contracted with the Health and Human Services Commission (HHSC) as an ECI provider/program. This arrangement/setting would generate the same weight as the self-contained, severe instructional arrangement/setting, and ADA funding will depend on the number of hours served per week.

(3) Funding may only be claimed if the district is involved in the provision of the ECI and other support services for the child. Otherwise, the child would be enrolled and indicated as not in membership for purposes of funding. If the district is contracted with HHSC as an ECI provider, funding would be generated under that contract.

(g) [(e)] For nonpublic day and residential [school] placements, the school district must comply with the requirements under §89.1092 of this title (relating to Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE)) or §89.1094 of this title, as appropriate [or shared service arrangement shall submit information to TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law].

(h) [(f)] Other program options that may be considered for the delivery of special education and related services to a student may include the following:

- (1) contracts with other school districts; and
- (2) other program options as approved by TEA.

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 22, 2024.

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Texas Education Agency

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



DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

19 TAC §§89.1075, 89.1076, 89.1085, 89.1090, 89.1092, 89.1094

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the

agency to develop eligibility criteria for students receiving special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.008, which establishes contracts for services for residential placement; TEC, §29.010, which requires the agency to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.013, which requires the agency to establish procedures and criteria for the distribution of funds to school districts for noneducational community-based support services to certain students with disabilities to ensure they receive a free appropriate education in the least restrictive environment; TEC, §29.014, which establishes criteria for school districts that provide education solely to students confined to or educated in hospitals; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.003, which establishes requirements for support of students enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf; TEC, §30.005, which establishes a memorandum of understanding between the Texas Education Agency and the Texas School for the Blind and Visually Impaired; TEC, §30.021, which establishes a school for the blind and visually impaired in Texas; TEC, §30.051, which establishes the purpose for Texas School for the Deaf; TEC, §30.057, which establishes admission criteria for eligible students with disabilities to the Texas School for the Deaf; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §30.087, which establishes criteria for funding the cost of educating students who are deaf or hard of hearing; TEC, §39A.001, which establishes grounds for commissioner action; TEC, §39A.002, which establishes actions that the commissioner of education is authorized to take if a school district is subject to action under §39A.001; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.101, which defines the requirement for all children residing in the state between ages of 3-21 to have a free appropriate public education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR §300.115, which establishes criteria for a continuum of alternative placements; 34 CFR §300.116, which establishes criteria for determining the educational placement of a child with a disability; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.201, which establishes the requirement for local education agencies to have policies, procedures, and pro-

grams that are consistent with the state policies and procedures; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, 29.003, 29.005, 29.008, 29.010, 29.012, 29.013, 29.014, 30.002, 30.003, 30.005, 30.021, 30.051, 30.057, 30.083, 30.087, 39A.001, 39A.002, and 48.102, and 34 Code of Federal Regulations, §§300.8, 300.101, 300.111, 300.114, 300.115, 300.116, 300.121, 300.124, 300.129, 300.147, 300.149, 300.201, 300.500, and 300.600.

§89.1075. *General Program Requirements and Local District Procedures.*

(a) Each school district must maintain an eligibility folder for each student receiving special education and related services, in addition to the student's cumulative record. The eligibility folder must include, but will ~~need~~ not be limited to, ~~2~~ copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs) and supporting data.

(b) Each school district must develop policies, procedures, programs, and practices that are consistent with the state's established policies, procedures, programs, and services to implement the Individuals with Disabilities Education Act.

(c) ~~[(b)]~~ For school districts providing special education services to students with visual impairments, there must be written procedures as required in ~~the~~ Texas Education Code (TEC), §30.002(c)(10).

(d) ~~[(e)]~~ Each school district must ensure that each teacher who provides instruction to a student with disabilities:

- (1) has access to relevant sections of the student's current IEP;
- (2) is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and
- (3) has an opportunity to request assistance regarding implementation of the student's IEP.

(e) ~~[(d)]~~ Each school district must develop a process to be used by a teacher who instructs a student with a disability in a general education ~~regular~~ classroom setting:

- (1) to request a review of the student's IEP;
- (2) to provide input in the development of the student's IEP;
- (3) that provides for a timely district response to the teacher's request; and
- (4) that provides for notification to the student's parent or legal guardian of that response.

(f) ~~[(e)]~~ Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.

(g) ~~[(f)]~~ School districts that contract for services from nonpublic ~~non-public~~ day schools or residential placements must

do so in accordance with 34 Code of Federal Regulations (CFR), §300.147, and §89.1092 and §89.1094 of this title (relating to Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE) and Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE)) ~~[Students Receiving Special Education and Related Services in an Off-Campus Program]~~.

(h) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(i) The transition and employment designee required of each school district or shared services arrangement by TEC, §29.011, must complete the required training as developed by the commissioner of education and provide information about transition requirements and coordination among parents, students, and appropriate state agencies to ensure that school staff can communicate and collaborate effectively.

§89.1076. *Interventions and Sanctions.*

The Texas Education Agency (TEA) must establish and implement a system of interventions and sanctions~~]~~ in accordance with the Individuals with Disabilities Education Act, 20 United States Code, §§1400 et seq. ; ~~]~~ Texas Education Code (TEC), §29.010; ~~]~~ and TEC, Chapter 39; and TEC, Chapter 39A, as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services. ~~In accordance with TEC, §39.102, the~~ TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

- (1) onsite ~~on-site~~ review for failure to meet program or compliance requirements;
- (2) required program or compliance audits ~~fiscal audit of specific programs and/or of the district]~~, paid for by the district;
- (3) required submission of corrective actions, including, but not limited to, compensatory services, paid for by the district;
- (4) required technical assistance and support, paid for by the district;
- (5) public release of program or compliance review or audit findings;
- (6) special investigation and/or follow-up verification visits;
- (7) required public hearing conducted by the local school board of trustees;
- (8) assignment of a [special purpose] monitor, conservator, or management team, as these terms are defined in TEC, Chapter 39A, paid for by the district;
- (9) hearing before the commissioner of education or designee;
- (10) placing specific conditions on grant funds, reduction in payment, required redirection of funds, or withholding of funds;
- (11) lowering of the special education monitoring/compliance status and/or the accreditation rating of the district; and/or

(12) other authorized interventions and sanctions as determined by the commissioner.

§89.1085. *Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services.*

(a) A student's admission, review, and dismissal (ARD) committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with the provisions of 34 Code of Federal Regulations (CFR), Part 300;² [;] the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057;² [;] and the applicable rules of this subchapter.

(b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq.;² [;] 34 CFR, Part 300;² [;] state statutes;² [;] and rules of the State Board of Education (SBOE),² the State Board for Educator Certification (SBEC), and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1400, et seq.

(c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.

(1) For each student, the resident school district shall list those services in the student's individualized education program (IEP) which the TSBVI or the TSD can appropriately provide.

(2) The district may make an onsite [on-site] visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.

(3) For each student, the resident school district shall include in the student's IEP the criteria and estimated timelines [time lines] for returning the student to the resident school district.

(d) In addition to the provisions of subsections (a)-(c) of this section, and as provided in TEC, §30.057, the TSD shall provide services in accordance with TEC, §30.051, to any eligible student with a disability for whom the TSD is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year if the referring person chooses the TSD as the appropriate placement for the student rather than placement in the student's resident school district or regional program determined by the student's ARD committee. For students placed at the TSD pursuant to this subsection, the TSD shall be responsible for assuring that a FAPE is provided to the student at the TSD, in accordance with IDEA, 20 USC, §§1400, et seq.;² [;] 34 CFR, Part 300;² [;] state statutes;² [;] and rules of the SBOE, the SBEC, and the commissioner [of education].

(e) For purposes of this section and §89.1090 of this title (relating to Transportation of Students Placed in [~~a Residential Setting, Including~~] the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf), the "resident school district" is the school district in which the student would be enrolled under TEC, §25.001, if the student were not placed at the TSBVI or the TSD. If the student is enrolled in an open-enrollment charter school at the time of placement in the TSBVI or TSD, then the open-enrollment charter school is considered the resident school district for purposes of this section and §89.1090 of this title, since the student's IEP will include the criteria and estimated timelines for returning the student to that school.

§89.1090. *Transportation of Students Placed in [~~a Residential Setting, Including~~] the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.*

(a) For each student placed [~~in a residential setting~~] by the student's admission, review, and dismissal (ARD) committee[; ~~including these students placed~~] in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf that includes placement at the residential campus, the resident school district, as defined in §89.1085 of this title (relating to Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services), shall be responsible for transportation from the campus as well as the return to campus [~~at the beginning and end of the term and for regularly scheduled school holidays~~] when all students are expected to leave the residential campus. This includes weekends, holiday breaks, and beginning and end of school terms, when all students are expected to leave the campus because the school will not be providing services.

(b) The resident school district is not responsible for transportation costs for students placed in these [~~residential~~] settings by their parents.

(c) Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged by the school using the most cost efficient means.

(d) When it is necessary for the safety of the student, as determined by the ARD committee and as documented in the student's individualized education program, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided.

(e) The resident school district and the school [~~residential facility~~] shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

§89.1092. *Contracting for Nonpublic Residential [~~Educational~~] Placements for the Provision of a Free Appropriate Public Education (FAPE) [~~Students with Disabilities~~].*

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

(1) School district--The definition of a school district includes independent school districts established under Texas Education Code (TEC), Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(2) Nonpublic residential program--A nonpublic residential program includes the provision of special education and related services to one or more Texas public school students by someone other than school district personnel at a facility not operated by a school district. A student placed in this program has been determined by his or her admission, review, and dismissal (ARD) committee to require a residential placement in order to facilitate the student's attainment of

reasonable educational progress and to provide the student a free appropriate public education (FAPE). It is not a placement intended primarily for the provision of medical care and treatment.

(3) Nonpublic residential program provider--A nonpublic residential program provider is a public or private entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is unable to provide those services and maintains current and valid licensure by the Texas Department of Family and Protective Services, the Texas Health and Human Services Commission, or another appropriate state agency. A provider that a school district contracts with only for the provision of related services is not subject to the requirements of this section.

(b) [(a)] Nonpublic residential program requirements [Residential placement]. A school district may contract with a nonpublic [for] residential program provider [placement of a student] when the student's ARD [admission, review, and dismissal (ARD)] committee determines that a residential placement is necessary in order for the student to receive a FAPE in accordance with the requirements of this section [free appropriate public education (FAPE)].

(1) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic residential program, the ARD committee shall initiate and conduct a meeting to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in this chapter'.

[(1) A school district may contract for a residential placement of a student only with either public or private residential facilities that maintain current and valid licensure by the Texas Department of Aging and Disability Services, Texas Department of Family and Protective Services, or Department of State Health Services for the particular disabling condition and age of the student. A school district may contract for an out-of-state residential placement in accordance with the provisions of subsection (d)(3) of this section.]

(2) Before a student's ARD committee places a student with a disability in, or refers a student with a disability to, a nonpublic residential program, the district shall initiate and conduct an in-person, onsite review of the program provider's facility and program to ensure that the program is appropriate for meeting the student's educational needs.

[(2) Subject to subsections (e) and (d) of this section, the district may contract with a residential facility to provide some or all of the special education services listed in the contracted student's individualized education program (IEP). If the facility provides any educational services listed in the student's IEP, the facility's education program must be approved by the commissioner of education in accordance with subsection (d) of this section.]

(3) The appropriateness of the placement and the facility shall be documented in the IEP annually. The student's ARD committee may only recommend a nonpublic residential program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the nonpublic residential program will provide.

(B) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a pro-

jected date for the student's return to the school district and document this information in the IEP.

(C) The school district shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by the Texas Education Agency (TEA), to:

(i) verify that the program provider can and will provide the services listed in the student's IEP that the provider has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements;

(iii) verify that the program provider's staff who work with the student have been subject to criminal background checks (to include fingerprinting) that meet the standards applicable to public school employees;

(iv) verify that the program provider, in conjunction with the school district, has developed written policies, procedures, and operating guidelines that set forth necessary standards and steps to be followed to ensure the student maintains the same rights as other public school students, including when the student is subject to emergency behavioral interventions or disciplinary actions; and

(v) verify that the educational program provided at the facility is appropriate and the placement is the least restrictive environment for the student.

[(3) A school district that intends to contract for residential placement of a student with a residential facility under this section shall notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process described in subsection (e) of this section.]

[(4) The school district has the following responsibilities when making a residential placement:]

[(A) Before the school district places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner rules.]

[(B) For each student, the services that the school district is unable to provide and that the facility will provide shall be listed in the student's IEP.]

[(C) For each student, the ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school district.]

[(D) The appropriateness of the facility for each student residentially placed shall be documented in the IEP. General screening by a regional education service center is not sufficient to meet the requirements of this subsection.]

[(E) The school district shall make one announced initial visit and two subsequent onsite visits annually, one announced and one unannounced, to verify that the residential facility can and will provide the services listed in the student's IEP that the facility has agreed to provide to the student.]

[(F) For each student placed in a residential facility (both initial and continuing placements), the school district shall verify, during the initial residential placement ARD committee meeting and each subsequent annual ARD committee meeting, that:]

~~[(i)]~~ the facility meets minimum standards for health and safety;

~~[(ii)]~~ residential placement is needed and is documented in the IEP; and]

~~[(iii)]~~ the educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the student.]

(4) ~~[(G)]~~ The placement of more than one student in the same ~~[residential]~~ facility may be considered in the same onsite visit to the [a] facility. However ~~[: however]~~, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student.

(5) ~~[(H)]~~ When a student who is ~~[residentially]~~ placed by a school district in a nonpublic residential program changes his or her residence to another Texas school district and the student continues in the contracted placement, the school district that negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

(c) ~~[(b)]~~ Notification. Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in a nonpublic residential [education] program, a school district must electronically submit to TEA [the Texas Education Agency (TEA)] notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.

(1) If the nonpublic residential [education] program provider is on the commissioner's list of approved providers ~~[residential education programs]~~, TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, TEA will notify the school district whether federal or state funds for the ~~[residential education]~~ program placement are approved. If TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the nonpublic residential [education] program provider is not on the commissioner's list of approved providers ~~[residential education programs]~~, TEA will begin the approval procedures described in subsection (d) ~~[(d)(1)]~~ of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If a nonpublic residential [education] program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The ~~[residential education]~~ program provider serving the student is not required to go through the approval procedures described in subsection (d) ~~[(d)(1)]~~ of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the ~~[residential education]~~ program, the ~~[residential education]~~ program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers ~~[residential programs]~~.

(d) Approval of a nonpublic residential program. Nonpublic residential program providers must have their educational programs approved for contracting purposes by the commissioner. Approvals and reapprovals will only be considered for those providers that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. Reapproval can be for one, two, or three years, at the discretion of TEA.

(1) For a program provider to be approved or reapproved, the school district must electronically submit to TEA notice of, and

information regarding, the placement in accordance with submission procedures specified by TEA. TEA shall begin approval procedures and conduct an onsite visit to the provider's facility within 30 calendar days after TEA has been notified by the school district and has received the required submissions as outlined by TEA. Initial approval of the provider shall be for one calendar year.

(2) The program provider may be approved or reapproved only after, at minimum, a programmatic evaluation and a review of personnel qualifications, adequacy of physical plant and equipment, and curriculum content.

(3) TEA may place conditions on the provider to ensure the provision of a FAPE for students who have been placed in a nonpublic residential program during the provider's approval period or during a reapproval process.

(4) If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, a school district must take steps to remove any students currently placed at the provider's facility, or cancel a student's planned placement, as expeditiously as possible.

(5) TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.

(e) ~~[(e)]~~ Criteria for approval [Application approval process]. Requests for approval of state and federal funding for nonpublic residential program placements [residentially placed students] shall be negotiated on an individual student basis through a residential application submitted by the school district to TEA.

(1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:

(A) placement is due primarily to the student's medical problems;

(B) placement is due primarily to problems in the student's home;

(C) district does not have a plan, including criteria and a projected date ~~[timelines and criteria]~~, for the student's return to the local school program;

(D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);

(E) placement is not cost effective when compared with other alternative placements; or

(F) residential facility provides unfundable or unapprovable services.

(2) The ~~[residential]~~ placement, if approved by TEA, shall be funded as follows:

(A) the education cost of nonpublic residential program contracts shall be funded with state funds on the same basis as nonpublic day program [school] contract costs according to TEC, §48.102 [Texas Education Code, §42.151];

(B) related services and residential costs for nonpublic residential program contracts [contract students] shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B~~[]~~ (IDEA-B), formula base planning amount [tentative entitle-

ment] (or an equivalent amount of state and/or local funds) for related services and residential costs. If this is not sufficient to cover all costs of the [residential] placement, the district through the residential application process may receive [additional] IDEA-B discretionary residential funds to pay the balance of the nonpublic residential contract placement(s) costs; and

(C) funds generated by the formula for residential costs described in subparagraph (B) of this paragraph shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the general residential operation intense service [specifie] level of care [in which the student is placed].

(3) Contracts between school districts and approved non-public residential program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.

(4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change in placement or services.

~~[(d) Approval of the education program for facilities that provide educational services. Residential facilities that provide educational services must have their educational programs approved for contracting purposes by the commissioner.]~~

~~[(1) If the education program of a residential facility that is not approved by the commissioner is being considered for a residential placement by a local school district, the school district should notify TEA in writing of its intent to place a student at the facility. TEA shall begin approval procedures and conduct an onsite visit to the facility within 30 calendar days after TEA has been notified by the local school district. Approval of the education program of a residential facility may be for one, two, or three years.]~~

~~[(2) The commissioner shall renew approvals and issue new approvals only for those facilities that have contract students already placed or that have a pending request for residential placement from a school district. This approval does not apply to residential facilities that only provide related services or residential facilities in which the local accredited school district where the facility is located provides the educational program.]~~

~~(f) [(3) Contract for out-of-state nonpublic residential programs. School districts that contract for out-of-state nonpublic residential programs [placement] shall do so in accordance with the rules [for in-state residential placement] in this section, except that the program provider [facility] must be approved by the appropriate agency in the state in which the facility is located rather than by TEA.~~

§89.1094. Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE) [Students Receiving Special Education and Related Services in an Off-Campus Program].

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

(1) Nonpublic or non-district operated day program--A nonpublic or non-district operated day program includes the provision of special education and related services to one or more Texas public school students during school hours by someone other than school district personnel in a facility not operated by a school district. A student placed in this program has been determined by his or her admission, review, and dismissal (ARD) committee to require a day placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a free appropriate public education (FAPE).

(2) Nonpublic or non-district operated day program provider--A nonpublic or non-district operated day program provider is an entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is unable to provide these services. These providers include:

(A) a county system operating under application of former law as provided in Texas Education Code (TEC), §11.301;

(B) a regional education service center established under TEC, Chapter 8;

(C) a nonpublic day school; or

(D) any other public or private entity with which a school district enters into a contract under TEC, §11.157(a), for the provision of special education services in a facility not operated by a school district.

(3) [(+) School district--The definition of a school district includes independent school districts established under TEC [Texas Education Code (TEC)], Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

[(2) Off-campus program--An off-campus program includes special education and related services provided during school hours by someone other than school district personnel in a facility other than a school district campus.]

[(3) Off-campus program provider--An off-campus program provider is an entity that provides the services identified in subsection (a)(2) of this section and includes:]

[(A) a county system operating under application of former law as provided in TEC, §11.301;]

[(B) a regional education service center established under TEC, Chapter 8;]

[(C) a nonpublic day school; or]

[(D) any other public or private entity with which a school district enters into a contract under TEC, §11.157(a), for the provision of special education services in a facility other than a school district campus operated by a school district.]

(b) Nonpublic or non-district operated day program requirements [Off-campus program placement] . A school district may contract with a nonpublic or non-district operated day [an off-campus] program provider [to provide some or all of the special education and related services to a student] in accordance with the requirements in this section.

[(+) Before the school district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct an onsite review to ensure that the off-campus program is appropriate for meeting the student's educational needs.]

(1) [(2)] Before a student's ARD committee [the school district] places a student with a disability in, or refers a student to, a nonpublic or non-district operated day [an off-campus] program, the ARD committee [district] shall initiate and conduct a meeting [of the student's admission, review, and dismissal (ARD) committee] to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in this chapter [Chapter 89 of this title (relating to Commissioner's Rules Concerning Special Education Services)] .

(2) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic or non-district operated day program, the district shall initiate and conduct an onsite, in-person review of the program provider's facility to ensure that the program is appropriate for meeting the student's educational needs.

(3) The appropriateness of the placement and the facility [off-campus program for each student placed] shall be documented in the IEP annually. The student's ARD committee may only recommend a nonpublic or non-district operated day [an off-campus] program [placement for a student] if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the program [facility] will provide.

(B) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date [estimated timelines] for the student's return to the school district and document this information in the IEP.

(C) The school district shall make a minimum of two onsite, in-person [on-site] visits annually, one announced and one unannounced, and more often if directed by TEA, to:

(i) verify that the program provider [off-campus program] can, and will, provide the services listed in the student's IEP that the provider [off-campus program] has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements; [and]

(iii) verify that the program provider's staff who work with the student have been subject to criminal background checks (to include fingerprinting) that meet the standards applicable to public school employees;

(iv) verify that the program provider, in conjunction with the school district, has developed written policies, procedures, and operating guidelines that set forth necessary standards and steps to be followed to ensure the student maintains the same rights as other public school students, including when the student is subject to emergency behavioral interventions or disciplinary actions; and

(v) [(iii)] verify that the educational program provided at the [off-campus program] facility is the least restrictive environment for the student.

(4) The placement of more than one student in the same [off-campus program] facility may be considered in the same onsite [on-site] visit to the [a] facility. However, the IEP of each student must be individually reviewed, and a determination of appropriateness of placement and services must be made for each student.

(c) Notification. Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in a nonpublic or non-district operated day [an off-campus] program, a school district must electronically submit to the Texas Education Agency (TEA) notice of, and information regarding, the placement in accordance with submission procedures specified by [the] TEA.

(1) If the nonpublic or non-district operated day [off-campus] program provider is on the commissioner's list of approved providers, [off-campus programs, the] TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case

of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, [the] TEA will notify the school district whether federal or state funds for the [off-campus] program placement are approved. If [the] TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the nonpublic or non-district day [off-campus] program provider is not on the commissioner's list of approved providers, [off-campus programs, the] TEA will begin the approval procedures described in subsection (d) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If a nonpublic or non-district operated day [an off-campus] program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify [the] TEA of the order within 30 calendar days. The [off-campus] program provider serving the student is not required to go through the approval procedures described in subsection (d) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the [off-campus] program, the [off-campus] program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers [off-campus programs].

(d) Approval of the nonpublic or non-district operated day [off-campus] program. Nonpublic or non-district operated day program providers [Off-campus programs] must have their educational programs approved for contracting purposes by the commissioner. Approvals and reapprovals will only be considered for those providers that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. Reapproval can be for one, two, or three years, at the discretion of TEA.

(1) For a program provider to be approved or reapproved, the school district must electronically submit to [the] TEA notice of, and information regarding, the placement in accordance with submission procedures specified by [the] TEA. [The] TEA shall begin approval procedures and conduct an onsite [on-site] visit to the provider's facility within 30 calendar days after [the] TEA has been notified by the school district and has received the required submissions as outlined by TEA. Initial approval of the provider [off-campus program] shall be for one calendar year.

(2) The [off-campus] program provider may be approved or reapproved only after, at minimum, a programmatic evaluation and a review of personnel qualifications, adequacy of physical plant and equipment, and curriculum content.

(3) TEA may place conditions on the provider to ensure the provision of a FAPE for students who have been placed in a nonpublic or non-district operated day program during the provider's approval period or during a reapproval process.

[(3) The commissioner shall renew approvals and issue new approvals only for those facilities that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. This approval does not apply to facilities that only provide related services. Nor does it apply to facilities when the school district, within which the facility is located, provides the educational program. Re-approval of the off-campus program may be for one, two, or three years at the TEA's discretion.]

(4) If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, a school district must take

steps to remove any students currently placed at the provider's facility, or cancel a student's planned placement, as expeditiously as possible.

(5) TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.

(e) Funding procedures and other requirements. The cost of nonpublic or non-district operated day [off-campus] program placements will be funded according to TEC, §48.102 (Special Education); [; and] §89.1005(e) of this title (relating to Instructional Arrangements and Settings) ; and §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

(1) Contracts between school districts and approved nonpublic or non-district operated day program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31 [off-campus programs must not exceed a school district's fiscal year and shall not begin prior to July 1 of the contracted fiscal year].

(2) Amendments to a contract must be electronically submitted to [the] TEA in accordance with submission procedures specified by [the] TEA no later than 30 calendar days from the change in placement or services [within the school district's fiscal year].

(3) If a student who is placed in a nonpublic or non-district operated day [an off-campus] program by a school district changes his or her residence to another Texas school district during the school year, the school district must notify [the] TEA within 10 calendar days of the date on which the school district ceased contracting with the [off-campus] program provider for the student's placement. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those described in the student's IEP from the previous school district until the new school district either adopts the student's IEP from the previous school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new [off-campus] program placement.

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 22, 2024.

TRD-202401686

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 2, 2024

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



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER A. INVESTIGATIONAL TREATMENTS FOR PATIENTS WITH SEVERE CHRONIC DISEASES

25 TAC §§1.1 - 1.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §1.1, concerning Purpose and Scope; new §1.2, concerning Definitions; new §1.3, concerning Patient Eligibility; and new §1.4, concerning Informed Consent, in new Subchapter A, Investigational Treatments for Patients with Severe Chronic Diseases.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill 773, 88th Legislature, Regular Session, 2023, which added Chapter 490 to the Texas Health and Safety Code to allow access to investigational treatments for patients with severe chronic disease. Texas Health and Safety Code §490.002 requires DSHS to designate medical conditions considered to be severe chronic diseases. Texas Health and Safety Code §490.052 states that DSHS may prescribe a form for the informed consent required by the new chapter.

SECTION-BY-SECTION SUMMARY

Proposed new §1.1, Purpose and Scope, describes the requirements of the subchapter.

Proposed new §1.2, Definitions, provides definitions for words and terms used in the subchapter, including "commissioner;" "department;" "investigational drug, biological product, or device;" and "severe chronic disease."

Proposed new §1.3, Patient Eligibility, establishes eligibility requirements for a patient with a severe chronic disease to access and use an investigational drug, biological product, or device.

Proposed new §1.4, Informed Consent, describes the requirement for an informed consent form. The proposed rule provides the department website to access the written informed consent form created by DSHS, pursuant to Texas Health and Safety Code §490.052(b).

FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined for each year of the first five years the new 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

DSHS has determined during the first five years the new 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 DSHS 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 DSHS;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and

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

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

Christy Havel Burton has also determined there will be no adverse economic impact on small businesses, micro-businesses, or rural communities. The rules do not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not impact a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, Community Health Improvement Division, has determined for each year of the first five years the new rules are in effect, the public benefit will be increased access to investigational drugs, biological products, or devices for patients who have been diagnosed with a severe chronic disease.

Christy Havel Burton has also determined for each year of the first five years the new rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules. The proposed rules only require patients who have been diagnosed with a severe chronic disease and are eligible to access and use an investigational drug, biological product, or device to sign, and for their physician to maintain, a written informed consent form.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Lauren Milius, Health Promotion and Chronic Disease Prevention Section Coordinator/Legislative Liaison, P.O. Box 149347, Mail Code 1965, Austin, Texas 78714-9347 or 1100 West 49th Street, Austin, Texas 78756-3199; or by email to HPCDP-Sprovider@dshs.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 24R029" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which

authorizes the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001. The new sections are also required to comply with Texas Health and Safety Code Chapter 490.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 490 and 1001.

§1.1. Purpose and Scope.

(a) The purpose of this subchapter is to establish the requirements for a patient with a severe chronic disease to access and use an investigational drug, biological product, or device, consistent with Texas Health and Safety Code Chapter 490 and the rules in this subchapter.

(b) Texas Health and Safety Code Chapter 490 and the rules in this subchapter do not require a manufacturer to make available an investigational drug, biological product, or device to an eligible patient but a manufacturer choosing to do so must not receive compensation.

§1.2. Definitions.

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

(1) Commissioner--The commissioner of the Texas Department of State Health Services.

(2) Department--The Texas Department of State Health Services.

(3) Investigational drug, biological product, or device--These words are defined in Texas Health and Safety Code §490.001.

(4) Severe chronic disease--A condition, injury, or illness that:

(A) may be treated;

(B) may not be cured or eliminated; and

(C) entails significant functional impairment or severe

pain.

§1.3. Patient Eligibility.

(a) A patient is eligible to access and use an investigational drug, biological product, or device, consistent with Texas Health and Safety Code §490.001, if:

(1) the patient's treating physician confirms, in writing, the patient has a diagnosis of a severe chronic disease; and

(2) the patient signs a written informed consent as described in §1.4 of this subchapter (relating to Informed Consent).

(b) A treating physician must maintain the written confirmation of a patient's severe chronic disease diagnosis in the medical record of the treating physician in accordance with the applicable records retention requirements.

§1.4. Informed Consent.

(a) Pursuant to Texas Health and Safety Code §490.052(b), the department adopts a written informed consent form for use by physicians and patients receiving an investigational drug, biological product, or device. A physician may use a different informed consent form if it contains, at a minimum, the same information as the department form. The written informed consent form is available on the department website at www.dshs.texas.gov/chronic/.

(b) A patient eligible to access and use an investigational drug, biological product, or device must sign a written informed consent form. If the patient is a minor or lacks the mental capacity to provide written informed consent, a parent, guardian, or conservator may provide written informed consent on the patient's behalf.

(c) A patient must provide a signed, written informed consent form to a manufacturer of an investigational drug, biological product, or device before the manufacturer may make the investigational drug, biological product, or device available to the patient.

(d) The written informed consent form must be maintained in the medical record of the treating physician in accordance with the applicable records retention requirements.

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

Filed with the Office of the Secretary of State on April 22, 2024.

TRD-202401682

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 939-7575



CHAPTER 3. MEMORANDUMS OF UNDERSTANDING WITH OTHER STATE AGENCIES

25 TAC §3.31, §3.41

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §3.31, concerning Memorandum of Understanding between the Texas Department of Criminal Justice, Texas Commission for the Blind, Texas Commissioner for the Deaf and Hard of Hearing, Texas Rehabilitation Commission, Texas Department of Human Services, and the Texas Department of Health, and §3.41, concerning Memorandum of Understanding Concerning Special Education Services to Students with Disabilities in Residential Facilities.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code pursuant to Senate Bill 219, 84th Legislature, Regular Session, 2015.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §3.31 and §3.41 deletes the rules as they are no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined, for each year of the first five years that the repealed rules will be in effect, enforcing or administering the repeals do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the repeals will be in effect:

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

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Barbara L. Klein, Senior Compliance and Accountability Official, has determined, for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Christy Havel Burton has also determined, for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R038" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

§3.31. *Memorandum of Understanding between the Texas Department of Criminal Justice, Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Rehabilitation Commission, Texas Department of Human Services, and the Texas Department of Health.*

§3.41. *Memorandum of Understanding Concerning Special Education Services to Students with Disabilities in Residential Facilities.*

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

Filed with the Office of the Secretary of State on April 22, 2024.

TRD-202401687

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 776-6683



CHAPTER 4. DSHS CONTRACTING RULES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §4.1, concerning Contract Protests; §4.11, concerning Purpose; §4.12, concerning Applicability; §4.13, concerning Definitions; §4.14, concerning Prerequisites to Suit; §4.15, concerning Notice of Claim of Breach of Contract; §4.16, concerning Agency Counterclaim; §4.17, concerning Request for Voluntary Disclosure of Additional Information; §4.18, concerning Timetable for Negotiation and Mediation; §4.19, concerning Conduct of Negotiation; §4.20, concerning Settlement Approval Procedures for Negotiation; §4.21, concerning Negotiated Settlement Agreement; §4.22, concerning Costs of Negotiation; §4.23, concerning Request for Contested Case Hearing; and §4.24, concerning Mediation.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code pursuant to Senate Bill 200, 84th Legislature, Regular Session, 2015.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §4.1 and §§4.11 - 4.24 deletes the rules as they are no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined, for each year of the first five years the repealed rules will be in effect, enforcing or administering the repeals do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the repeals will be in effect:

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

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Barbara L. Klein, Senior Compliance and Accountability Official, has determined, for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Christy Havel Burton has also determined, for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R038" in the subject line.

SUBCHAPTER A. PROTEST PROCEDURES FOR CERTAIN DSHS PURCHASES

25 TAC §4.1

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeal implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

§4.1. *Contract Protests.*

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 22, 2024.

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6683



SUBCHAPTER B. CERTAIN CONTRACT CLAIMS AGAINST THE DEPARTMENT

25 TAC §§4.11 - 4.24

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

§4.11. *Purpose.*

§4.12. *Applicability.*

§4.13. *Definitions.*

§4.14. *Prerequisites to Suit.*

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

§4.16. *Agency Counterclaim.*

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

§4.18. *Timetable for Negotiation and Mediation.*

§4.19. *Conduct of Negotiation.*

§4.20. *Settlement Approval Procedures for Negotiation.*

§4.21. *Negotiated Settlement Agreement.*

§4.22. *Costs of Negotiation.*

§4.23. *Request for Contested Case Hearing.*

§4.24. *Mediation.*

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 22, 2024.

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Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 776-6683



CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER B. DIABETIC EYE DISEASE DETECTION INITIATIVE

25 TAC §§61.21 - 61.24

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §61.21, concerning General Information; §61.22, concerning Client Eligibility; §61.23, concerning Program Benefits; and, §61.24, concerning Payment for Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code. The Diabetic Eye Disease Detection Initiative has been inactive since 2011 and DSHS does not intend to reactivate the initiative.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§61.21 - 61.24 deletes the rules as they are no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined, for each year of the first five years that the repealed rules will be in effect, enforcing or administering the repeals do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the repeals will be in effect:

- (1) the proposed repeals will not create or eliminate a government program;
- (2) implementation of the proposed repeals will not affect the number of DSHS employee positions;
- (3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;
- (4) the proposed repeals will not affect fees paid to DSHS;

- (5) the proposed repeals will not create a new regulation;
- (6) the proposed repeals will repeal existing regulations;
- (7) the proposed repeals will not change the number of individuals subject to the rules; and
- (8) the proposed repeals will not affect the state's economy.

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Barbara L. Klein, Senior Compliance and Accountability Official, has determined, for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Christy Havel Burton has also determined, for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R038" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human

services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

§61.21. *General Information.*

§61.22. *Client Eligibility.*

§61.23. *Program Benefits.*

§61.24. *Payment for Services.*

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

Filed with the Office of the Secretary of State on April 22, 2024.

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6683



CHAPTER 111. SPECIAL HEALTH SERVICES

25 TAC §111.2, §111.3

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §111.2, concerning Memorandum of Understanding Concerning Hospitals and Long-Term Care Facilities and §111.3, concerning Reporting Obligation by the Department of Agency Regulatory Survey Information.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code pursuant to Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §111.2 and §111.3 deletes the rules as they are no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined, for each year of the first five years the repealed rules will be in effect, enforcing or administering the repeals do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the repeals will be in effect:

- (1) the proposed repeals will not create or eliminate a government program;
- (2) implementation of the proposed repeals will not affect the number of DSHS employee positions;
- (3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;
- (4) the proposed repeals will not affect fees paid to DSHS;

- (5) the proposed repeals will not create a new regulation;
- (6) the proposed repeals will repeal existing regulations;
- (7) the proposed repeals will not change the number of individuals subject to the rules; and
- (8) the proposed repeals will not affect the state's economy.

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Barbara L. Klein, Senior Compliance and Accountability Official, has determined, for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Christy Havel Burton has also determined, for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R038" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human

services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

§111.2. Memorandum of Understanding Concerning Hospitals and Long-Term Care Facilities.

§111.3. Reporting Obligation by the Department of Agency Regulatory Survey Information.

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

Filed with the Office of the Secretary of State on April 22, 2024.

TRD-202401691

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 776-6683



CHAPTER 113. SPECIAL HEALTH SERVICES PERMITS

25 TAC §113.1, §113.2

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §113.1, concerning Processing Permits for Special Health Services Professionals and §113.2, concerning Time Periods for Processing and Issuing Licenses for Health Care Providers.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code. Senate Bill 202, 84th Legislature, Regular Session, 2015, transferred this program to HHSC.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §113.1 and §113.2 deletes the rules as they are no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined, for each year of the first five years that the repealed rules will be in effect, enforcing or administering the repeals do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the repeals will be in effect:

- (1) the proposed repeals will not create or eliminate a government program;
- (2) implementation of the proposed repeals will not affect the number of DSHS employee positions;
- (3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;
- (4) the proposed repeals will not affect fees paid to DSHS;
- (5) the proposed repeals will not create a new regulation;

- (6) the proposed repeals will repeal existing regulations;
- (7) the proposed repeals will not change the number of individuals subject to the rules; and
- (8) the proposed repeals will not affect the state's economy.

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Barbara L. Klein, Senior Compliance and Accountability Official has determined, for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Christy Havel Burton has also determined, for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R038" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

§113.1. *Processing Permits for Special Health Services Professionals.*

§113.2. *Time Periods for Processing and Issuing Licenses for Health Care Providers.*

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 22, 2024.

TRD-202401692

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 776-6683



CHAPTER 127. REGISTRY FOR PROVIDERS OF HEALTH-RELATED SERVICES

25 TAC §§127.1 - 127.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §127.1, concerning Request for Placement of an Occupation on the Registry; §127.2, concerning Approved Occupations; §127.3 concerning Application and Approval of an Individual's Placement on a Registry; and §127.4, concerning Fees.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code pursuant to Senate Bill 970, 87th Legislature, Regular Session, 2021.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§127.1 - 127.4 deletes the rules as they are no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined, for each year of the first five years that the repealed rules will be in effect, enforcing or administering the repealed rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the repeals will be in effect:

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

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

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

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Barbara L. Klein, Senior Compliance and Accountability Official has determined, for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Christy Havel Burton has also determined, for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R038" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055.

§127.1. *Request for Placement of an Occupation on the Registry.*

§127.2. *Approved Occupations.*

§127.3. *Application and Approval of an Individual's Placement on a Registry.*

§127.4. *Fees.*

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 22, 2024.

TRD-202401693

Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6683



CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER C. OPERATIONAL

REQUIREMENTS

25 TAC §133.55

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §133.55, concerning Workplace Violence Prevention.

BACKGROUND AND PURPOSE

The proposed new rule is necessary to implement Texas Health and Safety Code (HSC) Chapter 331, added by Senate Bill (S.B.) 240, 88th Legislature, Regular Session, 2023.

The proposed rule requires general and special hospitals to establish a workplace violence prevention committee or authorize an existing committee to develop the hospital's workplace violence prevention plan. The proposed rule specifies the required membership for a committee. The proposed rule requires a hospital to adopt, implement, and enforce a written workplace violence prevention policy and plan to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital.

The proposed rule requires the committee to annually evaluate the written workplace violence prevention plan and report the results of the evaluation to the hospital's governing body. The proposed rule requires each hospital to make a copy of the hospital's workplace violence prevention plan available to each hospital health care provider or employee while providing protection from the release of information in the plan that would pose a security threat if made public.

The proposed rule establishes minimum requirements for a hospital to respond to workplace violence incidents and creates protections for individuals with respect to reporting incidents of workplace violence.

HSC §331.006 permits HHSC to take disciplinary action against a provider that violates HSC Chapter 331 on or after September 1, 2023, as if the provider violated an applicable licensing law.

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 create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (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 is necessary to protect the health, safety, and welfare of the residents of Texas, 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 the new rule promoting a safe and secure environment for hospital healthcare providers and employees.

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 as these entities are required to comply with the law as added by S.B. 240 and the new section 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 24R013" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals; and HSC Chapter 331, which requires licensed hospitals to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

The new section implements Texas Government Code §531.0055 and HSC Chapter 331.

§133.55. Workplace Violence Prevention.

(a) In accordance with Texas Health and Safety Code (HSC) §331.002, a hospital shall establish a workplace violence prevention committee or authorize an existing hospital committee to develop a workplace violence prevention plan.

(b) A hospital shall ensure the committee includes at least:

(1) one registered nurse who provides direct care to the hospital's patients;

(2) one physician licensed to practice medicine in Texas who provides direct care to the hospital's patients; and

(3) one hospital employee who provides security services for the hospital if any and if practicable.

(c) A health care system that owns or operates more than one hospital may establish a single workplace violence prevention committee for all of the system's hospitals if:

(1) the committee develops a violence prevention plan for implementation at each hospital in the system; and

(2) data related to violence prevention remains distinctly identifiable for each hospital in the system.

(d) A hospital shall adopt, implement, and enforce a written workplace violence prevention policy to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital. In accordance with HSC §331.003, the policy shall:

(1) require the hospital to:

(A) provide significant consideration of the violence prevention plan recommended by the hospital's committee; and

(B) evaluate any existing hospital violence prevention plan;

(2) encourage health care providers and employees to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation health care providers or employees who provide information to the committee; and

(4) comply with HHSC rules relating to workplace violence.

(e) A hospital shall adopt, implement, and enforce a written workplace violence prevention plan developed by the committee. In accordance with HSC §331.004, the plan shall:

(1) be based on a hospital setting;

(2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the hospital to at least annually provide workplace violence prevention training or education that may be included in other required training or education provided to the health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the hospital;

(5) address physical security and safety;

(6) require the hospital to solicit information from the health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report workplace violence incidents through the hospital's existing occurrence reporting systems; and

(8) require the hospital to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(f) The written workplace violence prevention plan may satisfy the requirements of subsection (e) of this section by referencing other internal hospital policies and documents.

(g) At least annually after the date a hospital adopts a written workplace violence prevention plan required by subsection (e) of this section, the committee shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the hospital's governing body.

(h) Each hospital shall make available on request an electronic or printed copy of the hospital's workplace violence prevention plan to each health care provider or employee. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

(i) In accordance with HSC §331.005, after an incident of workplace violence occurs, a hospital shall offer immediate post-incident services, including any necessary acute medical treatment for each hospital health care provider or employee who is directly involved in the incident.

(j) In accordance with HSC §331.005, a hospital may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding a workplace violence incident.

(k) In accordance with HSC §331.005, a hospital shall prohibit hospital personnel from disciplining, including by suspension or termination of employment, discriminating against, or retaliating against another person who:

(1) in good faith reports a workplace violence incident; or

(2) advises a health care provider or employee of the provider's or employee's right to report a workplace violence incident.

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 22, 2024.

TRD-202401678

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

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



CHAPTER 135. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §135.31

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §135.31, concerning Workplace Violence Prevention.

BACKGROUND AND PURPOSE

The proposed new rule is necessary to implement Texas Health and Safety Code (HSC) Chapter 331, added by Senate Bill (S.B.) 240, 88th Legislature, Regular Session, 2023.

The proposed rule requires ambulatory surgical centers (ASCs) to establish a workplace violence prevention committee or authorize an existing committee to develop the hospital's workplace violence prevention plan. The proposed rule specifies the required membership for a committee. The proposed rule requires an ASC to adopt, implement, and enforce a written workplace violence prevention policy and plan to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the ASC.

The proposed rule requires the committee to annually evaluate the written workplace violence prevention plan and report the results of the evaluation to the ASC's governing body. The proposed rule requires each ASC to make a copy of the ASC's

workplace violence prevention plan available to each health care provider or employee while providing protection from the release of information in the plan that would pose a security threat if made public.

The proposed rule establishes minimum requirements for an ASC to respond to workplace violence incidents and creates protections for individuals with respect to reporting incidents of workplace violence.

HSC §331.006 permits HHSC to take disciplinary action against a provider that violates HSC Chapter 331 on or after September 1, 2023, as if the provider violated an applicable licensing law.

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 create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (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 is necessary to protect the health, safety, and welfare of the residents of Texas, 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 the new rule

promoting a safe and secure environment for ASC healthcare providers and employees.

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 as these entities are required to comply with the law as added by S.B. 240 and the new section 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 24R013" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §243.009, which authorizes HHSC to adopt rules regarding ASCs; and HSC Chapter 331, which requires licensed ASCs to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

The new section implements Texas Government Code §531.0055 and HSC Chapter 331.

§135.31. Workplace Violence Prevention.

(a) In accordance with Texas Health and Safety Code (HSC) §331.002, an ambulatory surgical center (ASC) shall establish a workplace violence prevention committee or authorize an existing ASC committee to develop a workplace violence prevention plan.

(b) An ASC shall ensure the committee includes at least:

(1) one registered nurse who provides direct care to the ASC's patients;

(2) one physician licensed to practice medicine in Texas who provides direct care to the ASC's patients; and

(3) one ASC employee who provides security services for the ASC if any and if practicable.

(c) A health care system that owns or operates more than one ASC may establish a single workplace violence prevention committee for all of the system's ASCs if:

(1) the committee develops a violence prevention plan for implementation at each ASC in the system; and

(2) data related to violence prevention remains distinctly identifiable for each ASC in the system.

(d) An ASC shall adopt, implement, and enforce a written workplace violence prevention policy to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the ASC. In accordance with HSC §331.003, the policy shall:

(1) require the ASC to:

(A) provide significant consideration of the violence prevention plan recommended by the ASC's committee; and

(B) evaluate any existing ASC violence prevention plan;

(2) encourage health care providers and employees to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation health care providers or employees who provide information to the committee; and

(4) comply with HHSC rules relating to workplace violence.

(e) An ASC shall adopt, implement, and enforce a written workplace violence prevention plan developed by the committee. In accordance with HSC 331.004, the plan shall:

(1) be based on an ASC setting;

(2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the ASC to at least annually provide workplace violence prevention training or education that may be included in other required training or education provided to the ASC's health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the ASC;

(5) address physical security and safety;

(6) require the ASC to solicit information from health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report workplace violence incidents through the ASC's existing occurrence reporting systems; and

(8) require the ASC to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(f) The written workplace violence prevention plan may satisfy the requirements of subsection (e) of this section by referencing other internal ASC policies and documents.

(g) At least annually after the date an ASC adopts a written workplace violence prevention plan required by subsection (e) of this section, the committee shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the ASC's governing body.

(h) Each ASC shall make available on request an electronic or printed copy of the ASC's workplace violence prevention plan to each health care provider or ASC employee. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

(i) In accordance with HSC §331.005, after an incident of workplace violence occurs, an ASC shall offer immediate post-incident services, including any necessary acute medical treatment for each ASC health care provider or employee who is directly involved in the incident.

(j) In accordance with HSC §331.005, an ASC may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding a workplace violence incident.

(k) In accordance with HSC §331.005, an ASC shall prohibit ASC personnel from disciplining, including by suspension or termination of employment, discriminating against, or retaliating against another person who:

(1) in good faith reports a workplace violence incident; or

(2) advises a health care provider or employee of the provider's or employee's right to report a workplace violence incident.

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 22, 2024.

TRD-202401679

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

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



CHAPTER 140. HEALTH PROFESSIONS REGULATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §140.30, concerning Introduction; §140.31, concerning Definitions; §140.32, concerning Fees; §140.33, concerning Petition for Rulemaking; §140.34, concerning Application Requirements and Procedures; §140.35, concerning Requirement for Insurance; §140.36, concerning Application Processing; §140.37, concerning Categories of Licensure and Registration; §140.38, concerning Renewal of License or Registration; §140.39, concerning Changes of Name or Address; §140.40, concerning Standards of Conduct for PERS Providers; §140.41, concerning Consumer Information; §140.42, concerning Filing

Complaints and Complaint Investigations; §140.43, concerning Grounds for Disciplinary Action; §140.44, concerning Informal Disposition; §140.45, concerning Formal Hearings; §140.46, concerning Guidelines for Issuing Licenses and Registrations to Persons with Criminal Convictions; §140.47, concerning Immediate Suspension for Failure to Maintain Insurance Coverage; §140.48, concerning Registration for Military Service Members, Military Veterans, and Military Spouses; §140.250, concerning Introduction; §140.251, concerning Definitions; §140.252, concerning Fees; §140.253, concerning Petition for Rulemaking; §140.254, concerning Sale or Delivery of Contact Lenses and Prescription Verification; §140.255, concerning Display of Permit; §140.256, concerning Application Requirements and Procedures; §140.257, concerning Application Processing; §140.258, concerning Renewal of Permit; §140.259, concerning Changes of Name or Address; §140.260, concerning filing Complaints and Complaint Investigations; §140.261, concerning Grounds for Disciplinary Action; §140.262, concerning Informal Disposition; §140.263, concerning Formal Hearings; §140.264, concerning Guidelines for Issuing Permits to Persons with Criminal Convictions; §140.265, concerning Permitting of Military Service Members, Military Veterans, and Military Spouses; §140.275, concerning Purpose and Construction; §140.276, concerning Definitions; §140.277, concerning Fees; §140.278, concerning Application Procedures and Requirements for Registration; §140.279, concerning Issuance of Certificate of Registration; §140.280, concerning Renewal of Registration; §140.281, concerning Requirements for Continuing Education; §140.282, concerning Change of Name or Address; §140.283, concerning Violations, Complaints, Investigation of Complaints, and Disciplinary Actions; §140.284, concerning Registration of Applicants with Criminal Backgrounds; §140.285, concerning Professional and Ethical Standards; §140.286, concerning Request for Criminal History Evaluation Letter; and, §140.287, concerning Registration of Military Service Members, Military Veterans, and Military Spouses.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code. Senate Bill (S.B.) 202, 84th Legislature, Regular Session, 2015, repealed the regulation of these health professions.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§140.30 - 140.48, §§140.250 - 140.265 and §§140.275 - 140.287 deletes rules no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined, for each year of the first five years that the repealed rules will be in effect, enforcing or administering the repealed rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the repeals will be in effect:

- (1) the proposed repeals will not create or eliminate a government program;
- (2) implementation of the proposed repeals will not affect the number of DSHS employee positions;
- (3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

- (4) the proposed repeals will not affect fees paid to DSHS;
- (5) the proposed repeals will not create a new regulation;
- (6) the proposed repeals will repeal existing regulations;
- (7) the proposed repeals will not change the number of individuals subject to the rules; and
- (8) the proposed repeals will not affect the state's economy.

