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 postmarked, 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-

coupment 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 recoupment 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 recoupment 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 recoupment 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 recoupment from subsection (k) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment 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 recoupment 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 recoupment 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 recoupment 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.

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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

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**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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Texas Health and Human Services Commission
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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 implications 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.

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Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
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# 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.

[(c) 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.

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5460

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# 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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# 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

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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# 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[~~,~~] 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.

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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) 427-6271

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## 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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Nichole Bunker-Henderson
General Counsel
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 AHAcomments@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 noticed 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) [~~(c)~~] 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 delivery, 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.

TRD-202401589
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 2, 2024
For further information, please call: (512) 427-6182

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## 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 AHAcomments@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.

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Nichole Bunker-Henderson
General Counsel
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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.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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## 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@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 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.

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

TRD-202401593
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

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# 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-

inforcing 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.

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) 427-6365

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## 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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## 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.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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# 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 TSBVI 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 longstanding 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/. 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.

[~~(c) 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) [~~(c)~~] 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.

TRD-202401685
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

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## 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, [~~:~~] 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) [~~(c)~~] 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; [,] the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057; [,] 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.; [,] 34 CFR, Part 300; [,] state statutes; [,] and rules of the State Board of Education (SBOE), 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.; [,] 34 CFR, Part 300; [,] state statutes; [,] 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 those 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 (c) 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 projected 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 (c) 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) [(c)] 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 [specific] level of care [in which the student is placed].

(3) Contracts between school districts and approved nonpublic 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) [(1)] 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.

[(1) 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

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# 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

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## 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 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.

*§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

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## 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.

TRD-202401688
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

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## 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.

TRD-202401689
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

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## 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
Earliest possible date of adoption: June 2, 2024
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

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## 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

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## 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.

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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

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# 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

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# 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

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## 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

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## 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

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## 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.

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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

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# 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 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.

*§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

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# 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

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# 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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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# 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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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## 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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161

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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.

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Karen Ray
Chief Counsel
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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.

[~~(c) 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.

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## 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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## 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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## 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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## 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 postmarked, 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.

Filed with the Office of the Secretary of State on April 19, 2024.

TRD-202401672
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: June 2, 2024
For further information, please call: (512) 438-3269

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## 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 proposed 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.hhsc.state.tx.us/crcg/crcg.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) [~~(21)~~] 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, 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) [~~(31)~~] 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.

Filed with the Office of the Secretary of State on April 19, 2024.

TRD-202401667
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

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## 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) [(c)] 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(c) 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(c)] 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(c)] 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.

Filed with the Office of the Secretary of State on April 19, 2024.

TRD-202401668
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

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# 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 procedures; 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.

Filed with the Office of the Secretary of State on April 19, 2024.

TRD-202401671
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

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# 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 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).

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 [~~(1)~~] 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) [~~(11)~~] 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 insurance 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 I,] 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) [(c)] 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.

(e) 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 follow:~~]

(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 1.16.~~]

*§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 I,~~] 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.

TRD-202401670
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: June 2, 2024
For further information, please call: (512) 676-6555

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## 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

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# 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) [~~(1)~~] 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 from 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) [~~(l)(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 (l)(4) [~~(l)(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 (l)(4) [~~(l)(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.

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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, §490I.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, §490I.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, §490I.0109, which permits the comptroller to adopt rules as necessary to implement Chapter 490I regarding the Texas Broadband Development Office.

The amendments implement Government Code, Chapter 490I.

*§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, §490I.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, §490I.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, §490I.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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For further information, please call: (512) 475-2220

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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@tjjd.texas.gov.

STATUTORY AUTHORITY

Section 385.9921 is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish 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[,] 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[,] or a denial of a request for 24-hour access[,] 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[,] 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

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# 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 [~~commission~~] examination for Basic Fire Marshal by:

(1) holding as a minimum, Instructor I certification through the Commission [~~commission~~]; and

(2) holding as a minimum, Fire Investigator certification or Arson Investigator certification through the Commission [~~commission~~]; and

(3) holding as a minimum, Fire Inspector certification through the Commission [~~commission~~].

(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 [~~commission~~]; and

(2) hold Basic Fire Investigator or Basic Arson Investigator certification through the Commission [~~commission~~]; 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 [~~commission~~] 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 [~~commission'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 [~~Commission-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.

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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

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## 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 [~~commission~~]; and

(3) hold Intermediate Fire Investigator or Intermediate Arson Investigator through the Commission [~~commission~~]; and

(4) hold Fire and Life Safety Educator II certification through the Commission [~~commission~~]; 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.

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## 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 [~~commission~~]; and

(3) hold Advanced Fire Investigator or Advanced Arson Investigator through the Commission [~~commission~~]; and

(4) hold Fire Plans Examiner certification through the Commission [~~commission~~]; 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.

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## 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 [~~commission~~]; and

(3) hold Master Fire Investigator or Master Arson Investigator through the Commission [~~commission~~]; 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.

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