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Barbara L. Klein, Senior Compliance and Accountability Official, has determined, for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Christy Havel Burton has also determined, for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R038" in the subject line.

SUBCHAPTER B. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDERS PROGRAM

25 TAC §§140.30 - 140.48

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

- §140.30. *Introduction.*
- §140.31. *Definitions.*
- §140.32. *Fees.*
- §140.33. *Petition for Rulemaking.*
- §140.34. *Application Requirements and Procedures.*
- §140.35. *Requirement for Insurance.*
- §140.36. *Application Processing.*
- §140.37. *Categories of Licensure and Registration.*
- §140.38. *Renewal of License or Registration.*
- §140.39. *Changes of Name or Address.*
- §140.40. *Standards of Conduct for PERS Providers.*
- §140.41. *Consumer Information.*
- §140.42. *Filing Complaints and Complaint Investigations.*
- §140.43. *Grounds for Disciplinary Action.*
- §140.44. *Informal Disposition.*
- §140.45. *Formal Hearings.*
- §140.46. *Guidelines for Issuing Licenses and Registrations to Persons with Criminal Convictions.*
- §140.47. *Immediate Suspension for Failure to Maintain Insurance Coverage.*
- §140.48. *Registration of Military Service Members, Military Veterans, and Military Spouses.*

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 22, 2024.

TRD-202401694
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Earliest possible date of adoption: June 2, 2024
 For further information, please call: (512) 776-6683



SUBCHAPTER F. CONTACT LENS DISPENSERS

25 TAC §§140.250 - 140.265

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

- §140.250. *Introduction.*
- §140.251. *Definitions.*
- §140.252. *Fees.*
- §140.253. *Petition for Rulemaking.*
- §140.254. *Sale or Delivery of Contact Lenses and Prescription Verification.*
- §140.255. *Display of Permit.*
- §140.256. *Application Requirements and Procedures.*
- §140.257. *Application Processing.*
- §140.258. *Renewal of Permit.*
- §140.259. *Changes of Name or Address.*
- §140.260. *Filing Complaints and Complaint Investigations.*
- §140.261. *Grounds for Disciplinary Actions.*
- §140.262. *Informal Disposition.*
- §140.263. *Formal Hearings.*
- §140.264. *Guidelines For Issuing Permits to Persons with Criminal Convictions.*
- §140.265. *Permitting of Military Service Members, Military Veterans, and Military Spouses.*

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 22, 2024.

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 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Earliest possible date of adoption: June 2, 2024
 For further information, please call: (512) 776-6683



SUBCHAPTER G. OPTICIANS

25 TAC §§140.275 - 140.287

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

- §140.275. *Purpose and Construction.*
- §140.276. *Definitions.*
- §140.277. *Fees.*
- §140.278. *Application Procedures and Requirements for Registration.*
- §140.279. *Issuance of Certificate of Registration.*
- §140.280. *Renewal of Registration.*
- §140.281. *Requirements for Continuing Education.*

§140.282. *Change of Name or Address.*

§140.283. *Violations, Complaints, Investigation of Complaints, and Disciplinary Actions.*

§140.284. *Registration of Applicants with Criminal Backgrounds.*

§140.285. *Professional and Ethical Standards.*

§140.286. *Request for Criminal History Evaluation Letter.*

§140.287. *Registration of Military Service Members, Military Veterans, and Military Spouses.*

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 22, 2024.

TRD-202401696

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 776-6683



CHAPTER 205. PRODUCT SAFETY SUBCHAPTER A. BEDDING RULES

25 TAC §§205.1 - 205.17

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §205.1, concerning Purpose and Scope; §205.2, concerning Definitions; §205.3, concerning General Requirements; §205.4, concerning Labeling Requirements; §205.5, concerning Definitions and Designations of Filling Materials; §205.6, concerning Adjunctive Terms; §205.7, concerning Suggested Terminology for Various Fiber By-Products; §205.8, concerning Germicidal Treatment Requirements; Methods; §205.9, concerning Sanitary Premises; §205.10, concerning Adjustments to the Minimum Requirements; §205.11, concerning Permit Requirements; Types; Application; Conditions; Suspension; §205.12, concerning Administrative Penalty; §205.13, concerning Detained or Embargoed Bedding; §205.14, concerning Removal Order for Detained or Embargoed Bedding; §205.15, concerning Condemnation; §205.16, concerning Recall Orders; and §205.17, concerning Inspection.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code pursuant to Senate Bill 202, 84th Legislature, Regular Session, 2015.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§205.1 - 205.17 deletes the rules as they are no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined, for each year of the first five years that the repealed rules will be in effect, enforcing or administering the repeals do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the repeals will be in effect:

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

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Barbara L. Klein, Senior Compliance and Accountability Official, has determined, for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Christy Havel Burton has also determined, for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the

last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R038" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

- §205.1. *Purpose and Scope.*
- §205.2. *Definitions.*
- §205.3. *General Requirements.*
- §205.4. *Labeling Requirements.*
- §205.5. *Definitions and Designations of Filling Materials.*
- §205.6. *Adjunctive Terms.*
- §205.7. *Suggested Terminology for Various Fiber By-Products.*
- §205.8. *Germicidal Treatment Requirements; Methods.*
- §205.9. *Sanitary Premises.*
- §205.10. *Adjustments to the Minimum Requirements.*
- §205.11. *Permit Requirements; Types; Application; Conditions; Suspension.*
- §205.12. *Administrative Penalty.*
- §205.13. *Detained or Embargoed Bedding.*
- §205.14. *Removal Order for Detained or Embargoed Bedding.*
- §205.15. *Condemnation.*
- §205.16. *Recall Orders.*
- §205.17. *Inspection.*

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 22, 2024.

TRD-202401698

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 776-6683



CHAPTER 297. INDOOR AIR QUALITY

SUBCHAPTER A. GOVERNMENT BUILDINGS

25 TAC §§297.1 - 297.10

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §297.1, concerning General Provisions; §297.2, concerning Definitions; §297.3, concerning Recommendations for Implementing a Governmental Building IAQ Program; §297.4, concerning Design/Construction/Renovation; §297.5, concerning Building Operation and Maintenance Guidelines; §297.6,

concerning Recommended Building Occupant Responsibilities; §297.7, concerning Assessing and Resolving IAQ Problems; §297.8, concerning Guidelines for Comfort and Minimum Risk Levels; §297.9, concerning Lease Agreements; and §297.10, concerning Special Considerations.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code pursuant to Senate Bill 202, 84th Legislature, Regular Session, 2015.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§297.1 - 297.10 deletes the rules as they are no longer necessary.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined, for each year of the first five years that the repealed rules will be in effect, enforcing or administering the repeals do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the repeals will be in effect:

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

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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Barbara L. Klein, Senior Compliance and Accountability Official, has determined, for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Christy Havel Burton has also determined, for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R038" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 1001.

- §297.1. *General Provisions.*
- §297.2. *Definitions.*
- §297.3. *Recommendations for Implementing a Governmental Building IAQ Program.*
- §297.4. *Design/Construction/Renovation.*
- §297.5. *Building Operation and Maintenance Guidelines.*
- §297.6. *Recommended Building Occupant Responsibilities.*
- §297.7. *Assessing and Resolving IAQ Problems.*
- §297.8. *Guidelines for Comfort and Minimum Risk Levels.*
- §297.9. *Lease Agreements.*
- §297.10. *Special Considerations.*

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 22, 2024.

TRD-202401699

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 776-6683



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §509.70

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §509.70, concerning Workplace Violence Prevention.

BACKGROUND AND PURPOSE

The proposed new rule is necessary to implement Texas Health and Safety Code (HSC) Chapter 331, added by Senate Bill (S.B.) 240, 88th Legislature, Regular Session, 2023.

The proposed rule requires certain facilities, including freestanding emergency medical care (FEMC) facilities, to establish a workplace violence prevention committee or authorize an existing facility committee to develop the workplace violence prevention plan. The proposed rule specifies the required membership for a committee. The proposed rule requires a facility to adopt, implement, and enforce a written workplace violence prevention policy and plan to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the facility.

The proposed rule requires the committee to annually evaluate the written workplace violence prevention plan and report the results of the evaluation to the facility's governing body. The proposed rule requires each facility to make a copy of the facility's workplace violence prevention plan available to each health care provider or employee while providing protection from the release of information in the plan that would pose a security threat if made public.

The proposed rule establishes minimum requirements for a facility to respond to workplace violence incidents and creates protections for individuals with respect to reporting incidents of workplace violence.

HSC §331.006 permits HHSC to take disciplinary action against a provider that violates HSC Chapter 331 on or after September 1, 2023, as if the provider violated an applicable licensing law.

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 create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (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 is necessary to protect the health, safety, and welfare of the residents of Texas, 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 the new rule promoting a safe and secure environment for facility healthcare providers and employees.

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 as these entities are required to comply with the law as added by S.B. 240 and the new section 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 24R013" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities; and HSC Chapter 331, which requires licensed FEMC facilities to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

The new section implements Texas Government Code §531.0055 and HSC Chapter 331.

§509.70. Workplace Violence Prevention.

(a) In accordance with Texas Health and Safety Code (HSC) §331.002, a facility shall establish a workplace violence prevention committee or authorize an existing facility committee to develop a workplace violence prevention plan.

(b) A facility shall ensure the committee includes at least:

(1) one registered nurse who provides direct care to the facility's patients;

(2) one physician licensed to practice medicine in this state who provides direct care to the facility's patients; and

(3) one facility employee who provides security services for the facility if any and if practicable.

(c) A health care system that owns or operates more than one facility may establish a single workplace violence prevention committee for all of the system's facilities if:

(1) the committee develops a violence prevention plan for implementation at each facility in the system; and

(2) data related to violence prevention remains distinctly identifiable for each facility in the system.

(d) A facility shall adopt, implement, and enforce a written workplace violence prevention policy to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the facility. In accordance with HSC §331.003, the policy shall:

(1) require the facility to:

(A) provide significant consideration of the violence prevention plan recommended by the facility's committee; and

(B) evaluate any existing facility violence prevention plan;

(2) encourage health care providers and facility employees to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation facility health care providers or employees who provide information to the committee; and

(4) comply with HHSC rules relating to workplace violence.

(e) A facility shall adopt, implement, and enforce a written workplace violence prevention plan developed by the committee. In accordance with HSC §331.004, the plan shall:

- (1) be based on a facility setting;
- (2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the facility to at least annually provide workplace violence prevention training or education that may be included in other required training or education provided to the facility's health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the facility;

(5) address physical security and safety;

(6) require the facility to solicit information from health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report workplace violence incidents through the facility's existing occurrence reporting systems; and

(8) require the facility to adjust patient care assignments, to the extent practicable, to prevent a health care provider or facility employee from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(f) The written workplace violence prevention plan may satisfy the requirements of subsection (e) of this section by referencing other internal facility policies and documents.

(g) At least annually after the date a facility adopts a written workplace violence prevention plan required by subsection (e) of this section, the committee shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the facility's governing body.

(h) Each facility shall make available on request an electronic or printed copy of the facility's workplace violence prevention plan to each health care provider or facility employee. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

(i) In accordance with HSC §331.005, after an incident of workplace violence occurs, a facility shall offer immediate post-incident services, including any necessary acute medical treatment for each facility health care provider or employee who is directly involved in the incident.

(j) In accordance with HSC §331.005, a facility may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding a workplace violence incident.

(k) In accordance with HSC §331.005, a facility shall prohibit facility personnel from disciplining, including by suspension or termination of employment, discriminating against, or retaliating against another person who:

- (1) in good faith reports a workplace violence incident; or
- (2) advises a health care provider or employee of the provider's or employee's right to report a workplace violence incident.

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 22, 2024.

TRD-202401680

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 2, 2024

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



CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.47

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §510.47, concerning Workplace Violence Prevention.

BACKGROUND AND PURPOSE

The proposed new rule is necessary to implement Texas Health and Safety Code (HSC) Chapter 331, added by Senate Bill (S.B.) 240, 88th Legislature, Regular Session, 2023.

The proposed rule requires certain facilities, including private psychiatric hospitals, to establish a workplace violence prevention committee or authorize an existing facility committee to develop the hospital's workplace violence prevention plan. The proposed rule specifies the required membership for a committee. The proposed rule requires a hospital to adopt, implement, and enforce a written workplace violence prevention policy and plan to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital.

The proposed rule requires the committee to annually evaluate the written workplace violence prevention plan and report the results of the evaluation to the hospital's governing body. The proposed rule requires each hospital to make a copy of the hospital's workplace violence prevention plan available to each hospital health care provider or employee while providing protection from the release of information in the plan that would pose a security threat if made public.

The proposed rule establishes minimum requirements for a hospital to respond to workplace violence incidents and creates protections for individuals with respect to reporting incidents of workplace violence.

HSC §331.006 permits HHSC to take disciplinary action against a provider that violates HSC Chapter 331 on or after September 1, 2023, as if the provider violated an applicable licensing law.

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 create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (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 is necessary to protect the health, safety, and welfare of the residents of Texas, 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 the new rule promoting a safe and secure environment for hospital healthcare providers and employees.

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. 240 and the new section 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 24R013" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §577.010, which authorizes HHSC to adopt rules regarding private mental hospitals and other mental health facilities; and HSC Chapter 331, which requires licensed mental hospitals to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

The new section implements Texas Government Code §531.0055 and HSC Chapter 331.

§510.47. Workplace Violence Prevention.

(a) In accordance with Texas Health and Safety Code (HSC) §331.002, a hospital shall establish a workplace violence prevention committee or authorize an existing hospital committee to develop a workplace violence prevention plan.

(b) A hospital shall ensure the committee includes at least:

(1) one registered nurse who provides direct care to the hospital's patients;

(2) one physician licensed to practice medicine in this state who provides direct care to the hospital's patients; and

(3) one hospital employee who provides security services for the hospital if any and if practicable.

(c) A health care system that owns or operates more than one hospital may establish a single workplace violence prevention committee for all of the system's hospitals if:

(1) the committee develops a violence prevention plan for implementation at each hospital in the system; and

(2) data related to violence prevention remains distinctly identifiable for each hospital in the system.

(d) A hospital shall adopt, implement, and enforce a written workplace violence prevention policy to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital. In accordance with HSC §331.003, the policy shall:

(1) require the hospital to:

(A) provide significant consideration of the violence prevention plan recommended by the hospital's committee; and

(B) evaluate any existing hospital violence prevention plan;

(2) encourage health care providers and employees to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation health care providers or employees who provide information to the committee; and

(4) comply with HHSC rules relating to workplace violence.

(e) A hospital shall adopt, implement, and enforce a written workplace violence prevention plan developed by the committee. In accordance with HSC §331.004, the plan shall:

(1) be based on a hospital setting;

(2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the hospital to at least annually provide workplace violence prevention training or education that may be included in other required training or education provided to the health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the hospital;

(5) address physical security and safety;

(6) require the hospital to solicit information from the health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report workplace violence incidents through the hospital's existing occurrence reporting systems; and

(8) require the hospital to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(f) The written workplace violence prevention plan may satisfy the requirements of subsection (e) of this section by referencing other internal hospital policies and documents.

(g) At least annually after the date a hospital adopts a written workplace violence prevention plan required by subsection (e) of this section, the committee shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the hospital's governing body.

(h) Each hospital shall make available on request an electronic or printed copy of the hospital's workplace violence prevention plan to each health care provider or hospital employee. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

(i) In accordance with HSC §331.005, after an incident of workplace violence occurs, a hospital shall offer immediate post-incident services, including any necessary acute medical treatment for each hospital health care provider or employee who is directly involved in the incident.

(j) In accordance with HSC §331.005, a hospital may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding a workplace violence incident.

(k) In accordance with HSC §331.005, a hospital shall prohibit hospital personnel from disciplining, including by suspension or termination of employment, discriminating against, or retaliating against another person who:

(1) in good faith reports a workplace violence incident; or

(2) advises a health care provider or employee of the provider's or employee's right to report a workplace violence incident.

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 22, 2024.

TRD-202401681

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 2, 2024

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



CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §553.254, concerning Training Requirements for Staff Providing Personal Care Services to a Resident With Alzheimer's Disease or Related Disorder in a Facility that is Not an Alzheimer's Certified Facility; and amendments to §553.17, concerning Criteria for Licensing; §553.255, concerning All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder; §553.257, concerning Human Resources; and §553.329, concerning HHSC Investigation of Allegations of Abuse, Neglect or Exploitation.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1009, H.B. 1673, and H.B. 4696 from the 88th Legislature, Regular Session, 2023. H.B. 1009 requires a facility to suspend an employee who HHSC has determined has engaged in reportable conduct during any applicable appeals process. H.B. 1673 requires facilities that are not Alzheimer's certified to nevertheless ensure all staff complete training specific to Alzheimer's disease and related disorders. H.B. 4696 allows HHSC to conduct an offsite survey unless the investigation is for alleged abuse or neglect. The proposal also clarifies that an accreditation commission is able to conduct a life safety code survey of a facility based on the requirements in Subchapter D of Chapter 553, Facility Construction.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §553.17 clarifies the ability of an on-site accreditation survey by an accreditation commission to conduct a survey based on requirements in Subchapter D of this chapter, Facility Construction.

Proposed new §553.254 adds training requirements for staff members of assisted living facilities that are not Alzheimer's certified who provide care to residents with Alzheimer's disease or related disorders.

The proposed amendment to §553.255 specifies that the policy requirements of this section may be satisfied by requiring the training described under proposed new §553.254 (for non-Alzheimer's certified facilities) or existing §553.303 (for Alzheimer's certified facilities).

The proposed amendment to §553.257 adds an employee suspension requirement when HHSC determines that a facility employee has engaged in reportable conduct.

The proposed amendment to §553.329 removes the requirement for HHSC to perform in-person complaint investigations unless abuse or neglect has been reported or the complaint involves unemancipated minors who have been inappropriately placed in a facility.

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. The new rules and amendments are merely codifying current procedures.

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 rule(s); 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 could be an adverse economic effect on small businesses, micro-businesses, or rural communities.

An assisted living facility may incur a cost due to the implementation of H.B. 1009 if a staff person is suspended while he or she goes through the appeals process for being added to the employee misconduct registry (EMR). This might not impact all assisted living facilities but could affect those that may need to hire additional staff on a temporary basis while the staff person is suspended.

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

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

Trey Wood has also determined that for the first five years the rules are in effect, there could be an adverse economic effect on persons required to comply with these proposed rules. A facility may incur a cost due to implementation of H.B. 1009 if an agency staff person is suspended while he or she goes through the appeals process for being added to the EMR. This might not impact all facilities but could impact those who may need to hire additional staff on a temporary basis while the staff member is on suspension. HHSC lacks sufficient data to estimate costs to those required to comply with the rule as proposed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Texas Health and Human Services Commission, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751, or by email to HHSCLTCR-Rules@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 23R062" in the subject line.

SUBCHAPTER B. LICENSING

26 TAC §553.17

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendment implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.17. *Criteria for Licensing.*

(a) A person must be licensed to establish or operate an assisted living facility in Texas.

(1) HHSC considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(2) The presence or absence of any one factor in paragraph (1) of this subsection is not conclusive.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section, and:

(1) the building in which the facility is housed:

(A) meets local fire ordinances;

(B) is approved by the local fire authority;

(C) meets HHSC licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an on-site inspection by HHSC or the standards for accreditation based on an on-site accreditation survey by an accreditation commission; and

(D) if located in a county of more than 3.3 million residents for initial license applications submitted or issued on or after December 6, 2022, is not located in a 100-year floodplain; and

(2) operation of the facility meets HHSC licensing standards based on an on-site health inspection by HHSC, which must include observation of the care of a resident; or

(3) the facility meets the standards for accreditation based on an on-site accreditation survey by the accreditation commission.

(d) An applicant who chooses the option authorized in subsection (c)(3) of this section must contact HHSC to determine which accreditation commissions are available to meet the requirements of that subsection. If a license holder uses an on-site accreditation survey by an accreditation commission, as provided in this subsection and §553.33(i) of this subchapter (relating to Renewal Procedures and Qualifications), the license holder must:

(1) provide written notification to HHSC by submitting an updated application in the licensing system within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission; and

(2) include a copy of the notice of change with its written notification to HHSC.

(e) HHSC issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) HHSC denies an application for an initial license or a renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(h) HHSC may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard, or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §553.751(a)(2) - (9) of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraph (1) or (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) engages in the following:

(A) knowingly submits false or intentionally misleading statements to HHSC;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees, as described in §553.47 of this subchapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code §247.021 by operating a facility without a license; or

(9) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(i) Without limitation, HHSC reviews all information provided by an applicant, a license holder, a person required to be disclosed on the application for licensure, or a manager when considering grounds for denial of an initial license application or a renewal application in accordance with subsection (h) of this section. HHSC may grant a license if HHSC finds the applicant, license holder, person required to be disclosed on the application for licensure, affiliate, or manager is able to comply with the rules in this chapter.

(j) HHSC reviews final actions when considering the grounds for denial of an initial license application or renewal application in accordance with subsections (f) and (h) of this section. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, HHSC examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

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 18, 2024.

TRD-202401649

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 2, 2024

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

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SUBCHAPTER E. STANDARDS FOR
LICENSURE

26 TAC §§553.254, 553.255, 553.257

STATUTORY AUTHORITY

The new section and amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section and amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.254. Training Requirements for Staff Providing Personal Care Services to a Resident With Alzheimer's Disease or a Related Disorder in a Facility that is Not an Alzheimer's Certified Facility.

(a) A facility that provides personal care services to a resident with Alzheimer's disease or a related disorder that is not an Alzheimer's certified facility must require a staff member to complete competency-based training and annual continuing education on Alzheimer's disease and related disorders in accordance with this section.

(1) The training required in this section may be included as part of the initial training and continuing education required in §553.253 of this subchapter (relating to Employee Qualifications and Training).

(2) The training required in this section may satisfy the training required by facility policy under §553.255 of this subchapter (relating to All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder).

(b) A facility must require a manager to:

(1) complete four hours of training and pass a competency-based evaluation on:

(A) Alzheimer's disease and related disorders;

(B) provision of person-centered care;

(C) assessment and care planning;

(D) activities of daily living for a resident with Alzheimer's disease or a related disorder;

(E) common behaviors and communications associated with residents with Alzheimer's disease or related disorders.

(F) administrative support services related to information for:

(i) comorbidities management;

(ii) care planning;

(iii) provision of medically appropriate education and support services and resources in the community; and

(iv) including person-centered care to residents with Alzheimer's disease or related disorders and the resident's family; and

(G) staffing requirements that will:

(i) facilitate collaboration and cooperation among facility staff members; and

(ii) ensure each staff member obtains appropriate informational materials and training to properly care for and interact with a resident with Alzheimer's disease or a related disorder based on the staff member's position; and

(H) establishing a supportive and therapeutic environment for residents with Alzheimer's disease or related disorders to enhance the sense of community among the residents and within the facility; and

(I) transitioning care and coordination of services for residents with Alzheimer's disease or related disorders; and

(2) after the date of successfully completing the training and competency-based evaluation required in paragraph (1) of this subsection, complete two hours of annual continuing education on best practices related to treatment and provision of care to residents with Alzheimer's disease or related disorders.

(c) A facility must require a staff member who provides personal care services to:

(1) complete four hours of training and pass a competency-based evaluation on:

(A) Alzheimer's disease and related disorders;

(B) provision of person-centered care;

(C) assessment and care planning;

(D) activities of daily living for a resident with Alzheimer's disease or a related disorder; and

(E) common behaviors and communications associated with a resident with Alzheimer's disease and related disorders;

(2) complete the requirements in paragraph (1) of this subsection prior to performing personal care services; and

(3) after successfully completing the training and competency-based evaluation required in paragraph (1) of this subsection, complete two hours of continuing education that includes best practices related to the treatment of and provision of care to residents with Alzheimer's disease or related disorders.

(d) A facility must require each staff member who is not a direct service staff member, including housekeeping staff, front desk staff, maintenance staff, and other staff members with incidental but recurring contact with a resident with Alzheimer's disease or a related disorder, to complete training and pass a competency-based evaluation on:

(1) Alzheimer's disease and related disorders;

(2) provision of person-centered care; and

(3) common behaviors and communications associated with a resident with Alzheimer's disease and related disorders.

(e) A facility must:

(1) provide the training completion certificate to the staff member, including the manager; and

(2) maintain records of each certificate for all staff, including the manager, in accordance with the facility's records retention policies.

(f) A facility staff member who successfully completes the training required by this section, passes the evaluation, and then transfers employment to another facility is not required to satisfy these requirements for the new facility if there is less than a two-year lapse of employment with a facility.

§553.255. All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder:

(a) A facility must adopt, implement, and enforce a written policy that:

(1) requires a facility employee who provides direct care to a resident with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to residents with Alzheimer's disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a resident with Alzheimer's disease or a related disorder meet the specific identified needs of the resident relating to the diagnosis of Alzheimer's disease or a related disorder.

(b) The training required for facility employees under subsection (a)(1) of this section may be satisfied by completing the training required under §553.254 of this subchapter (relating to Training Requirements for Staff Providing Personal Care Services to a Resident With Alzheimer's Disease or a Related Disorder in a Facility that is Not an Alzheimer's Certified Facility) or §553.303 of this chapter (relating to Staff Training) but must include information about:

(1) symptoms of dementia;

(2) stages of Alzheimer's disease;

(3) person-centered behavioral interventions; and

(4) communication with a resident with Alzheimer's disease or a related disorder.

§553.257. Human Resources.

(a) Personnel records. A facility must keep current and complete personnel records on a facility employee for review by HHSC staff including:

(1) documentation that the facility performed a criminal history check;

(2) an annual employee misconduct registry check;

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in §553.261(f) of this subchapter (relating to Coordination of Care);

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in §553.261(f) of this subchapter;

(6) the signed statement from the employee referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities), acknowledging that the employee may be criminally liable for the failure to report abuse, neglect, and exploitation; and

(7) a signed disclosure statement, indicating whether the employee:

(A) has been convicted of an offense described in Texas Health and Safety Code §250.006; and

(B) has lived in a state other than Texas within the past five years.

(b) Investigation of facility employees.

(1) A facility must comply with the provisions of Texas Health and Safety Code, Chapter 250.

(2) Before a facility hires an employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC nurse aide registry (NAR) to determine if the individual is designated in either registry as unemployable based on employee misconduct. Both registries can be accessed on the HHSC Internet website.

(3) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable or who has been convicted of an offense listed in Texas Health and Safety Code §250.006 as a bar to employment or is a contraindication to employment with the facility.

(4) A facility must provide notification about the EMR to an employee in accordance with §561.3 of this title [26 TAC §711.1413] (relating to Employment and Registry Information).

(5) In addition to the initial search of the NAR and the EMR, a facility must conduct a search of the NAR and the EMR to determine if the employee is designated in either registry as unemployable at least every 12 months.

(6) A facility must keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(7) If an applicant for employment indicates on the disclosure statement that he or she [they] have lived in another state within the past five years, the facility must conduct a name-based criminal history check in each state in which the applicant previously resided within the five-year period. A facility may hire the applicant pending the results of the name-based criminal history check in each state, but the employee must not be in a position that has direct contact with residents.

(8) If HHSC determines that a facility employee has engaged in reportable conduct, the facility must:

(A) suspend the employment of the employee while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review conducted in accordance with Texas Health and Safety Code §253.004 or §253.005, pending a final decision by an administrative law judge; and

(B) not reinstate the employee's employment during the course of any applicable appeals process.

(9) For the purpose of paragraph (8) of this subsection, reportable conduct includes:

(A) abuse or neglect that causes or may cause death or harm to a resident;

(B) sexual abuse of a resident;

(C) financial exploitation of a resident in an amount of \$25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to a resident.

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 18, 2024.

TRD-202401650

Karen Ray
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 2, 2024

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

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SUBCHAPTER G. INSPECTIONS,
INVESTIGATIONS, AND INFORMAL
DISPUTE RESOLUTION

26 TAC §553.329

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendment implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.329. HHSC Investigation of Allegations of Abuse, Neglect, or Exploitation.

(a) In accordance with the memorandum of understanding (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), between HHSC and the Texas Department of Family and Protective Services (DFPS), HHSC receives and investigates reports of abuse, neglect, and exploitation of elderly and disabled persons or other residents living in facilities licensed under this chapter.

(b) HHSC only investigates complaints of abuse, neglect, or exploitation when:

(1) the act occurs in the facility;

(2) the facility is responsible for the supervision of the resident at the time the act occurs; or

(3) the alleged perpetrator is affiliated with the facility.

[(b) HHSC only investigates complaints of abuse, neglect, or exploitation when the act occurs in the facility, when the licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Other complaints of abuse, neglect, or exploitation not meeting these criteria must be referred to DFPS.]

(c) HHSC refers all other complaints of abuse, neglect, or exploitation not meeting subsection (b) of this section to DFPS.

[(e) Complaint investigations include a visit to the resident's facility and consultation with persons thought to have knowledge of the circumstances. If the facility fails to admit HHSC staff for a complaint investigation, HHSC seeks a probate or county court order for admission. Investigators may request of the court that a peace officer accompany them.]

(d) HHSC must make an on-site visit to a facility to investigate complaints of abuse or neglect and all complaints involving unemancipated minors who have been inappropriately placed in the facility. During such on-site visits, HHSC must consult with persons thought to have knowledge of the circumstances. HHSC may make an on-site visit to a facility to investigate all other types of complaints.

~~[(d) In cases concluded to be physical abuse, HHSC submits the written report of the HHSC investigation to the appropriate law enforcement agency.]~~

(e) If a facility fails to admit HHSC staff for an on-site investigation, HHSC seeks a probate or county court order for admission. An HHSC investigator may request of the court that a peace officer accompany the investigator.

(f) In cases concluded to be physical abuse, HHSC submits the written report of the HHSC investigation to the appropriate law enforcement 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 18, 2024.

TRD-202401651

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 2, 2024

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



CHAPTER 571. VOLUNTARY RECOVERY HOUSING ACCREDITATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §571.1, concerning Purpose; §571.2, concerning Definitions; §571.3, concerning Approved Accrediting Organizations; §571.4, concerning Accreditation Not Required; §571.5, concerning Places Ineligible for Accreditation as a Recovery House; §571.11, concerning Standards for Accreditation; §571.21, Accrediting Organization Requirements; §571.31, concerning Soliciting; §571.32, concerning Advertising Restrictions; and §571.41, concerning Accrediting Organization Enforcement Actions in new Chapter 571, concerning Voluntary Recovery Housing Accreditation.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 299, 88th Legislature, Regular Session, 2023.

H.B. 299 added new Texas Health and Safety Code (THSC) Chapter 469 to establish a voluntary accreditation program for recovery housing programs. THSC Chapter 469, in part, requires HHSC to adopt minimum standards for a voluntary recovery housing accreditation process. THSC §469.002(b) requires HHSC to approve only the National Alliance for Recovery Residences or the Oxford House Incorporated to serve as an accrediting organization that provides accreditation to qualifying recovery houses.

THSC Chapter 469 also defines several key terms, outlines the responsibilities of the accreditation organizations, clarifies certain places are ineligible for accreditation as a recovery house,

requires certain recovery houses to designate a responsible party, requires HHSC to prepare an annual report, prohibits soliciting and certain advertising, outlines enforcement procedures for accreditation organizations, and clarifies effective September 1, 2025, a recovery house must be accredited by an accrediting organization under this chapter to receive state money.

The proposed new rules are necessary to establish and adopt the minimum standards for recovery housing accreditation required by THSC §469.002.

SECTION-BY-SECTION SUMMARY

Proposed new §571.1 describes the chapter's purpose.

Proposed new §571.2 defines relevant key terms used in the new chapter.

Proposed new §571.3 clarifies HHSC may approve only the National Alliance for Recovery Residences or the Oxford House Incorporated as an accrediting organization for a recovery house as required by THSC §469.002(b).

Proposed new §571.4 clarifies that seeking accreditation as a recovery house is voluntary. The new section also requires a recovery house to be accredited under the chapter and THSC Chapter 469 to receive state funding beginning September 1, 2025, as required by THSC §469.009.

Proposed new §571.5 describes the places that are ineligible for accreditation as a recovery house under THSC §469.003.

Proposed new §571.11 describes the standards for accreditation required under THSC §469.002(a).

Proposed new §571.21 describes the accreditation organization requirements required under THSC §469.002(c) and the designated responsible party requirements required under THSC §469.004.

Proposed new §571.31 describes the soliciting restrictions required under THSC §469.006.

Proposed new §571.32 describes the advertising restrictions required under THSC §469.007.

Proposed new §571.41 describes the accrediting organization enforcement actions required under THSC §469.008.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments because the state funding for the recovery houses is already being dispersed. The new rules will allow the funds to be dispersed only to accredited houses after September 1, 2025, but will not impact the total amount of state funding available.

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 not expand, limit, or 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 no adverse economic effect on small businesses, micro-businesses, or rural communities because participation in the accreditation process described in the proposed rules is voluntary.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from a recovery housing organization who chooses to participate in this program having additional oversight from an accrediting organization and from rules that are consistent with statutory requirements.

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 participation in the accreditation process described in the proposed rules is voluntary.

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 Rules 24R015" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §§571.1 - 571.5

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

The new sections implement Texas Government Code §531.0055 and THSC Chapter 469.

§571.1. Purpose.

The purpose of this chapter is to:

- (1) implement Texas Health and Safety Code (THSC) Chapter 469;
- (2) establish the minimum standards for voluntary accreditation as a recovery house as required by THSC §469.002; and
- (3) inform the public that accreditation under this chapter does not authorize a recovery house to provide chemical dependency treatment services.

§571.2. Definitions.

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

- (1) Accrediting organization--:
 - (A) the National Alliance for Recovery Residences; or
 - (B) the Oxford House Incorporated.
- (2) Applicant--A recovery house applying for accreditation.
- (3) HHSC--The Texas Health and Human Services Commission.
- (4) Personal care services--In accordance with Texas Health and Safety Code (THSC) §247.002:
 - (A) assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or
 - (B) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.
- (5) Recovery house--In accordance with THSC §469.001, a shared living environment that:
 - (A) promotes sustained recovery from substance use disorders by integrating residents into the surrounding community and providing a setting that connects residents to supports and services promoting sustained recovery from substance use disorders;
 - (B) is centered on peer support; and
 - (C) is free from alcohol and drug use.
- (6) State health care regulatory agency--In accordance with THSC §161.131, a state agency that licenses a health care professional.
- (7) THSC--Texas Health and Safety Code.

§571.3. Approved Accrediting Organizations.

In accordance with THSC §469.002(b), HHSC may approve only the National Alliance for Recovery Residences or the Oxford House Incorporated as an accrediting organization for a recovery house.

§571.4. Accreditation Not Required.

(a) The accreditation process outlined in this chapter is voluntary. A recovery house is encouraged to seek and maintain accreditation but is not required to be accredited to operate in the state of Texas.

(b) Effective September 1, 2025, in accordance with THSC §469.009, a recovery house that is not accredited by an accrediting organization under THSC Chapter 469 and this chapter is ineligible for and may not receive funding from the state of Texas.

§571.5. Places Ineligible for Accreditation as a Recovery House.

Pursuant to THSC §469.003, the following places are ineligible for accreditation as a recovery house:

- (1) a home and community support services agency licensed under THSC Chapter 142;
- (2) a nursing facility licensed under THSC Chapter 242;
- (3) a continuing care facility regulated under THSC Chapter 246;
- (4) an assisted living facility licensed under THSC Chapter 247;
- (5) an intermediate care facility for individuals with an intellectual disability licensed under THSC Chapter 252;
- (6) a boarding home facility, as defined by THSC §260.001;
- (7) a chemical dependency treatment facility licensed under THSC Chapter 464, Subchapter A;
- (8) a child-care facility licensed under Texas Human Resources Code Chapter 42;
- (9) a family violence shelter center, as defined by Texas Human Resources Code §51.002;
- (10) an entity qualified as a community home under Texas Human Resources Code Chapter 123; and
- (11) a hotel, as defined by Texas Tax Code §156.001.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



SUBCHAPTER B. MINIMUM STANDARDS FOR ACCREDITATION

26 TAC §571.11

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

The new section implements Texas Government Code §531.0055 and THSC Chapter 469.

§571.11. Standards for Accreditation.

(a) In accordance with THSC §469.002(a), HHSC adopts by reference the following standards established by the National Alliance for Recovery Residences and the Oxford House Incorporated as minimum standards for accreditation as a recovery house:

(1) Recovery Residence Quality Standards published by the National Alliance for Recovery Residences on November 19, 2018; and

(2) the Oxford House manual published September 2017.

(b) In addition to the minimum standards in subsection (a) of this section, a recovery house:

(1) may not provide personal care services; and

(2) if accredited by the National Alliance for Recovery Residences, must designate at least one individual to serve as the responsible party for the recovery house in accordance with THSC §469.004.

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. ACCREDITING ORGANIZATION REQUIREMENTS

26 TAC §571.21

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

The new section implements Texas Government Code §531.0055 and THSC Chapter 469.

§571.21. Accrediting Organization Requirements.

(a) An accrediting organization shall:

(1) develop procedures to:

(A) provide an easily accessible method for a recovery house seeking accreditation to find, complete, and submit an accreditation application;

(B) before accrediting an applicant or reaccrediting a recovery house, ensure the applicant or accredited recovery house at a minimum meets:

(i) the accrediting organization's standards in §571.11(a) of this chapter (relating to Standards for Accreditation) adopted by HHSC by reference; and

(ii) the additional standards in §571.11(b) of this chapter;

(C) determine the accreditation and reaccreditation period;

(D) require an accredited recovery house to submit all required reaccreditation information before the recovery house's accreditation period expires;

(E) require an applicant or accredited recovery house to adjust its practices to meet the standards for accreditation or reaccreditation;

(F) take an adverse action under §571.41 of this chapter (relating to Accrediting Organization Enforcement Actions) when a recovery house fails to meet the standards described in paragraph (2) of this subsection; and

(G) assess application accreditation and reaccreditation fees;

(2) provide training to recovery house staff concerning the accreditation standards in §571.11 of this chapter;

(3) develop a code of ethics;

(4) annually provide the following information to HHSC:

(A) the total number of accredited recovery houses;

(B) the number of recovery houses accredited during the preceding year;

(C) any issues concerning the accreditation or reaccreditation process;

(D) the number of accredited recovery houses that had an accreditation revoked during the preceding year; and

(E) the reasons for the revocation; and

(5) ensure a recovery house does not offer or claim to offer chemical dependency treatment services as outlined in THSC §464.001(4) (relating to Definitions) and Title 25 Texas Administrative Code (25 TAC) Chapter 448 (relating to Standard of Care) at the site of the recovery house without a chemical dependency treatment facility license issued under 25 TAC Chapter 448 (relating to Standard of Care). A recovery house that offers chemical dependency treatment services is not eligible for accreditation under this chapter.

(b) In addition to the requirements in subsection (a) of this section, the National Alliance for Recovery Residences shall:

(1) require an applicant or accredited recovery house to designate at least one individual to serve as the recovery house's responsible party, in accordance with THSC §469.004;

(2) require the responsible party to:

(A) satisfactorily complete training the accrediting organization provides concerning the accreditation standards in §571.11 of this chapter and the accrediting organization's accreditation and reaccreditation requirements; and

(B) be responsible for administering the recovery house in accordance with the accreditation standards in this chapter and the accrediting organization's accreditation and reaccreditation requirements; and

(3) require an accredited recovery house to notify the accrediting organization before the 30th business day after the date of any change to the recovery house's designated responsible party.

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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SUBCHAPTER D. PROHIBITED ACTIONS

26 TAC §571.31, §571.32

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

The new sections implement Texas Government Code §531.0055 and THSC Chapter 469.

§571.31. Soliciting.

Pursuant to THSC §469.006, an accrediting organization shall prohibit an accredited recovery house's responsible party designated under §571.21(b)(1) of this chapter (relating to Accrediting Organization Requirements), employee, or agent from offering to pay or agreeing to accept, directly or indirectly, overtly or covertly, remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.

§571.32. Advertising Restrictions.

Pursuant to THSC §469.007, an accrediting organization shall ensure a recovery house:

(1) does not advertise or otherwise communicate that the recovery house is accredited by an accrediting organization unless the recovery house is accredited by an accrediting organization in accordance with THSC Chapter 469 and this chapter; and

(2) does not advertise or cause to be advertised in any manner any false, misleading, or deceptive information about the recovery house.

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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Chief Counsel

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SUBCHAPTER E. ENFORCEMENT

26 TAC §571.41

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

The new section implements Texas Government Code §531.0055 and THSC Chapter 469.

§571.41. Accrediting Organization Enforcement Actions.

(a) Pursuant to THSC §469.008, if an accredited recovery house violates a provision in THSC Chapter 469 or in this chapter, the accrediting organization that issued the accreditation to the recovery house may suspend the accreditation for a period not to exceed six months while the accrediting organization conducts an audit of the recovery house.

(b) The accrediting organization may implement a corrective action plan or revoke the recovery house's accreditation after completing the audit under subsection (a) 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.

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CHAPTER 745. LICENSING

SUBCHAPTER K. INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY

DIVISION 3. CONFIDENTIAL RECORDS

26 TAC §745.8483, §745.8497

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §745.8483, concerning What portions of a child care record are confidential, and new §745.8497, concerning What confidentiality requirements apply to a person who is an applicant for a permit, a permit holder, or a former permit holder, in Texas Administrative Code, Title 26, Chapter 745, Licensing, Subchapter K, Division 3, Confidential Records.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 510 and a portion of House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023.

S.B. 510 added §552.11765 to Texas Government Code to require a state licensing authority to make confidential certain

information regarding a permit applicant, permit holder, or former permit holder. Accordingly, HHSC Child Care Regulation (CCR) is proposing (1) a new rule that describes the confidentiality requirements that apply to an applicant for a permit, a permit holder, or a former permit holder; and (2) amending an existing rule that describes the confidential portions of a child care record to include a cross-reference to the new rule.

H.B. 4696 amended Texas Health and Safety Code §253.001(4) and Texas Human Resources Code §48.251(a)(3) and §48.252(b) and (c) to specify that HHSC Long-Term Care Regulation Provider Investigations (HHSC PI) is responsible for investigating an allegation of abuse, neglect, and exploitation of an elderly person or adult with a disability who resides in a residential child-care facility. Accordingly, CCR proposes amending one rule to add to the list of confidential information in a child care record any information that would interfere with an HHSC PI investigation if the information were released. Only a portion of H.B. 4696 is being implemented as part of this rule project; a separate project will complete the rule development to implement the bill.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.8483 adds to the portions of a child care record that are considered confidential (1) any information that would interfere with an HHSC PI investigation of adult abuse, neglect, or exploitation; and (2) information relating to a person who is an applicant for a permit, a permit holder, or former permit holder as described in proposed new §745.8497.

Proposed new §745.8497 includes requirements (1) listing certain information as confidential regarding a person who is an applicant for a permit, a permit holder, or a former permit holder; and (2) listing exceptions to the confidentiality requirements.

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.

There will be an estimated cost of \$120,055 in fiscal year (FY) 2024 for information technology (IT) changes needed to update CCR's internal database and provider portal. However, these costs will be absorbed using existing resources.

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 not 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. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities 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 this rule because the rules (1) do not impose a cost on regulated persons, and (2) are necessary to comply with state law.

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 increased compliance with statutory requirements.

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 do not task the persons with additional responsibilities.

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 Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, 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 24R014" in the subject line.

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Texas Government Code Chapter 531.

The proposal affects Texas Government Code §552.11765, Texas Health and Safety Code §253.001(4), and Texas Human Resources Code §48.251(a)(3) and §48.252(b) and (c).

§745.8483. What portions of a child care record are confidential?

We can provide most portions of a child care record to the public. However, the following lists the portions of a child care record that are confidential and will not be released to the public in any manner, unless noted as an exception in §745.8487 of this division (relating to Are there any exceptions that allow the portions of a child care record that are confidential to be released to the public or certain persons?):

(1) Information concerning an open investigation, including:

(A) Interviews with operation staff, foster parents or other caregivers, children, or any other person; and

(B) Internal discussions by or among Licensing staff;

(2) The name of the reporter and any information that identifies the reporter;

(3) Information received or obtained from another agency, entity, or person, if that information is confidential under law, including information related to background checks as explained further in Subchapter F of this title (relating to Background Checks);

(4) Any private information that is confidential under state or federal law, including:

(A) A person's social security number;

(B) A foster home screening, adoptive home screening, and post-placement adoptive report; and

(C) Any information pertaining to pending court cases where the state is a party;

(5) Any information that would interfere with:

(A) ~~An [an]~~ ongoing law enforcement investigation or prosecution; ~~[or with]~~

(B) A [a] Texas Department of Family and Protective Services child abuse, neglect, or exploitation investigation; or

(C) A Texas Health and Human Services Commission Long-Term Care Regulation adult abuse, neglect, or exploitation investigation;

(6) The location of a family violence shelter or a victims of trafficking shelter center as defined by Texas Government Code §552.138;

(7) Information pertaining to an individual who received services at a family violence shelter or a victims of trafficking shelter center;

(8) Any photograph, audio or visual recording, or documentation of a child;

(9) Information that is confidential as described in §745.8497 of this division (relating to What confidentiality requirements apply to a person who is an applicant for a permit, a permit holder, or a former permit holder?); and

(10) ~~[(9)]~~ Any other information that is confidential under state or federal law.

§745.8497. What confidentiality requirements apply to a person who is an applicant for a permit, a permit holder, or a former permit holder?

(a) Except as provided by subsection (b) of this section, the following information regarding a person who is an applicant for a per-

mit, a permit holder, or a former permit holder is confidential and may not be released to the public:

- (1) Home address;
- (2) Home telephone number;
- (3) Email address;
- (4) Social security number;
- (5) Date of birth;
- (6) Driver's license number;
- (7) State identification number;
- (8) Passport number;
- (9) Emergency contact information; and
- (10) Payment information.

(b) The following information is not confidential or exempt from public disclosure under this section:

- (1) A home address that is also the operation's physical address;
- (2) A home telephone number that is also the operation's telephone number; and
- (3) An email address that is also the operation's email address.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



CHAPTER 904. CONTINUITY OF SERVICES--STATE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §904.5, concerning Definitions; §904.25, concerning Criteria for Commitment and Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA; §904.29, concerning Criteria for Commitment of a Minor to a State MR Facility Under the PMRA; §904.43, concerning MRA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA; and §904.45, concerning MRA Referral of an Applicant to a State MR Facility.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with statute, which requires HHSC to create a pathway to civil commitment to a state supported living center (SSLC) without a recommendation for placement by an interdisciplinary team (IDT). Senate Bill 944, 88th Legislature, Regular Session, 2023 amended Texas Health and Safety Code Chapter 593 to establish this requirement. The pro-

posed amendments establish guidelines and processes for such a commitment. Additional amendments to update language and agency information are also proposed.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §904.5, Definitions, updates language and agency information to use current terminology and includes new definitions for community-based services and intellectual disability.

The proposed amendment to §904.25, Criteria for Commitment and Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA, renames the section to "Criteria for Commitment, Commitment for Residential Services Without an Interdisciplinary Team Recommendation, and Regular Voluntary Admission of an Adult to a Residential Care Facility Under the PIDA;" updates language in the section; adds the requirements that must be met for an adult to be civilly committed to residential services without an IDT recommendation; and adds the right of a party to certain commitment proceedings to appeal the judgment to the appropriate court of appeals.

The proposed amendment to §904.29, Criteria for Commitment of a Minor to a State MR Facility Under the PMRA, renames the section to "Criteria for Commitment and Commitment for Residential Services Without an Interdisciplinary Team Recommendation of a Minor to a Residential Care Facility Under the PIDA;" updates language in the section; adds the requirements that must be met for a minor to be civilly committed to residential services with and without an interdisciplinary team (IDT) recommendation; and adds the right of a party to certain commitment proceedings to appeal the judgment to the appropriate court of appeals.

The proposed amendment to §904.43, MRA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA, renames the section to "LIDDA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a Residential Care Facility Under the PIDA" and updates language and references to Texas Administrative Code.

The proposed amendment to §904.45, MRA Referral of an Applicant to a State MR Facility, renames the section to "LIDDA Referral of an Applicant to a Residential Care Facility" and updates language and agency information.

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, there is expected to be an additional cost and loss of revenue to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect cannot be determined since the number of additional admissions cannot be determined. Increased admissions may require additional costs for staffing and potentially repairs and renovations for physical space. Court commitments that do not meet SSLC admissions criteria could result in decreased general revenue due to a lack of Medicaid reimbursement.

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 is expected to create new HHSC employee positions;
- (3) implementation of the proposed rules is expected to require an increase in future legislative appropriations;
- (4) the proposed rules are expected to increase fees paid to HHSC;
- (5) the proposed rules will not create a new regulation;
- (6) the proposed rules will expand existing regulations; and
- (7) the proposed rules are expected to increase the number of individuals subject to the rules.

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

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

Trey Woods has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rules do not apply to small or micro-businesses, or rural communities.

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; the rules do not impose a cost on regulated persons; and to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Laura Cazabon-Braly, Associate Commissioner of the SSLCs, has determined that for each year of the first five years the rules are in effect, the public benefit will be that a parent or guardian will have the option to petition the court for a civil commitment of an individual to an SSLC for residential services without the requirement that an interdisciplinary team provide a report recommending such a placement.

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 it is the parent's or guardian's choice to seek this path for admission to an SSLC and not a requirement. Court costs incurred by the petitioner are not required by the rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Health and Specialty Care System, Mail Code E-619, P.O. Box 13247, Austin, Texas 78711-3247, 701 W. 51st St, Austin, Texas 78751; or by email to healthandspecialtycare@hhsc.state.tx.us.

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 Rules 23R058" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §904.5

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 §591.004, provides that the Executive Commissioner of HHSC shall adopt rules to ensure the implementation of the Persons with an Intellectual Disability Act, Subtitle D, Title 7, Texas Health and Safety Code.

The amendment affects Texas Government Code §531.0055 and Texas Health and Safety Code §§593.0511 and 593.052.

§904.5. Definitions.

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

(1) Actively involved--Significant and ongoing involvement with the individual [who does not have the ability to provide legally adequate consent and who does not have an LAR which the individual's planning team deems to be supportive] based on the following:

- (A) observed interactions of the person with the individual;
- (B) advocacy for the individual;
- (C) knowledge of and sensitivity to the individual's preferences, values and beliefs; and
- (D) availability to the individual for assistance or support when needed.

(2) Applicant--An individual seeking residential services in a residential care [state MR] facility.

(3) CARE--A Texas Health and Human Services Commission (HHSC) data system [DADS' Client Assignment and Registration System; a database] with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.

(4) CLOIP--Community living options information process. The activities described in §904.99(a)(2) [§2.274(a)(2)] of this chapter [subchapter] (relating to Consideration of Living Options for Individuals Residing in State MR Facilities) performed by a contract local intellectual and developmental disability authority (LIDDA) [MRA] to provide information and education about community living options to an individual who is 22 years of age or older residing in a

residential care [state MR] facility and [or] to the individual's legally authorized representative (LAR) [LAR], if the individual has an LAR.

(5) Commissioner--The executive commissioner of HHSC [DADS].

(6) Community-based Services--Services which include:

(A) a Medicaid waiver program in Title XIX, §1915(c) of the Social Security Act, including:

(i) the Community Living Assistance and Support Services Program;

(ii) the Deaf Blind with Multiple Disabilities Program;

(iii) the Home and Community-based Services Program; or

(iv) the Texas Home Living Program;

(B) an intermediate care facility licensed under the Texas Health and Safety Code (THSC) Chapter 252;

(C) services from a local school district;

(D) services from the local mental health authority or local behavioral health authority;

(E) a home and community support services agency licensed under THSC Chapter 142;

(F) local Aging and Disability Resource Center; or

(G) services from the local intellectual and developmental disability authority.

(7) [(6)] Consensus--A negotiated agreement that all parties can and will support in implementation. The negotiation process involves the open discussion of ideas with all parties encouraged to express opinions.

(8) Contract LIDDA--A LIDDA that has a contract with HHSC to conduct the CLOIP.

(9) [(7)] Contract mental retardation authority (MRA) [MRA]-- A contract LIDDA [An MRA that has a contract with DADS to conduct the CLOIP].

(10) [(8)] CRCG [(Community Resource Coordination Group)]--Community Resource Coordination Group. A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Texas Health and Human Services Commission website at <https://crcg.hhs.texas.gov/www.hhse.state.tx.us/ereg/ereg.htm>.

(11) [(9)] DADS--The Department of Aging and Disability Services. As a result of the reorganization of health and human services delivery in Texas, DADS was abolished, and its functions transferred to HHSC.

(12) [(10)] Dangerous behavior--Physically [Behavior exhibited by an individual who is physically] aggressive, self-injurious, sexually aggressive, or seriously disruptive behaviors that require [and requires] a written behavioral intervention plan to prevent or reduce serious physical injury or psychological injury to the person engaging in these behaviors or others [to the individual or others].

(13) [(11)] Department--Department of Aging and Disability Services, predecessor agency whose functions have been dissolved and transferred to HHSC.

(14) Designated LIDDA--The LIDDA assigned to an individual in the HHSC data system.

(15) [(12)] Designated MRA--A designated LIDDA [The MRA assigned to an individual in CARE].

(16) [(13)] Discharge--The release by HHSC [DADS] of an individual voluntarily admitted or committed by court order for residential care [mental retardation] services from the custody and care of a residential care [state MR] facility and termination of the individual's assignment to the residential care [state MR] facility in the HHSC data system [CARE].

(17) [(14)] Emergency admission and discharge [admission/discharge] agreement--A written agreement between the residential care [state MR] facility, the individual or LAR, and the designated LIDDA [MRA; sample copies of which are available from the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030,] that describes:

(A) the purpose of the emergency admission, including the circumstances that precipitated the need for the admission and the expected outcomes from the admission;

(B) the responsibilities of each party regarding the care, treatment, and discharge of the individual, including how the terms of the agreement are [will be] monitored;

(C) the length of time of the emergency admission, which is that amount of time necessary to accomplish the purpose of the admission; and

(D) the anticipated date of discharge.

(18) [(15)] Facility of record--The residential care facility that serves the local service area [area(s)] assigned to the individual's designated-LIDDA [designated MRA].

(19) [(16)] Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(20) [(17)] Head of the facility--The [superintendent or] director of a residential care [state MR] facility.

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

(22) [(18)] ICAP [(Inventory for Client and Agency Planning)]--Inventory for Client and Agency Planning. A validated, standardized assessment that measures the level of supervision an individual requires and, thus, the amount and intensity of services and supports the individual needs.

(23) [(19)] ICAP service level--A designation that identifies the level of services needed by an individual as determined by the ICAP.

(24) [(20)] IDT [(Interdisciplinary team)]--Interdisciplinary team. A team comprised of intellectual disability professionals, paraprofessionals, [Mental retardation professionals and paraprofessionals] and other concerned persons, as appropriate, who assess an individual's treatment, training, and habilitation needs and make recommendations for services, including recommendations of whether

the individual is best served in a residential care facility or in a community setting.

(A) The team must include [~~Team membership always includes~~]:

- (i) the individual;
- (ii) the individual's LAR, if any; and
- (iii) persons specified by a LIDDA [~~an MRA~~] or a residential care [~~state MR~~] facility, as appropriate, who are professionally qualified or [~~and/or~~] certified or licensed with special training and experience in the diagnosis, management, needs, and treatment of individuals with an intellectual disability [~~mental retardation~~].

(B) Other participants in IDT meetings may include:

- (i) other concerned persons whose inclusion is requested by the individual or the LAR;
- (ii) at the discretion of the LIDDA [~~MRA~~] or residential care [~~state MR~~] facility, persons who are directly involved in the delivery of services to individuals with an intellectual disability [~~mental retardation services to the individual~~]; [~~and~~]
- (iii) if the individual is [~~school~~] eligible for public school services, representatives of the appropriate school district;
- (iv) actively-involved family members or friends of the individual who has neither the ability to provide legally adequate consent nor an LAR; and
- (v) when an individual is a client of the Protection and Advocacy System and the individual does not have the ability to provide legally adequate consent, a representative of the Protection and Advocacy System.

(25) [(24)] Individual--A person who has or is believed to have an intellectual disability [~~mental retardation~~].

(26) Intellectual disability--Consistent with THSC §591.003, significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originated during the developmental period.

(27) [(22)] Interstate transfer--The admission of an individual to a residential care [~~state MR~~] facility directly from a similar facility in another state.

(28) [(23)] IQ [(intelligence quotient)]--Intelligence quotient. A score reflecting the level of an individual's intelligence as determined by the administration of a standardized intelligence test.

(29) [(24)] LAR [(legally authorized representative)]--Legally authorized representative. A person authorized by law to act on behalf of an individual regarding [~~with regard to~~] a matter described in this chapter [~~subchapter~~], and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(30) [(25)] Legally adequate consent--Consent given by a person when each of the following conditions have [~~has~~] been met. [;]

(A) Legal [~~legal~~] status. [;] The individual giving the consent:

- (i) is 18 years of age or older, or younger than 18 years of age and is or has been married or had his or her disabilities of minority removed for general purposes by court order,² as described in the Texas Family Code[;] Chapter 31; and

(ii) has not been determined by a court to lack capacity to make decisions with regard to the matter for which consent is being sought.[;]

(B) Comprehension [~~comprehension~~] of information.[;] The individual giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure[;] and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with an intellectual disability. [~~mental retardation; and~~]

(C) Voluntariness. [~~voluntariness~~] The consent has been given voluntarily and free from coercion and undue influence.

(31) [(26)] Less restrictive setting--A setting which allows the greatest opportunity for the individual to be integrated into the community.

(32) LIDDA--Local intellectual and developmental disability authority. An entity to which HHSC's authority and responsibility described in THSC §531.002(12) has been delegated.

(33) [(27)] Local service area--A geographic area composed of one or more Texas counties delimiting the population which may receive services from a LIDDA [~~local MRA~~].

(34) [(28)] Mental retardation--Terminology previously used to describe intellectual disability [~~Consistent with THSC, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period~~].

(35) [(29)] Minor--An individual under the age of 18.

(36) [(30)] MRA [(mental retardation authority)]--Mental retardation authority. A LIDDA [~~An entity to which the Health and Human Services Commission's authority and responsibility described in THSC, §531.002(11) has been delegated~~].

(37) [(34)] Natural support network--Those persons, including family members, church members, neighbors, and friends, who assist and sustain an individual with supports that occur naturally within the individual's environment and that are not reimbursed or purposely developed by a person or system.

(38) [(32)] Ombudsman--An employee of HHSC who is responsible for assisting an individual or a person acting on behalf of an individual with an intellectual or developmental disability (IDD) or a group of individuals with an IDD with a complaint or grievance regarding the infringement of the rights of an individual with an IDD or the delivery of intellectual disability services submitted under THSC §592.039. The ombudsman must explain and provide information on HHSC and LIDDA services, facilities, and programs, and the rules, procedures, and guidelines applicable to the individual denied services, and refer the individual to the appropriate entity to assist the individual in gaining access to an appropriate program or in placing the individual on an appropriate interest list. [~~Consistent with THSC, §533.039, an employee of DADS who is responsible for assisting an individual or LAR if the individual is denied a service by DADS, a DADS program or facility, or an MRA. The ombudsman must explain and provide information on DADS and MRA services, facilities, and programs, and the rules, procedures, and guidelines applicable to the individual denied services, and assist the individual in gaining access to an appropriate program or in placing the individual on an appropriate waiting list.~~]

(39) [(33)] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living ar-

rangement in which the primary feature is an enduring and nurturing parental relationship.

(40) [(34)] Planning team--A team convened [group organized] by the LIDDA [MRA] and composed of:

(A) the individual;

(B) the individual's LAR [legally authorized representative (LAR)], if any;

(C) actively-involved family members or friends of the individual who has neither the ability to provide legally adequate consent nor an LAR;

(D) other concerned persons whose inclusion is requested by the individual with the ability to provide legally adequate consent or the LAR;

(E) a representative from the designated LIDDA [MRA]; [and]

(F) a representative from the individual's provider; and

(G) when an individual is a client of the Protection and Advocacy System and the individual does not have the ability to provide legally adequate consent, a representative of the Protection and Advocacy System.

(41) PIDA--Persons with an Intellectual Disability Act, Texas Health and Safety Code, Title 7, Subtitle D.

(42) [(35)] PMRA--PIDA [Persons with Mental Retardation Act, Texas Health and Safety Code, Title 7, Subtitle D].

(43) [(36)] Provider--A public or private entity that delivers [~~community-based residential~~] services and supports for individuals as an alternative to a residential care facility, including [~~;~~ but not limited to,] an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), [~~mental retardation (ICF/MR) or~~] a nursing facility, or an [~~]. The term also includes a public or private~~] entity that provides waiver services.

(44) [(37)] Related services--Services for school eligible individuals, as defined in Title 34 Code of Federal Regulations §300.34 [described in 19 TAC §89.1060 (relating to Definitions of Certain Related Services)].

(45) Residential care facility--A state supported living center or the ICF/IID component of the Rio Grande Center.

(46) [(38)] Respite admission and discharge [admission/discharge] agreement--A written agreement between the residential care [state MR] facility, the individual or LAR, and LIDDA [MRA, sample copies of which are available from the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030], that describes:

(A) the purpose of the respite admission, including the circumstances that precipitated the need for the admission and the expected outcomes from the admission;

(B) the length of time the individual will receive respite services from the residential care [state MR] facility; and

(C) the responsibilities of each party regarding the care, treatment, and discharge of the individual.

(47) [(39)] School eligible--A term describing those individuals between the ages of three and 22 who are eligible for public education services.

(48) [(40)] Service delivery system--All facility and community-based services and supports operated or contracted [~~for~~] by HHSC [DADS].

(49) [(41)] Services and supports--Programs and assistance for persons with an intellectual disability [~~mental retardation~~] that may include a determination of intellectual disability [~~mental retardation~~], interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(50) [(42)] Significantly subaverage general intellectual functioning--Measured intelligence on standardized general intelligence tests of two or more standard deviations, not including standard error of measurement adjustments, below the age-group mean for the tests used consistent with THSC §591.003 [~~Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used~~].

(51) [(43)] State MH facility [~~(state mental health facility)~~]-State mental health facility. A state hospital.

(52) [(44)] State MR facility [~~(state mental retardation facility)~~]-State mental retardation facility. A residential care facility [state school or a state center with a mental retardation residential component].

(53) [(45)] State MR facility living options instrument--A written document used to guide the discussion of living options during a planning meeting that results in a recommendation by the IDT of whether the individual should remain in the current living arrangement at the residential care [state MR] facility or move to an alternative living arrangement.

(54) TGC--Texas Government Code.

(55) [(46)] THSC--Texas Health and Safety Code.

(56) [(47)] Waiver services--Home and community-based services provided through a Medicaid waiver program approved by Centers for Medicare and Medicaid Services (CMS), as described in §1915(c) of the Social Security Act.

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

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For further information, please call: (512) 438-3049



SUBCHAPTER B. ADMISSION AND COMMITMENT

26 TAC §§904.25, 904.29, 904.43, 904.45

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of

HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §591.004, provides that the Executive Commissioner of HHSC shall adopt rules to ensure the implementation of the Persons with an Intellectual Disability Act, Subtitle D, Title 7, Texas Health and Safety Code.

The amendments affect Texas Government Code §531.0055 and Texas Health and Safety Code §§593.0511 and 593.052.

§904.25. Criteria for Commitment, Commitment for Residential Services Without an Interdisciplinary Team Recommendation, and Regular Voluntary Admission of an Adult to a Residential Care [State MR] Facility Under the PIDA [PMRA].

(a) In accordance with THSC[~~§~~] §§593.003, 593.052, and 593.041, except as provided by subsection (b) of this section, an adult may be committed to a residential care [state MR] facility for residential services only if:

(1) the adult is determined to have an intellectual disability [mental retardation] in accordance with §304.401 [§415.155] of this title (relating to Conducting a Determination of Intellectual Disability [Determination of Mental Retardation (DMR)]);

(2) the adult, because of an intellectual disability [mental retardation]:

(A) represents a substantial risk of physical impairment or injury to self or others; or

(B) is unable to provide for and is not providing for the adult's most basic personal physical needs;

(3) the adult cannot be adequately and appropriately habilitated in an available, less restrictive setting, as demonstrated by documentation that alternative settings have been identified, evaluated, and determined to be unavailable or unable to meet the adult's identified needs;

(4) the residential care [state MR] facility provides habilitative services, care, training, and treatment appropriate to the adult's needs; and

(5) a report by an IDT recommending the placement has been completed in accordance with §904.43 [§412.264] of this subchapter [title] (relating to LIDDA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a Residential Care [State MR] Facility Under the PIDA [PMRA]) during the six months preceding the date of the commitment hearing; and[-]

(6) the court determines beyond a reasonable doubt that the adult meets the requirements of subsection (d) of this section and paragraphs (1), (2)(A) or (2)(B), (3), and (4) of this subsection.

(b) In accordance with THSC §§593.003, 593.041, 593.0511, and 593.052, an adult may be committed to a residential care facility for residential services without an IDT recommendation only if:

(1) the adult is determined to have an intellectual disability in accordance with §304.401 of this title;

(2) the guardian of the adult petitions the court to issue a commitment order and shows, because of an intellectual disability, the adult:

(A) represents a substantial risk of physical impairment or injury to self or others; or

(B) is unable to provide for and is not providing for the adult's most basic personal physical needs;

(3) the adult cannot be adequately and appropriately habilitated in an available, less restrictive setting, as demonstrated by documentation that alternative settings have been identified, evaluated, and determined to be unavailable or unable to meet the adult's identified needs;

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate for the adult's needs; and

(5) the court determines beyond a reasonable doubt that the adult meets the requirements of subsection (d) of this section and paragraphs (1), (2)(A) or (2)(B), (3), and (4) of this subsection.

(c) [~~(b)~~] An adult with the capacity to give legally adequate consent may be admitted to a residential care [state MR] facility under a regular voluntary admission for residential services only if:

(1) in accordance with THSC[~~§~~] §§593.003, 593.013, and 593.026:

(A) the adult has been determined to have an intellectual disability [mental retardation] in accordance with §304.401 [§415.155] of this title [(relating to Determination of Mental Retardation (DMR))];

(B) a report by a LIDDA's [an MRA's] IDT recommending the placement has been completed in accordance with §904.43 [412.264] of this subchapter [title (relating to IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA)] during the six months preceding the request for admission;

(C) HHSC [the department] determines space is available in a residential care [state MR] facility; and

(D) the facility director [superintendent] determines that the residential care [state MR] facility provides services that meet the needs of the adult; and

(2) the IDT report referenced in paragraph (1)(B) of this subsection includes the following findings:

(A) because of an intellectual disability [mental retardation], the adult:

(i) represents a substantial risk of physical impairment or injury to self or others; or

(ii) is unable to provide for and is not providing for the adult's most basic personal physical needs;

(B) the adult cannot be adequately and appropriately habilitated in an available, less restrictive setting, as demonstrated by documentation that alternative settings have been identified, evaluated, and determined to be unavailable or unable to meet the adult's identified needs; and

(C) the residential care [state MR] facility provides habilitative services, care, training, and treatment appropriate for [~~to~~] the adult's needs.

(d) [~~(e)~~] An adult represents a substantial risk of physical impairment or injury to self or others or is unable to provide for and is not providing for the adult's most basic personal physical needs, as referenced in subsections [~~subsection~~] (a)(2), [~~and~~](b)(2)(A), and (c)(2)(A) of this section, if:

(1) the adult's IQ is four or more standard deviations below the mean, (i.e., in the severe or profound range of intellectual disability [mental retardation]); or

(2) the adult's ICAP service level equals:

- (A) 1, 2, 3, or 4; or
- (B) 5 or 6 and the adult:

(i) has extraordinary medical needs that would require direct nursing treatment for at least 180 minutes per week if the adult's caregiver were not providing such treatment; or

(ii) exhibits incidents of dangerous behavior that would require intensive staff intervention and resources to prevent serious physical injury to the adult or others if the adult's caregiver were not managing such incidents.[:; or]

[(3) the adult meets other objective measures as determined by the department.]

(e) In accordance with THSC §593.056, a party to a commitment proceeding under subsections (a) or (b) of this section has the right to appeal the judgment to the appropriate court of appeals.

(1) The Texas Rules of Civil Procedure apply to an appeal under this section.

(2) An appeal under this section shall be given a preference setting.

(3) The county court may grant a stay of commitment pending the outcome of the appeal.

§904.29. *Criteria for Commitment and Commitment for Residential Services Without an Interdisciplinary Team Recommendation of a Minor to a Residential Care [State MR] Facility Under the PIDA [PMRA].*

(a) In accordance with Texas Government Code §531.1521 and §531.153, before a minor may be committed to a residential care facility for residential services, the CRCG or the LIDDA, if the minor resides in a county that is not served by a CRCG, must fully inform the parent or guardian of all community-based services and any other service and support options for which the minor may be eligible and complete the permanency planning process, as described in §904.171 of this chapter (relating to MRA and State MR Facility Responsibilities). [THSC, §§593.003, 593.052, and 593.041; a minor may be committed to a state MR facility for residential services only if:]

[(1) the minor is determined to have mental retardation in accordance with §415.155 of this title (relating to Determination of Mental Retardation (DMR));]

[(2) the minor, because of mental retardation:]

[(A) represents a substantial risk of physical impairment or injury to self or others; or]

[(B) is unable to provide for and is not providing for the minor's most basic personal physical needs;]

[(3) the minor cannot be adequately and appropriately habilitated in an available, less restrictive setting;]

[(4) the state MR facility provides habilitative services, care, training, and treatment appropriate to the minor's needs; and]

[(5) a report by an MRA's IDT recommending the placement has been completed in accordance with §412.264 of this title (relating to IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA) during the six months preceding the date of the commitment hearing.]

(b) A minor represents a substantial risk of physical impairment or injury to self or others or is unable to provide for and is not

providing for the minor's most basic personal physical needs, as referenced in subsections (d)(2) and (e)(2) [subsection (a)(2)] of this section, if:

(1) the minor's IQ is four or more standard deviations below the mean, (i.e., in the severe or profound range of intellectual disability [mental retardation]); or

(2) the minor's ICAP service level equals:

- (A) 1, 2, 3, or 4; or
- (B) 5 or 6 and the minor:

(i) has extraordinary medical needs that would require direct nursing treatment for at least 180 minutes per week if the minor's caregiver were not providing such treatment; or

(ii) exhibits incidents of dangerous behavior that would require intensive staff intervention and resources to prevent serious physical injury to the minor or others if the minor's caregiver were not managing such incidents.[:; or]

[(3) the minor meets other objective measures as determined by the department.]

(c) A determination that a minor cannot be adequately and appropriately habilitated in an available, less restrictive setting, as referenced in subsections (d)(3) or (e)(3) [subsection (a)(3)] of this section, may not be made unless:

(1) a CRCG, or the LIDDA, if the minor resides in a county that is not served by CRCG, held a staffing concerning the minor and provided information to the minor's family about available community supports that could serve as an alternative to admission of the minor to a residential care [state MR] facility;

(2) available community supports that could serve as an alternative to admission of the minor to a residential care [state MR] facility were attempted; and

(3) if there are indications that the minor may have a serious emotional disturbance, the minor was assessed by a children's mental health professional to determine if a serious emotional disturbance exists and services to address the serious emotional disturbance were attempted.

(d) In accordance with THSC §§593.003, 593.052, and 593.041, except as provided by subsection (e) of this section, a minor may be committed to a residential care facility for residential services only if:

(1) the minor is determined to have an intellectual disability in accordance with §304.401 of this title (relating to Conducting a Determination of Intellectual Disability);

(2) the minor, because of an intellectual disability:

(A) represents a substantial risk of physical impairment or injury to self or others; or

(B) is unable to provide for and is not providing for the minor's most basic personal physical needs;

(3) the minor cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the minor's needs;

(5) a report by a LIDDA's IDT recommending the placement has been completed in accordance with §904.43 of this subchapter (relating to LIDDA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission

of an Adult to a Residential Care Facility Under the PIDA) during the six months preceding the date of the commitment hearing; and

(6) the court determines beyond a reasonable doubt that the minor meets the requirements of subsection (c) of this section and paragraphs (1), (2)(A) or (2)(B), (3), and (4) of this subsection.

(e) In accordance with THSC §§593.003, 593.041, 593.0511 and 593.052, a minor may be committed to a residential care facility for residential services without an IDT recommendation only if:

(1) the minor is determined to have an intellectual disability in accordance with §304.401 of this title;

(2) the parent of a minor petitions the court to issue a commitment order and shows, because of an intellectual disability, the minor:

(A) represents a substantial risk of physical impairment or injury to self or others; or

(B) is unable to provide for and is not providing for the minor's most basic personal physical needs;

(3) the minor cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the minor's needs; and

(5) the court determines beyond a reasonable doubt that the minor meets the requirements of subsection (c) of this section and paragraphs (1), (2)(A) or (2)(B), (3), and (4) of this subsection.

(f) In accordance with THSC §593.056, a party to a commitment proceeding under subsections (d) or (e) of this section has the right to appeal the judgment to the appropriate court of appeals.

(1) The Texas Rules of Civil Procedure apply to an appeal under this section.

(2) An appeal under this section shall be given a preference setting.

(3) The county court may grant a stay of commitment pending the outcome of the appeal.

§904.43. LIDDA [MRA] IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a Residential Care [State MR] Facility Under the PIDA [PMRA].

The IDT at a LIDDA [an MRA] must do the following in making a report of its findings and recommendations, as described in §904.25(a)(5) [§2.255(a)(5)] and (c)(1)(B) [(b)(1)(B)] of this subchapter (relating to Criteria for Commitment, Commitment for Residential Services Without an Interdisciplinary Team Recommendation, and Regular Voluntary Admission of an Adult to a Residential Care [State MR] Facility Under the PIDA [PMRA]), §904.27(b)(3)(E) [§2.256(b)(3)(E)], (c)(3)(E), (e)(3)(E), and (f)(3)(E) of this subchapter (relating to Criteria for Commitment of an Adult under the Texas Code of Criminal Procedure), and §904.29(d)(5) [§2.257(a)(5)] of this subchapter (relating to Criteria for Commitment and Commitment for Residential Services Without an Interdisciplinary Team Recommendation of a Minor to a Residential Care [State MR] Facility Under the PIDA [PMRA]).

(1) In [in] accordance with THSC [;] §593.013, the IDT must:

(A) interview the individual and [or] the individual's legally authorized representative (LAR) [LAR];

(B) review the individual's:

(i) social and medical history;

(ii) medical assessment, which must include an audiological, neurological, and vision screening;

(iii) psychological and social assessment, including the ICAP; and

(iv) determination of adaptive behavior level;

(C) determine the individual's need for additional assessments, including educational and vocational assessments;

(D) obtain any additional assessments [assessment(s)] necessary to plan services;

(E) identify the individual's or LAR's habilitation and service preferences and the individual's needs;

(F) recommend services to address the individual's needs that consider the individual's or LAR's interests, choices, and goals and, for an individual under 22 years of age, the individual's permanency planning goal;

(G) give [encourage] the individual and the individual's LAR an opportunity to participate in IDT meetings;

(H) if desired, use a previous assessment, social history, or other relevant record from a school district, public or private agency, or appropriate professional if the IDT determines that the assessment, social history or record is valid;

(I) prepare a written report of its findings and recommendations that is signed by each IDT member and send a copy of the report within 10 working days to the individual or LAR, as appropriate; and

(J) if the individual is being considered for commitment to the residential care [state MR] facility, submit the IDT report promptly to the court, as ordered, and to the individual or LAR, as appropriate; and

(2) determine whether:

(A) the individual, because of an intellectual disability [mental retardation]:

(i) represents a substantial risk of physical impairment or injury to self or others; or

(ii) is unable to provide for and is not providing for the individual's most basic personal physical needs;

(B) the individual cannot be adequately and appropriately habilitated in an available, less restrictive setting, as demonstrated by documentation that alternative settings have been identified, evaluated, and determined to be unavailable or unable to meet the individual's identified needs; and

(C) the residential care [state MR] facility provides habilitative services, care, training and treatment appropriate to the individual's needs.

§904.45. LIDDA [MRA] Referral of an Applicant to a Residential Care [State MR] Facility.

(a) If an individual or legally authorized representative (LAR) [LAR] requests residential services in a residential care [state MR] facility, the designated LIDDA [MRA] must provide an oral and written explanation of the residential services and supports for which the individual may be eligible, as described in Texas Administrative Code (TAC) Title 40 §2.307(b)(2) [§5.159(e) of this title] (relating to Access, Intake, and Enrollment Related Responsibilities [Assessment of Individual's Need for Services and Supports]).

(b) If the LIDDA's [MRA's] IDT determines that an applicant meets the criteria for residential services in a residential care facility or if a court orders an individual committed to residential care facility, as described in §904.25 [§2.255] of this subchapter (relating to Criteria for Commitment, Commitment for Residential Services Without an Interdisciplinary Team Recommendation, and Regular Voluntary Admission of an Adult to a Residential Care [State MR] Facility Under the PIDA [PMRA]) or, as described in §904.29 [§2.257] of this subchapter (relating to Criteria for Commitment and Commitment for Residential Services Without an Interdisciplinary Team Recommendation of a Minor to a Residential Care [State MR] Facility Under the PIDA [PMRA]), the LIDDA [MRA will]:

(1) notifies [notify] the applicant or LAR in writing, if applicable;

(2) contacts [contact] the residential care [state MR] facility serving the area in which the applicant lives or, if the applicant is requesting an interstate transfer, the area in which the individual's LAR or family lives or intends to live;

(3) contacts [contact] the interstate compact coordinator at HHSC [the Health and Human Services Commission], if the applicant is requesting an interstate transfer;

(4) compiles [compile] and submits [submit] all information required to complete an application packet, as described in subsection (i) [(g)] of this section; and

(5) opens [open] an assignment in the HHSC data system [CARE] indicating the applicant is waiting for services in a residential care [state MR] facility.

(c) If the LIDDA's [MRA's] IDT determines that the applicant does not meet the criteria for commitment or regular voluntary admission to a residential care [state MR] facility, as described in this subchapter, the LIDDA [MRA will]:

(1) notifies [notify] the applicant or LAR in writing of the determination and explains [explain] the procedure for the applicant or LAR to request a review of the IDT's determination by the LIDDA [MRA] in accordance with §301.155 of this title [§2.46 of this chapter] (relating to Notification and Appeals Process); or

(2) if the applicant requests [was requesting] an interstate transfer, notifies [notify] the interstate compact coordinator in writing of the determination.

(d) If a review by the LIDDA [MRA] of the IDT's determination results in the determination being upheld, the LIDDA informs [MRA will inform] the applicant or LAR in writing that they may [a] request [for] a review by HHSC's Intellectual or Developmental Disability (IDD) [DADS'] ombudsman by calling 1-800-252-8154 or they can visit the HHSC website for additional contact information for the IDD Ombudsman [may be made in writing to the Department of Aging and Disability Services, Consumer Rights and Services Division, P.O. Box 149030, Mail Code E-249, Austin, Texas 78714-9030, or by calling 1-800-458-9858].

(e) If the applicant or LAR requests a review, HHSC's IDD [DADS'] ombudsman reviews [will review] relevant documentation provided by the applicant and LAR, the IDT, and the LIDDA [MRA], and determines if [determine whether] the processes described in this subchapter were followed.

(1) The ombudsman issues [will issue] a written decision to the applicant, the applicant's LAR, and the LIDDA [MRA] within 14 calendar days of the request.

(2) If the ombudsman decides that the processes in this subchapter were followed, the ombudsman [will] provides information about other services the individual may be eligible for, including who to contact to place the applicant on interest lists [assist the applicant in gaining access to an appropriate program for which the applicant is eligible or in placing the applicant on the waiting list of an appropriate program for which the applicant is eligible].

(3) If the ombudsman decides that the processes in this subchapter were not followed, [then] the LIDDA [MRA] must take action to follow the processes in this subchapter.

(f) If the guardian of an adult petitions the court to issue a commitment order per THSC §§593.041, 593.0511, and 593.052, and the court issues the commitment order, the guardian must notify the LIDDA and provides a copy of the commitment order to the LIDDA.

(g) [(f)] If the LIDDA [MRA] determines that an applicant meets the criteria described in §904.37 [§2.261] of this subchapter (relating to Criteria for Emergency Admission of an Adult or a Minor to a State MR Facility Under the PMRA) or §904.39 [§2.262] of this subchapter (relating to Criteria for Admission of an Adult or a Minor to a State MR Facility for Respite Care Under the PMRA), the LIDDA [MRA will]:

(1) contacts [contact] the residential care [state MR] facility serving the area in which the applicant lives;

(2) compiles [compile] all of the information required to complete an application packet, as described in subsection (j) [(h)] or (k) [(i)] of this section, as appropriate; and

(3) requests [request] the applicant's enrollment in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions [ICF/MR] Program, as described in §261.244(e) [§9.244(e)] of this title (relating to Applicant Enrollment in the ICF/MR Program), if appropriate.

(h) The guardian must assist the LIDDA in compiling the information required to complete an application packet.

(i) [(g)] A complete application packet, as referenced in subsection (b)(4) of this section, must include:

(1) the original order of commitment, if applicable;

(2) a completed Form 8654, State Supported Living Center (SSLC) Admission Application, [for Admission] including signature of the applicant, if the applicant is able to sign, or the applicant's LAR, if applicable (Form 8654 is available on the HHSC website) [(copies of the Application for Admission are available by contacting the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030)];

(3) a Determination of Intellectual Disability (DID) [DMR] report with statement that the applicant has an intellectual disability, in accordance with §304.402 of this title (relating to The Determination of Intellectual Disability Report) [mental retardation, as described in §5.155(g) of this title (relating to Determination of Mental Retardation (DMR))];

(4) a completed ICAP [(Inventory for Client and Agency Planning)] booklet and Intellectual Disability and Related Conditions (ID/RC) [MR/RC] Assessment form;

(5) an IDT report completed, as described in §904.43 [§2.264] of this subchapter (relating to LIDDA [MRA] IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a Residential Care [State MR] Facility Under the PIDA [PMRA]) recommending the commit-

ment or regular voluntary admission of the applicant to a residential care [state MR] facility, unless the applicant is court committed, as described in §904.25(b) of this subchapter or §904.29(e);

(6) copies of available psychological, medical, and social histories for the applicant;

(7) a copy of any divorce decree pertaining to the applicant;

(8) any legal document dealing with the custody of a minor;

(9) current letters of guardianship, order appointing a guardian, and related orders, if the applicant has a guardian;

(10) a copy of any will naming the applicant as a devisee;

(11) a certified copy of the applicant's birth certificate;

(12) a copy of the applicant's immunization record;

(13) a copy of the applicant's social security card;

(14) a copy of the applicant's Medicare and Medicaid card (if applicable);

(15) any record regarding care and treatment of the individual in a state mental health facility or a psychiatric hospital;

(16) for the applicant who is school eligible, the Admission, Review and Dismissal [(ARD)] Committee report, Individual Education Plan [(IEP)], and Comprehensive Assessment;

(17) for the applicant who is a minor, results of the CRCG or LIDDA staffing held, as described in §904.29(c)(1) [§2.257(e)] of this subchapter;

(18) for the applicant under 22 years of age, results of the LIDDA's [MRA's] permanency planning process, as described in §904.171(a) [§2.283(a)] of this chapter [subchapter] (relating to MRA and State MR Facility Responsibilities); and

(19) any documents concerning the applicant's immigration status.

(j) [(h)] A complete application packet for emergency admission of an individual, as referenced in subsection (g)(2) [(f)(2)] of this section, must include:

(1) a completed Form 8654, State Supported Living Center (SSLC) Admission Application, [for Admission] including signature of the applicant, if the applicant is able to sign, or the applicant's LAR, if applicable (Form 8654 is available on the HHSC website) [(copies of the Application for Admission are available by contacting the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030)];

(2) a written request from the LIDDA [MRA] for the emergency admission of the applicant;

(3) documentation:

(A) describing the persuasive evidence that the individual has an intellectual disability [mental retardation];

(B) of the reasons supporting the individual's urgent need for the emergency admission, including the circumstances precipitating the need for the emergency admission;

(C) of the expected outcomes from the emergency admission; and

(D) that the requested relief can be provided by the residential care [state MR] facility within a year after the individual is admitted;

(4) a copy of any divorce decree pertaining to the individual;

(5) any legal document dealing with the custody of a minor;

(6) current letters of guardianship, order appointing a guardian and related orders, if the individual has a guardian;

(7) a certified copy of the applicant's birth certificate;

(8) a copy of the applicant's immunization record;

(9) a copy of the applicant's social security card;

(10) a copy of the applicant's Medicare and Medicaid card (if applicable);

(11) for the applicant who is school eligible, the Admission, Review and Dismissal [(ARD)] Committee report, Individual Education Plan [(IEP)], and Comprehensive Assessment;

(12) for the applicant who is a minor, the results of the CRCG or LIDDA staffing held, as described in §904.29(c)(1) [§2.257(e)] of this subchapter;

(13) for the applicant under 22 years of age, results of the LIDDA's [MRA's] permanency planning process, as described in §904.171(a) [§2.283(a)] of this chapter [subchapter];

(14) any record regarding care and treatment of the individual in a state mental health facility or a psychiatric hospital;

(15) any documents concerning the applicant's immigration status; and

(16) if requested by HHSC [DADS]:

(A) a DID [DMR] report with a statement that the applicant has an intellectual disability, [mental retardation, as described] in accordance with §304.402 [§5.155(g)] of this title[,] (relating to The Determination of Intellectual Disability Report) [if requested by DADS]; and

(B) a completed ICAP [(Inventory for Client and Agency Planning)] booklet and ID/RC [MR/RC] Assessment form.

(k) [(i)] A complete application packet for admission of an individual [individual] for respite care, as referenced in subsection (g)(2) [subsection (f)(2)] of this section, must include:

(1) a completed Form 8654, State Supported Living Center (SSLC) Admission Application, [for Admission] including signature of the applicant, if the applicant is able to sign, or the applicant's LAR, if applicable (Form 8654 is available on the HHSC website) [(copies of the Application for Admission are available by contacting the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030)];

(2) a written request from the LIDDA [MRA] for the admission of the applicant for respite care;

(3) documentation:

(A) describing the persuasive evidence that the individual has an intellectual disability [mental retardation];

(B) of the reasons why the individual or the individual's family urgently requires respite care; and

(C) that the requested assistance or relief can be provided by the residential care [state MR] facility within a period not to exceed 30 calendar days after the date of admission;

- (4) a copy of any divorce decree pertaining to the individual;
- (5) any legal document dealing with the custody of a minor;
- (6) current letters of guardianship, order appointing a guardian and related orders, if the individual has a guardian;
- (7) a certified copy of the applicant's birth certificate;
- (8) a copy of the applicant's immunization record;
- (9) a copy of the applicant's social security card;
- (10) a copy of the applicant's Medicare and Medicaid card (if applicable);
- (11) for the applicant who is school eligible, the Admission, Review and Dismissal [(ARD)] Committee report, Individual Education Plan [(IEP)], and Comprehensive Assessment;
- (12) any documents concerning the applicant's immigration status; and
- (13) if requested by HHSC [DADS]:

(A) a DID [DMR] report with a statement that the applicant has an intellectual disability in accordance with §304.402 of this title [mental retardation, as described in §5.155(g) of this title, if requested by DADS]; and

(B) a completed ICAP [(Inventory for Client and Agency Planning)] booklet and ID/RC [MR/RC] Assessment form.

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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Health and Human Services Commission

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For further information, please call: (512) 438-3049



CHAPTER 930. STATE HOSPITAL ESSENTIAL CAREGIVER DESIGNATION

26 TAC §§930.1, 930.3, 930.5, 930.7, 930.9, 930.11

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §930.1, concerning Purpose; §930.3, concerning Application; §930.5, concerning Definitions; §930.7, concerning Essential Caregiver In-Person Visitation; §930.9, concerning Revocation; and §930.11, concerning Temporary Suspension of Essential Caregiver Visits.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with Texas Health and Safety Code (THSC) Chapter 552, Subchapter F, Right to Essential Caregiver Visits, enacted by Senate Bill 52, 88th Legislature, Regular Session, 2023. Specifically, §552.202 establishes the right for a patient in a state hospital, or the patient's legally authorized representative (LAR), to designate an essential caregiver with whom a state hospital cannot prohibit in-person visitation. Section 552.203 further requires the HHSC

Executive Commissioner to develop guidelines for the state hospitals regarding the right to designate an essential caregiver, visitation schedules, physical contact, and safety protocols. Section 552.204 also addresses when an essential caregiver designation can be revoked, and the related right to an appeal, and Section 552.205 sets forth when a state hospital may seek a temporary suspension of visits.

SECTION-BY-SECTION SUMMARY

Proposed new §930.1, Purpose, describes that the purpose of the rules is to establish the right to designate an essential caregiver as provided by THSC Chapter 552, Subchapter F.

Proposed new §930.3, Application, describes who this chapter applies to and who must adhere to the policies outlined in this chapter.

Proposed new §930.5, Definitions, defines certain terms used throughout the chapter to help the reader understand the policy.

Proposed new §930.7, Essential Caregiver In-Person Visitation, describes the rights of a patient or the patient's LAR to designate an essential caregiver who can have in-person state hospital visitation, and guidelines for those visits.

Proposed new §930.9, Revocation, describes that each patient or the patient's LAR has the right to revoke an essential caregiver designation and may then designate another person as the essential caregiver. This section also addresses how and when a state hospital may revoke an essential caregiver designation, and how a patient, or the patient's LAR, may appeal such a revocation.

Proposed new §930.11, Temporary Suspension of Essential Caregiver Visits, describes how each state hospital can petition the state hospital associate commissioner or the state hospital associate commissioner's designee to suspend in-person essential caregiver visitation if it poses a community health risk, and how long a temporary suspension may last.

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 rule 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 not expand, limit, or 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 no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rules do not apply to small businesses, micro-businesses or rural communities because they only apply to HHSC.

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; does not impose a cost on regulated persons; and the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Kristy Carr, Associate Commissioner of State Hospitals, has determined that for each year of the first five years the rules are in effect, the public benefit will be that state hospital patients or the patient's LAR now can designate an essential caregiver.

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 patients or the patient's LAR can designate an essential caregiver at no cost.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Health and Specialty Care System, Mail Code E-619, P.O. Box 13247, Austin, Texas 78711-3247, or street address 701 W. 51st St, Austin, Texas 78751; or by email to healthandspecialtycare@hhsc.state.tx.us.

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 23R070" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §552.203(a) which requires the Executive Commissioner of HHSC to, by rule, develop guidelines to assist state hospitals in establishing essential caregiver visitation policies and pro-

cedures; and §552.204(c) which requires HHSC to, by rule, establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver.

The new sections affect Texas Government Code §531.0055 and THSC §552.203(a) and §552.204(c).

§930.1. Purpose.

The purpose of this chapter is to provide guidance and information on the right of state hospital patients, or the patient's legally authorized representative or representatives, to designate an essential caregiver and essential caregiver visitation policies in state hospitals.

§930.3. Application.

(a) This chapter applies to the Texas state hospitals listed under Texas Health and Safety Code Section 552.002, any facilities that the Texas Health and Human Services Commission (HHSC) operates as a state hospital, and any contracted state hospital beds funded by HHSC.

(b) The entities listed under subsection (a) must adhere to the procedures outlined in this chapter and monitor compliance with the implementation of the essential caregiver designation.

§930.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings.

- (1) Adult--An individual at least 18 years of age or older.
- (2) Community Health Risk--Any action or event that places the individuals served by the facility, staff, visitors, or the general public at the chance for or exposure to injury, sickness, or loss. This includes a public safety risk or disaster declaration by government officials.
- (3) Day--A calendar day.
- (4) Essential Caregiver--A family member, friend, guardian, or other individual a patient or patient's legally authorized representative selects for in-person visits.
- (5) LAR--Legally authorized representative. A person authorized by state law to act on behalf of an individual or patient with regard to a matter described by this chapter, including the parent of a minor child.
- (6) Manifestly Dangerous--An individual who, despite receiving appropriate treatment, including treatment targeted to the individual's dangerousness, remains likely to endanger others and requires a maximum-security environment to continue treatment and protect public safety.
- (7) Minor--An individual younger than 18 years of age and who has not been emancipated under the Texas Family Code.
- (8) Parent--The biological or adoptive parent, managing conservator, or guardian of a minor.
- (9) Patient--A person receiving services in a state hospital under this chapter.
- (10) Revocation--Action taken to terminate an essential caregiver designation.
- (11) State hospital--Texas state hospitals listed under Texas Health and Safety Code Section 552.002, any facilities that the Texas Health and Human Services Commission (HHSC) operates as a state hospital, and any contracted state hospital beds funded by HHSC.
- (12) Suspension--Temporary prevention of in-person essential caregiver visitation.

§930.7. Essential Caregiver In-Person Visitation.

Guidelines for state hospital policies and procedures.

(1) Each patient or the patient's legally authorized representative (LAR) has the right to designate an essential caregiver with whom in-person state hospital visitation may not be prohibited except as prescribed in §930.9 of this chapter (relating to Revocation) and §930.11 of this chapter (relating to Temporary Suspension of Essential Caregiver Visits).

(2) If a patient is a minor, the patient's LAR may designate up to two parents as essential caregivers.

(3) An essential caregiver may visit the individual for at least two hours each day except when the Texas Health and Human Services Commission identifies a serious community health risk under §930.9 or §930.11 of this chapter.

(4) Physical contact between the patient and the essential caregiver during in-person visitation may occur except in circumstances where physical contact is, as a matter of safety and in the exercise of reasonable medical judgment of a member of the medical staff, determined to present a significant risk of harm to the patient, essential caregiver, or others in light of the patient's current medical or psychiatric condition; including if a patient has been determined to be manifestly dangerous pursuant to 25 TAC Chapter 415, Subchapter G (relating to Determination of Manifest Dangerousness). The determination must be documented in the patient's medical record.

(5) The state hospital must provide a copy of visitation policies to the designated essential caregiver within 48 hours of the designated essential caregiver's agreement to become the essential caregiver and obtain a signed agreement form certifying that the essential caregiver agrees to follow the state hospital safety protocols for essential caregiver visits. This signed agreement must be placed in the patient's medical record.

(6) The state hospital may not establish safety protocols more restrictive for essential caregivers than those established for state hospital staff.

§930.9. Revocation.

(a) Each patient or the patient's LAR has the right to revoke an essential caregiver designation. The patient, the patient's guardian, or the patient's LAR may then designate another person as the essential caregiver.

(b) The state hospital may revoke an individual's essential caregiver designation if the individual violates state hospital policies, procedures, or safety protocols. At the time of revocation, the essential caregiver and the patient or the patient's LAR will be provided a copy of the violated policy, procedure, or safety protocol.

(c) If a state hospital revokes an individual's essential caregiver designation under this section:

(1) the patient, or the patient's LAR, has the right to designate another individual as the essential caregiver immediately;

(A) within 24 hours, the state hospital shall notify the patient or the patient's LAR of the revocation in person or by phone and the notification must be documented in the patient's record; and

(B) within two business days, the state hospital shall send a revocation notification letter to the patient or the patient's LAR via certified mail to include the state hospital appeal process;

(2) the patient or the patient's LAR may petition the state hospital associate commissioner to appeal the revocation of an essential caregiver's designation;

(A) not later than the 14th calendar day after the date of revocation, the patient or the patient's LAR, may request an appeal by submitting a written request to the state hospital associate commissioner's office;

(B) the state hospital associate commissioner or designee will make a determination on the essential caregiver appeal not later than the 14th calendar day after receiving the request; and

(C) the outcome will be documented in the patient's record and a decision letter will be sent to the requestor within two business days of the determination, if the patient or the patient's LAR files an appeal; and

(3) if the revocation is upheld, within two business days, the state hospital will send a revocation letter to the essential caregiver and the patient or the patient's LAR via certified mail.

§930.11. Temporary Suspension of Essential Caregiver Visits.

(a) Each state hospital may petition the state hospital associate commissioner or the state hospital associate commissioner's designee to suspend in-person essential caregiver visitation if in-person visitation poses a serious community health risk.

(1) The state hospital associate commissioner or designee may only approve a suspension for up to seven calendar days.

(2) State hospitals must request each suspension separately.

(3) The state hospital associate commissioner may deny the state hospital request.

(b) Each state hospital may petition the state hospital associate commissioner or the state hospital associate commissioner's designee to extend a suspension of in-person essential caregiver visitation for more than seven calendar days if in-person visitation continues to pose a serious community health risk.

(1) The state hospital associate commissioner or designee may only approve an extension for up to seven calendar days.

(2) State hospitals must request each extension separately.

(3) The state hospital associate commissioner may deny the state hospital request.

(c) A state hospital may not suspend in-person essential caregiver visitation in the 12 months from the date of the initial suspension for a period that:

(1) is more than 14 consecutive calendar days; or

(2) is more than a total of 45 calendar days.

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

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 438-3049



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §§7.1901, 7.1902, and 7.1904 - 7.1915. TDI also proposes new §7.1916 and §7.1917. The new and amended sections concern licensing requirements for multiple employer welfare arrangements (MEWAs). Sections 7.1901, 7.1906 - 7.1909, 7.1911, and 7.1913 - 7.1915 implement Insurance Code Chapter 846. Sections 7.1902, 7.1904, 7.1905, 7.1910, 7.1912, and new §7.1916 and §7.1917 implement House Bill 290, 88th Legislature, 2023. TDI also proposes to repeal 28 TAC §7.1903 to implement Insurance Code Chapter 846, Subchapters B and D.

EXPLANATION. Amendments to §§7.1901, 7.1902, and 7.1904 - 7.1915, and new §7.1916 and §7.1917 are necessary to implement HB 290 and Insurance Code Chapter 846. Insurance Code §846.0035 as added by HB 290 creates a new path for MEWAs. Under new Insurance Code §846.0035, all new MEWAs that apply for an initial certificate of authority on or after January 1, 2024, and existing MEWAs that elect to comply with the new section are subject to the new provisions.

New Insurance Code §846.0035(b) and (c) outline the Insurance Code provisions a MEWA is subject to when it:

- provides a comprehensive health benefit plan, as determined by the commissioner; or
- provides a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan (PPO) or an exclusive provider benefit plan (EPO) as defined in Insurance Code §1301.001, as determined by the commissioner.

The proposed new and amended sections clarify which plans or coverages constitute a "comprehensive health benefit plan" for the purposes of Insurance Code §846.0035(b) and what information a MEWA must provide to TDI to demonstrate compliance when the MEWA will provide a comprehensive health benefit plan under Insurance Code §846.0035. A MEWA that provides a comprehensive health benefit plan that is structured in the manner of a PPO or EPO must comply with the requirements in Insurance Code Chapters 1301 and 1467, and the rules that implement those provisions.

HB 290 also requires a MEWA that applies for a certificate of authority to demonstrate, as determined by the commissioner, that the arrangement is in compliance with all applicable federal and state laws. Under current federal law, a MEWA that does not qualify as a bona fide employer association plan is not a single group employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA) (29 United States Code §1001 et seq.). If the MEWA is not considered a single group employee welfare benefit plan under ERISA, each participating employer will be seen as sponsoring its own employee welfare benefit plan. The MEWA must demonstrate that each plan meets federal requirements for individual, small, or large group health benefit plans, as applicable. The previous requirement under Insurance Code Chapter 846 allowed a statement by the applicant certifying compliance. The proposed new and amended sections clarify what information will demonstrate compliance with federal law.

HB 290 expands who may qualify as an employer in a MEWA under new §846.0035. Where new §846.0035 applies, a MEWA may organize based on the location of the employers' principal place of business and does not need to meet the requirement for the association to have been in existence for two years. The proposed new and amended sections modify the definitions and adjust requirements to reflect this expanded eligibility.

In addition to the proposed new and amended sections that implement HB 290, the proposal also removes the requirement that MEWAs file the specific forms adopted by reference in §7.1903. Because the elements of the forms are integrated into amendments to §§7.1904, 7.1906, and 7.1912, §7.1903 is proposed for repeal. The previously adopted forms will remain on TDI's website at www.tdi.texas.gov/forms for use as a reference and resource in complying with the requirements in Chapter 7, Subchapter S. MEWAs are not required to use the TDI forms, but they must provide the required information under Insurance Code Chapter 846 and Title 28, Texas Administrative Code, Chapter 7, Subchapter S.

The proposal makes nonsubstantive changes to reflect current agency drafting style and plain language preferences, including (1) updating statutory references to reflect Insurance Code recodification; (2) adding or amending Insurance Code section titles and citations; (3) updating TDI contact information, including website addresses; and (4) correcting and revising punctuation, capitalization, and grammar.

Specifically, amendments to multiple sections include the replacement of "shall" with "must" or another context-appropriate word, and "multiple-employer welfare arrangement" with "multiple employer welfare arrangement" or "MEWA" for consistency with usage in the Insurance Code. These proposed amendments, along with other nonsubstantive amendments discussed in the following paragraphs, reflect current agency drafting style, adhere to plain language practices, and promote consistency in TDI rule text.

The proposed repeal of §7.1903 is necessary to implement Insurance Code Chapter 846, Subchapters B and D. The proposed repeal removes the forms that were previously adopted by reference for use in the regulation of MEWAs and integrates the required information into rule text, as discussed in a previous paragraph.

TDI received comments on an informal working draft that requested input on specific implementation questions. TDI posted the draft on its website on August 22, 2023, and considered those comments when drafting this proposal.

The proposed new, amended, and repealed sections are described in the following paragraphs.

Section 7.1901. The amendments to §7.1901 replace "these sections apply" with "this subchapter applies," "these sections do" with "this subchapter does," "multiple-employer" with "multiple employer," "which" with "that," and "Chapter 3, Subchapter I, concerning the licensing and regulation of such arrangements" with "Chapter 846, concerning Multiple Employer Welfare Arrangements." The proposal amends punctuation and removes "provisions of the," "or pursuant to," and "to any arrangement or plan that is established or maintained."

Nonsubstantive amendments also restructure subsection (b) to create two separate paragraphs for plain language and ease of reading. Amendments to punctuation in subsection (b) reflect

the restructuring of the section. This restructuring is not intended to create substantive changes in the requirements of §7.1901.

Section 7.1902. The amendments to §7.1902 reflect the enactment of HB 290 by adding a definition of "comprehensive health benefit plan." A comprehensive health benefit plan is defined as any health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness. The definition specifies which plans or coverage do not constitute comprehensive health benefit plans for the purposes of HB 290 and is based on exclusions in Insurance Code §846.001(3).

The proposed amendments also define "department" as the "Texas Department of Insurance" and redesignate the paragraphs throughout the section to reflect the addition of new definitions.

The proposal amends former §7.1902(2), now redesignated as §7.1902(4), to expand the definition of "employee welfare benefit plan" to include a multiple employer welfare arrangement based on the location of the employers' principal places of business as permitted under Insurance Code §846.0035 and §846.053(b)(2).

Nonsubstantive amendments restructure portions of the existing definition in §7.1902(4) into subparagraphs (A) - (C) and update punctuation to reflect the restructuring of the paragraph. This restructuring in subparagraphs (A) - (C) is not intended to create substantive changes in the requirements.

The proposal also amends punctuation throughout; removes "shall," "describes an entity which," and "the" before "Insurance Code"; and replaces "multiple-employer" with "multiple employer," "which" with "that," "Article 3.95-4" with "§846.201," and "§7.1908" with "§7.1909."

Section 7.1903. Section 7.1903 is proposed for repeal because the requirements in the forms have instead been added to the text of §§7.1904, 7.1906, and 7.1912. The forms will remain accessible as a reference and resource on TDI's website at www.tdi.texas.gov/forms. Companies and MEWAs may continue to use the forms to comply with the requirements of this subchapter.

Section 7.1904. The amendments to §7.1904 remove existing subsection (a) because it is no longer necessary and redesignate part of existing subsection (b) as a new subsection (a). Redesignated subsection (a) requires a MEWA to complete an application for an initial certificate of authority and authorizes the MEWA to use forms available on TDI's website at www.tdi.texas.gov/forms as a resource to comply.

Amendments to new subsection (b) clarify the information needed for an application for an initial certificate of authority to be considered complete and add subsection (b)(1) - (4) to incorporate information previously contained in the forms listed in §7.1903.

New subsection (b)(1) includes the information from Form FIN 300, concerning the application for and reservation of a MEWA's name. New subsection (b)(2) includes the information from Forms FIN 374, FIN 375, and FIN 376, including MEWA-specific information and information about the officers, directors, and trustees. Under subsection (b)(2), a MEWA applicant must submit an affidavit signed by the president, secretary, and treasurer or the trustees, and must include a declaration that the affiant knows of no reason under the Texas Insurance Code as to why the MEWA is not entitled to an initial certificate of authority. New

subsection (b)(3) requires a MEWA to submit a biographical affidavit for each trustee, officer, director, or administrator of the MEWA and include certain identifying information and contact information contained in Form FIN 311. New subsection (b)(4) requires the affiant to designate the commissioner of insurance as the MEWA's resident agent for purposes of service of process. A MEWA may use Form FIN 377 to comply with this requirement, but is not required to do so. The remaining paragraphs in subsection (b) are redesignated to reflect the addition of subsection (b)(1) - (4).

The amendments to new subsection (b) also add to or amend redesignated paragraphs (13), (16), (18), and (19) to implement HB 290.

Redesignated subsection (b)(13) is revised to clarify that, subject to Insurance Code §846.157(b), an actuarial opinion prepared according to §7.1904(b)(13) is required. The actuarial opinion must include the recommended amount of cash reserves the MEWA should maintain, among other things. To implement HB 290, an amendment to subsection (b)(13) clarifies that a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035 must comply with reserve requirements in Insurance Code Chapter 421. For MEWAs that do not provide a comprehensive health benefit plan, amendments to subsection (b)(13)(B)(ii) clarify that the recommended amount remains the same as was required before the passage of HB 290.

Redesignated subsection (b)(16) states that a MEWA that is formed under Insurance Code §846.0053(b)(2) must provide documentation to TDI to demonstrate compliance.

Redesignated subsection (b)(18) is revised to remove the certification that an applicant could provide to attest to compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.). Under the proposal, an applicant must provide documentation, as determined by the commissioner, that demonstrates that the MEWA is in compliance with all applicable federal and state laws. The proposed documents that will demonstrate compliance include:

- a list of and access to all reports for the last five years filed with the United States Department of Labor;
- if the MEWA is an employee welfare benefit plan, an advisory opinion from the United States Department of Labor that is not more than three years old for certain MEWA structures or an opinion from an attorney attesting to the structure of the MEWA; and
- for each plan sponsored by the applicant, an opinion from an attorney attesting to the fact that the plan is in compliance with federal and state laws.

Redesignated subsection (b)(19) is revised to implement HB 290 by requiring a MEWA that will provide a comprehensive health benefit plan under Insurance Code §846.0035 to provide additional information in accordance with proposed new §7.1917.

The proposal removes unnecessary introductory text before lists throughout the section. For example, the proposal removes the words "described in paragraphs (1) - (13) of this subsection" so the statement is simplified to "In order to be considered complete, the application must contain the following items." Similar changes are made throughout the section and are not intended to be substantive. Rather, the changes are intended to increase readability of the requirements.

The proposal revises the statement "any such licenses held should be specified by type" in subsection (b)(8)(E) to say "the applicant must specify any such licenses by type" to increase readability; removes "the" before Insurance Code, "which provides," "the summary plan description shall," "shall," and "or"; and adds "proposed" throughout for consistency with drafting in the section, "and" after subsection (b)(9)(A) to reflect that it is part of a list, and "the" at the beginning of clauses in subsection (b)(9)(B), as appropriate.

Proposed amendments also update Insurance Code citations with recodified citations throughout and replace "should" with "must"; "with components and characteristics" with "that is"; "which" with "that" or "the," as appropriate; "shall" with "must"; "non-renewal" with "nonrenewal"; "non-participation" with "nonparticipation"; "in conformity with" with "according to"; "third party" with "third-party"; "company's" with "third-party administrator's"; "management's" with "MEWA's"; and "multiple-employer welfare arrangement" with "multiple employer welfare arrangement" or "MEWA," as appropriate.

Section 7.1905. The amendments to §7.1905 clarify that employers in a MEWA may either be members of an association or group of five or more businesses within the same trade or industry or be formed under Insurance Code §846.053(b)(2), which requires the employers to each have a principal place of business in the same region that does not exceed the boundaries of the state or metropolitan statistical area designated by the United States Office of Management and Budget. These amendments implement HB 290, which expands the type of employers that may form a MEWA.

The amendments also clarify that the requirement that an association be in existence for at least two years before engaging in any activities related to the provision of employer health benefits does not apply to MEWAs formed under Insurance Code §846.0035. Proposed amendments also clarify what reserve requirements a MEWA must comply with, depending on whether the MEWA is formed under Insurance Code §846.0035.

The amendments also add subsection (a)(17) to clarify that a MEWA must comply with the requirements in proposed §7.1917 before the commissioner will issue an initial certificate of authority.

The proposal removes the safe harbor provision in subsection (a) that clarifies that MEWAs that timely filed notice for an initial and final certificate of authority would not be denied a certificate based on the fact that it engaged in the business of insurance in Texas on an unauthorized basis prior to September 1, 1993, because this provision is no longer necessary.

The proposal amends the structure of multiple paragraphs in the section and redesignates paragraphs and subparagraphs throughout to reflect the amendments. These proposed changes are nonsubstantive. For example, the bulk of paragraph (1) is broken into two subparagraphs for ease in reading and to include the second pathway created by HB 290. In addition, introductory text before lists throughout the section is amended. For example, the introductory text in subsection (a)(15) that reads "set out in subparagraphs (A) - (D) of this paragraph, as follows" now reads "in the following."

Proposed amendments to subsection (a)(15)(D) clarify that a MEWA must provide TDI's website in addition to the toll-free telephone number for consistency with 28 TAC §1.601 and remove the reference to the "Texas Department of Insurance con-

sumer services division." The requirements in 28 TAC §1.601 implement provisions of the Insurance Code, including Insurance Code §521.005, which a MEWA must comply with under Insurance Code §846.003(b)(12).

The proposal makes additional nonsubstantive changes by updating Insurance Code citations with recodified citations throughout; removing "to"; adding "in"; and replacing "transact" with "engage in," "shall" with "will," "shall have the power to" with "may," "shall be" with "is," "which may be necessary" with "necessary," "which" with "that" or "these," "prior to" with "before," "third party" with "third-party," "providing not less than," with "that provides," "days" with "days'," "non-renewal" with "nonrenewal," "current" with "preceding," "Texas Department of Insurance consumer services division" with "department," "Temporary" with "Initial" in the section title, and "multiple-employer welfare arrangement" with "multiple employer welfare arrangement (MEWA)" on the first instance and then "MEWA" through the remainder of the section.

Section 7.1906. An amendment to §7.1906(a) provides that applicants for a final certificate of authority may use MEWA forms on TDI's website at www.tdi.texas.gov/forms as a resource when complying with the section requirements.

An amendment also adds new paragraph (5) to subsection (b), inserting a requirement currently found in forms required in §7.1903. This amendment adds a requirement that the application for a final certificate of authority include a notarized statement that affirms that the affiant knows of no reason under the Texas Insurance Code as to why the MEWA is not entitled to a final certificate of authority.

An amendment to subsection (b) adds the title of Insurance Code Chapter 846 to a citation to the chapter, for consistency with other amendments to the rule and to reflect agency drafting style and plain language preferences.

Other amendments remove "the" before "Insurance Code" and replace "multiple-employer" with "multiple employer"; "which" with "that"; "multiple-employer welfare arrangement" with "MEWA"; "which sets forth a description of" with "that describes"; "Article 3.95-8" and "Chapter 3, Subchapter I" with "Chapter 846"; "which" with "whose"; and "shall" with "must" or "will," as appropriate.

Section 7.1907. Amendments to §7.1907 provide additional information about requesting an extension of an initial certificate of authority and the timelines for TDI's review of filed applications for a final certificate of authority. Existing subsection (b) is removed, and existing subsection (c) is redesignated as new subsection (b). The contents of existing subsection (b) are incorporated into new subsection (f), as discussed in a later paragraph.

The text of redesignated subsection (b) is clarified to provide that if an applicant submits a written request for a hearing within 30 days after the notice of refusal to grant a final certificate of authority is sent, revocation of the initial certificate of authority will be temporarily stayed.

New subsection (c) clarifies that a MEWA's initial certificate of authority will not expire during TDI's review of a timely filed application for final certificate of authority.

When a timely filed application is incomplete and a MEWA fails to respond to a notice of deficiency within the proposed timelines in new subsection (e), a MEWA's initial certificate of authority will expire five days after the date the response was due.

New subsection (d) requires a MEWA to timely respond to a notice of deficiency, and it also provides that the MEWA's initial certificate of authority will expire five days after the response due date or the one-year anniversary of the date the initial certificate of authority was issued, whichever occurs later.

New subsection (e) establishes the timeframe for a timely response to a notice of deficiency.

New subsection (f) incorporates requirements removed with the deletion of existing subsection (b) and additional new text provides that the request to extend the initial certificate of authority must occur before the end of the one-year term, must be in writing, and must explain in detail the reason for an extension. Subsection (f) also clarifies that only one extension will be granted under this subsection.

Amendments also replace "shall" with "will," "shall also constitute" with "constitutes," and "multiple-employer welfare arrangement" with "MEWA."

Section 7.1908. Amendments to §7.1908 reduce the fees for filing an annual audited financial statement and actuarial opinion to \$0. The fees for filing the initial and final certificate of authority are retained to cover the administrative cost to review the filings. The fee for an appointment of the commissioner of insurance as the agent for service of process remains \$50 because this amount is statutorily required under Insurance Code §846.059(c).

In addition, "shall" is replaced with "will" and "must" in the first sentence of the section.

Section 7.1909. Amendments to §7.1909 replace "pursuant to the provisions of" with "under," "optical" with "vision," "multiple-employer welfare arrangement" with "MEWA," and "multiple-employer" with "multiple employer" in the rule text and section title. In addition, the amendments revise a citation to the United States Code to remove italicized formatting in the citation.

Amendments also add the title of Insurance Code Chapter 846 to a citation to the chapter and remove "in paragraphs (1) - (3) of this subsection" in subsection (a).

Section 7.1910. Amendments to §7.1910 clarify in subsection (a)(4) that a MEWA must provide TDI's website in addition to the toll-free telephone number, for consistency with 28 TAC §1.601 and they also remove the reference to the "consumer services division." The requirements in 28 TAC §1.601 implement provisions of the Insurance Code, including Insurance Code §521.005, which a MEWA must comply with under Insurance Code §846.003(b)(12).

Amendments also add "(MEWA)" at the end of the first use of "multiple employer welfare arrangement" and replaces "multiple-employer" with "multiple employer," "must be" with "being," "shall" with "must," and "multiple-employer welfare arrangement" with "MEWA."

Section 7.1911. Amendments to §7.1911 clarify that a MEWA must complete a name application form, as described in §7.1904(b)(1), to transact business in Texas. The amendments also remove "no" at the beginning of subsection (a) and replace "shall" with "may not" to reflect the removal of "no," which is consistent with current agency drafting style and plain language preferences to remove "shall."

In addition, amendments include adding "(MEWA)" after the first use of "multiple employer welfare arrangement" and replacing "multiple-employer" with "multiple employer," "which" with "that,"

"any other" with "another," "multiple-employer welfare arrangement" with "MEWA," and "shall be" with "is."

Section 7.1912. Amendments to §7.1912 clarify that a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035 must comply with reserve requirements in Insurance Code Chapter 421. For MEWAs that do not provide a comprehensive health benefit plan, the recommended amount is unchanged and is found in subsection (a)(2)(B)(ii).

New subsection (e) requires a MEWA to file updated information when a material change occurs to documents previously provided in the application for the initial or final certificate of authority, which includes information previously listed in Form FIN 378. Form FIN 378 requires a MEWA to file updated plan documents when changes occur. To ensure that TDI has the most accurate information, a MEWA must provide updated information within 30 days of the material change. MEWAs may continue to use Form FIN 378, which is available on TDI's website at www.tdi.texas.gov/forms, as a resource to comply.

Amendments also update Insurance Code citations with recodified citations throughout the section; remove "the" before "Insurance Code"; and replace "multiple-employer" with "multiple employer," "multiple-employer welfare arrangement" with "MEWA," "shall" with "must" or "will," and "these sections" with "this subchapter."

Section 7.1913. Amendments to §7.1913 clarify that a MEWA that will provide a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan or exclusive provider benefit plan under Insurance Code §1301.001 must comply with the examination requirements in Insurance Code §1301.0056.

The amendments replace the citation to Article 1.16 with recodified citations in Insurance Code Chapter 401, Subchapter D, and the corresponding titles; add a citation to Insurance Code §1301.0056; remove "the" before "Insurance Code"; and add "(MEWA)" after the first use of "multiple employer welfare arrangement."

The proposal also replaces "multiple-employer" with "multiple employer" in the rule text and section title; "multiple-employer welfare arrangement" with "MEWA"; and "shall" with "will" or "must," as appropriate.

Section 7.1914. Amendments to §7.1914 remove "shall"; add "required"; and replace "multiple-employer" with "multiple employer," "multiple-employer welfare arrangement" with "MEWA," "shall respectively have such" with "may exercise the," "such" with "the," "shall be" with "must," and "shall" with "may" or "must," as appropriate.

Section 7.1915. Amendments to §7.1915 replace citations to Article 3.95-13 and Chapter 3, Subchapter I, with the recodified citations to Insurance Code §846.003 and Insurance Code Chapter 846, respectively. The proposal also adds the section titles to both updated citations.

Nonsubstantive amendments also remove "the" before "Insurance Code," "add "(MEWA)" after the first use of "multiple employer welfare arrangement," and replace "multiple-employer" with "multiple employer" and "multiple-employer welfare arrangement" with "MEWA."

Section 7.1916. Proposed new §7.1916 states how a MEWA that was issued a certificate of authority before January 1, 2024, may elect to be subject to certain Insurance Code provisions

under Insurance Code §846.0035. To make the election, a MEWA must complete and submit a statement signed and dated by an authorized officer, director, or trustee electing to be bound by additional provisions under Insurance Code §846.0035. The MEWA may use the forms accessible on TDI's website at www.tdi.texas.gov/forms as a resource to comply with the filing requirements.

In addition to the statement electing to be bound by additional provisions under Insurance Code §846.0035, the MEWA must submit documentation demonstrating that it is in compliance with all applicable federal and state laws including, at a minimum:

- a list of and access to all reports for the last five years filed with the United States Department of Labor;

- if the MEWA is an employee welfare benefit plan, an advisory opinion from the United States Department of Labor that is not more than three years old, for certain MEWA structures, or an opinion from an attorney attesting to the structure of the MEWA; and

- for each plan sponsored by the MEWA, an opinion from an attorney attesting to the fact that the plan is in compliance with federal and state laws.

A MEWA that will provide a comprehensive health benefit plan under Insurance Code §846.0035 must also comply with new §7.1917.

Section 7.1917. Proposed new §7.1917 applies only to a MEWA that intends to provide a comprehensive health benefit plan under Insurance Code §846.0035. If a MEWA intends to provide a comprehensive health benefit plan, the MEWA must submit a form to TDI that includes a statement declaring the MEWA's intention to provide a comprehensive health benefit plan as defined in §7.1902.

To be complete, a MEWA must submit a detailed compliance plan to address the additional requirements under Insurance Code §846.0035(b). If a MEWA provides a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan under Insurance Code §1301.001, then the MEWA must submit a detailed compliance plan to address the requirements under Insurance Code §846.0035(c), in addition to those requirements in Insurance Code §846.0035(b). A MEWA may use forms accessible on TDI's website at www.tdi.texas.gov/forms as a resource to comply with the requirements of the section.

Proposed §7.1917 also requires an opinion from an attorney attesting to the fact that each comprehensive health benefit plan sponsored by the applicant is in compliance with all applicable federal and state laws. Specifically, the opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.). The opinion must explain how each plan will comply with federal requirements applicable to large group, small group, or individual markets.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the sections as proposed are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Walker made this determination because the sections as proposed do not add to

or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed sections.

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the sections as proposed are in effect, Ms. Walker expects that enforcing and administering the sections will have the public benefit of ensuring that TDI's rules conform to Insurance Code §§846.0035, 846.052, and 846.053 as added or amended by House Bill 290, 88th Legislative Session, 2023, and §§846.056, 846.153, 846.154, and 846.157.

Ms. Walker expects that the proposed new and amended sections that implement HB 290 will not increase the cost of compliance with Insurance Code Chapter 846 because the sections as proposed do not impose requirements beyond those in statute.

Insurance Code §846.0035 permits a MEWA to provide comprehensive health benefit plans, as determined by the commissioner, and specifies additional Insurance Code provisions with which a MEWA must comply. MEWAs that provide a comprehensive health benefit plan and that the commissioner determines are structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance Code §1301.001 are subject to Insurance Code Chapters 1301 and 1467, and the rules that implement those provisions. Compliance with those additional requirements under Insurance Code §846.0035 may impose a significant cost on MEWAs that provide those particular plans.

MEWAs that elect to provide a comprehensive health benefit plan under Insurance Code §846.0035 and those that also elect to structure the plan as a preferred provider benefit plan or an exclusive provider benefit plan must do so by filing additional information with TDI for review under proposed new §7.1916 and §7.1917. Ms. Walker anticipates that preparing and filing the additional information for TDI review may result in administrative costs to the MEWAs.

MEWAs applying for their initial certificate of authority and MEWAs that already hold a final certificate of authority are not required to provide a comprehensive health benefit plan under Insurance Code §846.0035. MEWAs may continue to provide other coverage authorized under Insurance Code Chapter 846.

For MEWAs that elect to be bound to the new provisions in HB 290, the imposed costs on regulated persons are a result of implementing HB 290, so Government Code §2001.0045 does not apply under §2001.0045(c)(9).

Ms. Walker expects that the proposed repeal of §7.1903 will not increase the cost of compliance with Insurance Code Chapter 846 because the proposed repeal does not change any previously adopted requirements. The repeal of §7.1903 removes the requirement that MEWAs complete and file the forms previously identified and adopted by reference.

The technical requirements found in the forms in §7.1903, such as notarization or the inclusion of an association seal, are proposed to be incorporated into the rule text in §§7.1904, 7.1906, and 7.1912. Because these changes do not require MEWAs to comply with new or additional requirements, the proposed repeal of §7.1903 and incorporation of the form elements into the rule text do not impose an additional cost on MEWAs. In addition, the proposed repeal of §7.1903 does not require MEWAs to create or use their own forms. MEWAs may continue to use the forms

on TDI's website at www.tdi.texas.gov/forms to comply with the requirements in this subchapter.

Ms. Walker anticipates that the proposed requirement in §7.1912(e) to file updated information within 30 days when a material change occurs to information provided in the application for an initial or final certificate of authority may impose a cost to regulated persons. Under Insurance Code §846.153(a)(3), a MEWA must file modified terms of a plan document with a certification from the trustees that the changes are in compliance with the minimum requirements of Insurance Code Chapter 846.

For any other documents or information not subject to the filing requirement in Insurance Code §846.153(a)(3), Ms. Walker anticipates that preparing and filing the additional updated information may result in administrative costs to MEWAs. The requirement that a MEWA update its previously provided application information when a material change occurs will have the benefit of ensuring TDI retains accurate information about MEWAs that hold a certificate of authority in Texas. Ms. Walker anticipates that, although preparing and filing the additional information may result in a cost to regulated persons, the cost will be offset by the removal of certain annual filing fees in §7.1908, discussed in the subsequent paragraph.

The proposed amendments to §7.1908 reduce the fees for filing the annual audited financial statement and actuarial opinion to \$0. The fees for filing the initial and final certificate of authority are retained to cover the administrative cost to review the filings. The \$50 fee for an appointment of the commissioner of insurance as the MEWA's agent for the purposes of service of process remains as it is required in Insurance Code §846.059(c).

Ms. Walker anticipates that removing the annual fees in §7.1908 will offset any outstanding costs to regulated persons for complying with the proposed amendments to §7.1912(e).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the sections as proposed will not have an adverse economic effect on small or micro businesses, or on rural communities. MEWAs are nonprofit entities, so they do not meet the definition of a small or micro business under Government Code §2006.001. As a result, and in accordance with Government Code §2006.002, TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the sections as proposed are necessary to implement legislation. The proposed rule implements Insurance Code §846.0035 and §846.052, as added by House Bill 290, 88th Legislative Session, 2023.

Because proposed amendments to §7.1904 and §7.1906 add requirements previously found in forms required under §7.1903, the requirements likely do not impose a possible cost on regulated persons. The requirements in §7.1912 may impose a cost to regulated persons, but the proposed removal of certain filing fees in §7.1908 will offset those costs.

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

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on June 3, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2844 at 2:00 p.m., central time, on May 23, 2024, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

SUBCHAPTER S. MULTIPLE EMPLOYER

~~[MULTIPLE-EMPLOYER]~~ WELFARE

ARRANGEMENTS REQUIREMENTS

FOR OBTAINING AND MAINTAINING

CERTIFICATE OF AUTHORIZATION

28 TAC §§7.1901, 7.1902, 7.1904 - 7.1917

STATUTORY AUTHORITY. TDI proposes amendments to §§7.1901, 7.1902, and 7.1904 - 7.1915, and new §7.1916 and §7.1917 under Insurance Code §§846.0035(a), 846.0035(b), 846.0035(c), 846.005(a), 846.052(b)(5), 1301.007, 1451.254, 1467.003, 4201.003, and 36.001.

Insurance Code §846.0035(a) authorizes the commissioner to prescribe the manner by which a multiple employer welfare arrangement may elect to be bound by Insurance Code §846.0035.

Insurance Code §846.0035(b) authorizes the commissioner to determine when a multiple employer welfare arrangement provides a comprehensive health benefit plan and is subject to additional requirements.

Insurance Code §846.0035(c) authorizes the commissioner to determine whether a multiple employer welfare arrangement is structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan.

Insurance Code §846.005(a) provides that the commissioner may, on notice and opportunity for all interested persons to be

heard, adopt rules and issue orders reasonably necessary to augment and implement Insurance Code Chapter 846.

Insurance Code §846.052(b)(5) authorizes the commissioner to determine whether a multiple employer welfare arrangement has demonstrated that it is in compliance with all applicable federal and state laws.

Insurance Code §1301.007 directs the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §1451.254 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 1451, Subchapter F.

Insurance Code §1467.003 directs the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §4201.003 authorizes the commissioner to adopt rules to implement Insurance Code Chapter 4201.

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

CROSS-REFERENCE TO STATUTE. Sections 7.1902, 7.1905, and 7.1910, and new §7.1916 and §7.1917 implement HB 290. Section 7.1901 implements Insurance Code §846.005. Section 7.1904 implements HB 290 and Insurance Code Chapter 846, Subchapters B and D. Section 7.1906 implements Insurance Code §846.056. Section 7.1907 implements Insurance Code §846.055 and §846.057. Section 7.1908 implements Insurance Code §846.059(b). Section 7.1909 implements Insurance Code §846.201. Section 7.1910 implements Insurance Code §§521.005(b), 846.003(b)(12), and 846.254. Section 7.1911 implements Insurance Code §846.159. Section 7.1912 implements HB 290 and Insurance Code §846.153. Section 7.1913 implements Insurance Code §846.158. Section 7.1914 implements Insurance Code Chapter 846, Subchapter C. Section 7.1915 implements Insurance Code §846.060.

§7.1901. Scope and Applicability.

(a) This subchapter applies [These sections apply] to any multiple employer [multiple-employer] welfare arrangement that [which] is subject to [provisions of the] Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements [Chapter 3, Subchapter I, concerning the licensing and regulation of such arrangements].

(b) This subchapter does [These sections do] not apply to any arrangement or plan that is established or maintained:

(1) under [or pursuant to] one or more agreements that [which] the United States Secretary of Labor finds to be a collective bargaining agreement; [;] or

(2) [to any arrangement or plan that is established or maintained] by a rural electric cooperative or a rural telephone cooperative association, as those terms are defined in the Employee Retirement Income Security Act of 1974 (29 United States Code §1002(40)).

§7.1902. Definitions.

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

(1) Business plan--The comprehensive, detailed plan by which the multiple employer [multiple-employer] welfare arrangement conducts or proposes to conduct its business.

(2) Comprehensive health benefit plan--Any health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness. The term does not include:

(A) accident-only or disability income insurance coverage, or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance;

(D) coverage for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides limited-scope dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) workers' compensation insurance coverage or similar insurance coverage;

(K) coverage provided through a jointly managed trust authorized under 29 United States Code §141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 United States Code §157;

(L) hospital indemnity or other fixed indemnity insurance coverage;

(M) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(N) short-term major medical contracts;

(O) liability insurance coverage, including general liability insurance coverage and automobile liability insurance coverage;

(P) coverage issued as a supplement to liability insurance coverage;

(Q) automobile medical payment insurance coverage;

(R) coverage for on-site medical clinics;

(S) coverage that provides other limited benefits specified by federal regulations; or

(T) other coverage that is:

(i) similar to the coverage described by subparagraphs (A) - (S) of this paragraph under which benefits for medical care are secondary or incidental to other coverage benefits; and

(ii) specified in federal regulations.

(3) Department--Texas Department of Insurance.

(4) [(2)] Employee welfare benefit plan--Any plan, fund, or program established or maintained by an employer or employers

as members of an association or group of five or more businesses in the same trade or industry. An employee welfare benefit plan includes a multiple employer welfare arrangement under Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits, when each of the employers in the multiple employer welfare arrangement has a principal place of business in the same region that does not exceed the boundaries of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget. The plan must: ~~to the extent that such plan, fund, or program is established or maintained for the purpose of providing for its participants or their beneficiaries those benefits which are permitted under the Insurance Code, Article 3.95-4. Such plan must, at a minimum, clearly set out the rights, privileges, duties, and obligations of employers, employees, and beneficiaries with respect to the multiple-employer welfare arrangement. The plan must clearly set forth benefits intended to be provided under the plan, persons to whom the benefits are intended to be provided, the source of funding for such intended benefits, and a clear and complete procedure for the application for, and collection of, such benefits by beneficiaries of the plan.]~~

(A) ~~be established or maintained for the purpose of providing for its participants or their beneficiaries one or more of those benefits permitted under Insurance Code §846.201, concerning Benefits Allowed;~~

(B) ~~at a minimum, set out the rights, privileges, duties, and obligations of employers, employees, and beneficiaries with respect to the multiple employer welfare arrangement in a manner calculated to be understood by the average plan participant; and~~

(C) ~~plainly describe:~~

~~(i) the benefits the plan intends to provide;~~

~~(ii) the persons the plan benefits are intended to apply to;~~

~~(iii) the source of funding for the intended benefits; and~~

~~(iv) a clear and complete procedure for beneficiaries to apply for and collect the intended benefits under the plan.~~

(5) ~~Multiple employer [(3) Multiple-employer] welfare arrangement--An employee welfare benefit plan, or any other arrangement that [which] is established or maintained for the purpose of offering or providing any benefit described in [the] Insurance Code §846.201 [; Article 3.95-4], and restated in §7.1909 [§7.1908] of this title (relating to Benefits Allowed To Be Provided by Multiple Employer [Multiple-Employer] Welfare Arrangements), to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, provided that the arrangement [describes an entity which] meets either or both of the following criteria:~~

(A) ~~one or more of the employer members in the multiple employer [multiple-employer] welfare arrangement is either domiciled in this state or has its principal headquarters or principal administrative office in this state; or~~

(B) ~~the multiple employer [multiple-employer] welfare arrangement solicits an employer that is domiciled in this state or has its principal headquarters or principal administrative office in this state.~~

§7.1904. *Application for Initial Certificate of Authority.*

~~[(a) Entities which must file applications under this subchapter are set out in paragraphs (1) and (2) of this subsection.]~~

~~[(1) Any person wishing to establish a multiple-employer welfare arrangement which is not fully insured, as that term is defined in the Insurance Code, Article 3.95-1(4), must apply for and obtain a license after September 1, 1993.]~~

~~[(2) To avoid prosecution for engaging in the unauthorized business of insurance, a multiple-employer welfare arrangement which is not fully insured, as that term is defined in the Insurance Code, Article 3.95-1(4), and which was in existence on June 1, 1993, and which has continued after that date to provide any of the services regulated by Insurance Code, Chapter 3, Subchapter I, shall complete its application for initial certificate of authority by June 1, 1994, and timely file an application for final certificate of authority.]~~

(a) ~~Any person seeking to establish a multiple employer welfare arrangement (MEWA) that is not fully insured, as that term is defined in Insurance Code §846.002(a), concerning Applicability of Chapter, must submit a [(b) A] complete application for initial certificate of authority [must be submitted] to the commissioner and may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply.~~

(b) ~~In order to be considered complete, the application must contain the following items [described in paragraphs (1) - (13) of this subsection]:~~

(1) ~~a name application form signed and dated by an authorized representative of the applicant that includes:~~

(A) ~~the name of the MEWA; the physical address where the MEWA is incorporated; contact information, including telephone number and email address; and title or relationship of each organizer to the proposed MEWA, along with the same information about any affiliated organizations;~~

(B) ~~a statement that the applicant is seeking to reserve a name as a MEWA and whether the purpose of the application is to change the name of an existing MEWA, form a new MEWA, or seek to be admitted to the State of Texas as a foreign MEWA;~~

(C) ~~a list of all the states where the MEWA holds a certificate of authority or license; and~~

(D) ~~a list of all the states where the MEWA holds a certificate of authority under an assumed name;~~

(2) ~~a notarized affidavit signed by the president, secretary, and treasurer, or all of the trustees, that contains:~~

(A) ~~information about the MEWA, including:~~

~~(i) the MEWA's full name;~~

~~(ii) the physical address of the MEWA's home office;~~

~~(iii) the employer identification number;~~

~~(iv) the point of contact's name and contact information; and~~

~~(v) the association's seal, if applying as an association. If not applying as an association, a notation that the affiant is a group of employers;~~

(B) ~~information about the officers, directors, and trustees, as applicable, including:~~

~~(i) the full name, social security number, and appointment or election date of the president, secretary, and treasurer; and~~

(ii) the full name, social security number, and appointment or election date of any other directors or trustees; and

(C) a statement that affirms the following: "We hereby apply for an initial Certificate of Authority authorizing {MEWA name} to act as a Multiple Employer Welfare Arrangement in the State of Texas for a period of twelve (12) months. We know of no reason under the provisions of the Texas Insurance Code why {MEWA name} is not entitled to such a Certificate of Authority";

(3) a biographical affidavit that is completed and filed for each trustee, officer, director, or administrator of the MEWA that includes the following information:

(A) the affiant's current legal name and any names the individual may have used in the past, social security number, date of birth, citizenship(s), and current mailing addresses, phone numbers, and email addresses;

(B) the name and address of the MEWA;

(C) the affiant's current or proposed position or title at the MEWA;

(D) information regarding the affiant's education, memberships in professional organizations, and any professional, occupational, or vocational licenses held (current and past), including a statement whether any were refused, suspended, or revoked in the last 10 years;

(E) the affiant's employment history for the previous 10 years; and

(F) the affiant's fidelity bond coverage history, criminal history, any bankruptcy history, lawsuit history in the past five years, and ownership or control of entities involved in the business of insurance, including a statement whether any became insolvent or were placed under supervision or in receivership, rehabilitation, liquidation, or conservatorship, or had their certificate of authority suspended or revoked;

(4) a notarized service of process form signed by the president and secretary or the trustees that designates the commissioner as the MEWA's resident agent for purposes of service of process and includes the following:

(A) the mailing address of the MEWA;

(B) a statement substantially similar to the following: "{MEWA Name} hereby appoints the commissioner of insurance, located at 1601 Congress Ave., Austin, Texas 78701, as its resident agent for service of process under Texas Insurance Code Section 846.059. All process or pleadings in any civil suit or action against {MEWA Name} may be served on the commissioner as though served on {MEWA Name} directly. {MEWA Name} waives all claims of error by reason of this appointment and admits or agrees that this appointment of the commissioner of insurance as its resident agent for service of process will be taken and held as valid and sufficient as though served directly on {MEWA Name}. This appointment will continue for as long as any liability remains outstanding against {MEWA Name} pertaining to any such matters."; and

(C) the MEWA's seal, as applicable;

(5) a [(4)] certified copy of the articles of incorporation, if applicable;

(6) a certified copy of the [(2)] bylaws, constitution, or rules or regulations establishing and operating the MEWA; [multiple-employer welfare arrangement;]

(7) [(3)] trust agreements created in connection with the MEWA, which [multiple-employer welfare arrangement. The trust agreements] must be signed by all trustees;

(8) [(4)] a welfare benefit plan document, including documentation or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the MEWA; [multiple-employer welfare arrangement;]

(9) a [(5)] summary plan description, [with components and characteristics] consistent with 29 United States Code §1022, that: [as provided in subparagraphs (A) and (B) of this paragraph:]

(A) is [the summary plan description shall be] written in a manner calculated to be understood by the average plan participant and is [shall be] sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan; and

(B) contains the following information: [the summary plan description shall contain the items of information set out in clauses (i) - (xii) of this subparagraph as follows:]

(i) the name and type of administration of the plan;

(ii) the name and address of the administrator;

(iii) the names and addresses of any trustee or trustees if they are persons different from the administrator;

(iv) the plan requirements with respect to eligibility for participation and benefits;

(v) a description of provisions relating to nonforfeitable benefits if any are included in the plan;

(vi) a description of circumstances that [which] may result in disqualification, ineligibility, or denial or loss of benefits;

(vii) the source of financing of the plan;

(viii) the identity of any organization through which benefits are provided;

(ix) the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis;

(x) the procedures to be followed in presenting claims for benefits under the plan;

(xi) remedies available under the plan for the redress of claims that [which] are denied in whole or in part; and

(xii) a statement of guaranty fund nonparticipation [non-participation], if applicable, in the same form as set out for insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Nonparticipation [Non-participation]);

(10) [(6)] financial statements, including: [as described in subparagraphs (A) - (F) of this paragraph:]

(A) a current financial statement. If the MEWA [multiple-employer welfare arrangement] is already in business, the financial statement must include an annual balance sheet and income statement, developed on generally accepted accounting principles, for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(B) a projected balance sheet for a minimum of three years on a quarterly basis, including assumptions used in producing projections. The projected balance sheet [and] must be developed

according to ~~[in conformity with]~~ generally accepted accounting principles;

(C) a projected income statement, providing income forecasts for a minimum interval of three years, detailed on a quarterly basis. The projected income statement must be developed according to ~~[in conformity with]~~ generally accepted accounting principles;

(D) a projected cash flow analysis on a quarterly basis, for a minimum of three years. Line by line documentation of anticipated cash inflow and outflow by specific account type must be submitted;

(E) a statement of the proposed initial cash and cash reserves summary. This statement must include all items of funding, including but not limited to loan receipts, loan repayments, and stock sales. The statement must include a description of the source and terms of the funding; and

(F) if an existing MEWA, ~~[multiple-employer welfare arrangement, it must submit]~~ a copy of its Federal Form 5500 for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(11) ~~[(7)]~~ a copy of the fidelity bond issued in the name of the MEWA ~~[multiple-employer welfare arrangement]~~ protecting against acts of fraud and dishonesty by its trustees, directors, officers, employees, administrator, or other individuals responsible for servicing the employer welfare benefit plan. Such bond must ~~[should]~~ be in an amount equal to the greater of 10% of the premiums and contributions received by the MEWA, ~~[multiple-employer welfare arrangement,]~~ or 10% of the benefits paid, during the preceding calendar year, with a minimum of \$10,000 and a maximum of \$500,000. No additional bond will be required of a ~~third-party [third party]~~ administrator licensed to engage in business in this state;

(12) ~~[(8)]~~ a business plan that includes the following six major areas. ~~[which includes the six major areas addressed in subparagraphs (A) - (F) of this paragraph:]~~

(A) Current or proposed operations must be outlined with information by the applicant identifying the number of employers in the group currently participating or proposed to participate in the MEWA ~~[multiple-employer welfare arrangement]~~. The outline must ~~[should]~~ also include the number of participating units. To the extent such information is available, it also must ~~[should]~~ include the number of dependents covered or to be covered by the MEWA ~~[multiple-employer welfare arrangement]~~. A specific list of the benefits being provided or ~~proposed~~ to be provided must also be included.

(B) Specific information about individuals providing or proposed to provide management services is required. The applicant must ~~[should]~~ indicate whether each trustee is an owner, partner, officer, or director, and/or employee of a participating employer or is committed to participate in the MEWA ~~[multiple-employer welfare arrangement]~~. In addition, the applicant must ~~[should]~~ provide the name and address of the employer represented by each trustee and by each officer and provide the association of the trustee or officer with such employer. The applicant must list the individuals responsible for managing or handling funds or assets of the MEWA. ~~[multiple-employer welfare arrangement. A biographical affidavit must be completed and filed for each trustee, officer director or administrator of the multiple-employer welfare arrangement.]~~

(C) With respect to administration of the present or proposed plan, the applicant must give the names and qualifications of individuals ~~[;]~~ or the ~~third-party [third party]~~ administrator ~~[;]~~ responsible for or proposed to be responsible for servicing the program of the MEWA ~~[multiple-employer welfare arrangement]~~. If a

~~third-party [third party]~~ administrator is to service the plan, a copy of the ~~third-party administrator's [company's]~~ Texas license must ~~[should]~~ be attached. In addition, a copy of the agreement between the MEWA ~~[multiple-employer welfare arrangement]~~ and the ~~third-party [third party]~~ administrator must ~~[should]~~ be submitted, signed by the ~~third-party administrator and trustees or directors of the MEWA [multiple-employer welfare arrangement]~~.

(D) The applicant must provide documentation that ~~the MEWA [multiple-employer welfare arrangement]~~ has provided or will provide a sufficient number of competent persons to service its program in the areas of claims adjusting and underwriting. The applicant must ~~[should]~~ also describe the present or proposed plan to service billings, claims, and underwriting. The criteria for underwriting must ~~[shall]~~ be actuarially justified.

(E) The applicant must provide a specific outline and description of the MEWA's ~~[management's]~~ marketing efforts. The applicant must ~~[should]~~ list the names of all persons directly employed or proposed to be employed by the arrangement ~~[;]~~ who solicit participants or adjust claims, indicating the qualifications and credentials of such individuals ~~[;]~~ and whether such persons hold any license issued by the department. ~~The applicant must specify any such licenses by type. [Any such licenses held should be specified by type.]~~

(F) The applicant must provide documentation showing that a procedure has been established for handling claims for benefits in the event of dissolution of the MEWA; ~~[multiple-employer welfare arrangement.]~~

(13) subject to Insurance Code §846.157(b), concerning ~~Renewal of Certificate; Additional Actuarial Review, [(9)]~~ an actuarial opinion prepared by an actuary who is not an employee of the MEWA ~~[multiple-employer welfare arrangement]~~ and who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code §1241 and §1242). The actuarial opinion must ~~[shall]~~ include the following ~~[items described in subparagraphs (A) - (C) of this paragraph, as follows:]~~

(A) a description of the actuarial soundness of the MEWA ~~[multiple-employer welfare arrangement]~~, including any recommended actions that the MEWA ~~[multiple-employer welfare arrangement]~~ should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the MEWA ~~[multiple-employer welfare arrangement]~~ should maintain.

(i) For a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035, concerning ~~Applicability of Certain Laws to Associations Providing Health Benefits, the MEWA must comply with Insurance Code Chapter 421, concerning Reserves in General.~~

(ii) For a MEWA that does not provide a comprehensive health benefit plan under Insurance Code §846.0035, the recommended amount may ~~[which shall]~~ not be less than the greater of 20% of the total contributions in the preceding plan year or 20% of the total estimated contributions for the current plan year; cash reserves must ~~[shall]~~ be calculated with proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor, and a margin for error (cash reserves required by ~~[the]~~ Insurance Code §846.154, concerning ~~Cash Reserve Requirements, must [; Article 3-95-8, shall]~~ be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount, or such other investments as the commissioner may authorize by rule); and

(C) the recommended level of specific and aggregate stop-loss insurance the MEWA [~~multiple-employer welfare arrangement~~] should maintain;

(14) [(10)] if the MEWA [~~multiple-employer welfare arrangement~~] is in existence at the time of its application, annual reports meeting the substantive requirements of 29 United States Code §1023 and §1024 must [~~shall~~] be filed. To the extent that such annual reporting requirements are not otherwise met by existing MEWAs when [~~multiple-employer welfare arrangements in~~] complying with other provisions of this subchapter, a filing under this paragraph must be made, and must include, at a minimum: [~~at a minimum include the items described in subparagraphs (A) - (C) of this paragraph, as follows:~~]

(A) the administrator's report of essential information for the most recent year ending, detailing the size and nature of the plan, and the number of participating employees in the plan;

(B) the statement from any insurance company, insurance service, or other similar organization that sells or guarantees [~~or organizations which sell or guarantee~~] plan benefits. The [~~;~~ which] statement must [~~shall~~] detail:

(i) the premium rate or subscription charge and the total of such premiums or subscription charges in relation to the approximate number of persons covered by each class of benefits; and

(ii) the total amount of premiums received, approximate number of persons covered by each class of benefits, and total claims paid by such company, service, and other organization; and

(C) the published summary plan description and annual report to participants and beneficiaries of the plan;

(15) [(14)] documentation indicating that the MEWA [~~multiple-employer welfare arrangement~~] has applications from not less than five employers and will provide similar benefits for not less than 200 separate participating employees, and that the annual gross premiums of or contributions to the plan will be not less than \$20,000 for a vision-benefit-only plan, \$75,000 for a dental-benefits-only plan, and \$200,000 for all other plans;

(16) for a MEWA that is formed according to Insurance Code §846.053(b)(2), concerning Eligibility Requirements for Initial Certificate of Authority, documentation demonstrating that the employers in the MEWA applicant each have a principal place of business in the same region that does not exceed the boundaries of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget;

(17) [(12)] documentation that the MEWA [~~multiple-employer welfare arrangement~~] possesses a written commitment, binder, or policy for stop-loss insurance issued by an insurer authorized to do business in this state that provides [~~providing not less than~~]:

(A) at least 30 days' [~~days~~] notice to the commissioner of any cancellation or nonrenewal [~~non-renewal~~] of coverage; and

(B) [~~which provides~~] both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the subsequent plan year and the specific retention amount determined by the actuarial report required by [~~the~~] Insurance Code §846.153, concerning Required Filings, [~~;~~ Article 3.95-8~~;~~] and paragraph (13) [(9)] of this subsection; [~~and~~]

(18) documentation demonstrating that the MEWA is in compliance with all applicable federal and state laws, including, at a minimum, the following:

(A) for all plans sponsored by the applicant, whether operating in Texas or in any other state, a list of and access to all reports for the last five years filed with the United States Department of Labor in compliance with the Employee Retirement Income Security Act of 1974, 29 United States Code §§1021(g), 1023, and 1024;

(B) if the MEWA is an employee welfare benefit plan for purposes of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.), either:

(i) an advisory opinion from the United States Department of Labor that is no more than three years old recognizing the employer group or association as a bona fide employer association or group if the relevant MEWA structure addressed by the advisory opinion has not changed and will not change after licensure; or

(ii) an opinion from an attorney attesting that the employer group or association as it will be structured after licensure qualifies as a bona fide employer association or group for purposes of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.). An attorney attestation must adequately explain how and why the employer group or association meets all of the factors to be a bona fide employer association or group, based on the facts and circumstances of the employer group's or association's governance and operations during the 12 months immediately preceding submission of the application, and on how the MEWA will be structured after licensure, with explicit references to relevant language drawn from the employer group's or association's bylaws, trust agreement, or other organizational documents, which must be submitted to the department with the attorney's attestation; and

(C) for each plan that will be provided by the applicant, an opinion from an attorney attesting to the fact that the plan is in compliance with all applicable federal and state laws. The opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.), including how each plan complies with federal requirements applicable to large group, small group, or individual markets, as applicable; and

(19) if the MEWA will provide a comprehensive health benefit plan, the MEWA must provide additional information in accordance with §7.1917 of this title, concerning Comprehensive Health Benefit Plans.

[(13) a certification, provided by the applicant and signed by the president and secretary or the trustee of the MEWA, or other such official, attesting that the multiple-employer welfare arrangement is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq).]

(c) On finding of good cause, the commissioner may order an actuarial review of a MEWA [~~multiple-employer welfare arrangement~~] in addition to the actuarial opinion required by [~~the~~] Insurance Code §846.153. [~~;~~ Article 3.95-8(a)(2)]. The cost of any such additional actuarial review must [~~shall~~] be paid by the MEWA [~~multiple-employer welfare arrangement~~].

(d) Upon application of a MEWA [~~multiple-employer welfare arrangement~~], the commissioner may waive or reduce the requirement for aggregate stop-loss coverage and the amount of reserves required by [~~the~~] Insurance Code §846.154 [~~;~~ Article 3.95-8(a)(2)(B)], if it is determined that the interests of the participating employers and employees are adequately protected.

§7.1905. *Commissioner Review of Application; Issuance of Initial [Temporary] Certificate of Authority.*

(a) The commissioner ~~will~~ ~~[shall]~~ promptly review the documentation submitted by the applicant and may ~~[shall have the power to]~~ conduct any necessary investigation ~~[which may be necessary]~~ and ~~[to]~~ examine under oath any persons interested in or connected with the multiple employer welfare arrangement (MEWA). ~~[multiple-employer welfare arrangement. An existing multiple-employer welfare arrangement which timely files notice for an initial and a final certificate of authority will not be denied such certificate based on the fact that it engaged in the business of insurance in this state on an unauthorized basis prior to September 1, 1993.]~~ Within 60 days of the filing of a ~~[the]~~ completed application, the commissioner ~~will~~ ~~[shall]~~ issue an initial certificate of authority, which is ~~[shall be]~~ a temporary certificate of authority for a term of one year, to the MEWA ~~[multiple-employer welfare arrangement]~~, provided that all of the following conditions ~~[in paragraphs (1) - (16) of this subsection]~~ have been met~~;~~ ~~[as follows]:~~

(1) the employers in the MEWA: ~~[multiple-employer welfare arrangement]~~

(A) are members of an association or group of five or more businesses ~~that [which]~~ are the same trade or industry, including closely related businesses ~~that [which]~~ provide support, services, or supplies primarily to that trade or industry; or

(B) for a MEWA that is formed based under Insurance Code §846.053(b)(2), concerning Eligibility Requirements for Initial Certificate of Authority, each has a principal place of business in the same region that does not exceed the boundaries of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget;

(2) if the applicant is an association, that the association in the MEWA ~~[multiple-employer welfare arrangement]~~ is engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan;

(3) if the applicant is an association and Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits, does not apply to the MEWA, that the association in the MEWA ~~[multiple-employer welfare arrangement]~~ has been in existence for a period of not less than two years ~~before [prior to]~~ engaging in any activities relating to the provision of employer health benefits to its members;

(4) the employee welfare plan of the association or group in the MEWA ~~[multiple-employer welfare arrangement]~~ is controlled and sponsored directly by participating employers, participating employees, or both;

(5) the association or group of employers in the MEWA ~~[multiple-employer welfare arrangement]~~ is a not-for-profit organization;

(6) the MEWA ~~[multiple-employer welfare arrangement]~~ has within its own organization adequate facilities and competent personnel, as determined by the commissioner, to service the employee benefit plan or has contracted with a third-party ~~[third party]~~ administrator that holds a current certificate of authority to engage in business in the State of Texas;

(7) the MEWA ~~[multiple-welfare arrangement]~~ has applications from not less than five employers and will provide similar benefits for not less than 200 separate participating employees, and the annual gross premiums or contributions to the plan will be not less than \$20,000 for a plan that provides only vision benefits, \$75,000 for a plan that provides only dental benefits, and \$200,000 for all other plans;

(8) the MEWA ~~[multiple-employer welfare arrangement]~~ possesses a written commitment, binder, or policy for stop-loss insur-

ance issued by an insurer that has a certificate of authority to engage in ~~[transact]~~ business in the State of Texas that provides: ~~[; providing not less than]~~

(A) at least 30 days' ~~[days]~~ notice to the commissioner of any cancellation or nonrenewal ~~[non-renewal]~~ of coverage; ~~[(this instrument shall provide)]~~

(B) both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the next plan year and a specific retention amount annually determined by the actuarial report required by Insurance Code §846.153(a)(2), concerning Required Filings, ~~[Article 3.95-8(a)(2);]~~ and verified by the signature of the actuary who prepared the report; ~~and [;]~~

(C) ~~[(9)]~~ both the specific and aggregate coverage will require all claims to be submitted within 90 days after the claim is incurred and provide a 12-month claims incurred period and a 15-month paid claims period for each policy year;

(9) ~~[(10)]~~ the contributions must ~~[shall]~~ be set to fund at least 100% of the aggregate retention plus all other costs of the MEWA ~~[multiple-employer welfare arrangement]~~;

(10) ~~[(11)]~~ if the reserves required by Insurance Code §846.154, concerning Cash Reserve Requirements, ~~[Article 3.95-8(a)(2)(B)]~~ exceed the greater of 40% of the total contributions for the preceding ~~[current]~~ plan year~~;~~ or 40% of the total contributions expected for the current plan year, the contributions may be reduced to fund less than 100% of the aggregate retention plus all other costs of the MEWA ~~[multiple-employer welfare arrangement]~~, but in no event less than the level of contributions necessary to fund the minimum reserves required under Insurance Code §846.154, or Insurance Code Chapter 421, concerning Reserves in General, for comprehensive health benefit plans ~~[Article 3.95-8(a)(2)(B)]~~;

(11) ~~[(12)]~~ the minimum reserves required by Insurance Code §846.154 or Insurance Code Chapter 421 for comprehensive health benefit plans ~~[described in Article 3.95-8(a)(2)(B)]~~ have been established or will be established before the final certificate of authority is issued;

(12) ~~[(13)]~~ the MEWA ~~[multiple-employer welfare arrangement]~~ has established a procedure for handling claims for benefits in the event of dissolution of the MEWA ~~[multiple-employer welfare arrangement]~~;

(13) ~~[(14)]~~ the MEWA ~~[multiple-employer welfare arrangement]~~ has obtained the required fidelity bond;

(14) ~~[(15)]~~ the MEWA ~~[multiple-employer welfare arrangement]~~ has submitted its plan document or any instrument describing the rights and obligations of the employers, employees, and beneficiaries with respect to the MEWA: ~~[multiple-employer welfare arrangement; and]~~

(15) ~~[(16)]~~ the MEWA ~~[multiple-employer welfare arrangement]~~ has submitted a summary plan description and has filed for review any notifications such as an identification card, policy, or contract, in connection with the employee welfare benefit plan. These ~~[; which]~~ notifications include any of the disclosures in the following: ~~[set out in subparagraphs (A) - (D) of this paragraph, as follow:]~~

(A) that individuals covered by the plan are only partially insured;

(B) that in the event the plan or the MEWA ~~[multiple-employer welfare arrangement]~~ does not ultimately pay medical expenses that are eligible for payment under the plan for any reason,

the participating employer or its participating employee covered by the plan may be liable for those expenses;

(C) that, if applicable, the plan does not participate in the guaranty fund; such disclosure must be ~~being~~ provided in the same notice format required of insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Nonparticipation); and

(D) the toll-free telephone number and website for ~~the complaints section of~~ the department as required under Insurance Code §521.005, concerning Notice to Accompany Policy; and [Texas Department of Insurance consumer services division.]

(16) for a MEWA that will provide a comprehensive health benefit plan, the MEWA has submitted documentation that adequately demonstrates compliance with applicable requirements, as specified in §7.1917 of this title (relating to Comprehensive Health Benefit Plans).

(b) Unless excepted by statute, a MEWA ~~[multiple-employer welfare arrangement]~~ may commence doing business in this state only after it receives its initial certificate of authority.

(c) The MEWA must ~~[multiple-employer welfare arrangement shall]~~ appoint the commissioner of insurance as its registered agent for service of process, by filing the form as described in §7.1904(b)(4) of this title (relating to Application for Initial Certificate of Authority) ~~[same on the prescribed form]~~.

§7.1906. Application for Final Certificate of Authority.

(a) A multiple employer ~~[multiple-employer]~~ welfare arrangement (MEWA) that ~~[which]~~ has received its initial certificate of authority must apply for a final certificate of authority no later than one year after the issuance of its initial certificate of authority. The MEWA must submit a complete ~~[multiple-employer welfare arrangement shall file an]~~ application for final certificate of authority to the commissioner and may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply ~~[on the prescribed form and furnish such information as may be required by the commissioner]~~.

(b) The application must ~~[shall]~~ include only the following information: ~~[those items described in paragraphs (1) - (4) of this subsection, as follow:]~~

(1) the names and addresses of:

(A) the association or group of employers sponsoring the MEWA ~~[multiple-employer welfare arrangement]~~;

(B) as applicable, the members of the board of trustees or directors ~~[; as applicable,]~~ of the MEWA ~~[multiple-employer welfare arrangement]~~; and

(C) at least five employers, if the arrangement is not an association, whose ~~[which]~~ information will ~~[shall]~~ be retained by the commissioner as confidential;

(2) evidence that the fidelity bond requirements have been met;

(3) copies of all plan documents and agreements with service providers, which will ~~[shall]~~ be retained by the commissioner as confidential. (Indicate on what pages the specific benefits are listed); ~~[and]~~

(4) a funding report containing:

(A) a statement certified by the board of trustees or directors, as applicable, and an actuarial opinion that all applicable requirements of ~~[the]~~ Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, ~~[; Article 3-95-8,]~~ have been met;

(B) an actuarial opinion that describes ~~[which sets forth a description of]~~ the extent to which contributions or premium rates:

(i) are not excessive;

(ii) are not unfairly discriminatory; and

(iii) are adequate to provide for the payment of all obligations and the maintenance of required cash reserves and surplus of the MEWA ~~[multiple-employer welfare arrangement]~~;

(C) a certified statement of the current value of the assets and liabilities accumulated by the MEWA ~~[multiple-employer welfare arrangement]~~ (unless the application for final certificate of authority is filed 90 days or later following the close of the fiscal year for the MEWA ~~[multiple-employer welfare arrangement]~~, in which case the financial statement must ~~[shall]~~ be an audited statement), and a projection of the assets, liabilities, income, and expenses of the MEWA ~~[multiple-employer welfare arrangement]~~ for the next 12-month period and that reflects that the MEWA has maintained adequate cash reserves; and

(D) a statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with operation of the MEWA; and ~~[multiple-employer welfare arrangement.]~~

(5) a notarized statement signed by an authorized director, officer, or trustee that affirms the following: "I know of no reason under the provisions of the Texas Insurance Code why {MEWA Name} is not entitled to a final certificate of authority."

(c) ~~[(b)]~~ After examination, investigation, and determination that all the requirements of ~~[the]~~ Insurance Code Chapter 846 ~~[; Chapter 3, Subchapter E,]~~ and this subchapter ~~[these sections]~~ have been met, the commissioner will ~~[shall]~~ issue a final certificate of authority to the MEWA ~~[multiple-employer welfare arrangement]~~.

§7.1907. Denial of Final Certificate of Authority and Extension of Initial Certificate of Authority.

(a) If the commissioner refuses to grant a final certificate of authority to an applicant that fails to meet the requirements of §7.1906 of this title (relating to Application for Final Certificate of Authority), notice of refusal will ~~[shall]~~ be in writing. Such notice will ~~[shall]~~ set forth the basis for the refusal, and constitutes ~~[shall also constitute]~~ 30 days' advance notice of revocation of the initial certificate of authority.

~~[(b)]~~ The initial certificate of authority may be extended for up to one year at the discretion of the commissioner on a determination that the multiple-employer welfare arrangement is likely to meet the requirements of this subchapter within one year. No more than one extension of the initial certificate of authority shall be granted, regardless of the length of time for which an extension was granted.]

(b) ~~[(e)]~~ If the applicant submits a written request for a hearing within 30 days after ~~[mailing of]~~ the notice of refusal to grant a final certificate of authority is sent, revocation of the initial certificate of authority will ~~[shall]~~ be temporarily stayed. The commissioner will ~~[shall]~~ promptly conduct a hearing in which the applicant will ~~[shall]~~ be given an opportunity to show compliance with the requirements of this subchapter.

(c) The term of the multiple employer welfare arrangement's (MEWA's) initial certificate of authority does not expire during the department's review of a timely filed application for a final certificate of authority.

(d) If a timely filed application is not complete, the MEWA must timely respond to a notice of deficiency from the department. If a MEWA fails to timely respond to a notice of deficiency, the MEWA's

initial certificate of authority expires five days after the date the response was due or on the one-year anniversary of the date that the MEWA's initial certificate of authority was issued, whichever occurs later.

(c) A response to a notice of deficiency is timely if the response provides all information requested by the department and is made in writing:

(1) not later than the 15th day after the date the notice of deficiency is received;

(2) not later than the 25th day if the department receives written notice from the MEWA that additional time is required to respond to the inquiry; or

(3) as otherwise agreed to by the department.

(f) Before the end of the one-year term of its initial certificate of authority, a MEWA may request an extension of its initial certificate of authority. The request must be in writing and must explain in detail the basis for an extension. The initial certificate of authority may be extended for up to one year at the discretion of the commissioner on a determination that the MEWA is likely to meet the requirements of this subchapter within one year. No more than one extension of the initial certificate of authority will be granted, regardless of the length of time for which an extension was granted under this subsection.

§7.1908. Required Filing Fees.

The commissioner will ~~shall~~ collect, and the applicant affected ~~must~~ ~~shall~~ pay to the commissioner, the following fees:

(1) filing fee for filing an application for the initial certificate of authority--\$5,000;

(2) filing fee for final certificate of authority--\$1,500;

(3) filing fee for appointment of commissioner of insurance as the attorney for service of process--\$50; and

(4) annual filing fee for filing audited financial statement and actuarial opinion--\$0 ~~[\$500]~~.

§7.1909. Benefits Allowed To Be Provided by Multiple Employer [Multiple-Employer] Welfare Arrangements.

(a) A multiple employer ~~[multiple-employer]~~ welfare arrangement (MEWA) licensed under ~~[pursuant to the provisions of]~~ Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, and this subchapter ~~[these sections]~~ will be limited to providing any one or more of the benefits described ~~[in paragraphs (1) - (3) of this subsection;]~~ as follows:

(1) medical, dental, vision ~~[optical]~~, surgical, or hospital care;

(2) benefits in the event of sickness, accident, disability, or death; and

(3) any other benefit authorized for health insurers in this state.

(b) A MEWA ~~[multiple-employer welfare arrangement]~~ may only provide benefits to active or retired owners, officers, directors, or employees of or partners in participating employers, or the beneficiaries of such persons, except as may otherwise be limited by provisions of the Employer Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) ~~[(29 United States Code §1001 et seq.)]~~.

§7.1910. Required Notice to Participants.

(a) A multiple employer ~~[multiple-employer]~~ welfare arrangement (MEWA), in connection with an employee welfare benefit

plan, ~~must~~ ~~[shall]~~ provide to each participating employee or former employee covered by the plan a ~~[the]~~ written notice at the time the coverage of such participating employee or former employee becomes effective. The written notice must contain ~~[containing]~~, at a minimum, the following: ~~[the items described in paragraphs (1) - (5) of this subsection;]~~ at the time the coverage of such participating employee or former employee becomes effective:]

(1) that individuals covered by the plan are only partially insured;

(2) that in the event the plan or the MEWA ~~[multiple-employer welfare arrangement]~~ does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses;

(3) that, if applicable, the plan does not participate in the guaranty fund; such disclosure ~~must be~~ ~~[being]~~ provided in the same notice format required of insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Nonparticipation);

(4) the toll-free telephone number and website for ~~[the complaints section of]~~ the department as required under Insurance Code §521.005, concerning Notice to Accompany Policy ~~[Texas Department of Insurance consumer services division];~~ and

(5) that a copy of the summary plan description may be obtained from the plan administrator, employer, or trustee, as applicable.

(b) The notice ~~must~~ ~~[shall]~~ also briefly explain the types of information in the summary plan description.

§7.1911. Name Eligibility and Proof of Existence.

(a) A multiple employer ~~[No multiple-employer]~~ welfare arrangement (MEWA) licensed under this subchapter may not ~~[shall]~~ take any name that ~~[which]~~ is the same as or closely resembles the name of another MEWA ~~[any other multiple-employer welfare arrangement]~~ possessing a certificate of authority and doing business in this state. A MEWA ~~[multiple-employer welfare arrangement]~~ must complete a name application form, as described in §7.1904(b)(1) of this title (relating to Application for Initial Certificate of Authority), to transact business under its own name and may ~~[shall]~~ not adopt any assumed name, except that a MEWA ~~[multiple-employer welfare arrangement]~~ by amending its articles may change its name or take a new name with the approval of the commissioner.

(b) Whenever it ~~is~~ ~~[shall be]~~ necessary in any legal proceeding to prove the existence of a MEWA ~~[multiple-employer welfare arrangement]~~, a certified copy of the MEWA's ~~[multiple-employer welfare arrangement's]~~ certificate of authority ~~is~~ ~~[shall be]~~ prima facie evidence of the existence of the MEWA ~~[multiple-employer welfare arrangement]~~.

§7.1912. Filings by Multiple Employer [Multiple-Employer] Welfare Arrangements; Report of Cash Reserves; Approval by Commissioner; Additional Actuarial Review.

(a) Each multiple employer ~~[multiple-employer]~~ welfare arrangement (MEWA) transacting business in this state ~~must~~ ~~[shall]~~ file annually with the commissioner statements and reports described as follows: ~~[in paragraphs (1) and (2) of this subsection;]~~ as follows:]

(1) within 90 days of the end of the MEWA's fiscal year, financial statements audited by a certified public accountant; and

(2) within 90 days of the end of the MEWA's fiscal year, an actuarial opinion prepared and certified by an actuary who is not an employee of the MEWA ~~[multiple-employer welfare arrangement]~~ and who is a fellow of the Society of Actuaries, a member of the American

Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code §1241 and §1242). The actuarial opinion must [shall] include:

(A) a description of the actuarial soundness of the MEWA [multiple-employer welfare arrangement], including any recommended actions that the MEWA [multiple-employer welfare arrangement] should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the MEWA [multiple-employer welfare arrangement] should maintain, as follows:

(i) for a comprehensive health benefit plan under Insurance Code §846.0035, concerning Applicability of Certain Laws to Associations Providing Health Benefits, the MEWA must comply with Insurance Code Chapter 421, concerning Reserves in General; or

(ii) for a MEWA that does not provide a comprehensive health benefit plan under Insurance Code §846.0035, the recommended amount that may [which shall] not be less than the greater of 20% of the total contributions in the preceding plan year or 20% of the total estimated contributions for the current plan year;

(C) a calculation of cash reserves with proper actuarial regard for known claims, paid and outstanding, a history of incurred by not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor, and a margin for error; and

(D) the recommended level of specific and aggregate stop-loss insurance the MEWA [multiple-employer welfare arrangement] should maintain.

(b) The cash reserves required by [the] Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, [; Chapter 3, Subchapter I,] and this subchapter must [these sections shall] be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the commissioner has authorized by rule.

(c) The commissioner will [shall] review the statements and reports required by subsection (a) of this section. The commissioner will [shall] automatically renew a MEWA's [multiple-employer welfare arrangement's] certificate of authority unless the commissioner finds that the MEWA [multiple-employer welfare arrangement] does not meet the requirements of [the] Insurance Code Chapter 846, [; Chapter 3, Subchapter I,] and this subchapter. [these sections.]

(d) On a finding of good cause, the commissioner may order an actuarial review of a MEWA [multiple-employer welfare arrangement] in addition to the actuarial opinion required by [the] Insurance Code §846.153(a)(2), concerning Required Filings [; Article 3.95-8(a)(2)]. The cost of any such additional actuarial review must [shall] be paid by the MEWA [multiple-employer welfare arrangement].

(e) A MEWA must file updated information within 30 days when a material change occurs to information provided in the application for an initial or final certificate of authority according to the requirements of Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, and this subchapter.

§7.1913. Examination of Multiple Employer [Multiple-Employer] Welfare Arrangements.

(a) The commissioner or any person appointed by the commissioner will [shall] have the power to examine the affairs and conduct of any multiple employer [multiple-employer] welfare arrangement (MEWA) and for such purposes will [shall] have free access to all the books, records, and documents that relate to the business of the plan and may examine under oath its trustees or directors, officers,

agents, and employees in relation to the affairs, transactions, and condition of the MEWA [multiple-employer welfare arrangement]. Examinations of a MEWA will [multiple-employer welfare arrangement shall] be made in the same manner and with the same frequency that applies to domestic and foreign insurers licensed to transact the business of insurance in this state, including as provided in Insurance Code §1301.0056, concerning Examinations and Fees, for a MEWA that provides a comprehensive health benefit plan that is determined by the commissioner to be structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance Code §1301.001, concerning Preferred Provider Benefit Plans.

(b) Expenses of examination must [shall] be paid by each MEWA [multiple-employer welfare arrangement] in the same manner and to the same extent as is provided for domestic insurance companies in [the] Insurance Code §§401.151, concerning Expenses of Examination of Domestic Insurer; 401.152, concerning Expenses of Examination of Other Insurers; 401.155, concerning Additional Assessments; 401.156, concerning Deposit and Use of Assessment and Fee; and 1301.0056. [; Article 4-16.]

§7.1914. Duties and Compensation of Trustees, Officers, or Directors.

(a) The trustees or directors of a multiple employer [multiple-employer] welfare arrangement (MEWA) must [shall] give the attention and exercise the vigilance, diligence, care, and skill that prudent persons use in like or similar circumstances. Trustees or directors are [shall be] responsible for all operations of the MEWA [multiple-employer welfare arrangement] and must [shall] take all necessary precautions to safeguard the assets of the MEWA [multiple-employer welfare arrangement].

(b) The board of trustees or directors must [shall] select such officers as designated in the articles or bylaws or trust agreement and may appoint agents as deemed necessary for the transaction of the business of the MEWA [multiple-employer welfare arrangement]. All officers and agents may exercise the [shall respectively have such] authority and perform the [such] duties required in the management of the property and affairs of the MEWA [multiple-employer welfare arrangement] as may be delegated by the board of trustees or directors. Any officer or agent may be removed by the board of trustees or directors whenever, in their judgment, the business interests of the MEWA [multiple-employer welfare arrangement] will be served by the removal. The board of trustees or directors must [shall] secure the fidelity of any or all such officers or agents who handle the funds of the MEWA [multiple-employer welfare arrangement] by bond or otherwise.

(c) Trustees or directors must [shall] serve without compensation from the MEWA [multiple-employer welfare arrangement] except for actual and necessary expenses. A MEWA may [multiple-employer welfare arrangement shall] not pay any salary, compensation, or emolument to any officer of the MEWA [multiple-employer welfare arrangement] unless the payment is first authorized by a majority vote of the board of trustees or directors of the MEWA [multiple-employer welfare arrangement].

(d) An officer, employee, or agent of a MEWA may [multiple-employer welfare arrangement shall] not be compensated unreasonably. The compensation of any officer or employee of a MEWA may [multiple-employer welfare arrangement shall] not be calculated directly or indirectly as a percentage of money or premium collected. The compensation of any agent may [shall] not exceed 5.0% of the money or premium collected.

§7.1915. Suspension, Revocation, or Limitation of Certificate of Authority and Other Remedies.

In addition to any requirements or remedies set out in [the] Insurance Code §846.003, concerning Limited Exemption from Insurance Laws; Applicability of Certain Laws, [; Article 3-95-13,] the commissioner may suspend, revoke, or limit the certificate of authority of a multiple employer [multiple-employer] welfare arrangement (MEWA) if the commissioner finds, after notice and hearing, that the MEWA [multiple-employer welfare arrangement] does not meet the requirements of [the] Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, [; Chapter 3, Subchapter F,] and this subchapter. [these sections.]

§7.1916. Election for the Application of Certain Laws.

(a) A multiple employer welfare arrangement (MEWA) that was issued a certificate of authority under Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, before January 1, 2024, may elect to be subject to certain Insurance Code provisions under Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits.

(b) A MEWA that makes an election under this section is bound to the provisions enumerated in Insurance Code §846.0035.

(c) To make an election, the MEWA must submit to the department a statement that is substantially similar to the following that is signed and dated by an authorized officer or trustee: "{MEWA name} hereby makes an election under Texas Insurance Code §846.0035 to be subject to additional Texas Insurance Code provisions." The MEWA may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply.

(d) In addition to the statement required in subsection (c) of this section, the MEWA must submit the following:

(1) documentation demonstrating that the MEWA is in compliance with all applicable federal and state laws, including, at a minimum, the following:

(A) for all plans sponsored by the MEWA, whether operating in Texas or in any other state, a list of and access to all reports for the last five years filed with the United States Department of Labor in compliance with the Employee Retirement Income Security Act of 1974, 29 United States Code §§1021(g), 1023, and 1024;

(B) a copy of its Federal Form 5500 for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(C) if the MEWA is and will continue to be an employee welfare benefit plan for purposes of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.), either:

(i) an advisory opinion from the U.S. Department of Labor that is no more than three years old recognizing the employer group or association as a bona fide employer association or group if the relevant MEWA structure addressed by the opinion has not changed and will not change after the election under this section; or

(ii) an opinion from an attorney attesting to the fact that the employer group or association as it will be structured after the election under this section qualifies as a bona fide employer association or group for purposes of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.). An attorney attestation must adequately explain how and why the employer group or association meets all of the factors to be a bona fide employer association or group, based on the facts and circumstances of the employer group's or association's governance and operations during the 12 months immediately preceding submission of the election under this section, and on how the MEWA will be structured after the election under this section, with explicit references to relevant language drawn from the employer

group's or association's bylaws, trust agreement, or other organizational documents, which must be submitted to the department with the attorney's attestation; and

(D) for each plan that will be provided by the MEWA, an opinion from an attorney attesting to the fact that the plan is in compliance with all applicable federal and state laws. The opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.), including how each plan complies with federal requirements applicable to large group, small group, or individual markets, as applicable; and

(2) if the MEWA will provide a comprehensive health benefit plan, the MEWA must also comply with §7.1917 of this title (relating to Comprehensive Health Benefit Plans).

§7.1917. Comprehensive Health Benefit Plans.

(a) This section applies only to a multiple employer welfare arrangement (MEWA) that:

(1) was issued an initial certificate of authority under §846.054, concerning Issuance of Initial Certificate of Authority, on or after January 1, 2024; or

(2) elects to be bound by Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits, under §7.1916 of this title (relating to Election for the Application of Certain Laws).

(b) If a MEWA will provide a comprehensive health benefit plan, the MEWA must submit a form signed and dated by an authorized officer or trustee to the department that includes the following:

(1) a statement that is substantially similar to the following: "This document is being submitted in accordance with 28 Texas Administrative Code §7.1917. {MEWA Name} will provide a comprehensive health benefit plan as defined by 28 Texas Administrative Code §7.1902"; and

(2) if the comprehensive health benefit plan is not structured as a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance Code §1301.001, concerning Definitions, a description of the health care provider and benefit structure of the plan and an explanation of how it does not qualify as a preferred provider benefit plan or an exclusive provider benefit plan.

(c) In addition to the form required in subsection (b) of this section, the MEWA must submit the following:

(1) a detailed compliance plan addressing the following requirements:

(A) Insurance Code Chapter 421, concerning Reserves in General;

(B) Insurance Code Chapter 422, concerning Asset Protection Act;

(C) Insurance Code Chapter 1451, Subchapter C, concerning Selection of Practitioners; Subchapter F, concerning Access to Obstetrical or Gynecological Care; and Subchapter K, concerning Health Care Provider Directories; and

(D) Insurance Code Chapter 4201, concerning Utilization Review Agents;

(2) if the MEWA provides a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance

Code §1301.001, concerning Definitions, a detailed compliance plan addressing the following requirements:

(A) Insurance Code Chapter 1301, concerning Preferred Provider Plans; and

(B) Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution; and

(3) for each comprehensive health benefit plan that will be sponsored by the MEWA, an opinion from an attorney attesting to the fact that the plan is in compliance with all applicable federal and state laws. The opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.), including how each plan complies with federal requirements applicable to large group, small group, or individual markets, as applicable.

(d) A MEWA may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply with the requirements in subsections (b) and (c) 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 19, 2024.

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Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 2, 2024

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



SUBCHAPTER S. MULTIPLE-EMPLOYER WELFARE ARRANGEMENTS REQUIREMENTS FOR OBTAINING AND MAINTAINING CERTIFICATE OF AUTHORIZATION

28 TAC §7.1903

STATUTORY AUTHORITY. TDI proposes the repeal of §7.1903 under Insurance Code §846.005(a) and 36.001.

Insurance Code §846.005(a) provides that the commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement Insurance Code Chapter 846.

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

CROSS-REFERENCE TO STATUTE. The repeal of §7.1903 implements Insurance Code Chapter 846.

§7.1903. Forms and Documentation Required To Be Filed To Obtain an Initial Certificate of Authority as a Multiple-Employer Welfare Arrangement.

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 19, 2024.

TRD-202401669

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 2, 2024

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING-- PAYROLL

34 TAC §5.46

The Comptroller of Public Accounts proposes amendments to §5.46 concerning deductions for paying membership fees to certain state employee organizations.

The amendments add a definition of CAPPS in new subsection (a)(1) and renumber the subsequent provisions accordingly.

The amendments to subsections (b)(1)(C) and (b)(2)(B) add a second method of establishing, changing or cancelling a payroll deduction for state employee organization membership fees. These provisions currently allow a state employee to establish, change or cancel a payroll deduction by submitting a written authorization form to the employer's human resource officer or payroll officer. The amendments to these provisions also allow a state employee to establish, change or cancel a payroll deduction by submitting an electronic authorization through CAPPs.

The amendments to subsection (b)(2)(D) make a conforming change to require state agencies to notify the affected eligible organization if a state employee submits an electronic authorization form through CAPPs cancelling a payroll deduction for state employee organization membership fees.

The amendments to subsection (b)(3)(C) make nonsubstantive changes to clarify and simplify the language in this provision.

The amendments to subsections (c) and (d) make conforming changes to apply the requirements regarding the effective date of authorizations and cancellations to electronic authorizations, in addition to written authorization forms.

The amendments to subsection (i)(3)(A), (B), and (D) update the references to renumbered provisions.

The amendments move subsection (k)(5) and (6) to new subsection (l)(2)(D) and (3), so that these provisions are placed in a subsection that is more closely related to the subject matter the provisions address. Specifically, since these provisions relate to the responsibilities of state agencies, they are being moved from subsection (k), which addresses the responsibilities of eligible organizations, to subsection (l), which addresses the responsibilities of state agencies. Subsequent provisions in subsections (k) and (l) are renumbered accordingly. The amendments also update the provisions regarding the acceptance of cancellation forms or cancellation notices to better address the responsibilities of state agencies.

The amendments to subsection (l)(2)(B) simplify the process for determining if a state employee organization identified on an authorization form is currently certified as an eligible organization. At this time, a state agency is required to check notification documents previously received from the comptroller to make this determination. These amendments will require a state agency to check the comptroller's website to confirm that the state employee organization is listed as an approved state employee organization for membership fee deduction.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by updating the rule to reflect current practices. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Rob Coleman, Director, Fiscal Management Division, at: rob.coleman@cpa.texas.gov or at: P.O. Box 13528 Austin, Texas 78711. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §403.0165, which authorizes the comptroller to adopt rules to administer payroll deductions for certain state employee organizations, and Government Code, §659.110, which authorizes the comptroller to adopt rules to administer the eligible state employee organization membership fee deduction programs authorized by Government Code, Chapter 659, Subchapter G, concerning supplemental deductions.

The amendments implement Government Code, §403.0165 and §§659.1031 - 659.110.

§5.46. *Deductions for Paying Membership Fees to Certain State Employee Organizations.*

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

(1) CAPPS--The centralized accounting and payroll/personnel system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, developed under Government Code, §2101.035 and §2101.036.

(2) [(4)] Comptroller--The Comptroller of Public Accounts for the State of Texas.

(3) [(2)] Eligible organization--A state employee organization that the comptroller has certified in accordance with this section and whose certification has not been terminated.

(4) [(3)] Employer--A state agency that employs a state employee who authorizes a deduction under this section.

(5) [(4)] Fiscal year--The accounting period for the state government which begins on September 1 and ends on August 31.

(6) [(5)] Holiday--A state or national holiday as specified by Government Code, §§662.001-662.010. The term does not include a holiday that the General Appropriations Act prohibits state agencies from observing.

(7) [(6)] Include--Is a term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(8) [(7)] Institution of higher education--Has the meaning assigned by Education Code, §61.003.

(9) [(8)] May not--Is a prohibition. The term does not mean "might not" or its equivalents.

(10) [(9)] Membership fee--The dues or fee that a state employee organization requires a state employee to pay to maintain membership in the organization.

(11) [(10)] Salary or wage leveling agreement--A contract or other agreement between a state employee and the employer that requires the employer to pay the employee's total annual salary or wages over 12 months even though the employee is not scheduled to work each of those months.

(12) [(11)] Salary or wages--Base salary or wages, longevity pay, or hazardous duty pay.

(13) [(12)] State agency--A department, commission, board, office, agency, or other entity of Texas state government, including an institution of higher education.

(14) [(13)] State employee--An employee of a state agency. The term includes an elected or appointed official, a part-time employee, an hourly employee, a temporary employee, an employee who is not covered by Government Code, Chapter 654 (the Position Classification Act), and a combination of the preceding. The term excludes an independent contractor and an employee of an independent contractor.

(15) [(14)] State employee organization--An association, union, or other organization that advocates the interests of state employees concerning grievances, compensation, hours of work, or other conditions or benefits of employment.

(16) [(15)] Texas identification number--The 14-digit number that the comptroller assigns to each direct recipient of a payment made by the comptroller.

(17) [(16)] Workday--A calendar day other than Saturday, Sunday, or a holiday.

(b) Deductions.

(1) Authorization of deductions.

(A) A state employee may authorize one or more monthly deductions from the employee's salary or wages to pay membership fees to eligible organizations.

(B) Neither a state agency nor a state employee organization may state or imply that a state employee is required to authorize a deduction under this section.

(C) A state employee may provide an authorization only if the employee:

(i) submits to the employer's human resource officer or payroll officer a properly completed [completes an] authorization form establishing a deduction; or [and]

(ii) submits through CAPPs a properly completed electronic authorization establishing a deduction [the form to the employer's human resource officer or payroll officer].

(D) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee's authorization of an incorrect amount of a deduction under this section.

(E) Except as provided in subsection (i)(3) of this section, neither the comptroller nor a state agency is responsible for providing a state employee's membership information to an eligible organization.

(2) Change in the amount of a deduction or cancellation of a deduction.

(A) At any time, a state employee may authorize a change in the amount to be deducted under this section from the employee's salary or wages or cancel a deduction under this section.

(B) A state employee may authorize a change in the amount of a deduction or a cancellation of a deduction under this section only if the employee:

(i) submits to the employer's human resource officer or payroll officer a properly completed [completes an] authorization form, cancellation form, or cancellation notice, as appropriate, changing or cancelling a deduction; or [and]

(ii) submits through CAPPs a properly completed electronic authorization changing or canceling a deduction [the form or notice to the employer's human resource officer or payroll officer].

(C) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee's change of the amount of a deduction or cancellation of a deduction under this section.

(D) If a state employee submits a cancellation form or cancellation notice to the employer's human resource officer or payroll officer, or submits an electronic authorization through CAPPs cancelling a deduction, the state agency must notify the affected eligible organization.

(3) Automatic change in the amount of a deduction.

(A) An employer may change the amount of a deduction under this section from the employee's salary or wages without requiring the employee to submit a new authorization form only if:

(i) the employee's current authorization form authorizes the employer to change the amount of a deduction under this section from the employee's salary or wages without requiring the employee to submit a new authorization form; and

(ii) the change is needed because the eligible organization to which the employee authorized a deduction has changed the amount of membership fees it charges to state employees.

(B) Even if a state employee provides the authorization under subparagraph (A) of this paragraph, the employer may require the employee to submit a properly completed authorization form to the employer before the employer changes the amount of a deduction under this section from the employee's salary or wages.

(C) A state employee may provide the authorization under subparagraph (A) of this paragraph only if the employee~~;~~

[(i)] submits to the employer's human resource officer or payroll officer a properly completed [completes an] authorization form. [that enables state employees to provide the authorization; and]

[(ii) submits the form to the employer's human resource officer or payroll officer.]

(D) When an eligible organization wants to change the amount of membership fees it charges to state employees that are authorized under subparagraph (A) of this paragraph, the organization must provide prior written notification of the change to the comptroller. If the comptroller receives the notification on the first calendar day of a month, the change is effective for the salary or wages paid to state employees on the first workday of the second month following the month in which the comptroller receives the notification. If the comptroller receives the notification after the first calendar day of a month, the change is effective for the wages and salaries paid to state employees on the first workday of the third month following the month in which the comptroller received the notification.

(4) Sufficiency of salary or wages to support a deduction.

(A) A state employee is solely responsible for ensuring that the employee's salary or wages are sufficient to support a deduction authorized by this section.

(B) If a state employee's salary or wages are sufficient to support only part of a deduction authorized by this section, no part of the deduction may be made.

(C) The amount that could not be deducted from a state employee's salary or wages because they were insufficient to support the deduction may not be made up by deducting the amount from subsequent payments of salary or wages to the employee.

(5) Timing of deductions.

(A) Except as provided in subparagraph (B) of this paragraph, a deduction authorized by this section must be made from the salary or wages that are paid on the first working day of a month.

(B) If a state employee does not receive a payment of salary or wages on the first working day of a month, the employer may designate the payment of salary or wages to the employee from which a deduction authorized by this section will be made. A deduction authorized by this section may be made only once each month.

(6) Regularity of deductions.

(A) This subparagraph applies to a state employee who is scheduled by the employer to work each month of a year. A deduction authorized by this section must be calculated so that the total membership fee paid by a state employee per year is spread evenly over 12 monthly deductions.

(B) This subparagraph applies to a state employee who is not scheduled by the employer to work each month of a year.

(i) If a state employee has entered into a salary or wage leveling agreement, a deduction authorized by this section must be calculated so that the total membership fee paid by the employee per year is spread evenly over the months the employee will be paid under the agreement.

(ii) If a state employee has not entered into a salary or wage leveling agreement, a deduction authorized by this section must be calculated so that the total membership fee paid by the employee per year is spread evenly over the months the employee will be paid.

(7) Retroactive deductions.

(A) In this paragraph, "retroactive deduction" means a deduction authorized by this section to the extent the purpose of the deduction is:

(i) to correct an error made in a previous month that resulted in the amount of money deducted being less than the amount authorized by a state employee; or

(ii) to catch up on the amount of membership fees owed by a state employee to an eligible organization because a deduction authorized by this section was not made in one or more previous months.

(B) A retroactive deduction is prohibited unless:

(i) an error described in subparagraph (A)(i) of this paragraph was committed by the employer; and

(ii) the eligible organization that received the erroneous deduction consents to the retroactive deduction.

(8) Interagency transfers of state employees. A state employee who transfers from one state agency to a second state agency must be treated by the second state agency as if the employee has not yet authorized any deductions under this section.

(c) Effectiveness of authorizations [~~authorization forms~~].

(1) Effective date of authorizations [~~authorization forms~~].

(A) This subparagraph applies if a state agency receives a state employee's properly completed authorization form or electronic authorization on the first calendar day of a month.

(i) The first deduction authorized by this section must be made from the employee's salary or wages that are paid on the first workday of the first month following the month in which the agency receives the authorization form or electronic authorization.

(ii) If an authorization form or electronic authorization is submitted to change the amount of a deduction authorized by this section, the change is effective with the deduction made on the first workday of the first month following the month in which the agency receives the authorization form or electronic authorization.

(B) This subparagraph applies if a state agency receives a state employee's properly completed authorization form or electronic authorization after the first calendar day of a month.

(i) The first deduction authorized by this section must be made from the employee's salary or wages that are paid on the first workday of the second month following the month in which the agency receives the authorization form or electronic authorization. However, the agency may consent for the first deduction to occur from the salary or wages that are paid on the first workday of the first month following the month in which the agency receives the authorization form or electronic authorization.

(ii) If an authorization form or electronic authorization is submitted to change the amount of a deduction authorized by this section, the change is effective with the deduction made on the first workday of the second month following the month in which the agency receives the authorization form or electronic authorization. However, the agency may consent for the change to be effective with the deduction made on the first workday of the first month following the month in which the agency receives the authorization form or electronic authorization.

(C) If the first calendar day of a month is not a workday, the first workday following the first calendar day is the deadline for the receipt of properly completed authorization forms or electronic authorizations.

(D) A state employee is solely responsible for ensuring that a properly completed authorization form or electronic authorization is received by the employer by the deadline.

(E) An eligible organization's receipt of the authorization form or electronic authorization is not a prerequisite to the authorization becoming effective.

(2) Return of authorization forms.

(A) A state agency shall return an authorization form to the state employee who submitted the form if:

(i) the form is incomplete, contains erroneous data, or is otherwise insufficient; and

(ii) a deficiency listed in clause (i) of this subparagraph makes it impossible for the agency to establish the deduction in accordance with the form.

(B) A state agency may either accept an authorization form or return an authorization form to the state employee who submitted the form when the form postpones the first deduction authorized by this section beyond the effective date determined under paragraph (1) of this subsection. If the agency accepts the authorization form, the agency may not make the deduction effective before the effective date specified on the form.

(C) A state agency shall state in writing the reason for the return of an authorization form. The statement must be attached to the form being returned.

(d) Effectiveness of cancellation of deductions [~~forms and cancellation notices~~].

(1) Effective date of cancellation of deductions [~~forms and cancellation notices~~].

(A) This subparagraph applies if a state agency receives a state employee's properly completed cancellation form, [~~or~~] cancellation notice, or electronic authorization on the first calendar day of a month. A state employee's cancellation of a deduction authorized by this section is effective for the salary or wages paid to the employee on the first workday of the first month following the month in which the agency receives the cancellation form, [~~or~~] cancellation notice, or electronic authorization.

(B) This subparagraph applies if a state agency receives a state employee's properly completed cancellation form, [~~or~~] cancellation notice, or electronic authorization after the first calendar day of a month. A state employee's cancellation of a deduction authorized by this section is effective for the salary or wages paid to the employee on the first workday of the:

(i) second month following the month in which the agency receives the cancellation form, [~~or~~] cancellation notice, or electronic authorization; or

(ii) first month following the month in which the agency receives the cancellation form, [~~or~~] cancellation notice, or electronic authorization if the agency consents to this effective date.

(C) If the first calendar day of a month is not a workday, the first workday following the first calendar day is the deadline for the receipt of properly completed cancellation forms, [~~or~~] cancellation notices, or electronic authorization.

(D) A state employee is solely responsible for ensuring that properly completed cancellation forms, [and] cancellation notices, and electronic authorization are received by the deadline.

(E) An eligible organization's receipt of the cancellation form, [~~or~~] cancellation notice, or electronic authorization is not a prerequisite to the cancellation becoming effective.

(2) Return of cancellation forms and cancellation notices.

(A) A state agency shall return a cancellation form or cancellation notice to the state employee who submitted the form or notice if:

(i) the form or notice is incomplete, contains erroneous data, or is otherwise insufficient; and

(ii) a deficiency listed in clause (i) of this subparagraph makes it impossible for the agency to cancel the deduction in accordance with the form or notice.

(B) A state agency shall state in writing the reason for the return of a cancellation form or cancellation notice. The statement must be attached to the form being returned.

(e) Authorization and cancellation forms.

(1) The comptroller's approval of authorization and cancellation forms.

(A) An eligible organization may not distribute or provide an authorization or cancellation form to a state employee until the organization has received the comptroller's written approval of the form.

(B) As a condition for retaining its eligibility, an eligible organization must produce an authorization form and a cancellation form that comply with the comptroller's requirements and this section. The organization must produce the forms within a reasonable time after the organization receives its certification from the comptroller.

(C) The comptroller may approve an eligible organization's authorization form if the form:

(i) clearly informs state employees that a properly completed authorization form must be submitted to the employer's human resource officer or payroll officer to authorize a deduction;

(ii) clearly informs state employees that a copy of the properly completed authorization form should be provided to the organization to notify the organization that the employee has authorized a deduction;

(iii) contains the following statement: "I understand that I cannot be compelled to be a member of a state employee organization or to pay dues to a state employee organization as a condition of employment with the state. While I am free to join a state employee organization, I understand that I may change or cancel this authorization at any time by providing written notice to my employer. I voluntarily authorize a monthly payroll deduction in the amount shown above from my salary or wages for membership fees to the state employee organization listed above and agree to comply with the comptroller's rules concerning this deduction. I agree that my name, social security number, personal contact information, and the amount of my payroll deduction for membership fees may be provided to the state employee organization listed above only for the purpose of informing the state employee organization about the payroll deduction."; and

(iv) complies with this section and the comptroller's other requirements for format and substance.

(D) The comptroller may approve the cancellation form of an eligible organization if the form:

(i) clearly informs state employees that a properly completed cancellation form must be submitted to the employer's human resource officer or payroll officer to cancel the deduction;

(ii) clearly informs state employees that a copy of the properly completed cancellation form should be provided to the organization to notify the organization that the employee has cancelled the deduction;

(iii) clearly informs state employees that they are not required to state a reason for a cancellation; and

(iv) complies with the comptroller's other requirements for format and substance.

(E) An eligible organization must revise an authorization or cancellation form upon request from the comptroller. The organization may not distribute or otherwise make available to state employees a revised form until the organization has received the comptroller's written approval of the form.

(2) Distribution of authorization or cancellation forms.

(A) An eligible organization must provide an authorization or cancellation form to a state employee or state agency promptly after receiving:

(i) an oral or written request for the form from the employee or agency; or

(ii) an oral or written request to provide the form to the employee from the comptroller or the employer.

(B) A state agency may maintain a supply of cancellation forms and distribute the forms to its state employees upon request. An eligible organization shall promptly provide the forms to the agency upon request.

(f) Procedural requirements for certifying state employee organizations.

(1) Request for certification.

(A) The comptroller may not certify a state employee organization under this section unless the comptroller receives a written request for certification from an individual who is authorized by the organization to make the request.

(B) The comptroller may not certify a state employee organization under this section if the comptroller receives the organization's request for certification after June 2nd of a fiscal year.

(2) Requirements for requests for certification. A request for certification submitted to the comptroller by a state employee organization must contain:

(A) the organization's complete name;

(B) the street address of the headquarters of the organization;

(C) the mailing address of the headquarters of the organization, if different from the street address;

(D) the full name, title, telephone number, and mailing address of the organization's primary contact;

(E) a specific request for certification as an eligible organization, specifying whether the organization is requesting certification under Government Code, §403.0165 or §659.1031;

(F) a specific acceptance of the requirements of this section as they exist at the time the request is made or as adopted or amended thereafter;

(G) the organization's Internal Revenue Service employer identification number; and

(H) any other information that the comptroller deems necessary.

(g) Substantive requirements for certifying state employee organizations. The comptroller shall certify a state employee organiza-

tion under this section if the organization satisfies the requirements of paragraph (1) or (2) of this subsection.

(1) Certification of a state employee organization under Government Code, §403.0165.

(A) The comptroller shall certify a state employee organization if the organization:

(i) submits persuasive evidence to the comptroller that the organization had a membership of at least 4,000 state employees throughout the 18 months preceding the month in which the comptroller receives the organization's request for certification (an example of the evidence that the comptroller may review is a membership roster containing the name of each state employee who is a member of the organization, the date each employee joined the organization, and the date through which each employee's membership fees are paid);

(ii) demonstrates to the comptroller that the organization conducts activities on a statewide basis (an organization may satisfy this requirement by submitting any relevant evidence, including newsletters, news articles, correspondence, and membership rosters containing the names and addresses of the organization's members);

(iii) demonstrates to the comptroller that the organization had a membership fee structure for state employees throughout the 18 months preceding the month in which the comptroller receives the organization's request for certification (an organization may satisfy this requirement by submitting relevant evidence, including dated enrollment forms from state employees, documentation about the fees structure, and financial records);

(iv) demonstrates to the comptroller that the membership fees collected from state employees will be equal to an average of at least one-half of the membership fees received by the organization nationwide (an organization may satisfy this requirement by submitting financial records that compare the membership fees to be received from state employees with the membership fees received from other individuals throughout the nation); and

(v) has submitted to the comptroller a completed direct deposit form for the organization.

(B) The comptroller shall certify a state employee organization under this paragraph that demonstrates to the satisfaction of the comptroller that the organization had a membership of at least 4,000 state employees on April 1, 1991. The organization is not required to satisfy any of the other substantive requirements of this paragraph except for subparagraph (A)(v) of this paragraph. A state employee organization may demonstrate that the organization had a membership of at least 4,000 state employees on April 1, 1991, only by submitting to the comptroller:

(i) a membership roster containing the name of each state employee who was a member of the organization on April 1, 1991;

(ii) the date each employee joined the organization; and

(iii) the date through which each employee's membership fees were paid as of April 1, 1991.

(2) Certification of a state employee organization under Government Code, §659.1031. The comptroller shall certify a state employee organization if the organization:

(A) submits persuasive evidence to the comptroller that the organization had a membership of at least 2,000 active or retired state employees who hold or have held certification from the Texas Commission on Law Enforcement under Occupations Code, Chapter 1701, Subchapter G; and

(B) has submitted a completed direct deposit form for the organization to the comptroller.

(3) Notifications.

(A) The comptroller shall notify a state employee organization about the comptroller's approval or disapproval of the organization's request for certification by no later than the 30th day after the comptroller receives the request if the request is complete in all respects.

(B) The comptroller shall notify each state agency of the comptroller's certification of a state employee organization by no later than the 30th day after the comptroller makes the certification.

(h) Effective date of certification. The first deduction to pay a membership fee to an eligible organization may be made from salary or wages paid on the first workday of the second month following the month in which the comptroller certifies the organization.

(i) Payments of deducted membership fees.

(1) Payments by the comptroller through electronic funds transfers. The comptroller shall pay deducted membership fees to an eligible organization by electronic funds transfer.

(2) Payments by institutions of higher education.

(A) This paragraph applies only to membership fees in eligible organizations that have been deducted from salaries or wages that the comptroller does not pay directly to state employees of institutions of higher education.

(B) An institution of higher education shall pay deducted membership fees to an eligible organization by electronic funds transfer unless it is infeasible to do so.

(C) If it is infeasible for an institution of higher education to pay deducted membership fees to an eligible organization by electronic funds transfer, then the institution shall pay the fees by check. The check must be mailed or delivered to the organization by no later than the 20th calendar day of the month following the month when the salary or wages from which the deductions were made were earned. If the 20th calendar day of a month is not a workday, then the first workday following the 20th calendar day is the deadline for the mailing or delivery of checks.

(3) Reconciliation.

(A) An eligible organization shall reconcile the detail report provided by a state agency under subsection (1)(4) [~~(4)(3)~~] of this section with:

(i) the amount of membership fees paid to the organization under this subsection; and

(ii) the organization's membership information.

(B) An eligible organization must submit to the agency, in a secure manner, a reconciling items report, which identifies:

(i) any discrepancies between the detail report provided by a state agency under subsection (1)(4) [~~(4)(3)~~] of this section and the actual amount of membership fees received under this subsection; and

(ii) the name of any employee listed in the detail report provided by a state agency under subsection (1)(4) [~~(4)(3)~~] of this section for whom the organization does not already have personal contact information.

(C) The organization must ensure that the agency receives the organization's reconciling items report by no later than the

60th calendar day after the day on which the agency submitted the detail report to the organization. If the 60th calendar day is not a workday, the first workday following the 60th calendar day is the deadline.

(D) A state agency that receives a reconciling items report from an eligible organization shall investigate the reconciling items described in the organization's reconciling items report, and notify the organization of the action to be taken to eliminate the reconciling items. A reconciling item may be eliminated by:

(i) making a retroactive deduction if it is authorized by subsection (b)(7) of this section;

(ii) recovering an excessive payment to an eligible organization of amounts deducted under this section from a subsequent payment to the organization;

(iii) recovering an excessive payment to an eligible organization of amounts deducted under this section by obtaining a refund from the organization in accordance with subsection (k)(5) [(k)(7)] of this section;

(iv) the agency making corrections to the detail report if the report is incorrect; or

(v) providing the organization, in a secure manner, with personal contact information for each employee identified in the reconciling items report for whom the organization does not already have personal contact information.

(E) If a state agency timely receives a reconciling items report that identifies the information described in paragraph (3)(B)(ii) of this subsection, the agency shall provide the information described in paragraph (3)(D)(v) of this subsection to the organization no later than the 10th calendar day after the day on which the agency received the organization's reconciling items report. If the 10th calendar day is not a workday, the first workday following the 10th calendar day is the deadline for providing the information.

(4) Subordinate units of eligible organizations.

(A) A chapter or other subordinate unit of an eligible organization may receive directly from the comptroller or an institution of higher education a payment of deducted membership fees if the fees were deducted under authorization forms that authorized the payment of the fees to the chapter or other subordinate unit of the organization.

(B) A request to pay deducted membership fees to a chapter or subordinate unit instead of the parent eligible organization must be submitted to the comptroller by the organization.

(C) The comptroller may grant a request under subparagraph (B) of this paragraph only if the membership fee structure of the chapter or subordinate unit is the same as the membership fee structure of the parent eligible organization.

(D) The comptroller's granting of a request under subparagraph (B) of this paragraph is not a certification of the chapter or subordinate unit as an eligible organization.

(E) The comptroller may require an eligible organization to submit proof that an entity is a chapter or other subordinate unit of the organization before a payment of deducted membership fees is paid directly to the entity. The comptroller may periodically require the organization to submit proof that the entity is still a chapter or other subordinate unit of the organization as a condition for continuing to pay deducted membership fees directly to the entity.

(j) Solicitation. This section does not prohibit the chief administrator of a state agency from permitting or prohibiting solicitation by eligible organizations on the premises of the agency.

(k) Responsibilities of eligible organizations.

(1) Disseminating information.

(A) An eligible organization is solely responsible for the dissemination of relevant information to its representatives and employees.

(B) An eligible organization must ensure that its representatives and employees comply with the requirements of this section.

(2) Notification to the comptroller. An eligible organization must notify the comptroller in writing immediately after a change occurs to:

(A) the organization's name;

(B) the street address of the headquarters of the organization;

(C) the mailing address of the headquarters of the organization, if different from the street address;

(D) the full name, title, telephone number, or mailing address of the organization's primary contact; or

(E) the organization's electronic funds transfer information.

(3) Primary contact. The individual that a state employee organization designates as its primary contact must represent the organization for the purposes of:

(A) communicating with the comptroller, including receiving and responding to correspondence from the comptroller; and

(B) disseminating information, including information about the requirements of this section, to representatives of the organization.

(4) Texas identification number. The Texas identification number of an eligible organization must appear on all correspondence from the organization to the comptroller or a state agency.

~~[(5) Acceptance of authorization forms. A state agency must accept an authorization form from a state employee if a refusal to accept the form would violate a law of the United States or the State of Texas.]~~

~~[(6) Acceptance of cancellation forms and cancellation notices. A state agency must accept a cancellation form or cancellation notice from a state employee unless:]~~

~~[(A) the employee is not a member of the organization; or]~~

~~[(B) the employee did not properly complete the cancellation form.]~~

(5) [(7)] Refunding excessive payments of amounts deducted under this section.

(A) An eligible organization shall refund a payment of amounts deducted under this section to the extent the amount exceeds the amount that should have been paid to the organization if:

(i) the organization receives a written request for the refund from a state agency;

(ii) the agency provides reasonable evidence of the overpayment to the organization; and

(iii) no subsequent payments of amounts deducted under this section are anticipated to be made to the organization.

(B) If a refund is required by subparagraph (A) of this paragraph, the organization must ensure that the appropriate state agency receives the refund by no later than the 30th calendar day after the later of:

(i) the date on which the organization receives the agency's written request for the refund; and

(ii) the date on which the organization receives the agency's reasonable evidence of the overpayment.

(l) Responsibilities of state agencies.

(1) Reports of violations. A state agency may report to the comptroller a violation of this section that the agency believes an eligible organization or its representatives or employees might have committed. A report must be made in writing, and a copy of the report must be mailed to the organization at the same time that the original of the report is mailed to the comptroller.

(2) Authorization forms. A state agency:

(A) may accept authorization forms only if they comply with this section;

(B) must ensure that the state employee [identifying information for an eligible] organization identified on an authorization form is listed [the same as the identifying information] on the comptroller's website as an approved state employee organization for membership fee deduction [notification document received from the comptroller under subsection (g)(3)(B) of this section]; [and]

(C) may not accept an authorization form that contains an obvious alteration without the state employee's written consent to the alteration; and [-]

(D) must accept an authorization form from a state employee if a refusal to accept the form would violate a law of the United States or the State of Texas.

(3) Acceptance of cancellation forms and cancellation notices. A state agency must accept a cancellation form or cancellation notice from a state employee unless:

(A) the employee has not previously authorized a monthly deduction from the employee's salary or wages to pay membership fees to the eligible organization listed on the cancellation form or cancellation notice; or

(B) the employee did not properly complete the cancellation form or failed to provide sufficient information in the cancellation notice.

(4) [(3)] Detail reports to eligible organizations.

(A) An employer must submit, in a secure manner, a detail report each month to each eligible organization that receives the deductions.

(B) A detail report to an eligible organization for a month must contain:

(i) the name, in alphabetical order, and social security number of each state employee from whose salary or wages a deduction was authorized by this section for the month, regardless of whether the deduction was actually made; and

(ii) the amount of the deduction made for each employee.

(C) An employer must submit the detail report for the payment to the organization by no later than the 15th calendar day of the month in which the payment was made. If the 15th calendar day is

not a workday, then the first workday following the 15th calendar day is the deadline for submitting the report.

(m) Termination of certification.

(1) Termination by the comptroller.

(A) The comptroller may terminate the certification of an eligible organization only if the organization violates subsection (e)(1) of this section.

(B) The comptroller may determine the effective date of a termination under this paragraph. No deduction authorized by this section may be made to an eligible organization on or after the effective date of a termination under this paragraph.

(C) When the comptroller terminates the certification of an eligible organization, the comptroller shall send written notice of the termination to the organization via certified mail, return receipt requested.

(2) Termination by eligible organizations.

(A) An eligible organization may terminate its participation in the deduction program authorized by this section only by terminating its certification.

(B) An eligible organization may terminate its certification by providing written notice of termination to the comptroller. However, an organization may not provide written notice of termination to the comptroller until the organization has provided written notice of termination to each state employee from whose salary or wages a membership fee to the organization is being deducted.

(C) An eligible organization's termination of its certification is effective beginning with the salary or wages that are paid on the first workday of the third month following the month in which the comptroller receives the organization's proper notice of termination.

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 16, 2024.

TRD-202401614

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 475-2220



CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER B. TEXAS BROADBAND DEVELOPMENT OFFICE

DIVISION 2. BROADBAND DEVELOPMENT PROGRAM

34 TAC §16.30

The Comptroller of Public Accounts proposes amendments to §16.30, concerning definitions.

The amendments to §16.30 increase the threshold speeds for internet service to qualify as broadband service to match the standards adopted by the Federal Communications Commission

for advanced telecommunications capability under 47 U.S.C., §1302 as contemplated under Senate Bill 1238, §1, 88th Legislature, R.S., 2023 (amending Government Code, §4901.0101(b)).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current federal standards. There would be no anticipated significant economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Greg Conte, Director, Broadband Development Office, at broadband@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §4901.0101(b), which permits the comptroller by rule to adopt standards for internet service that match the standards adopted by the Federal Communications Commission for advanced telecommunications capability under 47 U.S.C., §1302 and under Government Code, §4901.0109, which permits the comptroller to adopt rules as necessary to implement Chapter 4901 regarding the Texas Broadband Development Office.

The amendments implement Government Code, Chapter 4901.

§16.30. Definitions.

As used in this subchapter and in these rules, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A person that has submitted an application for an award under this subchapter.

(2) Application protest period--A period of at least thirty days beginning on the first day after an application is posted under §16.36(d) of this subchapter.

(3) Broadband development map--The map adopted or created under Government Code, §4901.0105.

(4) Broadband service--Internet service that delivers transmission speeds capable of providing:

(A) a download speed of not less than 100 [25] Mbps;

or
(B) an upload speed of not less than 20 [three] Mbps;

and
(C) network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements.

(5) Broadband serviceable location--A business or residential location in this state at which broadband service is, or can be, installed, including a community anchor institution.

(6) Census block--The smallest geographic area for which the U.S. Bureau of the Census collects and tabulates decennial census data as shown on the most recent on Census Bureau maps.

(7) Commercial broadband service provider--A broadband service provider engaged in business intended for profit, a telephone cooperative, an electric cooperative, or an electric utility that offers broadband service or middle-mile broadband service for a fare, fee, rate, charge, or other consideration.

(8) Community anchor institution--An entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

(9) Designated area--A census block or other area as determined under §16.21 of this subchapter.

(10) Grant funds--Grants, low-interest loans, and other financial incentives awarded to applicants under this subchapter for the purpose of expanding access to and adoption of broadband service.

(11) Grant recipient--An applicant who has been awarded grant funds under this subchapter.

(12) Mbps--Megabits per second.

(13) Middle mile infrastructure--Any broadband infrastructure that does not connect directly to an end-user location, including a community anchor institution. The term includes:

(A) leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and

(B) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links.

(C) The term does not include provision of Internet service to end-use customers on a retail basis.

(14) Non-commercial broadband service provider--A broadband service provider that is not a commercial broadband service provider.

(15) Office--The Broadband Development Office created under Government Code, §4901.0102.

(16) Project area--The area, consisting of one or more broadband serviceable locations, identified by an applicant in which the applicant proposes to deploy broadband service or middle mile infrastructure.

(17) Public school--A school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12 and is operated by a governmental entity.

(18) Qualifying broadband service--Broadband service that meets the minimum speed, latency and reliability thresholds prescribed by the office in each applicable notice of funds availability.

(19) Reliable broadband service--Broadband service that is accessible to a location via:

(A) fiber-optic technology;

(B) Cable Modem/ Hybrid fiber-coaxial technology;

(C) digital subscriber line (DSL) technology; or

(D) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

(20) Served location--A broadband serviceable location that has access to reliable broadband service that exceeds the minimum threshold for an underserved location or a location that is subject to an existing federal commitment to deploy qualifying broadband service.

(21) Underserved location--A broadband serviceable location that has access to reliable broadband service but does not have access to reliable broadband service with the capability of providing:

(A) a download speed of not less than 100 Mbps;

(B) an upload speed of not less than 20 Mbps; and

(C) a network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements as established under Government Code, §4901.0101.

(22) Unserved location--A broadband serviceable location that does not have access to reliable broadband service.

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 16, 2024.

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Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

SUBCHAPTER B. INTERACTION WITH THE PUBLIC

37 TAC §385.8183

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §385.8183 (concerning advocacy, support group, and social services provider access).

SUMMARY OF CHANGES

The amendments to §385.8183 will include adding that: 1) TJJD tracks the frequency with which the executive director finalizes appeals described elsewhere in the rule; 2) TJJD compiles frequency data on a quarterly basis; and 3) at the beginning of each quarter, TJJD provides the frequency data from the previous quarter to the TJJD Board and the Sunset Advisory Commission.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to bring TJJD in compliance with statutory changes by ensuring certain actions of the executive director are reported by the agency and ensuring legal sufficiency reviews are required before appropriate parties are notified of abuse, neglect, and exploitation investigation findings.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjtd.texas.gov.

STATUTORY AUTHORITY

Section 385.9921 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended section is also proposed under §242.102, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires administrative investigative findings of the Office of the Inspector General to undergo a legal sufficiency review before being made public.

No other statute, code, or article is affected by this proposal.

§385.8183. *Advocacy, Support Group, and Social Services Provider Access.*

(a) Purpose. This rule establishes a process for allowing advocacy and support groups and social services providers to provide on-site information, support, and other services for youth confined in Texas Juvenile Justice Department (TJJD) residential facilities.

(b) Applicability.

(1) This rule applies to residential facilities operated by TJJD.

(2) This rule does not apply to a youth's access to his/her personal attorney or personal clergy member in accordance with §380.9311 of this title and §380.9317 of this title.

(c) Definitions. The following words and terms have the following meanings when used in this rule, unless the context clearly indicates otherwise:

(1) Advocacy or Support Groups--organizations whose primary functions are to benefit children, inmates, girls and women, persons with mental illness, or victims of sexual assault.

(2) Social Services Providers--organizations whose primary functions are to provide psychological, social, educational, health, and other related services to juveniles and their families.

(3) Confined--placement in a residential facility.

(4) Confidential Setting--a setting that provides for private conversation but is within the line of sight of a TJJD staff member who is authorized to provide sole supervision of youth.

(d) Registration Procedures.

(1) An advocacy or support group or social services provider must register with TJJD prior to providing on-site information, support, or other services to confined youth.

(2) In order to register with TJJD, an advocacy or support group or social services provider must provide the following in a form and manner determined by TJJD:

(A) a copy of the articles of incorporation on file with the secretary of state or other official documentation showing the organization's primary purpose;

(B) contact information for the local program director(s);

(C) names of all persons employed by or otherwise officially representing the organization who would likely seek access to residential facilities under the provisions of this rule; and

(D) if 24-hour access to residential facilities is believed to be necessary to perform the organization's primary function, a written justification of the need for such access and the names of individuals representing the organization who perform the function for which 24-hour access is requested.

(3) The TJJD division director with responsibility over volunteer services or his/her designee determines whether or not an organization qualifies as an advocacy or support group or social services provider as defined in this rule[5] and whether or not 24-hour access, if requested, is necessary to provide the organization's primary function.

(4) A determination that an organization does not qualify as an advocacy or support group or social services provider under this rule[5] or a denial of a request for 24-hour access[5] must be in writing and may be appealed to the TJJD executive director or his/her designee. The appeal must be in writing and clearly state the reason the organization should be considered an advocacy or support group or social

services provider under this rule or the reason that denial of 24-hour access would prevent the organization from effectively performing its primary function.

(5) A person representing a registered advocacy or support group or social services provider is not permitted to provide information, support, or other services to youth in a confidential setting unless and until:

(A) TJJD conducts a background check pursuant to §385.8181 of this title and clears the person for such access; and

(B) the person signs appropriate confidentiality agreements concerning youth information and/or records.

(6) A registered advocacy or support group or social services provider must provide immediate written notification to TJJD when a person who is registered with TJJD as a representative of the organization ceases to represent the organization.

(e) General Provisions.

(1) A person who has been granted 24-hour access should provide reasonable advance notice of his/her intention to visit a facility to allow for security and confidentiality arrangements to be made. Lack of advance notice does not constitute grounds for denying entry.

(2) A person who has not been granted 24-hour access may access residential facilities during youth waking hours. Such a person must provide at least 24-hour advance notice of his/her visit to the facility in order for security and confidentiality arrangements to be made. Visits with less than 24-hour advance notice will be accommodated when possible.

(3) The security and confidentiality measures arranged by TJJD must not be designed to deny a registered advocacy or support group or social services provider access to youth.

(4) A person who has been cleared for access and who has provided adequate advance notice, if required, will not be denied access to any residential facility unless, in the judgment of the facility administrator or designee, the circumstances existing at the time of the visit create an unacceptable risk to the safety of youth, staff, or visitors. If, upon arrival at a facility, a representative of an advocacy or support group or social services provider is denied entry due to unsafe conditions, the facility administrator or designee must provide written justification to the organization within three workdays. A youth's current placement in a security unit does not constitute an unacceptable safety risk that would prevent access by a registered group or provider[5] but may be taken into consideration with other factors in making a determination of the safety of the current circumstances.

(5) A person who has been cleared for access must present picture identification at the entry point in order to gain access to the facility.

(6) Members of advocacy or support groups or social services providers are subject to search upon entry to a residential facility in accordance with §380.9710 of this title.

(7) Under state law, any person, including a registered member of an advocacy or support group or social services provider, who has cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation has a legal obligation to report the matter in accordance with §380.9333 of this title. The reporting requirement applies without exception to a person whose personal communications may otherwise be privileged.

(8) Youth have the right to refuse a visit with an advocate or social services provider.

(9) Advocacy and support groups and social services providers may file complaints regarding the security and privacy procedures arranged by a facility in accordance with §385.8111 of this title.

(10) Provisions of this rule may not be used to bypass the provisions of §380.9312 of this title regarding visitation procedures for family members of youth committed to TJJD.

(f) Revocation of Access.

(1) TJJD may revoke the access of a representative of a registered advocacy or support group or social services provider, with written notice, when:

(A) the person has endangered the safety of youth or the security of the facility; or

(B) the person has violated a TJJD confidentiality agreement.

(2) Revocation of access may be appealed to the executive director or his/her designee. The appeal must be in writing and clearly state the reason the person's access should not be revoked.

(g) Frequency Data.

(1) The department shall track the frequency with which the executive director finalizes appeals described in subsections (d) and (f).

(2) The department shall compile frequency data on a quarterly basis.

(3) At the beginning of each quarter, the department shall provide the frequency data from the previous quarter to the governing board of the Texas Juvenile Justice Department and Sunset Advisory Commission.

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 19, 2024.

TRD-202401662

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 490-7278



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 467. FIRE MARSHAL

The Texas Commission on Fire Protection ("the Commission" or "agency") proposes amendments to 37 Texas Administrative Code Chapter 467 Fire Marshal, §467.1, Basic Fire Marshal Certification, §467.3 Minimum Standards for Basic Fire Marshal Certification, §467.5 Examination Requirement, §467.201, Intermediate Fire Marshal Certification, §467.301, Advanced Fire Marshal Certification, and §467.401, Master Fire Marshal Certification.

BACKGROUND AND PURPOSE

The proposed rule amendments are initiated because of a change in the examination requirements for Basic Fire Marshal as reflected in the proposed amendment to §467.1 and §467.5. Proposed rule amendments to §467.3, §467.201, §467.301, and §467.401 correct typographical errors.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Agency Chief, Michael Wisko, has determined that for each year of the first five-year period that the proposed rule amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments pursuant to Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Chief Wisko has also determined that pursuant to Texas Government Code §2001.024(a)(5), for each year of the first five years the proposed rule amendments are in effect, the public benefit will be more accurate, clear, and concise rules.

LOCAL ECONOMY IMPACT STATEMENT

For the first five years that the proposed rule amendments are in effect, there is no anticipated effect on the local economy; therefore, no local employment impact statement is required pursuant to Texas Government Code §2001.022 and §2001.024(a)(6).

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

Chief Wisko has determined there will be no impact on small businesses, micro-businesses, or rural communities as a result of implementing these proposed rule amendments. Therefore, no economic impact statement or regulatory flexibility analysis is required pursuant to Texas Government Code §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined that pursuant to Texas Government Code §2001.0221, during the first five years the amendments are in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) the proposed rules will not create or eliminate any existing employee positions;
- (3) the proposed rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase or 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 increase the number of individuals subject to the rule; and
- (8) the proposed rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by these proposed rule amendments, and they 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, these proposed rule amendments do not constitute a taking or require a taking impact assessment pursuant to Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

The proposed rule amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed rule amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed rule amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286, or e-mailed to frank.king@tcfp.texas.gov.

SUBCHAPTER A. MINIMUM STANDARDS FOR BASIC FIRE MARSHAL CERTIFICATION

37 TAC §§467.1, 467.3, 467.5

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification.

CROSS-REFERENCE TO STATUTE

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

§467.1. *Basic Fire Marshal Certification.*

(a) A Fire Marshal is defined as an individual designated to provide delivery, management, and/or administration of fire protection and life safety-related codes and standards, investigations, education, and/or prevention services.

(b) All individuals holding a Fire Marshal certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) Special temporary provision. Individuals are eligible to take the Commission [~~e~~ommission] examination for Basic Fire Marshal by:

(1) holding as a minimum, Instructor I certification through the Commission [~~e~~ommission]; and

(2) holding as a minimum, Fire Investigator certification or Arson Investigator certification through the Commission [~~e~~ommission]; and

(3) holding as a minimum, Fire Inspector certification through the Commission [~~e~~ommission].

(4) [~~(d)~~] All applications for testing during the special temporary provision period must be received no earlier than August 1, 2023, and no later than August 1, 2024.

(5) [(e)] This subsection will expire on August 30, 2024.

§467.3. *Minimum Standards for Basic Fire Marshal Certification.*

In order to be certified as a Basic Fire Marshal, an individual must:

(1) hold Basic Fire Inspector certification through the Commission [~~e~~ommission]; and

(2) hold Basic Fire Investigator or Basic Arson Investigator certification through the Commission [~~e~~ommission]; and

(3) hold Fire and Life Safety Educator I certification through the Commission; and

(4) complete a commission-approved Fire Marshal program and successfully pass the Commission [~~e~~ommission] examination as specified in Chapter 439 of this title (relating to Examinations for Certification). [~~;~~ and]

(5) An approved Fire Marshal program must consist of the completion of a commission-approved Fire Marshal Curriculum as specified in Chapter 15 of the Commission's [~~e~~ommission's] Certification Curriculum Manual.

§467.5. *Examination Requirements* [~~Requirement~~].

(a) Examination requirements in Chapter 439 of this title (relating to Examinations for Certification) must be met to receive Basic Fire Marshal certification.

(b) Individuals will be permitted to take the Commission examination for Basic Fire Marshal certification by documenting the following:

(1) Basic Inspector certification and Basic Fire Investigator or Basic Arson Investigator; and

[(2) Basic Arson Investigator certification; and]

(2) [(3)] Fire and Life Safety Educator I certification through the Commission; or

(3) [(4)] the equivalent IFSAC seals and completing a commission-approved [~~C~~ommission-approved] Basic Fire Marshal curriculum.

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-202401584

Frank King

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: June 2, 2024

For further information, please call: (512) 936-3838



SUBCHAPTER B. MINIMUM STANDARD FOR INTERMEDIATE FIRE MARSHAL CERTIFICATION

37 TAC §467.201

The new sections are proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which

authorizes the commission to adopt rules establishing fees for certifications.

CROSS-REFERENCE TO STATUTE

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

§467.201. *Intermediate Fire Marshal Certification.*

Applicants for Intermediate Fire Marshal certification must complete the following requirements:

(1) hold as a prerequisite a Basic Fire Marshal certification as defined in §467.3 of this title (relating to Minimum Standards for Basic Fire Marshal Certification); and

(2) hold Intermediate Fire Inspector certification through the Commission [~~eommission~~]; and

(3) hold Intermediate Fire Investigator or Intermediate Arson Investigator through the Commission [~~eommission~~]; and

(4) hold Fire and Life Safety Educator II certification through the Commission [~~eommission~~]; and

(5) acquire a minimum of four years of fire protection experience.

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-202401585

Frank King

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



SUBCHAPTER C. MINIMUM STANDARDS FOR ADVANCED FIRE MARSHAL CERTIFICATION

37 TAC §467.301

The new sections are proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

CROSS-REFERENCE TO STATUTE

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

§467.301. *Advanced Fire Marshal Certification.*

Applicants for Advanced Fire Marshal certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Fire Marshal certification as defined in §467.201 [~~§467.5~~] of this title (relating to Minimum Standards for Intermediate Fire Marshal Certification); and

(2) hold Advanced Fire Inspector certification through the Commission [~~eommission~~]; and

(3) hold Advanced Fire Investigator or Advanced Arson Investigator through the Commission [~~eommission~~]; and

(4) hold Fire Plans Examiner certification through the Commission [~~eommission~~]; and

(5) acquire a minimum of eight years of fire protection experience.

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-202401586

Frank King

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



SUBCHAPTER D. MINIMUM STANDARDS FOR MASTER FIRE MARSHAL CERTIFICATION

37 TAC §467.401

The new sections are proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

CROSS-REFERENCE TO STATUTE

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

§467.401. *Master Fire Marshal Certification.*

Applicants for Master Fire Marshal certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Marshal certification as defined in §467.301 [~~§467.5~~] of this title (relating to Minimum Standards for Advanced Fire Marshal Certification); and

(2) hold Master Fire Inspector certification through the Commission [~~eommission~~]; and

(3) hold Master Fire Investigator or Master Arson Investigator through the Commission [~~eommission~~]; and

(4) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in any combination of Fire Science and/or Criminal Justice. College-level courses from both the upper and lower divisions [~~division~~] may be used to satisfy the education requirements for Master Fire Marshal Certification.

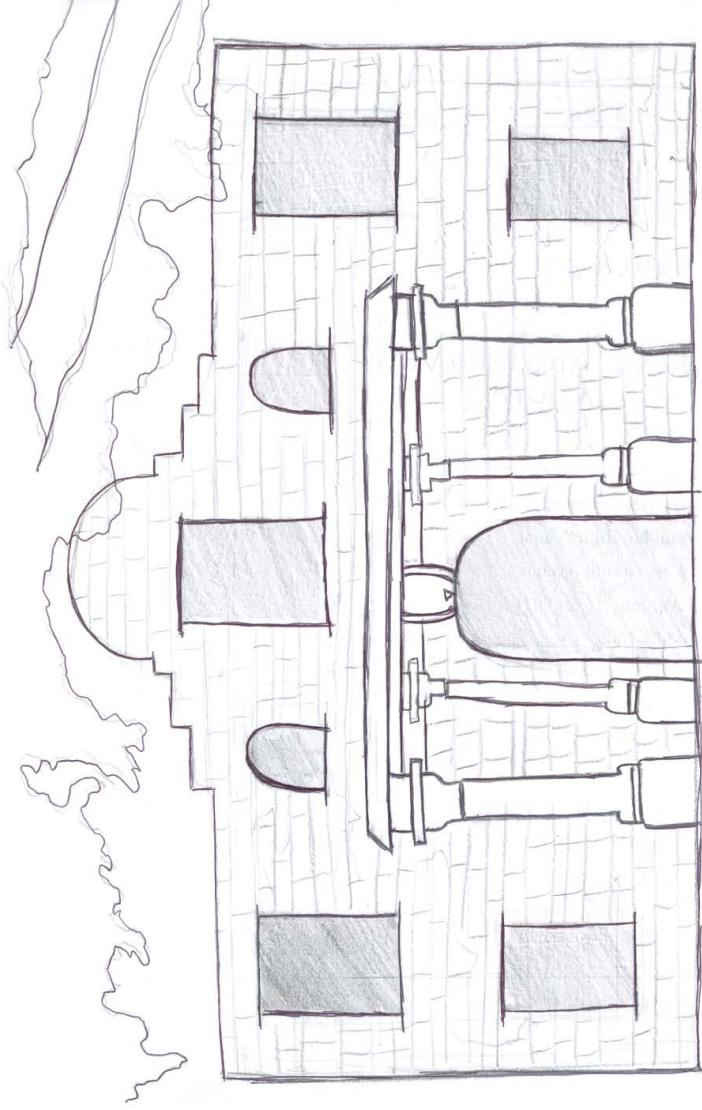
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

TRD-202401587

Frank King
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: June 2, 2024
For further information, please call: (512) 936-3838





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

SUBCHAPTER B. INTERACTION WITH THE PUBLIC

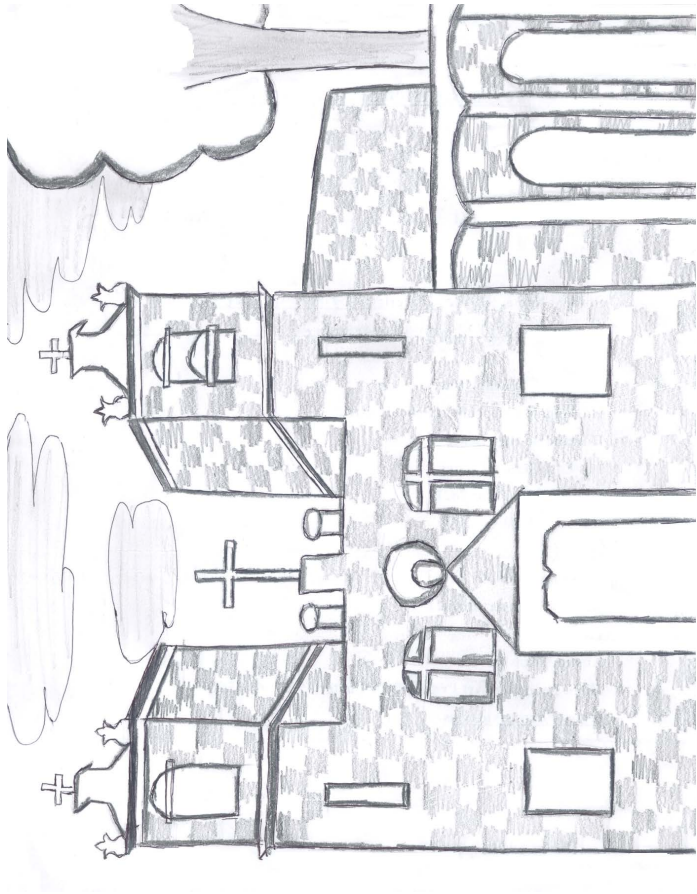
37 TAC §385.8183

The proposed repeal of §385.8183, published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5644), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on April 22, 2024.

TRD-202401700





ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 65. LANDOWNER COMPENSATION PROGRAM

The Office of the Attorney General (OAG) adopts new Chapter 65 in Title 1 of the Texas Administrative Code (TAC), relating to the Landowner Compensation Program. These new rules are adopted with changes to the proposed text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 821). The new rules will be republished. The changes are in response to public comments.

The adopted rule implements Chapter 56C, Texas Code of Criminal Procedure, enacted as Senate Bill 1133, which requires the OAG to implement the Landowner Compensation Program.

Chapter 65 consists of Subchapter A, §§65.1 and 65.2, Scope, Construction, and Definitions; Subchapter B, §§65.200 - 65.203, Program Guidelines; Subchapter C, §§65.300 - 65.307, Application for Compensation; and Subchapter D, §§65.400 - 65.402, Administrative Remedies. Chapter 65 is necessary to implement the Landowner Compensation Program in Chapter 56C, Texas Code of Criminal Procedure.

EXPLANATION OF AND JUSTIFICATION RULES

The Legislature, in the 88th Regular Session (2023), added Chapter 56C to the Code of Criminal Procedure (S.B. 1133) which establishes the Landowner Compensation Program (LCP). The purpose of the LCP is to compensate certain landowners who suffer real property damage on agricultural land as a result of certain acts in connection with a border crime.

Senate Bill 1133 provides that the OAG shall establish: eligibility for compensation, application procedures, criteria for evaluating applications and awarding compensation, guidelines for compensation amounts not to exceed \$75,000 per incident, and procedures for monitoring the use of awarded compensation.

Chapter 65 is necessary to implement Chapter 56C and Contingency Rider Section 18.03, General Appropriations Act (GAA) for Fiscal Years 2024-2025, which appropriates funds to create and administer the LCP. Chapter 56C, Code of Criminal Procedure, as added by S.B.1133 will expire on the second anniversary of the date that the money appropriated for the LCP has been expended.

SECTION-BY-SECTION SUMMARY

Adopted new Chapter 65 adds new Subchapter A - Scope, Construction, and Definitions.

Adopted new §65.1, outlines the authority, scope, and construction of the rules and law establishing the LCP.

Adopted new §65.2, defines the following terms: "Agricultural land," "Agricultural use," "Application," "Border crime," "Claimant," "Closed application," "Collateral source," "Incident," "Landowner," "Law enforcement agency," "LCP," "OAG," "Real property," "Report," and "Trespasser."

Adopted new Chapter 65 adds new Subchapter B - Program Guidelines.

Adopted new §65.200 outlines claimant eligibility requirements, the administration of the program, and compensation and award limits. The eligibility requirements are consistent with Chapter 56C and require that a claimant submit an application in accordance with adopted new Chapter 65. Adopted new §65.200 also establishes that real property damage for which an applicant files a claim must have occurred on or after September 1, 2023.

Adopted new §65.201 establishes that the OAG may award compensation to claimants that the OAG determines have met all eligibility requirements outlined in §65.200. Adopted new §65.201 also establishes parameters the OAG may use to determine the amount of compensation that will be awarded to a claimant who the OAG determines is eligible to receive compensation under the LCP.

Adopted new §65.202 establishes the types of real property repairs for which the OAG may award compensation and how the rates will be set, published, and reviewed. New §65.202 also establishes a maximum compensation amount of \$75,000, which is consistent with Chapter 56C, and states that applications for \$15 or less will not be considered.

Adopted new §65.203, establishes procedures that the OAG may use to monitor a landowner's use of compensation awarded under the LCP.

Adopted new Chapter 65 adds new Subchapter C - Application for Compensation.

Adopted new §65.300 establishes the application requirements a claimant must meet to be eligible for compensation under the LCP.

Adopted new §65.301 states that claimants must submit applications for compensation no later than 90 days after the date the incident occurred. The OAG has the discretion to extend the time frame for filing an application.

Adopted new §65.302, requires the claimant report an incident to the appropriate state or local law enforcement agency within a reasonable time period as determined by the OAG.

Adopted new §65.303 outlines when an application may be denied or closed. The OAG may reopen an application that has been closed. The OAG may reconsider an application that

has been denied. A claimant may not reapply for compensation based on the same incident for which a previous application has been denied.

Adopted new §65.304 establishes that the OAG is the payer of last resort pursuant to §56C.006 of the Code of Criminal Procedure. Adopted new §65.304 provides that the OAG will not award compensation where another collateral source is or was available to compensate the landowner for real property damage and failed to seek reimbursement for the available collateral source. Adopted new §65.304 also establishes that the OAG may consider the availability of collateral sources to determine, award, deny, or reduce compensation.

Adopted new §65.305 establishes that the OAG may require a refund from a claimant if the claimant applied for compensation on the basis of fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation. The OAG may also pursue available administrative or civil penalties in addition to seeking a refund upon determining that compensation was awarded based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

Adopted new §65.306 provides that the OAG will not exceed the amount of money appropriated for compensation under the LCP and available funds will be awarded in a priority deemed appropriate by the OAG.

Adopted new §65.307 provides that the OAG has authority to transmit the submission of notices, forms, and other documentation electronically and also may require a claimant to do so, unless good cause is shown.

Adopted new Chapter 65 adds new Subchapter D - Administrative Remedies.

Adopted new §65.400 outlines procedures to request a reconsideration of an application or award under the LCP.

Adopted new §65.401 outlines the prehearing conference requirements.

Adopted new §65.402 outlines the hearing procedures.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Ryan Fisher, Chief of the Crime Victim Services Division, has determined that for each year of the first five years the adopted rules are in effect, there will be an anticipated additional cost to the state General Revenue Funds, estimated at \$18,000,000 for the first fiscal year and \$18,000,000 for the second fiscal year.

The additional cost to the state was considered in the fiscal note for S.B. 1133, which amended the Texas Code of Criminal Procedure by adding Chapter 56C. Senate Bill 1133 grants the OAG the ability to adopt rules, establish, and administer the Landowner Compensation Program.

The General Appropriations Act for Fiscal Year 2024-2025 appropriated \$18 million per fiscal year for two years, totaling \$36 million, with administrative costs of \$342,617 per year included in the amount to implement S.B. 1133. Because the LCP is a new program, an accurate forecast of compensation payouts and operating costs is not possible.

Chapter 56C of the Code of Criminal Procedure, as added by S.B. 1133, will expire on the second anniversary of the date the money appropriated for the Landowner Compensation Program has been expended.

Mr. Fisher has determined that there will be no additional costs to local government, no estimated reductions in costs to state or local government, and no estimated increase in revenue or estimated losses in revenue to state or local government.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Fisher has determined that the adopted rules do not have an impact on local employment or economies because the adopted rules impact landowners. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

PUBLIC BENEFITS

Mr. Fisher has determined that for each year of the first five-year period the adopted rules are in effect, the public benefit will be to the landowners who have suffered real property damage on agricultural land as a result of certain acts in connection with a border crime. Eligible claimants will receive compensation, an award amount of up to \$75,000 per incident, for their losses. The compensation will allow for financial recovery for damage caused by trespassing on agricultural land or related to border crimes if compensation from other collateral sources is not available to the landowner.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Fisher 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. Senate Bill 1133 amended the Texas Code of Criminal Procedure adding Chapter 56C, which establishes the Landowner Compensation Program, to assist those affected by border crime on agricultural land to be eligible to receive compensation for real property damage. Those identified as affected by the proposed rules are potential claimants who may be eligible for compensation. Enforcing or administering the proposed rules do not have foreseeable economic costs to those claimants.

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

Mr. Fisher has determined that for each year of the first five-year period the adopted rules are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the adopted rules.

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. Adopted new chapter 65 creates a new government program. Senate Bill 1133 creates a government program called Landowner Compensation Program and appropriates General Revenue Funds to the OAG for two years to administer the program.

2. Implementation of adopted new chapter 65 requires the OAG to create 10 new full-time employee positions. The adopted rules are necessary to implement S.B. 1133, which resulted in the creation of a new program for which implementation requires additional staff in the Crime Victims Services Division.

3. Implementation of the adopted rules does not require an increase or decrease in future legislative appropriations to the agency. The adopted rules implement General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program. The appropriated amount for the program is \$18 million per fiscal year for two years, totaling \$36 million, with administrative costs of \$342,617 per year included in the amount. Chapter 56C, Code of Criminal Procedure, as added by S.B. 1133 will expire on the second anniversary of the date that the money appropriated for the Landowner Compensation Program has been expended. Unless continued by the Texas Legislature and funded through the General Appropriations Act, the adopted rules do not increase or decrease future legislative appropriations.

4. The adopted rules will not require an increase or decrease in fees paid to the agency.

5. The adopted rules will not create a new regulation.

6. The adopted rules will not expand, limit, or repeal an existing regulation.

7. The adopted rules increase the number of individuals subject to the rules' applicability. The adopted rules implement S.B. 1133 which creates a new Landowner Compensation Program and therefore increases the number of individuals that may be eligible to be claimants.

8. The adopted rules positively affect this state's economy. Senate Bill 1133 allows landowners who have suffered real property damage on agricultural land as a result of certain acts in connection with a border crime to be awarded compensation. Eligible claimants will receive compensation, an award amount of up to \$75,000 per incident, for their losses. This will allow for a quicker financial recovery for damage caused by trespassing on agricultural land or related to border crimes.

TAKINGS IMPACT ASSESSMENT

The OAG has determined that no private real property interests are affected by the adopted rules and the adopted 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 adopted rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

The OAG received comments on the proposed rule from: Albert Hausser, Texas Farm Bureau, Texas & Southwestern Cattle Raisers Association (TSCRA), and the South Texas Property Rights Association (STPRA).

Comments regarding impact statements.

STPRA comments on OAG's estimate that there will be no additional costs to local governments, stating that the need for written reports by law enforcement agencies will add time and travel to make investigations for the reports and may lead to added landowner liaison positions at law enforcement agencies. STPRA comments on OAG's estimate that there will be no im-

pact to local economies, noting that landowner compensation to landowners may positively affect the local economy.

OAG Response:

The OAG reviewed the comments and declines to make changes to the rules because the law and the rules do not add any new requirement to law enforcement when crimes occur or are reported. How a local law enforcement agency chooses to investigate, document, and write incident reports now for reported crimes will not change as a result of the law or the proposed rules. In addition, although compensation to landowners may positively affect the local economy, at this time, any positive fiscal impact is speculative so OAG declines to make changes to the local employment impact statement.

Comments regarding definitions

Tex. Code of Crim. Proc. 56C.001 Definition of Border Crime

STPRA commented that the definition of "border crime" in Tex. Code of Crim. Proc. §56C.001 should be expanded to include "illegal entry."

OAG Response:

OAG has reviewed the comment and declines to make this change at this time because expanding the definition of "border crime" would require a legislative change.

Request to clarify that Special Rangers can submit the required written report.

A state senator's office requested that special rangers appointed under Tex. Code of Crim. Proc. Art. 2.125 be included as an agency that can submit a written law enforcement report.

OAG response:

OAG considered the request and made this change to the definition of law enforcement agency.

Comments regarding collateral source requirements

Tex. Code of Crim. Proc. 56C.006(b) regarding reimbursement from an insurance contract.

1 Texas Administrative Code §65.2(6) Definition of Collateral Sources.

Mr. Hausser commented that requiring landowners to file insurance premiums to be eligible for the LCP will cause the landowner's insurance premiums to increase. TSCRA also commented it does not agree "with the inclusion of insurance contracts, including property insurance, in the definition of 'collateral resources.'" TSCRA commented that the definition of collateral sources in general is overbroad. TSCRA commented that the definition of collateral sources should be limited to insurance contracts.

OAG Response:

The OAG has reviewed the comments and declines to make changes because the rules requiring applicants to show they sought for and were not eligible to receive compensation from all available collateral sources is consistent with Tex. Code of Crim. Proc. Art. 56C.006.

1 Texas Administrative Code §65.200(b)(5) eligibility requirement to seek out and apply for all collateral sources.

TSCRA commented that the OAG should "remove or revise the requirement that essentially forces the rancher to exhaust all

other options by seeking out, applying for, and receiving a denial from 'all collateral sources' before applying to the LCP."

OAG response:

The OAG has reviewed the comment and declines to make changes because the proposed rules only require applicants to seek out and apply for all collateral sources before applying with the OAG. If the landowner is subsequently compensated by another source, the OAG will seek a refund from the landowner to prevent enrichment.

1 Texas Administrative Code §65.200 & §65.201 requirement to consider collateral sources.

STPRA commented that a process to accommodate collateral sources may be difficult to resolve and get payment from. STPRA requested guidance on whether "unreasonable delay on the part of third parties" resolves issue with those collateral sources.

OAG Comment:

The OAG reviewed the comments and declines to make any changes to the rule. The rules provide flexibility for collateral sources and allow for a claim to be paid while an application with a collateral source is pending. As the payer of last resort, OAG then requires the landowner to refund compensation if it later receives that compensation from another source. If the source never pays, there will be no need to go through the refund process.

Comments regarding deadlines

TSCRA commented that the OAG extend all of the proposed deadlines in the rules. The TSCRA in particular commented that the 1 TAC §65.303(b)(2) 30-day deadline to send information to complete an application is the "most egregiously short" deadline.

OAG Response:

The OAG reviewed the comment and declines to make any changes to the rule. The 30-day deadline is in place to keep the application moving forward and not delay payments based on missing information.

TSCRA also comments that a lack of access to reliable internet in "many rural areas of the state" impacts the consideration of deadlines.

OAG Response:

OAG reviewed the comment and declines to make any changes as the rule is consistent with the statute.

1 Texas Administrative Code §65.301 90-day time period to apply.

TSCRA commented that the 90-day time period to apply for the LCP is too short for farmers and ranchers given long days of work and the requirement to apply for available collateral sources. TSCRA commented that the OAG's requirements to apply for collateral sources are onerous and that the OAG does not "acknowledge the realities of trying to obtain relief from another program." The comment raises the concern that future legislation could add relief that applicants would not be able to apply for before 90-day period.

STPRA commented that the rules should include an extension for those landowners who experienced eligible damage between September 1, 2023, and the date these rules are final, and applications may be accepted.

OAG Comment:

The OAG reviewed the comments and declines to make any changes to the rules. The 90-day requirement ensures that only applications for recent incidents are considered. Further, the rules do not require receipt of a denial from a collateral source before applying. The rules include an exception to the 90-day deadline if good cause for the delay is shown.

1 Texas Administrative Code §65.304(d) Requirement to notify the OAG within 10 business days of becoming aware of compensation from a collateral source.

TSCRA comments that the 10 days to notify the OAG is "not reasonable for the realities of agriculture in Texas."

OAG response:

The OAG reviewed the comment and declines to make changes to the rule as 10 days is a reasonable timeframe for an applicant to notify the OAG that the applicant has been awarded funds from another source. The notification can be as simple as an email. Prompt notification is essential to comply with the requirement that the LCP is the payer of last resort. If an awardee receives compensation from another source that leads to unjust enrichment, the OAG needs notice to ensure it can recoup the overpayment.

1 Texas Administrative Code §65.203 Deadline during monitoring the use of compensation.

The Texas Farm Bureau commented that the 10-day period to respond to a request from the OAG for supporting documentation regarding the use of compensation is too short and recommended that the OAG extend this time period to 30 days. The Texas Farm Bureau commented that "[t]he daily responsibilities and workload of farmers and ranchers . . . will likely require more time."

OAG Response:

The OAG has reviewed the comment and extended the deadline to respond to an OAG request to 30 days.

Comments regarding application requirements

1 Texas Administrative Code §65.300 requirement that landowner submit application.

TSCRA commented that landowners lease their land to farmers and ranchers, or have property managers, who deal with the damage at issue in LCP. STPRA adds that property managers may be on site rather than the landowner and that person will deal with the practicalities of the damage. Both TSCRA and STPRA suggests adding "or agent" to 65.300(b)(2) so that lessees can submit the application.

OAG Response:

The OAG has reviewed the comments and amended §65.300(b)(2) to include an authorized agent as determined by the OAG. The landowner is still the entity that receives compensation under the LCP. Tex. Code of Crim. Proc. 56C.003.

1 Texas Administrative Code §65.300(d)(4) use of ag/timber registration number to prove agricultural land use.

TSCRA commented that not all landowners will have the required ag/timber registration number. STPRA suggests that the landowner be required to use their property identification number from the local appraisal district instead.

OAG Response:

The OAG has reviewed the comment and amended §65.300(d)(4) to broadly require "identifying property information needed to determine eligibility" for proof of landownership rather than to specifically require an ag/timber registration.

Other comments

1 Texas Administrative Code §65.303 regarding process following denial of an application.

STPRA commented that the rule should be amended to allow a landowner to reapply if new information regarding the incident is available.

OAG Response:

The OAG has reviewed the comment and declines to make changes to the rules. If an applicant's claim is denied, the applicant can use the appeals process in §65.400 which allows the applicant to submit new information for consideration.

1 Texas Administrative Code §65.202 determination of reasonable compensation if no proof of actual cost for repairs.

STPRA commented with questions about the determination of standardized compensation rates. STPRA also commented asking if receipts and bid estimates can be used to support larger and non-standard damage claims and repair costs.

OAG Response:

More information on the rates will be available on the OAG's website. Section 65.201(d) explains that the fair market price is used when the claimant does not, for a reasonable reason, submit proof of the actual cost of the repair.

1 Texas Administrative Code §65.302 regarding crime location in law enforcement reports.

STPRA comments that precise latitude and longitude coordinates should be requested and used when possible.

OAG Response:

The OAG reviewed the comments and declines to make changes to the rule because §65.302 requires the law enforcement report include the location of the incident, which is sufficient to determine eligibility for the LCP.

Request for OAG to gather data on personal property losses or damages that occur in conjunction with the real property damage.

STPRA commented requesting the application for LCP include OAG gather data for personal losses or damages resulting from damage caused in relation to border crime.

OAG Response:

The OAG reviewed the comments and declines to make changes to the rule because gathering data is not the intent of the LCP.

Comment regarding the application

TSCRA commented that the final application "should be simple, succinct, and user-friendly," and request an opportunity to review and give input.

OAG Response:

The OAG has been working to develop the application through an online site and a PDF as a backup while finalizing the rules. The rules incorporate the application requirements.

Other changes

The OAG removed redundancies regarding the administrative appeals process and corrected an inconsistency regarding collateral sources.

SUBCHAPTER A. SCOPE, CONSTRUCTION, AND DEFINITIONS

1 TAC §65.1, §65.2

ADOPTION AND STATUTORY AUTHORITY

New 1 TAC Chapter 65 is adopted pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

New Chapter 65 is further adopted pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

§65.1. Authority, Scope, and Construction of Rules.

This chapter applies to the administration of the Landowner Compensation for Property Damage caused by Certain Criminal Activities program pursuant to Texas Code of Criminal Procedure, Chapter 56C. The Office of the Attorney General (OAG) adopts this chapter under the authority of the Texas Code of Criminal Procedure, Chapter 56C and Texas Government Code, Chapter 402.

§65.2. Definitions.

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

(1) "Agricultural land" means any land the use of which qualifies the land for appraisal based on agricultural use as defined under Subchapter D, Chapter 23, Texas Tax Code.

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, defined by the Texas Tax Code §23.51(2).

(3) "Application" means a written request for compensation under the Landowner Compensation for Property Damage caused by Certain Criminal Activities program and includes all supporting documentation that is provided for claim determination as prescribed by the OAG.

(4) "Border crime" means conduct:

(A) constituting an offense under:

(i) Subchapter D, Chapter 481 (Texas Controlled Substances Act), Health and Safety Code;

(ii) Section 20.05 (Smuggling of Persons) or 38.04 (Evading Arrest or Detention), Penal Code; or

(iii) Chapter 20A (Trafficking of Persons), Penal Code; and

(B) involving transnational criminal activity.

(5) "Claimant" means any landowner applying for any benefit under this chapter.

(6) "Closed application" means an application which has been administratively closed under this chapter.

(7) "Collateral source" means financial compensation for real property damage under a state, local, or federal funding program, or an insurance contract and may include property insurance; state funding; local funding; federal funding; or foreign consulate payments.

(8) "Incident" means an occurrence of real property damage on agricultural land caused by a trespasser as a result of an offense under Chapter 28, Penal Code, in the course or furtherance of a border crime or engaged in a border crime that has been reported to law enforcement.

(9) "Landowner" means an individual or business that owns land in the State of Texas.

(10) "Law enforcement agency" means a governmental organization that employs commissioned peace officers as defined by Texas Code of Criminal Procedure Article 2.12, and shall include special rangers appointed pursuant to Texas Code of Criminal Procedure Article 2.125.

(11) "LCP" means Landowner Compensation Program.

(12) "OAG" means Office of the Attorney General.

(13) "Real Property" means agricultural land that has the meanings assigned by Texas Tax Code, §1.04(2). The term does not include crops, farm equipment, or livestock.

(14) "Report" means written documentation created or provided by a law enforcement agency in connection with an incident.

(15) "Trespasser" has the meaning assigned by Texas Civil Practice and Remedies Code §75.007.

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

Filed with the Office of the Secretary of State on April 22, 2024.

TRD-202401701

Justin Gordon

General Counsel

Office of the Attorney General

Effective date: May 12, 2024

Proposal publication date: February 16, 2024

For further information, please call: (512) 475-4291



SUBCHAPTER B. PROGRAM GUIDELINES

1 TAC §§65.200 - 65.203

ADOPTION AND STATUTORY AUTHORITY

New 1 TAC Chapter 65 is adopted pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

New Chapter 65 is further adopted pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

§65.200. Eligibility and Administration.

(a) The OAG shall determine the eligibility, standards, and reasonable limits on compensation for applications and payments in a manner consistent with the law and this chapter. Use of payments made under the LCP are subject to ongoing review by the OAG to ensure compliance with conditions of the awards.

(b) The following requirements must be met in order for a claimant to be eligible for compensation under the LCP:

(1) the claimant must be a landowner;

(2) the land for which the claimant submits an application for compensation under the LCP must be agricultural land;

(3) the damage for which the claimant submits an application must be real property damage caused by a trespasser as a result of an offense under Chapter 28, Texas Penal Code, that was committed in the course of or in furtherance of a border crime or a law enforcement response to a trespasser who was engaged in a border crime;

(4) the claimant must submit a written report created by a law enforcement agency stating real property damage occurred in connection with a border crime; and

(5) the landowner sought and was not eligible to receive compensation from all available collateral sources.

(c) The real property damage for which a claimant files a claim must have occurred on or after September 1, 2023.

(d) A claimant may not be eligible for compensation under the LCP if the claimant does not submit an application in accordance with this chapter.

§65.201. Program Compensation.

(a) The OAG may award compensation to claimants determined by the OAG to have met all eligibility requirements in §65.200 of this chapter.

(b) Compensation will be reduced for any portion of the otherwise eligible real property damage for which the claimant received compensation from a collateral source.

(c) Awarded compensation will be an amount the OAG determines is reasonable to restore the real property to equal value of the real property before the damage.

(d) The OAG may determine the fair market price of a cost to determine a reimbursable amount of compensation if a claimant does not, for a reasonable reason, submit proof of the actual cost for repair. The OAG has the discretion to determine whether the reason a claimant is not able to provide proof of actual cost for repair is reasonable.

§65.202. Compensation Amount Guidelines.

(a) Real property repairs are limited to the following categories:

- (1) labor cost for repairs made;
- (2) cost for fence repair, including materials;
- (3) cost for structure repair, including materials;
- (4) disposal and removal of damaged property; or
- (5) any other costs the OAG determines is reasonable to restore fair market value.

(b) The OAG will set the compensation rates for costs enumerated in subsection (a) of this section in accordance with fair market value guidelines and publish the rates on the OAG's website. The OAG may periodically review and adjust the compensation rates at its discretion to ensure fair market value.

(c) The maximum amount awarded per incident will not exceed \$75,000.

(d) Applications submitted by a claimant for \$15 or less will not be considered.

§65.203. Monitoring Use of Compensation.

(a) The OAG may verify and investigate the use of compensation awarded under the LCP. Verification and investigation includes but is not limited to:

- (1) verification of any documentation submitted to the OAG;
- (2) review of records submitted by a claimant; or
- (3) a post-award audit to verify actual charges, bills, payments, and the delivery of goods or services.

(b) The OAG may require additional supporting documentation from a claimant. The claimant must respond to the OAG's request within 30 days, unless good cause is shown.

(c) If the claimant fails to provide additional supporting documentation or the OAG determines the claimant improperly used awarded compensation, then the OAG may require a claimant to refund the awarded funds in accordance with this chapter.

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

Filed with the Office of the Secretary of State on April 22, 2024.

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Justin Gordon

General Counsel

Office of the Attorney General

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For further information, please call: (512) 475-4291



SUBCHAPTER C. APPLICATION FOR COMPENSATION

1 TAC §§65.300 - 65.307

ADOPTION AND STATUTORY AUTHORITY

New 1 TAC Chapter 65 is adopted pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

New Chapter 65 is further adopted pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

§65.300. Application for Compensation.

(a) All communications and applications for compensation shall be submitted to the LCP in a manner and form prescribed by the OAG.

(b) An application for compensation is complete when the application:

- (1) is filled out in its entirety as prescribed by the OAG;
- (2) signed by the claimant or authorized agent, as determined by the OAG;
- (3) contains all relevant required documentation; and
- (4) contains any other information requested by the OAG to determine eligibility.

(c) The OAG will not consider an application until the application is complete as prescribed in §65.300(b).

(d) An application must include:

- (1) a written report, including an incident or claim number, by a law enforcement agency that documents the real property damage occurred in connection with a border crime;
- (2) photographic evidence of the real property damage;
- (3) a detailed description of the real property damage;
- (4) any identifying property information needed to determine eligibility; and
- (5) insurance declarations or denial of coverage.

(e) The OAG may require the claimant to provide:

- (1) Federal Tax Identification Number (EIN);
- (2) entity formation information;
- (3) the claimant's social security number;
- (4) the claimant's Individual Taxpayer Number (ITIN);
- (5) itemized receipts or invoices of cost for repair(s);
- (6) itemized receipts or invoices of cost for labor; or
- (7) any other information needed to determine eligibility.

(f) If the claimant submits an application that is not complete, the OAG will notify the claimant in writing, that the application is incomplete and request that the additional information.

(g) If the claimant does not return the completed application to the OAG within 30 days from the date generated on the OAG's request for additional information, the application may be closed in accordance with §65.303.

§65.301. Timely Filing an Application.

(a) An application must be submitted with the OAG no later than 90 days from the date of an incident.

(b) The OAG may extend the time for filing an application upon good cause shown by the claimant. Good cause, as determined by the OAG, may include the following circumstances:

- (1) The claimant was not reasonably aware of the LCP;
- (2) Extenuating circumstances prevented the claimant from filing in a timely manner; or
- (3) Any other circumstance that the OAG considers significant.

§65.302. Law Enforcement Report.

(a) A claimant must report an incident to the appropriate law enforcement agency within a reasonable period as determined by the OAG in order to be eligible for compensation under the LCP.

(b) The OAG may extend the time for reporting an incident to law enforcement if the OAG determines that the extension is justified by extraordinary circumstances.

(c) The report must include the location of the incident.

§65.303. Denial or Closure of an Application.

(a) The OAG will deny compensation under this article if:

(1) real property damage was not caused by a trespasser committing a border crime on agricultural land;

(2) the claimant was eligible for reimbursement from another collateral source and failed to seek reimbursement from the collateral source prior to submitting an application; or

(3) the claimant did not meet the requirements for eligibility under this chapter; or

(4) the claimant knowingly or intentionally provides false or fraudulent information or supporting documentation to the OAG.

(b) An application for compensation may be closed at the discretion of the OAG if any of the following conditions occurs:

(1) No written report by a law enforcement agency was obtained;

(2) The claimant fails to respond within a 30-day period to a request made by the OAG for additional information as required by §65.300;

(3) The OAG is unable, within 30 days of receiving an application, to obtain information substantiating the incident; and

(4) The claimant fails to report that the claimant received or was eligible to receive compensation through a collateral source.

(c) The OAG may reopen an application that has been closed at its discretion upon written request from a claimant that establishes good cause.

(d) The OAG will not reopen an application that has been denied. A claimant may not reapply for compensation for an incident.

§65.304. Collateral Sources.

(a) The LCP is the payer of last resort, and the OAG will not award compensation to a claimant if the OAG determines the claimant is or was eligible for reimbursement from any available collateral source and failed to seek reimbursement from an available collateral source.

(b) The OAG may deny or reduce the compensation if the OAG notifies the claimant of a possible reimbursement amount from any available collateral source, and the claimant fails to apply or pursue the compensation within a reasonable time frame as determined by the OAG. The acceptable time frame will be determined by the OAG upon consideration of all relevant facts and circumstances.

(c) A claimant must seek compensation from any available collateral sources prior to submitting a claim to the OAG, when reasonably possible.

(d) Unless good cause is shown, if a claimant receives compensation from a collateral source, the claimant must report the compensation amount and the source to the OAG before the claimant will be eligible to receive compensation. If a claimant is awarded compensation by a collateral source after the OAG awarded compensation under the LCP, the claimant must notify the OAG of the amount and the source of the collateral source within 10 business days of becoming aware of the compensation from a collateral source.

(e) If the claimant fails to utilize any available collateral source for all or a portion for real property damage, the OAG may deny or reduce an award under the LCP.

(f) Gifts, donations, or charitable contributions made directly to a claimant are not a collateral source and may not reduce the determination of the actual real property damage incurred by the claimant.

§65.305. Refunds from Claimants.

(a) The OAG may require a refund from a claimant if any compensation was awarded under the LCP based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

(b) The OAG may require the claimant to refund any overpayment in full or in installments or reduce future or pending payments by the amount of the overpayment.

(c) The OAG may discontinue or suspend all current and future payments to a claimant from whom the OAG has requested a refund.

(d) The OAG may pursue available administrative or civil penalties in addition to seeking a refund upon determining that compensation was awarded based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

§65.306. Insufficient Funds.

The OAG will not exceed the amount of money appropriated for compensation and available funds will be awarded in a priority deemed appropriate by the OAG.

§65.307. Use of the Electronic Communication.

(a) The OAG may send a claimant any notices, forms, or other documentation and information by electronic means.

(b) The OAG may require a claimant to submit notices, forms, or other documentation and information by electronic means, unless good cause is shown.

(c) In accordance with the Uniform Electronic Transactions Act, Texas Business and Commerce Code, Chapter 322, a notice, form, record, or signature may not be denied legal effect or enforceability solely because it is in electronic form.

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

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Justin Gordon
General Counsel
Office of the Attorney General
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SUBCHAPTER D. ADMINISTRATIVE PENALTIES

1 TAC §§65.400 - 65.402

ADOPTION AND STATUTORY AUTHORITY

New 1 TAC Chapter 65 is adopted pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

New Chapter 65 is further adopted pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

§65.400. Request for Reconsideration of Adverse Action.

(a) A claimant may request a reconsideration of all or any part of the OAG's decision to make or deny an award on an application or on the amount of an award.

(b) Within 30 days from the date that the OAG's office provides the claimant with the award written decision notice, the claimant must submit a signed, written request for reconsideration stating the reasons for the request for reconsideration. If the claimant fails to file a written request for reconsideration to the OAG's adverse action within the 30-day time period, the decision of the OAG becomes binding, and the claimant waives the right to further appeal.

(c) The OAG may not grant a reconsideration if a request is not filed by the claimant within the 30-day time period, unless the claimant shows good cause for late filing. The claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for reconsideration of the OAG's adverse action within the 30-day time period. If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding, and the claimant waives the right to further appeal.

(d) The OAG will provide the claimant a written notification of its reconsideration decision. If the claimant is dissatisfied with the reconsideration of the OAG's award decision, the claimant must file a signed, written request for a hearing with the OAG within 30 days of the date of the reconsideration decision. If the claimant fails to file a written request for a hearing within the 30-day time period, the reconsideration decision becomes binding, and the claimant waives the right to a hearing.

(e) A claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

§65.401. Prehearing Conference.

At any time before a hearing is conducted, the hearing officer may request a prehearing conference, either in person or by telephone, with the claimant, or his or her legal representative in order to establish whether a hearing on an application for compensation is necessary.

§65.402. Hearing.

(a) If the claimant is dissatisfied with the reconsideration decision, the claimant may file a signed, written request for hearing.

(b) The OAG may not grant a request for a hearing if a request is not filed by the claimant within the 30-day time period, unless the claimant shows good cause for late filing. The claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for hearing within the 30-day time period.

(c) If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding, and the claimant waives the right to further appeal. If the OAG determines that a hearing is necessary, then the claimant will receive notice of hearing not less than 10 days before the date of the hearing, stating the time, date, and place of the hearing.

(d) The hearing shall be conducted in Texas in a manner consistent with the law and rules adopted under this chapter.

(e) Any costs for the claimant to travel to the hearing are entirely the financial responsibility of the claimant and those costs will not be reimbursed by the OAG.

(f) Failure of the claimant to appear for the hearing, may result in the entry of a final decision based upon the available record. A claimant may have the hearing rescheduled by making a request to reschedule at least two OAG business days prior to the hearing. Multiple requests for reschedule may be denied by the OAG. If a claimant fails to make a timely request to reschedule, the OAG may reschedule the hearing upon good cause shown by the claimant.

(g) The OAG will notify the claimant in writing of the final decision, including the reasons for the decision.

(h) A claimant may seek judicial review of all or any part of the final decision.

(i) In any proceeding under this subchapter, the burden of proof is upon the claimant to prove by a preponderance of the evidence that grounds for compensation exist.

(j) A claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

(k) A final decision from the OAG may only be rendered by the OAG hearing officer after a prehearing conference, a final ruling hearing, or based on the available record.

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

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Justin Gordon

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Office of the Attorney General

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER H. STORAGE AND SALE OF
FIREWORKS

28 TAC §34.815

The commissioner of insurance adopts amended 28 TAC §34.815, concerning the sale of retail fireworks permits. The amendments to §34.815 implement House Bill 2259, 88th Legislature, 2023. The amendments are adopted without changes to the proposed text published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 487). The rules will not be republished.

REASONED JUSTIFICATION. Amendments to §34.815 are necessary to enact changes in accordance with HB 2259, which revised Occupations Code §2154.202 by removing language providing for the purchase of retail fireworks permits from licensed manufacturers, distributors, or jobbers or directly from the State Fire Marshal's Office (SFMO) and specified that the Texas Department of Insurance (TDI) is required to enable the sale of retail fireworks permits through a web page that is linked from TDI's website.

Before HB 2259, the Occupations Code allowed various methods for obtaining and distributing retail permits to sell fireworks. These permits could either be acquired directly from SFMO or purchased through distributors, manufacturers, or jobbers. They were typically sold in booklets containing 20 permits. However, these booklets, which included carbon copies of each retail permit sold, proved to be cumbersome for both the industry and SFMO. The information within these booklets had to be manually typed, causing delays in SFMO's receipt of information regarding firework sales. This manual process was also prone to data entry errors and required SFMO to process refunds for unused retail permits in an outdated and slow manner. To simplify and streamline this process, HB 2259 requires that retail firework permits be available for purchase through TDI's website, eliminating the need to obtain them from manufacturers, distributors, or jobbers.

Adopted amendments revise and restructure §34.815 using plain language to implement HB 2259. Previously, the rule's steps to get a retail permit were interrupted by bulk storage rules, which added confusion, and the new structure will make the rule more understandable by providing a natural, sequential order of steps necessary to obtain a retail permit to sell fireworks that reflects the new requirements.

New subsection (b) specifies the requirement that an applicant have a sales tax permit number, which must be entered on the retail fireworks permit application in order to receive a permit. This is an existing requirement currently addressed in subsection (b)(5), but the new text more clearly and plainly addresses it.

The previous subsection (b) is redesignated as subsection (c), and the text of the subsection is revised to reflect the changes in how retail fireworks permits may now be obtained. The requirement that a retail permit be signed is deleted from the text and addressed in new subsection (d). Paragraphs (1) and (4) are removed because this text pertains to fireworks sales permit purchases from manufacturers, distributors, or jobbers, which is no longer allowed, and because copies of Occupations Code Chapter 2154 and the fireworks rules are readily available online. Paragraphs (2), (3), and (6) are removed and their contents are included as new text in new subsections (e) - (g).

The previous subsection (c) is deleted because it relates to the purchase of retail fireworks permits in ways no longer allowed under HB 2259.

New subsection (d) provides that, once issued, a retail permit be printed, signed, and posted in a visible place. The requirements to print and post a retail permit are new, reflecting that permits may now only be obtained through a website; this provides documentary evidence of the retail permit, similar to how participating manufacturers, distributors, or jobbers would formerly provide evidence of the valid issuance of a permit.

New subsection (e) provides that retail permits may be issued only to those individuals or groups engaged in the retail sale of fireworks. This requirement was previously addressed in subsection (b)(6); it is relocated here to facilitate the rule's clarity.

New subsection (f) provides that bulk storage of Fireworks 1.4G must be done in compliance with §34.823. This provision is relocated from its previous place in subsection (b)(2) to facilitate the rule's clarity.

New subsection (g) provides that Fireworks 1.4G must be sold only through permitted sites and within the selling periods defined in Occupations Code §2154.202. This provision is relocated from its previous place in subsection (b)(3) to facilitate the clarity of the rule.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on March 4, 2024. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner adopts amended §34.815 under Occupations Code §2154.052(a) and (b), and Insurance Code §36.001.

Occupations Code §2154.052(a) provides that the commissioner will administer Occupations Code Chapter 2154 through the state fire marshal and may issue rules to administer the chapter.

Occupations Code §2154.052(b) provides that the commissioner adopt, and the state fire marshal must administer, rules necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state.

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

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EMPLOYMENT AND TRAINING

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T):

Subchapter A. General Provisions, §§813.1, 813.2, and 813.5

Subchapter D. Allowable Activities, §813.32

Amended §§813.1, 813.2, 813.5, and 813.32 are adopted without changes to the proposal, as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 849), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 813 rule change is to amend rule language to conform with SNAP provisions of the Fiscal Responsibility Act of 2023, revise references to the case management system, and update the allowable activities for able-bodied adults without dependents (ABAWDs).

Texas Government Code §2001.039 requires that every four years each state agency review and consider for re adoption, revision, or repeal each rule adopted by that agency. TWC assessed whether the reasons for adopting the rules in Chapter 813 continue to exist. TWC finds that the chapter is needed and that the reasons for adopting the chapter continue to exist. TWC, therefore, readopts the rules in Chapter 813, Supplemental Nutrition Assistance Program Employment and Training.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§813.1. Purpose

Section 813.1 updates the SNAP purpose to align with the Fiscal Responsibility Act of 2023.

§813.2. Definitions

Section 813.2 extends the age range of ABAWDs to align with the Fiscal Responsibility Act of 2023.

§813.5. Documentation, Verification, and Supervision of Work Activities

Section 813.5 updates language related to TWC's case management system.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

TWC adopts the following amendments to Subchapter D:

§813.32. SNAP E&T Activities for ABAWDs

Section 813.32 adds work experience as an allowable activity for ABAWDs.

PART III. PUBLIC COMMENTS

The public comment period closed on March 18, 2024. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§813.1, 813.2, 813.5

PART IV. STATUTORY AUTHORITY

The adopted rules implement provisions of the federal Fiscal Responsibility Act of 2023 by making conforming changes to TWC rules regarding Supplemental Nutrition Assistance Program Employment and Training.

The rules are adopted under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

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

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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 850-8356



SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §813.32

The rule is adopted under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

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

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CHAPTER 853. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 853, relating to Independent Living Services for Older Individuals Who Are Blind:

Subchapter A. Independent Living Services for Older Individuals Who Are Blind, §§853.1 - 853.6

Subchapter B. Services, §853.10

Subchapter C. Customer Financial Participation, §853.21

Subchapter D. Case Documentation, §853.30

Subchapter E. Customer's Rights, §853.40

Amended §§853.3, 853.4, 853.10, and 853.30 are adopted without changes to the proposal, as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 29), and, therefore, the adopted rule text will not be published.

Amended §§853.1, 853.2, 853.5, 853.6, 853.21, and 853.40 are adopted with changes to the proposal, as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 29), and, therefore, the adopted rule text will be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 853 rule change is to amend eligibility for the OIB program, clarify language for consistency purposes, and complete its statutorily required four-year review.

Texas Government Code §2001.039 requires a state agency to review and consider for readoption each of its rules every four years. In accordance with the statute, TWC has reviewed Chapter 853, Independent Living Services for Older Individuals Who Are Blind, and readopts the rules as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. Independent Living Services for Older Individuals Who Are Blind

TWC adopts amendments to Subchapter A, as follows:

§853.1. Definitions

Section 853.1 is amended to remove references to Independent Living Services (ILS) and add definitions for "Older Individuals Who are Blind (OIB)" and "significant visual impairment." Subsequent paragraphs are renumbered.

At adoption, TWC amended §853.1 to correct the name of TWC's Vocational Rehabilitation Division.

At adoption, TWC amended §853.1 to add the *Texas Register* relating to reference.

§853.2. Referral

Section 853.2 is amended to remove a reference to ILS, add additional referral sources, and to more clearly describe the referral process.

At adoption, TWC amended §853.2(c) to change "referral only" to "minimal services successful closure" to make the language

consistent with program terminology and other amendments within this section and this chapter.

§853.3. Accessible Communication

Section 853.3 is amended to remove references to ILS.

§853.4. Application

Section 853.4 is amended to more clearly describe the application process.

§853.5. Eligibility

Section 853.5 is amended to remove a reference to ILS and add "significant visual impairment" to the eligibility criteria.

At adoption, TWC amended §853.5(a)(2) to correct the formatting of the *Texas Register* relating to reference.

At adoption, TWC amended §853.5(e) to add the *Texas Register* relating to reference.

§853.6. Ineligibility Determination

Section 853.6 is amended to clarify language.

At adoption, TWC amended §853.6(a) to add the *Texas Register* relating to reference.

SUBCHAPTER B. Services

TWC adopts amendments to Subchapter B, as follows:

§853.10. Independent Living Plan

Section 853.10 is amended to clarify the time frame for developing an ILP and to update the form number.

SUBCHAPTER C. Customer Financial Participation

TWC adopts amendments to Subchapter C, as follows:

§853.21. Customer Participation in the Cost of Services

Section 853.21 is amended to clarify language relating to customer participation in cost of service and to remove a reference to ILS.

At adoption, TWC amended §853.21(a) to correct the formatting of the *Texas Register* relating to reference.

SUBCHAPTER D. Case Documentation

TWC adopts amendments to Subchapter D, as follows:

§853.30. Case Closure

Section 853.30 is amended to add language regarding minimal services closures and remove a subsection about post-closure services. The removed subsection included obsolete terminology that was later replaced but is no longer applicable to OIB.

SUBCHAPTER E. Customer's Rights

TWC adopts amendments to Subchapter E, as follows:

§853.40. Rights of Customers

Section 853.40 is amended to remove references to ILS and add receiving a diagnosis of significant visual impairment as one of the requirements to receive OIB services.

At adoption, TWC amended §853.40(a) to add the *Texas Register* relating to reference.

At adoption, TWC amended §853.40(b) to correct the formatting of the *Texas Register* relating to reference.

PART III. PUBLIC COMMENTS

The public comment period closed on February 19, 2024. No comments were received.

SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

40 TAC §§853.1 - 853.6

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

§853.1. Definitions.

In addition to the definitions contained in Texas Labor Code §352.001, 34 CFR §361.5, and §856.3 of this title (relating to Definitions) of the Agency's Vocational Rehabilitation Division rules, the following words and terms, when used in this chapter, shall have the following meanings:

(1) Act--The Rehabilitation Act of 1973, as amended (29 USC 701 et seq.).

(2) Adjusted income--The dollar amount that is equal to a household's annual gross income, minus allowable deductions.

(3) Applicant--An individual who applies for Older Individuals Who Are Blind (OIB) services.

(4) Attendant care--A personal assistance service provided to an individual with significant disabilities to aid in performing essential personal tasks, such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(5) Blind--An individual having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(6) Center for Independent Living (CIL)--Has the meaning assigned by §702 of the Act (29 USC §796a).

(7) Client Assistance Program (CAP)--A federally funded program under 34 CFR Part 370 that provides information, assistance, and advocacy for individuals with disabilities who are seeking or receiving services from programs funded under the Act. In Texas, the designated agency is Disability Rights Texas (DRTx).

(8) Comparable services or benefits--Services and benefits that are provided or paid for, in whole or part, by other federal, state, or local public programs, or by health insurance, third-party payers, or other private sources.

(9) Customer--An individual who is eligible for and receiving OIB services under this chapter.

(10) Customer participation system--The system for determining and collecting the financial contribution that a customer may be required to pay for receiving OIB services.

(11) Customer representative--Any individual chosen by a customer, including the customer's parent, guardian, other family member, or advocate. If a court has appointed a guardian or representative, that individual is the customer's representative.

(12) Federal Poverty Guidelines--The poverty guidelines updated periodically in the *Federal Register* by the US Department of Health and Human Services under the authority of 42 USC §9902(2), found at <https://aspe.hhs.gov/poverty-guidelines>.

(13) Independent Living Plan (ILP)--A written plan in which the customer and OIB staff have collaboratively identified the services that the customer needs to achieve the goal of living independently.

(14) Low vision--A condition of having a visual acuity not more than 20/70 in the better eye with correcting lenses, or visual acuity greater than 20/70 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 30 degrees, or having a combination of both.

(15) Older Individuals Who Are Blind (OIB)--The independent living services program that serves individuals ages 55 and over who are blind or visually impaired.

(16) Significant disability--A significant physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community.

(17) Significant visual impairment--A disease or condition of the eye that does not meet the definitions of Blind or Low Vision but does create a significant impediment to independent living and cannot be corrected with glasses or contact lenses.

(18) Transition services--Services that:

(A) facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services; and

(B) provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community.

§853.2. Referral.

(a) An individual may be referred for OIB services in a variety of ways, including, but not limited to:

- (1) a physician's office;
- (2) a community organization;
- (3) the Center for Independent Living (CIL);
- (4) a senior community organization;
- (5) family, customer representative, and friends;
- (6) contract providers; or
- (7) online self-referral portal.

(b) A referral shall include the name of the individual seeking services, the address where the individual resides, and an email address and telephone number, if available.

(c) During the referral process, OIB staff may determine the level of services needed by the customer, provide minimal services, or verify the customer's eligibility criteria. Minimal services may include information and referral, a guide to independent living, bump dots for kitchen appliances, and low-cost magnifiers. If minimal services are all that a customer requires, the case may be closed as a minimal services successful closure.

(d) For service delivery to begin, an individual shall submit a complete application and document that all eligibility requirements are met.

§853.5. *Eligibility.*

(a) To be eligible for OIB, a customer must:

- (1) be age 55 or older;
- (2) be blind or have low vision or a significant visual impairment, as defined in §853.1, of this subchapter (relating to Definitions);
- (3) be an individual for whom independent living goals are feasible; and
- (4) be present in Texas.

(b) Eligibility for blindness, low vision, or a significant visual impairment is determined by OIB staff based on the documented diagnosis of a licensed practitioner.

(c) Individuals shall establish eligibility through existing data and information, including, but not limited to, medical records and information used by the Social Security Administration. The information may be obtained from the applicant, the applicant's family members, or the applicant's representative. OIB staff may assist in locating or obtaining existing documentation.

(d) The Agency shall substantively evaluate the documentation and application to determine whether eligibility requirements are met.

(e) OIB staff shall endeavor to make an eligibility determination within 60 days from the time a completed and signed application for services has been received. The eligibility determination is conditional on the applicant's availability to complete the assessment process, as set forth in §853.4(3) of this subchapter (relating to Application). When an applicant is unavailable to complete such assessment process in a timely manner due to unforeseen circumstances, which may include, but are not limited to, medical conditions or hospitalizations, the 60-day period shall be abated until the applicant is available to complete the necessary assessment process to determine eligibility.

(f) Eligibility cannot be established unless and until all required elements under subsection (a) of this section have been completed and documented, including any assessment to establish eligibility.

(g) Eligibility requirements are applied without regard to an individual's age, color, creed, gender, national origin, race, religion, or length of time present in Texas.

§853.6. *Ineligibility Determination.*

(a) A determination of ineligibility shall be based only on a substantive evaluation of an applicant's completed and signed application, including all documentation required to establish eligibility under §853.5(a) of this subchapter (relating to Eligibility).

(b) Before making a determination of ineligibility, OIB staff shall provide the applicant or the applicant's representative, as appropriate, an opportunity to consult with OIB staff. OIB staff shall notify the applicant, or the applicant's representative, as appropriate, of an ineligibility determination. Notice shall be provided in accessible format and through accessible methods and in compliance with Texas Government Code §2054.460, if applicable. The notice shall include the following:

(1) A brief statement of the ineligibility determination, with reference to the requirements under this chapter and any deficiencies;

- (2) The mailing date of the determination;
- (3) An explanation of the individual's right to an appeal;
- (4) The procedures for filing an appeal with the Agency, including applicable time frames;
- (5) The right to have a hearing representative, including legal counsel;
- (6) How to contact the Texas CAP, which is DRTx; and
- (7) The contact information to which the appeal must be sent.

(c) When appropriate, OIB staff may refer the applicant to other agencies and facilities.

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

Filed with the Office of the Secretary of State on April 16, 2024.

TRD-202401608

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: May 6, 2024

Proposal publication date: January 5, 2024

For further information, please call: (512) 850-8356



SUBCHAPTER B. SERVICES

40 TAC §853.10

The rule is adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

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

Filed with the Office of the Secretary of State on April 16, 2024.

TRD-202401609

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: May 6, 2024

Proposal publication date: January 5, 2024

For further information, please call: (512) 850-8356



SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

40 TAC §853.21

The rule is adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.21. *Customer Participation in the Cost of Services.*

(a) Some independent living services, as set forth in §853.11 or this chapter (relating to Scope of Services), may be subject to customer participation in cost of service as defined in OIB policy.

(b) OIB staff shall administer the customer participation system in accordance with the rules in this chapter, the OIB policy manual, and 34 CFR §367.67(b)(1).

(c) OIB staff shall provide those independent living services not requiring customer participation in cost of services as set forth in §853.11 of this chapter at no cost to the customer.

(d) OIB staff shall determine the customer's adjusted gross income and the percentage of the Federal Poverty Guidelines at <https://aspe.hhs.gov/poverty-guidelines> for that income, based on documentation provided by the customer.

(e) OIB staff is required to apply the Federal Poverty Guidelines at <https://aspe.hhs.gov/poverty-guidelines> to determine customer participation.

(f) The customer or customer's representative shall sign an ILP acknowledging the customer's contribution for services and providing written agreement that:

(1) the information provided by the customer or the customer's representative about the customer's household size, annual gross income, allowable deductions, and comparable services or benefits is true and accurate; or

(2) the customer or the customer's representative chooses not to provide information about the customer's household size, annual gross income, allowable deductions, and comparable services or benefits.

(g) If the customer or the customer's representative, as appropriate, chooses not to provide information on the customer's household size, annual gross income, allowable deductions, and comparable services or benefits, the customer shall pay the entire cost of applicable services.

(h) The customer shall report to OIB staff as soon as possible all changes to household size, annual gross income, allowable deductions, and comparable services or benefits and sign an amended ILP.

(i) When the customer amends the ILP, the new customer's contribution for services takes effect the beginning of the following month. The new contribution shall not be applied retroactively.

(j) OIB staff shall develop a process to reconsider and adjust the customer's contribution for services based on circumstances that are both extraordinary and documented. This may include assessing the customer's ability to pay the customer's participation amount. Extraordinary circumstances include:

(1) an increase or decrease in income;

(2) unexpected medical expenses;

(3) unanticipated disability-related expenses;

(4) a change in family size;

(5) catastrophic loss, such as fire, flood, or tornado;

(6) short-term financial hardship, such as a major repair to the customer's home or personally owned vehicle; or

(7) other extenuating circumstances for which the customer makes a request and provides supporting documentation.

(k) The customer's contribution for services remains in effect during the reconsideration and adjustment process.

(l) OIB staff shall:

(1) use program income that is received from the customer only to provide services outlined in §853.11 of this chapter; and

(2) report fees collected as program income.

(m) The Agency may not use program income received from the customer to supplant any other fund sources.

(n) The Agency may not pay any portion of the customer's contribution.

(o) The customer's ILP and all financial information collected by OIB staff are subject to subpoena.

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

Filed with the Office of the Secretary of State on April 16, 2024.

TRD-202401610

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: May 6, 2024

Proposal publication date: January 5, 2024

For further information, please call: (512) 850-8356



SUBCHAPTER D. CASE DOCUMENTATION

40 TAC §853.30

The rule is adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

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

Filed with the Office of the Secretary of State on April 16, 2024.

TRD-202401611

Les Trobman
General Counsel
Texas Workforce Commission
Effective date: May 6, 2024
Proposal publication date: January 5, 2024
For further information, please call: (512) 850-8356



SUBCHAPTER E. CUSTOMER'S RIGHTS

40 TAC §853.40

The rule is adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.40. *Rights of Customers.*

(a) In accordance with applicable legal provisions, the Agency does not, directly or through contractual or other arrangements, exclude, deny benefits to, limit the participation of, or otherwise discriminate against any individual on the basis of age, color, disability, national origin, political belief, race, religion, sex, or sexual orientation. For the purposes of receiving OIB services, the customer must be blind or have a low vision diagnosis or a significant visual impairment as defined in §853.1 of this chapter (relating to Definitions); however, that requirement is not considered discrimination against any individual on the basis of disability.

(b) OIB staff shall ensure the customer or the customer's representative, as appropriate, is notified in an accessible format about the

rights included in subsection (a) of this section, and §853.21 of this chapter (relating to Customer Participation in the Cost of Services), when:

- (1) the customer applies for services;
 - (2) OIB staff determines that a customer is ineligible for services; and
 - (3) OIB staff intends to terminate services.
- (c) Filing a complaint with DRTx:

(1) A customer has the right to appeal a determination to the state's CAP. The CAP in Texas is implemented by DRTx.

(2) DRTx advocates are not employees of the Agency. There are no fees for CAP services, which are provided by advocates and attorneys when necessary. Services are confidential.

(3) A customer who is enrolled in OIB services, or the customer's representative, may file a complaint with DRTx alleging that a requirement of OIB was violated. The complaint does not need to be filed with OIB.

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

Filed with the Office of the Secretary of State on April 16, 2024.

TRD-202401612

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: May 6, 2024

Proposal publication date: January 5, 2024

For further information, please call: (512) 850-8356



TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 4, Rights and Protection of Individuals Receiving Intellectual Disability Services, Subchapter K, Criminal History and Registry Clearances, and Subchapter L, Abuse, Neglect, and Exploitation in Local Authorities and Community Centers are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 301, IDD-BH Contractor Administrative Functions, Subchapter L, Criminal History and Registry Clearances in Local Intellectual and Developmental Disability Authorities, and Subchapter M, Abuse, Neglect, and Exploitation in Local Authorities and Community Centers.

The rules will be transferred in the Texas Administrative Code effective May 31, 2024.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 4, Subchapters K and L

TRD-202401717

Texas Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 4, Rights and Protection of Individuals Receiving Intellectual Disability Services, Subchapter K, Criminal History and Registry Clearances, and Subchapter L, Abuse, Neglect, and Exploitation in Local Authorities and Community Centers are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 301, IDD-BH Contractor Administrative Functions, Subchapter L, Criminal History and Registry Clearances in Local Intellectual and Developmental Disability Authorities, and Subchapter M, Abuse, Neglect, and Exploitation in Local Authorities and Community Centers.

The rules will be transferred in the Texas Administrative Code effective May 31, 2024.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 4, Subchapters K and L

TRD-202401718

Figure: 40 TAC Chapter 4, Subchapters K and L

Current Rules Title 40. Social Services and Assistance Part 1. Department of Aging and Disability Services Chapter 4. Rights And Protection Of Individuals Receiving Intellectual Disability Services	Move to Title 26. Health and Human Services Part 1. Texas Health and Human Services Commission Chapter 301. IDD-BH Contractor Administrative Functions
Subchapter K. Criminal History And Registry Clearances	Subchapter L. Criminal History And Registry Clearances in Local Intellectual and Developmental Disability Authorities
§4.501. Purpose.	§301.601. Purpose.
§4.502. Application.	§301.603. Application.
§4.503. Definitions.	§301.605. Definitions.
§4.505. Prohibition to Employment or Contractual or Volunteer Status.	§301.607. Prohibition to Employment or Contractual or Volunteer Status.
§4.507. Conducting Criminal History and Registry Checks.	§301.609. Conducting Criminal History and Registry Checks.
§4.509. Self-Reporting a Criminal Offense Charge or Conviction.	§301.611. Self-Reporting a Criminal Offense Charge or Conviction.
§4.511. MRA and Community Center Policies Related to Criminal History and Registry Checks.	§301.613. LIDDA and Community Center Policies Related to Criminal History and Registry Checks.
§4.513. Contract Agency.	§301.615. Contract Agency.
Subchapter L. Abuse, Neglect, And Exploitation In Local Authorities And Community Centers	Subchapter M. Abuse, Neglect, And Exploitation In Local Authorities And Community Centers
§4.551. Purpose.	§301.651. Purpose.
§4.552. Application.	§301.653. Application.
§4.553. Definitions.	§301.655. Definitions.
§4.554. Responsibilities of Local Authorities, Community Centers, and Contractors.	§301.657. Responsibilities of Local Authorities, Community Centers, and Contractors.
§4.555. Information To Be Provided to Victim or Alleged Victim and Others.	§301.659. Information To Be Provided to Victim or Alleged Victim and Others.
§4.556. Investigations Conducted by the Texas Department of Protective and Regulatory Services (TDPRS).	§301.661. Investigations Conducted by the Texas Department of Family and Protective Services (DFPS).
§4.557. Disciplinary and Other Action.	§301.663. Disciplinary and Other Action.
§4.558. Data Reporting Responsibilities.	§301.665. Data Reporting Responsibilities.
§4.559. Confidentiality of Investigative Process and Report.	§301.667. Confidentiality of Investigative Process and Report.
§4.560. Competency of Employees and Agents.	§301.669. Competency of Employees and Agents.
§4.561. TDMHMR Oversight Responsibilities.	§301.671. HHSC Oversight Responsibilities.
§4.562. Exhibits.	§301.673. Exhibits.
§4.563. References.	§301.675. References.
§4.564. Distribution.	§301.677. Distribution.



REVIEW OF AGENCY RULES

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

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

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

Proposed Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

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

Chapter 358, Medicaid Eligibility for the Elderly and People with Disabilities

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

Comments on the review of Chapter 358, Medicaid Eligibility for The Elderly and People with Disabilities, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to aes_policy_coordination@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 358" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at www.sos.texas.gov.

TRD-202401729

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: April 24, 2024



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

Chapter 396, Employee Training and Education

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

Comments on the review of Chapter 396, Employee Training and Education, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to hhsaskhr@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 396" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

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

TRD-202401711

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: April 23, 2024



Texas Board of Physical Therapy Examiners

Title 22, Part 16

The Texas Board of Physical Therapy Examiners (Board) files this notice of intent to review the following chapters of Title 22, Part 16 of the Texas Administrative Code in accordance with Texas Government Code §2001.039: Chapter 321, concerning Definitions; Chapter 322, concerning Practice; Chapter 323, concerning Powers and Duties of the Board; Chapter 325, concerning Organization of the Board; Chapter 327, concerning Compensation; Chapter 329, concerning Licensing Procedure; Chapter 335, concerning Professional Title; Chapter 337, concerning Display of License; Chapter 339, concerning Fees; Chapter 341, concerning License Renewal; Chapter 342, concerning Open Records; Chapter 343, concerning Contested Case Procedure; Chapter 344, concerning Administrative Fines and Penalties; Chapter 346, concerning Practice Settings for Physical Therapy; and Chapter 348, concerning Physical Therapy Licensure Compact.

During the review, the Board will consider whether the reason for adopting the rules continues to exist, and whether the rules should be repealed, readopted, or readopted with amendments.

Comments on the review may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, Austin, Texas 78701 or to karen@ptot.texas.gov. Comments must be received no later than 30 days after the date this notice is published in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the

comment refers and that comments sent by email include "Public Comment" in the email's subject line.

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

TRD-202401706

Ralph Harper

Executive Director

Texas Board of Physical Therapy Examiners

Filed: April 22, 2024



Department of State Health Services

Title 25, Part 1

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

Chapter 417, Agency and Facility Responsibilities

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

Comments on the review of Chapter 417, Agency and Facility Responsibilities, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to hhsrulescoordinationoffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 417" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

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

TRD-202401660

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: April 19, 2024



Texas Health and Human Services Commission

Title 26, Part 1

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

Chapter 356, Family Violence Program

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

Comments on the review of Chapter 356, Family Violence Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to familyviolence2@hhsc.state.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 356" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

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

TRD-202401661

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: April 19, 2024



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 324, Used Oil Standards.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 324 continue to exist.

Comments regarding suggested changes to the rules in Chapter 324 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by TCEQ.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 324. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-067-324-WS. Comments must be received by June 4, 2024. For further information, please contact Rebecca Moore, Occupational Licensing and Registration Division, at (512) 239-2463.

TRD-202401659

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 18, 2024



Adopted Rule Reviews

Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 35 (Check Verification Entities), comprised of Subchapter A (§35.1); Subchapter B (§§35.11 - 35.19); Subchapter C (§35.31); Subchapter D (§§35.51 - 35.59); and Subchapter E (§35.71 and §35.72).

Notice of the review of Chapter 35 was published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1739). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 35 continue to exist. However, certain revisions may be appropriate. Proposed amendments, if any, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-202401666
Robert K. Nichols, III
General Counsel
Texas Department of Banking
Filed: April 19, 2024



Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 98, Texas HIV Medication Program

Notice of the review of this chapter was published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 882). HHSC received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 98 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agencies determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 98. Any appropriate amendments to Chapter 98 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 98 as required by the Texas Government Code, §2001.039.

TRD-202401721
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: April 23, 2024



Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (the Commission) adopts the review of the Texas Administrative Code, Title 37, Part 13, Chapter 429, concerning Fire Inspector and Plan Examiner. The review was conducted pursuant to the Texas Government Code, Chapter 2001, §2001.039.

The Commission received no comments on the proposed rule review, which was published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1975).

The Commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of the Texas Administrative Code, Title 37, Part 13, Chapter 429.

TRD-202401648
Frank King
General Counsel
Texas Commission on Fire Protection
Filed: April 18, 2024



Department of Aging and Disability Services

Title 40, Part 1

The Texas Health and Human Services Commission (HHSC), as the successor agency of the Texas Department of Aging and Disability Services, adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code (TAC):

Chapter 2, Local Authority Responsibilities

Notice of the review of this chapter was published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 1106). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 2 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 2 except for:

- §2.51. Purpose;
- §2.52. Application;
- §2.53. Definitions;
- §2.54. Accountability;
- §2.55. Procurement;
- §2.56. Community Services Contracting Requirements;
- §2.57. Provisions for Community Services Contracts;
- §2.58. Competitive Procurement Methods for Community Services;
- §2.59. Non-competitive Procurement of Community Services;
- §2.60. Open Enrollment;
- §2.61. Consumer Access to Participating Community Services Contractors in Provider Network;
- §2.62. Monitoring and Enforcing Community Services Contracts;
- §2.63. References;
- §2.64. Distribution;
- §2.151. Most Appropriate and Available Treatment Alternative; and
- §2.152. Special Considerations.

The identified repeals and any amendments, if applicable, to Chapter 2 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 40 TAC Chapter 2 as required by the Texas Government Code, §2001.039.



TRD-202401723

Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Filed: April 24, 2024

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Alamo Area Metropolitan Planning Organization

Request for Proposals

The Alamo Area Metropolitan Planning Organization (AAMPO) is seeking proposals from qualified firms to conduct and deliver the Transit Asset Management Study for VIA Metropolitan Transit Passenger Amenities.

The Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from AAMPO's website at www.alamoareampo.org or calling Sonia Jiménez, Deputy Director, at (210) 227-8651. Anyone wishing to submit a proposal must email it by 12:00 p.m. (CDT), Friday, June 7, 2024, to the AAMPO office at aampo@alamoareampo.org.

Reimbursable funding for this study, in the amount of \$250,000, is contingent upon the availability of federal transportation planning funds.

TRD-202401732

Sonia Jimenez

Deputy Director

Alamo Area Metropolitan Planning Organization

Filed: April 24, 2024

Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts proposed new 34 TAC §3.334 in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2442). Due to an error by the Texas Register, a paragraph in the preamble was not published in its entirety. The corrected paragraph reads as follows:

The comptroller proposes to add the following definitions:

"Independently owned and operated business--a self-controlling entity that is not a subsidiary of another entity or otherwise subject to control by another entity, and that is not publicly traded."

"Micro-business--a legal entity, including a corporation, partnership, or sole proprietorship, that:

- (A) is formed for the purpose of making a profit;
- (B) is independently owned and operated; and
- (C) has not more than 20 employees."

"Small business--a legal entity, including a corporation, partnership, or sole proprietorship, that:

- (A) is formed for the purpose of making a profit;
- (B) is independently owned and operated; and
- (C) has fewer than 100 employees or less than \$6 million in annual gross receipts."

TRD-202401719

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/29/24 - 05/05/24 is 18.00% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/29/24 - 05/05/24 is 18.00% for commercial² credit.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment, or other similar purpose.

TRD-202401724

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 24, 2024

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 4, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 4, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 2AMA INCORPORATED dba Lucky Corner Store; DOCKET NUMBER: 2023-0023-PST-E; IDENTIFIER: RN106551930; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(e) and §334.50(b)(1)(B) and (2)(A)(iii), and TWC, §26.3475(a) and (c)(1), by failing to ensure that all release detection equipment is maintained in good operating condition and functioning in accordance with industry practices and manufacturer's specification, and failing to monitor the underground storage tank installed on or after January 1, 2009 in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring; and 30 TAC §334.48(g)(1)(B) and (h)(1)(B)(i) and TWC, §26.3475(c)(2), by failing to inspect the overfill prevention equipment at least once every three years, and failing to conduct the annual walkthrough inspection of the containment sumps; PENALTY: \$4,288; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Aaron Davis Construction, LLC; DOCKET NUMBER: 2022-0922-WQ-E; IDENTIFIER: RN111012290; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25, by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Astoria Homes, LLC; DOCKET NUMBER: 2023-0282-WQ-E; IDENTIFIER: RN111643243; LOCATION: Whitesboro, Grayson County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: BONITA-TWO CORPORATION dba Corner Stop; DOCKET NUMBER: 2023-0235-PST-E; IDENTIFIER: RN101548972; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Celia Garza, (210) 657-8422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(5) COMPANY: Capitol Aggregates, Incorporated; DOCKET NUMBER: 2023-0900-MLM-E; IDENTIFIER: RN108959032; LOCATION: Hondo, Medina County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §213.4(k) and §213.5(b)(5)(A) and Edwards Aquifer Water Pollution Abatement Plan Numbers 13000073 and 13000715, Standard Conditions Number 19, by failing to maintain the Edwards Aquifer detention basin; and 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR05EG16, Part V, Section J, Number 9(d), by failing to minimize the off-site vehicle tracking of sediment; PENALTY: \$13,388; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,355; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(6) COMPANY: CIRCLE K STORES INCORPORATED dba Valero Corner Store 2018; DOCKET NUMBER: 2023-0996-PST-E; IDENTIFIER: RN102376605; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(g)(1)(A)(ii), (h)(1)(A)(i) and (ii) and §334.51(b)(2) and TWC, §26.3475(c)(1) and (2), by failing to test the spill prevention equipment at least once every three years to ensure the equipment is liquid tight, failing to remove any liquid and debris from the spill prevention equipment within 96 hours, failing to conduct a walkthrough inspection of the release detection equipment every 30 days, and lastly, failing to maintain overfill prevention equipment in a manner that will prevent overfilling of regulated substances resulting from transfers to such systems; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$1,976; ENFORCEMENT COORDINATOR: Ramya Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: City of Bastrop; DOCKET NUMBER: 2021-1490-MWD-E; IDENTIFIER: RN101510832; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011076001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$106,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$106,250; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: City of Hart; DOCKET NUMBER: 2023-1282-PWS-E; IDENTIFIER: RN101440873; LOCATION: Hart, Castro County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.107(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.005 milligrams per liter for benzene based on the running annual average; PENALTY: \$1,337; ENFORCEMENT COORDINATOR: Hannah Shakir, (512) 239-1142; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: City of Tom Bean; DOCKET NUMBER: 2021-1546-MWD-E; IDENTIFIER: RN102915493; LOCATION: Tom Bean, Grayson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010057001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,200; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,360; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: Cypress Valley Water Supply Corporation; DOCKET NUMBER: 2023-1031-PWS-E; IDENTIFIER: RN101184745; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$4,550; ENFORCEMENT COORDINATOR: Margaux Ordoveza, (512) 239-1128; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: DTT LLC; DOCKET NUMBER: 2023-1044-MWD-E; IDENTIFIER: RN106823628; LOCATION: Brownwood, Brown County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1),

and Texas Pollutant Discharge Elimination System Permit Number WQ0015096001, Interim I Effluent Limitations and Monitoring Requirements Numbers 1, 2, 3, and 6, by failing to comply with permitted effluent limitations; PENALTY: \$43,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$21,750; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(12) COMPANY: EAST HOUSTON UTILITIES, INCORPORATED; DOCKET NUMBER: 2022-1197-PWS-E; IDENTIFIER: RN101267177; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; PENALTY: \$50; ENFORCEMENT COORDINATOR: Christiana McCrimmon, (512) 239-2811; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: ETC Texas Pipeline, Ltd.; DOCKET NUMBER: 2023-0812-AIR-E; IDENTIFIER: RN100239698; LOCATION: Coyanosa, Pecos County; TYPE OF FACILITY: natural gas sweetening and dehydration facility; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 2351A, Special Conditions Number 1, Federal Operating Permit Number O3187, General Terms and Conditions and Special Terms and Conditions Number 1.A, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$8,250; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(14) COMPANY: Forge Energy Operating, LLC; DOCKET NUMBER: 2023-0664-AIR-E; IDENTIFIER: RN111616553; LOCATION: Pecos, Reeves County; TYPE OF FACILITY: oil and gas tank battery; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 171213, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,538; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(15) COMPANY: Gaines County; DOCKET NUMBER: 2023-0299-PWS-E; IDENTIFIER: RN102674793; LOCATION: Seminole, Gaines County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: Occidental Permian Ltd.; DOCKET NUMBER: 2023-0662-AIR-E; IDENTIFIER: RN102419694; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: tank battery; RULES VIOLATED: 30 TAC §101.201(a)(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §106.6(b), Permit by Rule Registration Number 38414, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,001; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077;

REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(17) COMPANY: Oklaunion Industrial Park, LLC; DOCKET NUMBER: 2023-0595-AIR-E; IDENTIFIER: RN101062255; LOCATION: Vernon, Wilbarger County; TYPE OF FACILITY: electrical power generation plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O38, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$3,250; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(18) COMPANY: Patriot Erectors LLC; DOCKET NUMBER: 2023-0901-MLM-E; IDENTIFIER: RN101249258; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: structural metal work operation; RULES VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Contributing Zone; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26, by failing to maintain authorization to discharge stormwater associated with industrial activities; PENALTY: \$46,000; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Runnin Red LLC dba Runnin Red Food Store; DOCKET NUMBER: 2022-1305-PST-E; IDENTIFIER: RN102049723; LOCATION: Gainesville, Cooke County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$7,033; ENFORCEMENT COORDINATOR: Celia Garza, (210) 657-8422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(20) COMPANY: SJK PETROLEUM INCORPORATED dba Joe's Fast Lane; DOCKET NUMBER: 2022-1020-PST-E; IDENTIFIER: RN102458718; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,118; ENFORCEMENT COORDINATOR: Eunice Adegele, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Solu Enterprises Incorporated dba Texaco A and K Mart; DOCKET NUMBER: 2022-1147-PST-E; IDENTIFIER: RN102466802; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.51(b) and TWC, §26.3475(c)(2), by failing to equip the UST system with spill and overfill prevention equipment; PENALTY: \$4,375; ENFORCEMENT COORDINATOR:

Eresha DeSilva, (512) 239-5084; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Southwest Milam Water Supply Corporation; DOCKET NUMBER: 2023-0092-PWS-E; IDENTIFIER: RN101452837; LOCATION: Rockdale, Milam County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; PENALTY: \$1,350; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(23) COMPANY: STRYKER LAKE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2023-1278-PWS-E; IDENTIFIER: RN101450377; LOCATION: New Summerfield, Cherokee County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter (mg/L) for haloacetic acids and 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: \$2,975; ENFORCEMENT COORDINATOR: Margaux Ordoveza, (512) 239-1128; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(24) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2024-0159-MWD-E; IDENTIFIER: RN102419181; LOCATION: Palestine, Anderson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013717001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$24,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$24,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(25) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2023-0383-PST-E; IDENTIFIER: RN102041316; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$3,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,000; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Topsy Water Supply Corporation; DOCKET NUMBER: 2022-1548-PWS-E; IDENTIFIER: RN101451011; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(d)(2), by failing to provide increased pressure by means of booster pumps taking suction from ground storage tanks or obtain an exception by acquiring plan approval from the Executive Director for a booster pump taking suction from the distribution lines; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813;

REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(27) COMPANY: Town of Round Top; DOCKET NUMBER: 2022-0436-MWD-E; IDENTIFIER: RN106257900; LOCATION: Round Top, Fayette County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015025001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$13,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,800; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: Ville d'Alsace Water Supply, LLC; DOCKET NUMBER: 2022-1662-PWS-E; IDENTIFIER: RN102680964; LOCATION: Castroville, Medina County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: \$695; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(29) COMPANY: Waller County Road Improvement District Number 1; DOCKET NUMBER: 2023-0994-MWD-E; IDENTIFIER: RN105855324; LOCATION: Brookshire, Waller County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014571001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitation; PENALTY: \$12,937; ENFORCEMENT COORDINATOR: Sarah Castillo, (512) 239-1130; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(30) COMPANY: William Euceda dba BNA Quick Stop; DOCKET NUMBER: 2021-1593-PST-E; IDENTIFIER: RN103026654; LOCATION: San Benito, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,874; ENFORCEMENT COORDINATOR: Amy Lane, (512) 239-2614; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202401713

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 23, 2024



Amended Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 175607

APPLICATION. Johnson County Pipe Inc, 800 County Road 209, Alvarado, Texas 76009-8028 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration

Number 175607 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 800 County Road 209, Alvarado, Johnson County, Texas 76009. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.157641,32.407483&level=13>. This application was submitted to the TCEQ on March 7, 2024. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 27, 2024.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, May 30, 2024, at 6:00 p.m.

LaQuinta Inn Banquet Hall

1165 W Highway 67

Alvarado, Texas 76009

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Edu-

cation Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Johnson County Pipe, Inc., 800 County Road 209, Alvarado, Texas 76009-8028, or by calling Ms. Nickolet Blackstock, Environmental, Health and Safety Director at (817) 725-9219.

Notice Issuance Date: April 17, 2024

TRD-202401734

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2024



Enforcement Orders

A default order was adopted regarding Carol Ann Norra dba Carol Norra Mobile Home Park, Docket No. 2021-1219-PWS-E on April 24, 2024, assessing \$9,470 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Misty James, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Oak Point, Docket No. 2021-1322-WQ-E on April 24, 2024, assessing \$20,000 in administrative penalties with \$4,000 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding SAI SAINT AUGUSTINE INC dba GOODY'S FOOD STORE, Docket No. 2021-1566-PST-E on April 24, 2024, assessing \$4,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Municipal Utility District No. 387, Docket No. 2021-1571-MWD-E on April 24, 2024, assessing \$9,000 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Oglesby, Docket No. 2021-1623-MWD-E on April 24, 2024, assessing \$40,600 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of De Leon, Docket No. 2021-1642-MWD-E on April 24, 2024, assessing \$15,750 in administrative penalties with \$3,150 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Aspermont, Docket No. 2022-0122-PWS-E on April 24, 2024, assessing \$12,980 in administrative penalties with \$2,596 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Municipal Utility District No. 157, Docket No. 2022-0473-MWD-E on April 24, 2024, assessing \$24,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Alvarado, Docket No. 2022-0660-MWD-E on April 24, 2024, assessing \$108,750 in administrative penalties with \$21,750 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Rio Hondo, Docket No. 2022-0676-PWS-E on April 24, 2024, assessing \$4,275 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Pleasanton, Docket No. 2022-0762-MWD-E on April 24, 2024, assessing \$45,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2022-0861-PWS-E on April 24, 2024, assessing \$9,120 in administrative penalties with \$1,824 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Charlotte Inetta Helenberg, Docket No. 2022-0933-MSW-E on April 24, 2024, assessing \$3,937 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting William Hogan, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WJH LLC, Docket No. 2022-1433-WQ-E on April 24, 2024, assessing \$11,250 in administrative penalties with \$2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nilmah Investment Inc dba 1 Pitt Stop, Docket No. 2023-0983-PST-E on April 24, 2024, assessing \$14,957 in administrative penalties with \$2,991 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegelu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202401743
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 24, 2024



Notice of District Petition
Notice issued April 17, 2024

TCEQ Internal Control No. D-02272024-039; Winn Schroeder, Kimberly Schroeder, and 1308 BKMT, L.P. (Petitioners) filed a petition for creation of Lantana Municipal Utility District of Caldwell County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District (3) the proposed District will contain approximately 126.49 acres located within Caldwell County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and, (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes of the proposed district is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$19,080,000 (\$13,105,000 for water, wastewater, and drainage plus \$5,975,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at

(512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202401733

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2024



Notice of District Petition

Notice issued April 19, 2024

TCEQ Internal Control No. D-12112023-010 Maple Grove Square, LLC, a Texas limited liability company and Maple Park Development, LLC, a Texas limited liability company (Petitioners), filed a petition for the creation of Waller County Municipal Utility District No. 54 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) Maple Grove Square, LLC represents that there are no lienholders on the property owned by Maple Grove Square, LLC and Maple Park Development, LLC, represents that there is one lienholder, Rosebrook Holdings, LLC, on the property owned by Maple Park Development, LLC and the aforementioned entity has consented to the creation of the District. All (petitioners) land to be included in the proposed District; (3) the proposed District will consist of two (2) land tracts containing approximately 170.523 (total) acres located within Waller County, Texas; and (4) all of the land within the proposed district is located within the extraterritorial jurisdiction of the City of Pattison, Texas and the extraterritorial jurisdiction of the City of Brookshire, Texas. By Ordinance No. 166-2023, passed, approved, and adopted on June 8, 2023, the City of Pattison gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. By Resolution No. 1434, passed and approved, on March 27, 2023, the City of Brookshire gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the work to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created (the "Project"). According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$46,600,000 (\$26,700,000 for water, wastewater, and drainage, \$16,200,000 for roads and \$3,700,000 for park and recreational facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202401735

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2024



Notice of District Petition

Notice issued April 19, 2024

TCEQ Internal Control No. D-01182024-023 Bissonnet 136, LLC, a Texas limited liability company, ("Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 584 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority of the assessed value of the land to be included in the proposed District; (2) there is one lienholder on the property to be included in the proposed District, International Interests, LP, and evidence was provided that the lienholder has consented to creation of and inclusion of the land in the proposed District; (3) the proposed District will contain approximately 136.892 acres of land, located within Harris County, Texas; (4) the land to be included in the proposed District is within the corporate limits of the City of Houston, Texas (City), and (5) by Resolution No. 2023-1109, passed and adopted on December 13, 2023, the City gave its consent to the creation of the proposed District, pursuant to Texas Water Code Section 54.016. The petition

further states that the proposed District will (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters; and (3) such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of purchasing and constructing the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$36,780,000, including \$24,630,000 for water, wastewater and drainage, \$7,640,000 for roads, and \$4,510,000 for recreational facilities.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202401736

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2024



Notice of District Petition

Notice issued April 19, 2024

TCEQ Internal Control No. D-01182024-023 Bissonnet 136, LLC, a Texas limited liability company, ("Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 584 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority of the assessed value of the land to be included in the proposed District; (2) there is one lienholder on the property to be included in the proposed District, International Interests, LP, and evidence was provided that the lienholder has consented to creation of and inclusion of the land in the proposed District; (3) the proposed District will contain approximately 136.892 acres of land, located within Harris County, Texas; (4) the land to be included in the proposed District is within the corporate limits of the City of Houston, Texas (City), and (5) by Resolution No. 2023-1109, passed and adopted on December 13, 2023, the City gave its consent to the creation of the proposed District, pursuant to Texas Water Code Section 54.016. The petition further states that the proposed District will (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters; and (3) such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of purchasing and constructing the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$36,780,000, including \$24,630,000 for water, wastewater and drainage, \$7,640,000 for roads, and \$4,510,000 for recreational facilities.

INFORMATION SECTION

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The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commis-

sioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202401737

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2024



Notice of District Petition

Notice issued April 19, 2024

TCEQ Internal Control No. D-01182024-023 Bissonnet 136, LLC, a Texas limited liability company, ("Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 584 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority of the assessed value of the land to be included in the proposed District; (2) there is one lienholder on the property to be included in the proposed District, International Interests, LP, and evidence was provided that the lienholder has consented to creation of and inclusion of the land in the proposed District; (3) the proposed District will contain approximately 136.892 acres of land, located within Harris County, Texas; (4) the land to be included in the proposed District is within the corporate limits of the City of Houston, Texas (City), and (5) by Resolution No. 2023-1109, passed and adopted on December 13, 2023, the City gave its consent to the creation of the proposed District, pursuant to Texas Water Code Section 54.016. The petition further states that the proposed District will (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters; and (3) such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of purchasing and constructing the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$36,780,000, including \$24,630,000 for water, wastewater and drainage, \$7,640,000 for roads, and \$4,510,000 for recreational facilities.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete

notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202401738

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2024



Notice of District Petition

Notice issued April 24, 2024

TCEQ Internal Control No. D-01092024-012: Cathy Moore, individually, and Mark Albrecht, individually, (Petitioner) filed a petition for the creation of Williamson County Municipal Utility District No. 50 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 and Article III, § 52 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is no lienholder on the property (3) the proposed District will contain approximately 278.915 acres of land, more or less, located wholly within Williamson County, Texas; (4) all of the land to be included within the proposed District is not located within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks system, including the purchase and sale of water, municipal, for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system, for domestic and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; (4) design, acquire, construct, finance, improve and maintain parks and recreational facilities; and (5) construct, acquire,

install, maintain, purchase, and operate such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. It further states that the planned residential and commercial development of the area and the present and future inhabitants of the area will be benefited by the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$90,335,000 (\$72,510,000 for water, wastewater, and drainage facilities and \$15,055,000 for road facilities and \$2,770,000 for recreational facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202401741

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2024



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the com-

mission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 4, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 4, 2024**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Big Diamond, LLC dba Circle K Store 2743943 and dba Circle K Store 2743949; DOCKET NUMBER: 2020-0767-PST-E; TCEQ ID NUMBERS: RN102257193 (Facility 1); RN102354404 (Facility 2); LOCATIONS: 2310 Babcock Road, San Antonio, Bexar County (Facility 1); 3727 Thousand Oaks Drive, San Antonio, Bexar County (Facility 2); TYPE OF FACILITIES: two underground storage tank (UST) systems and convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.74, by failing to investigate and confirm within 30 days after monitoring results from a release detection method indicated a release may have occurred (Facility 1); 30 TAC §334.50(d)(9)(A)(iv) and §334.72, by failing to report to TCEQ within 24 hours after monitoring results from a release detection method indicated a release may have occurred (Facility 1); TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(C)(i), by failing to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity (Facility 1); 30 TAC §334.74, by failing to investigate and confirm within 30 days after monitoring results from a release detection method indicated a release may have occurred (Facility 2); 30 TAC §334.72, by failing to report to TCEQ within 24 hours after monitoring results from a release detection method indicated a release may have occurred (Facility 2); 30 TAC §334.7(d)(1)(G), (H), and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition (Facility 2); and TWC, §26.3475(d) and 30 TAC §334.42(a) and §334.49(a)(2), by failing to ensure that all components of any new or existing UST system are designed, installed, maintained, and operated in a manner that will prevent releases of regulated substances due to structural failure or corrosion (Facility 2); PENALTY: \$53,438; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Big Diamond, LLC dba Corner Store 3948; DOCKET NUMBER: 2020-0932-PST-E; TCEQ ID NUMBER: RN102262193; LOCATION: 8501 Broadway Street, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a

convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.74, by failing to investigate and confirm within 30 days after monitoring results from a release detection method indicated a release may have occurred; 30 TAC §334.72, by failing to report to TCEQ within 24 hours after monitoring results from a release detection method indicated a release may have occurred; TWC, §26.3475(d) and 30 TAC §§334.5(a)(2), 334.42(a), and 334.49(a)(2), by failing to design, install, and operate all components of a UST system in a manner that will prevent releases of regulated substances due to structural failure or corrosion; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; and TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(C)(iii), by failing to equip all USTs with a valve or other device which is designed to automatically shut-off or automatically restrict the flow of regulated substances into the tank when the liquid level reaches a volume which shall be no higher than the 98% capacity level for the tank; PENALTY: \$34,313; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: CIRCLE K STORES INC. dba Circle K Store 2741192; DOCKET NUMBER: 2022-0872-PST-E; TCEQ ID NUMBER: RN106586126; LOCATION: 3511 West Davis Street, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner that is sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons; PENALTY: \$7,500; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Dan M. Leung and Curtis Ray Overstreet; DOCKET NUMBER: 2022-0682-MSW-E; TCEQ ID NUMBER: RN111357570; LOCATION: West North Street and North Wall Street, Itasca, Hill County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$7,875; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Jan Tofell; DOCKET NUMBER: 2021-1050-AGR-E; TCEQ ID NUMBER: RN111130506; LOCATION: 6107 Old Millsap Road, Millsap, Parker County; TYPE OF FACILITY: animal feeding operation; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §321.31(a), by failing to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state; PENALTY: \$3,750; STAFF ATTORNEY: Georgette Oden, Litigation, MC 175, (512) 239-3321; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202401715

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 23, 2024



Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill

Notice mailed on April 23, 2024 Proposed Permit No. 62053

Application. Impact Residential Development, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62053). The proposed development concerns a tract of land of approximately 12 acres located at 12000 Bissonnet Street Houston, Texas 77099 in Harris County. This application would authorize soil disturbance and the construction and operations of enclosed structures/buildings over a closed municipal solid waste landfill. The proposed development includes four three-story apartment buildings and a single-story clubhouse with a combined footprint of 54,165 square feet, and driveways, parking areas, and support utilities. The proposed structures will include measures for methane ventilation and monitoring. The development permit application is available for viewing and copying at Alief - David M. Henington Regional Library, 11903 Bellaire Boulevard, Houston, Texas 77072 in Harris County. The permit application may be viewed online at <https://www.skaconsulting.com/impact-development-permit-documents/>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://areg.is/enWmm>. For exact location, refer to application.

Alternative Language Notice/Aviso de Idioma Alternativo. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/mswapps. El aviso de idioma alternativo en español está disponible en www.tceq.texas.gov/goto/mswapps.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at <http://www14.tceq.texas.gov/epic/eComment/> or in writing to the Texas Commission on Environmental Quality, Office of the Chief

Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Impact Residential Development, LLC, at the mailing address 400 Galleria Parkway SE, Suite 1450, Atlanta, Georgia 30339 or by calling Ms. Jessica Mullins at (713) 344-7055.

TRD-202401742

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2024



Notice of Receipt of Application for Land Use Compatibility Determination for a Municipal Solid Waste Type IV Permit

Notice mailed on April 19, 2024 Proposed Permit No. 2421

Application. Chisholm Trail Disposal, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for a separate land use compatibility determination for a Type IV Municipal Solid Waste Permit to authorize the construction of a Type IV Municipal solid waste landfill that will primarily receive construction and demolition wastes, brush, and rubbish from Wise and surrounding counties. The facility is located at 291 Private Road 4674, Aurora, Texas 76078 in Wise County, Texas. The TCEQ received the land use compatibility portion of the application on February 26, 2024. This application is available for viewing and copying at the Rhome Community Library, 265 West B.C. Rhome Avenue, Rhome, Texas 76078, and may be viewed online at <https://biggsandmathews.com/on-line-documents/permits-v2/category/110-chisholm-trail=disposal-llc>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1aH1KW>. For exact location, refer to application.

Additional Notice. The TCEQ Executive Director has determined that the land use compatibility portion of the application is administratively complete and will conduct a substantive review of this portion of the application. Following completion of that review, the TCEQ will make a separate determination on the question of land use compatibility. If the site is determined to be compatible with the surrounding land uses, the TCEQ may at another time consider conformity with other regulatory requirements. After completing the land use compatibility review, the TCEQ will issue a Notice of Application and Preliminary Decision. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name,

phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Chisholm Trail Disposal, LLC at the mailing address 134 Riverstone Terrace, Suite 203, Canton, Georgia, 30114 or by calling Mr. Thad Owings at (770) 720-2717.

TRD-202401739

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 24, 2024



Notices Issued April 22, 2024

NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR TPDES PERMIT FOR MUNICIPAL WASTEWATER STAFF-INITIATED MINOR AMENDMENT AND NOTICE OF A NEW PRETREATMENT PROGRAM

PROPOSED PERMIT NO. WQ0010201001

APPLICATION AND PRELIMINARY DECISION. The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010201001 issued to the City of Kilgore, 815 North Kilgore Street, Kilgore, Texas 75662, to authorize the approval of a new pretreatment program. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The applicant has applied to the TCEQ for approval of its new pretreatment program under the TPDES program. Approval of the request for pretreatment program authority and the new pretreatment program will authorize the applicant to implement the legal authority, technically based local limits, enforcement response plan/enforcement response guide, standard operating procedures (including forms), and all required Streamlining Rule provisions, to regulate the discharge of pollutants by industrial users into its treatment works facilities, to perform inspections, surveillance, and monitoring, to determine compliance with applicable pretreatment standards and requirements, and to enforce against noncompliant industrial users. The request for approval complies with both federal and State requirements. The new pretreatment program will be approved without change if no substantive comments are received within 30 days of notice publication. The following treatment work facilities will be subject to the requirements of the new pretreatment program: TPDES Permit Nos. WQ0010201001. The facility is located at 2701 Angeline Street, Kilgore, in Gregg County, Texas 75662. The treated effluent is discharged via pipe to Rabbit Creek, thence to the Sabine River Above Toledo Bend Reservoir in Segment No. 0505 of the Sabine River Basin. The unclassified receiving water use is intermediate aquatic life use for Rabbit Creek. The designated uses for Segment No. 0505 are primary contact recreation, public water supply, and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-94.848611%2C32.3975&level=12> The TCEQ Executive Director has completed the technical review of the application, newly developed pretreatment program, and prepared a

draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The Executive Director has also made a preliminary decision that the requested new pretreatment program, if approved, meets all statutory and regulatory requirements. The new pretreatment program fact sheet and Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Kilgore City Hall, 815 North Kilgore St, Kilgore, Texas.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-publicnotices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-publicnotices>.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this draft permit or on the application for approval of the new pretreatment program. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the draft permit or the application for the new pretreatment program. Generally, the TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the draft permit, or the application for approval of the pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing. There is no opportunity to request a contested case hearing on the application for the new pretreatment program. All written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days of the date of publication of this notice. After the deadline for public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application.

MAILING LIST. If you submit public comments, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this draft permit, application for approval of the new pretreatment program, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040. Further information may also be obtained from the City of Kilgore at the address stated above or by calling Mr. Clayton R. Evers, P.E., at (903) 988-4118.

TRD-202401740
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 24, 2024

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Texas Health and Human Services Commission

Correction of Error

The Texas Health and Human Services Commission (HHSC) proposed amendments to 26 TAC §746.501 in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2386). Due to an error by the Texas Register, the section number for 26 TAC §746.501 was omitted from two sentences in the first and fourth paragraphs of the preamble for the adopted rulemaking. The corrected sentences are as follows:

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §746.405, concerning What telephone numbers must I post and where must I post them; §746.501, concerning What written operational policies must

I have; §746.1317, concerning Must the training for my caregivers and the director meet certain criteria; and §746.4101, concerning Who may I release children to; and new §746.521, concerning What rights does a parent of a child in care of my child-care center have, in Texas Administrative Code, Title 26, Chapter 746, Minimum Standards for Child-Care Centers.

The proposed amendment to §746.501 (1) adds a requirement that a child-care center include, in its written operational policies, procedures that address parent rights that are consistent with rules in new Division 5 of Subchapter B; (2) removes operational policy requirements that have been moved to new Division 5; (3) reorganizes a paragraph in the rule to consolidate information and improve readability; and (4) renumbers paragraphs in the rule accordingly.

TRD-202401720

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of March 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
FORT WORTH	CONSULTANTS IN CARDIOVASCULAR MEDICINE AND SCIENCE-FORT WORTH	L07216	FORT WORTH	00	03/05/24
THROUGHOUT TX	SCI ENGINEERING INC	L07215	EAGLE PASS	00	03/05/24
THROUGHOUT TX	INDUSTRIAL ENERGY SOLUTIONS INC	L07217	FORT WORTH	00	03/08/24
WEBSTER	CLS HEALTH PLLC DBA CLEAR LAKE SPECIALTIES	L07218	WEBSTER	00	03/12/24

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	253	03/12/24
BAYTOWN	COVESTRO LLC	L01577	BAYTOWN	76	03/01/24
BIG SPRING	STEWART TEXAS HOSPITAL HOLDINGS LLC DBA SCENIC MOUNTAIN MEDICAL CENTER A STEWARD FAMILY HOSPITAL	L07033	BIG SPRING	02	03/06/24
BORGER	WRB REFINING LP	L02480	BORGER	74	03/13/24
CORPUS CHRISTI	EQUISTAR CHEMICALS LP CORPUS CHRISTI PLANT	L02447	CORPUS CHRISTI	27	03/11/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

CORPUS CHRISTI	CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES	L04043	CORPUS CHRISTI	63	03/01/24
DALLAS	NORTH CENTRAL SURGICAL CENTER LLP	L07115	DALLAS	04	03/06/24
DALLAS	UT SOUTHWESTERN MEDICAL CENTER	L05947	DALLAS	57	03/05/24
DALLAS	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	154	03/05/24
DEER PARK	THE LUBRIZOL CORPORATION	L06744	DEER PARK	08	03/04/24
EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE SIERRA CAMPUS	L02365	EL PASO	126	03/12/24
FORT WORTH	ONCOLOGY HEMATOLOGY CONSULTANTS PA DBA THE CENTER FOR CANCER AND BLOOD DISORDERS	L05919	FORT WORTH	35	03/05/24
FORT WORTH	FORT WORTH HEART PA	L05480	FORT WORTH	53	03/06/24
HOUSTON	TEXAS ONCOLOGY PA	L07194	HOUSTON	02	03/11/24
HOUSTON	CHCA WOMANS HOSPITAL LPD DBA THE WOMANS HOSPITAL OF TEXAS	L04834	HOUSTON	22	03/12/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN CYPRESS HOSPITAL	L06832	HOUSTON	39	03/08/24
HOUSTON	HOUSTON NORTHWEST OPERATING COMPANY LLC DBA HOUSTON NORTHWEST MEDICAL CENTER	L06190	HOUSTON	47	03/05/24
HOUSTON	UNIVERSITY OF HOUSTON ENVIRONMENTAL HEALTH AND SAFETY	L01886	HOUSTON	81	03/05/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN MEMORIAL CITY MEDICAL CENTER	L01168	HOUSTON	203	03/06/24
LUBBOCK	METHODIST CHILDRENS HOSPITAL DBA JOE ARRINGTON CANCER CENTER	L06903	LUBBOCK	11	03/11/24
LUBBOCK	COVENANT MEDICAL GROUP DBA COVENANT CARDIOLOGY ASSOCIATES	L04468	LUBBOCK	37	03/11/24
PARIS	ESSENT PRMC LP DBA PARIS REGIONAL HEALTH	L03199	PARIS	74	03/08/24
PLANO	TEXAS ONCOLOGY PA	L06917	PLANO	08	03/08/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

SAN ANTONIO	CHRISTUS SANTA ROSA HEALTH CARE	L02237	SAN ANTONIO	179	03/04/24
SHENANDOAH	TEXAS ONCOLOGY PA	L07041	SHENANDOAH	05	03/08/24
SUGAR LAND	TMH PHYSICIAN ORGANIZATION DBA METHODIST SUGAR LAND CARDIOLOGY ASSOCIATES	L06575	SUGAR LAND	04	03/06/24
THROUGHOUT TX	SIGMA OILFIELD SOLUTIONS LLC	L07184	CYPRESS	02	03/06/24
THROUGHOUT TX	HVJ NORTH TEXAS – CHELLIAH CONSULTANTS INC	L06807	DALLAS	10	03/08/24
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L06332	GARLAND	20	03/01/24
THROUGHOUT TX	DAE & ASSOCIATES LTD	L03923	HOUSTON	31	03/13/24
THROUGHOUT TX	NUCLEAR SCANNING SERVICES INC	L04339	HOUSTON	36	03/13/24
THROUGHOUT TX	HVJ ASSOCIATES INC	L03813	HOUSTON	75	03/05/24
THROUGHOUT TX	FIXED EQUIPMENT RELIABILITY LLC	L07168	INGLESIDE	04	03/05/24
THROUGHOUT TX	ARCTIC TESTING AND INSPECTION LLC	L07065	LA PORTE	08	03/08/24
THROUGHOUT TX	ADVANCED CORROSION TECHNOLOGIES & TRAINING LLC	L06508	LA PORTE	29	03/04/24
THROUGHOUT TX	AMERICAN PIPING INSPECTION INC	L06835	LONGVIEW	21	03/06/24
THROUGHOUT TX	AMERICAN PIPING INSPECTION INC	L06835	LONGVIEW	22	03/06/24
THROUGHOUT TX	OLIVIER INTERNATIONAL LLC	L07031	MIDLAND	02	03/11/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	SCI ENGINEERING INC	L06961	SELMA	04	03/08/24
THROUGHOUT TX	DYNAMIC ENGINEERING CONSULTANTS PLLC	L06684	SULPHUR SPRINGS	02	03/08/24
WACO	TEXAS ONCOLOGY PA	L05940	WACO	24	03/05/24
WEBSTER	TEXAS ONCOLOGY PA DBA DEKE SLAYTON MEMORIAL CENCER CENTER	L06465	WEBSTER	12	03/08/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
LAREDO	LAREDO REGIONAL MEDICAL CENTER LP DBA DOCTORS HOSPITAL OF LAREDO	L02192	LAREDO	53	03/12/24
MCKINNEY	CARDIAC CENTER OF TEXAS PA	L05744	MCKINNEY	15	03/01/24
SEGUIN	CRAIG CARDIOVASCULAR CENTER PA	L06623	SEGUIN	04	03/05/24
TEXAS CITY TX	SID ACHARYA MD PA DBA CARDIOVASCULAR SPECIALISTS OF TEXAS	L05714	TEXAS CITY TX	07	03/06/24
THROUGHOUT TX	LOCKHEED MARTIN CORPORATION	L05633	FORT WORTH	26	03/06/24
THROUGHOUT TX	CDK PERFORATING LLC DBA NINE ENERGY SERVICE	L06616	MIDLAND	14	03/07/24

RENEWAL OF LICENSES ISSUED:(continued)

THROUGHOUT TX	KLX ENERGY SERVICES LLC	L06620	ROSHARON	37	03/14/24
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TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
THROUGHOUT TX	USA DEBUSK LLC	L06836	CLUTE	03	03/07/24

TRD-202401730
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: April 24, 2024



Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Medico Life and Health Insurance Company, a foreign life, accident, and/or health company. The home office is in Des Moines, Iowa.

Application for incorporation in the state of Texas for Centennial Reinsurance Company, a domestic fire and/or casualty company. The home office is in Addison, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202401731
 Justin Beam
 Chief Clerk
 Texas Department of Insurance
 Filed: April 24, 2024



Texas Lottery Commission

Scratch Ticket Game Number 2570 "JACKPOT MILLIONS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2570 is "JACKPOT MILLIONS". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2570 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2570.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, MONEY BAG SYMBOL, CHERRY SYMBOL, MOON SYMBOL, LEMON SYMBOL, CLUB SYMBOL, MELON SYMBOL, ANCHOR SYMBOL, LIGHTNING BOLT SYMBOL, SPADE SYMBOL, PINEAPPLE SYMBOL, CACTUS SYMBOL, HEART SYMBOL, ELEPHANT SYMBOL, BANANA SYMBOL, RAINBOW SYMBOL, SUN SYMBOL, HORSESHOE SYMBOL, SAILBOAT SYMBOL, DICE SYMBOL, CROWN SYMBOL, HAT SYMBOL, 10X SYMBOL, DIAMOND SYMBOL, \$20.00, \$50.00, \$75.00, \$100, \$200, \$500, \$1,000, \$20,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2570 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET

29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
MONEY BAG SYMBOL	DBL
CHERRY SYMBOL	CHERRY
MOON SYMBOL	MOON
LEMON SYMBOL	LEMON
CLUB SYMBOL	CLUB
MELON SYMBOL	MELON
ANCHOR SYMBOL	ANCHOR
LIGHTNING BOLT SYMBOL	BOLT

SPADE SYMBOL	SPADE
PINEAPPLE SYMBOL	PNAPLE
CACTUS SYMBOL	CACTUS
HEART SYMBOL	HEART
ELEPHANT SYMBOL	ELPHT
BANANA SYMBOL	BANANA
RAINBOW SYMBOL	RAINBW
SUN SYMBOL	SUN
HORSESHOE SYMBOL	HRSHOE
SAILBOAT SYMBOL	BOAT
DICE SYMBOL	DICE
CROWN SYMBOL	CROWN
HAT SYMBOL	HAT
10X SYMBOL	WINX10
DIAMOND SYMBOL	WINALL
\$20.00	TWY\$
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$20,000	20TH
\$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2570), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2570-0000001-001.

H. Pack - A Pack of the "JACKPOT MILLIONS" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of

the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "JACKPOT MILLIONS" Scratch Ticket Game No. 2570.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "JACKPOT MILLIONS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-seven (67) Play Symbols. GAME 1: The player scratches to reveal 6 prize amounts. If the player reveals 3 matching prize amounts, the player wins that amount. If the player reveals 2 matching prize amounts and a "MONEY BAG" Play Symbol, the player wins DOUBLE that amount. GAME 2: If the player reveals 2 matching Play Symbols in the same SPIN, the player wins the PRIZE for that SPIN. If the player reveals 3 matching Play Symbols in the same SPIN, the player wins 5 TIMES the PRIZE for that SPIN. GAME 3: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "DIAMOND" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-seven (67) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-seven (67) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-seven (67) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-seven (67) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to twenty-five (25) times.

D. GENERAL: The "DIAMOND" (WINALL) and "10X" (WINX10) Play Symbols will never appear in the GAME 1 or GAME 2 play areas.

E. GENERAL: The "MONEY BAG" (DBL) Play Symbol will never appear in the GAME 2 or GAME 3 play areas.

- F. GENERAL: On winning and Non-Winning Tickets, the top cash prizes of \$1,000, \$20,000 and \$1,000,000 will each appear at least once, except on Tickets winning twenty-five (25) times and with respect to other parameters, play action or prize structure.
- G. GAME 1: A Ticket can win up to one (1) time in GAME 1.
- H. GAME 1: A Prize Symbol will not appear more than three (3) times in GAME 1.
- I. GAME 1: A Ticket will not contain two (2) sets of three (3) matching Prize Symbols.
- J. GAME 1: Winning Tickets will contain three (3) matching Prize Symbols or two (2) matching Prize Symbols and a "MONEY BAG" (DBL) Play Symbol.
- K. GAME 1: On winning Tickets, all non-winning Prize Symbols will be different from the winning Prize Symbols.
- L. GAME 1: Non-Winning Tickets will never have more than two (2) matching Prize Symbols.
- M. GAME 1: The "MONEY BAG" (DBL) Play Symbol will never appear on a Non-Winning Ticket.
- N. GAME 1: The "MONEY BAG" (DBL) Play Symbol will never appear more than one (1) time.
- O. GAME 1: The "MONEY BAG" (DBL) Play Symbol will only appear on a Ticket that has two (2) matching Prize Symbols.
- P. GAME 1: The "MONEY BAG" (DBL) Play Symbol will never appear on a Ticket that wins with three (3) matching Prize Symbols.
- Q. GAME 1: The "MONEY BAG" (DBL) Play Symbol will never appear on a Ticket that has more than one (1) pair of matching Prize Symbols.
- R. GAME 2: The GAME 2 play area consists of four (4) SPINs with three (3) Play Symbols and one (1) Prize Symbol per SPIN.
- S. GAME 2: GAME 2 can win up to four (4) times, once in each SPIN.
- T. GAME 2: Non-winning Prize Symbols will not match a winning Prize Symbol in GAME 2.
- U. GAME 2: Non-winning Prize Symbols will be different across all SPINs.
- V. GAME 2: There will never be two (2) matching Play Symbols in a vertical or diagonal line.
- W. GAME 2: On non-winning SPINs, a Play Symbol will never appear more than one (1) time in a SPIN.
- X. GAME 2: Consecutive Non-Winning Tickets within a Pack will not have matching SPINs. For example, if the first Ticket contains a "LEMON" Play Symbol, "BANANA" Play Symbol and a "HEART" Play Symbol in a SPIN, the next Ticket will not contain a "LEMON" Play Symbol, "BANANA" Play Symbol and a "HEART" Play Symbol in any SPIN in any order.
- Y. GAME 2: Winning and Non-Winning Tickets will not have matching non-winning SPINs. For example, if SPIN 1 is a "LEMON" Play Symbol, "BANANA" Play Symbol and a "HEART" Play Symbol, then SPIN 2 - SPIN 4 will not contain a "LEMON" Play Symbol, "BANANA" Play Symbol and a "HEART" Play Symbol in any order.
- Z. GAME 2: Two (2) matching Play Symbols in the same horizontal SPIN will win the PRIZE for that SPIN.
- AA. GAME 2: Three (3) matching Play Symbols in the same horizontal SPIN will win 5 TIMES the PRIZE for that SPIN and will win as per the prize structure.
- BB. GAME 3: A Ticket can win up to twenty (20) times in GAME 3.
- CC. GAME 3: All non-winning YOUR NUMBERS Play Symbols will be different.
- DD. GAME 3: Non-winning Prize Symbols will not match a winning Prize Symbol in GAME 3.
- EE. GAME 3: All WINNING NUMBERS Play Symbols will be different.
- FF. GAME 3: Tickets winning more than one (1) time in GAME 3 will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.
- GG. GAME 3: On all Tickets, a Prize Symbol in GAME 3 will not appear more than three (3) times, except as required by the prize structure to create multiple wins.
- HH. GAME 3: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.
- II. GAME 3: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 20 and \$20).
- JJ. GAME 3: The "DIAMOND" (WINALL) Play Symbol will never appear on the same Ticket as the "10X" (WINX10) Play Symbol.
- KK. GAME 3: The "DIAMOND" (WINALL) Play Symbol will instantly win all twenty (20) prize amounts in GAME 3 and will win as per the prize structure.
- LL. GAME 3: The "DIAMOND" (WINALL) Play Symbol will never appear more than one (1) time on a Ticket.
- MM. GAME 3: The "DIAMOND" (WINALL) Play Symbol will never appear on a Non-Winning Ticket.
- NN. GAME 3: The "DIAMOND" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
- OO. GAME 3: On Tickets winning with the "DIAMOND" (WINALL) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.
- PP. GAME 3: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
- QQ. GAME 3: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.
- RR. GAME 3: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.
- SS. GAME 3: The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "JACKPOT MILLIONS" Scratch Ticket Game prize of \$20.00, \$50.00, \$75.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$75.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not

validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JACKPOT MILLIONS" Scratch Ticket Game prize of \$1,000, \$20,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JACKPOT MILLIONS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "JACKPOT MILLIONS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "JACKPOT MILLIONS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2570. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2570 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20.00	624,000	9.62
\$50.00	480,000	12.50
\$75.00	96,000	62.50
\$100	288,000	20.83
\$200	55,000	109.09
\$500	3,800	1,578.95
\$1,000	265	22,641.51
\$20,000	20	300,000.00
\$1,000,000	4	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2570 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2570, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202401714
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: April 23, 2024



Scratch Ticket Game Number 2585 "SUPER LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2585 is "SUPER LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2585 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2585.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: ARMADILLO SYMBOL, BAT SYMBOL, BLUEBONNET SYMBOL, BOAR SYMBOL, CACTUS SYMBOL, CHERRIES SYMBOL, CHILE PEPPER SYMBOL, CORN SYMBOL, COVERED WAGON SYMBOL, COWBOY HAT SYMBOL, COWBOY SYMBOL, FIRE SYMBOL, GUITAR SYMBOL, HEN SYMBOL, HORSE SYMBOL, HORSESHOE SYMBOL, JACKRABBIT SYMBOL, LIZARD SYMBOL, LONE STAR SYMBOL, MARACAS SYMBOL, MOCKINGBIRD SYMBOL, MOONRISE SYMBOL, MORTAR PESTLE SYMBOL, NEWSPAPER SYMBOL, OIL RIG SYMBOL, PECAN

TREE SYMBOL, PIÑATA SYMBOL, RATTLESNAKE SYMBOL, ROADRUNNER SYMBOL, SADDLE SYMBOL, SHOES SYMBOL, SPEAR SYMBOL, SPUR SYMBOL, STRAWBERRY SYMBOL, SUNSET SYMBOL, WHEEL SYMBOL, WINDMILL SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$500, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2585 - 1.2D

PLAY SYMBOL	CAPTION
ARMADILLO SYMBOL	ARMADILLO
BAT SYMBOL	BAT
BLUEBONNET SYMBOL	BLUEBONNET
BOAR SYMBOL	BOAR
CACTUS SYMBOL	CACTUS
CHERRIES SYMBOL	CHERRIES
CHILE PEPPER SYMBOL	CHILE PEPPER
CORN SYMBOL	CORN
COVERED WAGON SYMBOL	COVERED WAGON
COWBOY HAT SYMBOL	COWBOY HAT
COWBOY SYMBOL	COWBOY
FIRE SYMBOL	FIRE
GUITAR SYMBOL	GUITAR
HEN SYMBOL	HEN
HORSE SYMBOL	HORSE
HORSESHOE SYMBOL	HORSESHOE
JACKRABBIT SYMBOL	JACKRABBIT
LIZARD SYMBOL	LIZARD
LONE STAR SYMBOL	LONE STAR
MARACAS SYMBOL	MARACAS
MOCKINGBIRD SYMBOL	MOCKINGBIRD
MOONRISE SYMBOL	MOONRISE
MORTAR PESTLE SYMBOL	MORTAR PESTLE
NEWSPAPER SYMBOL	NEWSPAPER
OIL RIG SYMBOL	OIL RIG
PECAN TREE SYMBOL	PECAN TREE
PIÑATA SYMBOL	PIÑATA

RATTLESNAKE SYMBOL	RATTLESNAKE
ROADRUNNER SYMBOL	ROADRUNNER
SADDLE SYMBOL	SADDLE
SHOES SYMBOL	SHOES
SPEAR SYMBOL	SPEAR
SPUR SYMBOL	SPUR
STRAWBERRY SYMBOL	STRAWBERRY
SUNSET SYMBOL	SUNSET
WHEEL SYMBOL	WHEEL
WINDMILL SYMBOL	WINDMILL
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$5,000	FVTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2585), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2585-0000001-001.

H. Pack - A Pack of the "SUPER LOTERIA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front

of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SUPER LOTERIA" Scratch Ticket Game No. 2585.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly fifty-two (52) Play Symbols. A prize winner in the "SUPER LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAYBOARD: 1)

The player completely scratches the CALLER'S CARD area to reveal 21 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. BONUS GAMES: The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 4 symbols in the same GAME, the player wins the PRIZE for that GAME. TABLA DE JUEGO: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 21 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. JUEGOS DE BONO: El jugador SOLAMENTE raspa los símbolos de los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 4 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-two (52) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-two (52) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-two (52) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-two (52) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to six (6) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: There will be no identical Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD/TABLA DE JUEGO: At least eight (8), but no more than twelve (12), CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a symbol on the PLAYBOARD/TABLA DE JUEGO play area on a Ticket.

E. PLAYBOARD/TABLA DE JUEGO: No identical Play Symbols are allowed on the PLAYBOARD/TABLA DE JUEGO play area.

F. BONUS GAMES/JUEGOS DE BONO: Every BONUS GAMES/JUEGOS DE BONO Grid will match at least one (1) Play Symbol to the CALLER'S CARD/CARTA DEL GRITÓN play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In

the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER LOTERIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "SUPER LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "SUPER LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 50,040,000 Scratch Tickets in Scratch Ticket Game No. 2585. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2585 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	6,004,800	8.33
\$10.00	5,004,000	10.00
\$15.00	667,200	75.00
\$20.00	667,200	75.00
\$50.00	667,200	75.00
\$100	208,917	239.52
\$200	34,194	1,463.41
\$500	5,004	10,000.00
\$5,000	150	333,600.00
\$100,000	25	2,001,600.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2585 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2585, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202401744
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: April 24, 2024



Texas Department of Transportation

Public Hearing Notice Statewide Transportation Improvement Program May 2024 Revision

The Texas Department of Transportation (department) will hold a public hearing on Thursday, May 30, 2024, at 10:00 a.m. Central Standard Time (CST) to receive public comments on the May 2024 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2023-2026. The hearing will be conducted via electronic means. Instructions for accessing the hearing will be published on the department’s website at: <https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html>.

The STIP reflects the federally funded transportation projects in the FY 2023-2026 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and

affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed May 2024 Quarterly Revisions to the FY 2023-2026 STIP will be available for review, at the time the notice of hearing is published, on the department's website at: <https://www.txdot.gov/inside-txdot/division/transportation-planning/stips.html>.

Persons wishing to speak at the hearing may register in advance by notifying Karen Burkhard, Transportation Planning and Programming Division, at (512) 484-9813 no later than 12:00 p.m. CST on Wednesday, May 29, 2024. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker.

Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate in the hearing are encouraged to contact the Transportation Planning and Programming Division, at (512) 484-9813. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to participate in the hearing may submit comments regarding the proposed May 2024 Quarterly Revisions to the FY 2023-2026 STIP to Humberto Gonzalez, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. CST on Monday, June 3, 2024.

TRD-202401707

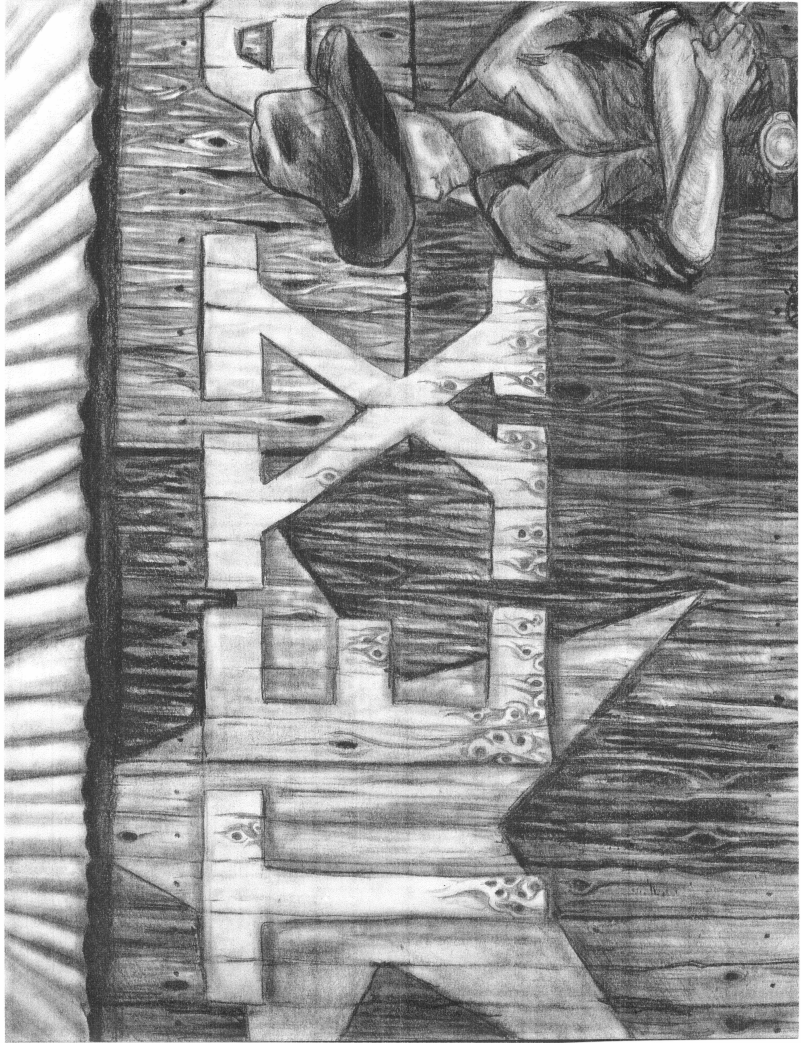
Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: April 22, 2024





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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