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 <u>underlined text</u>. [Square brackets and strikethrough] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## **TITLE 16. ECONOMIC REGULATION**

## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

## CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS SUBCHAPTER H. CERTIFICATES OF

#### CONVENIENCE AND NECESSITY

#### 16 TAC §24.233, §24.245

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.233, relating to Contents of Certificate of Convenience and Necessity (CCN) Applications and §24.245, relating to Revocation of a CCN or Amendment of a CCN by Decertification, Expedited Release, or Streamlined Expedited Release. Revised §24.233 and §24.245 implement Sections 274-277 of House Bill (HB) 4559 enacted by the 88th Texas Legislature (R.S.). The proposed rules amend §24.233 to change the county population threshold ranges for CCN applications within municipal boundaries, extraterritorial jurisdiction of certain municipalities, and extensions beyond extraterritorial jurisdiction. The proposed rules also amend §24.245 to revise the county population threshold ranges for proceedings related to revocation or amendment of a CCN. Additionally, the proposed rule makes minor and conforming changes to §24.245 for clarity and specifies response time periods for filings by a prospective retail public utility or former CCN holders after the commission has issued an order granting CCN revocation, decertification, expedited release, or streamlined expedited release.

#### Growth Impact Statement

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

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

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

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

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

(5) the proposed rules will not create a new regulation, because they are replacing similar regulations;

(6) the proposed rules will not repeal an existing regulation;

(7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rules that are being proposed to replace; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Celia Eaves, Utility Outreach Administrator, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code  $\S2001.024(a)(4)$  as a result of enforcing or administering the sections.

#### Public Benefits

Ms. Eaves has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections is ensuring that the substantive rules governing the water CCN applications continue to be in alignment with statutes as enacted and are not limited in application by population brackets that were revised following the federal census. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Ms. Eaves has determined that the economic costs to persons required to comply with the proposed rules will vary on an individual basis.

Local Employment Impact Statement

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

Costs to Regulated Persons

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

#### **Public Hearing**

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by May 30, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

#### **Public Comments**

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by May 30, 2024, by 3:00 P.M. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 56223.

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

#### Statutory Authority

The rules are proposed under the following provisions of Texas Water Code (TWC): TWC §13.041, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §13.245, which establishes commission's authority related to CCN for a service area within municipal boundaries or extraterritorial jurisdiction of certain municipalities; §13.2451, which establishes commission's authority related to CCN for a service area beyond its extraterritorial jurisdiction; §13.254, related to decertification initiated by utility commission or utility, and expedited release initiated by landowner; and §13.2541, related to streamlined expedited release initiated by landowner.

Cross Reference to Statutes: TWC §13.041, 13.245, 13.2451, 13.254, 13.2541.

## *§24.233.* Contents of Certificate of Convenience and Necessity Applications.

(a) Application. To obtain or amend a certificate of convenience and necessity (CCN), a person, public water or sewer utility, water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality shall file an application for a new CCN or a CCN amendment. Applications must contain the following materials, unless otherwise specified in the application form:

(1) (No change.)

(2) mapping documents as prescribed in §24.257 [§24.259] of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications);

(3) - (16) (No change.)

(b) (No change.)

(c) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) - (6) (No change.)

(7) Paragraphs (4) - (6) of this subsection do not apply to Cameron, Hidalgo, or Willacy Counties, or to a county:

(A) with a population of more than 30,000 and less than <u>36,000 [35,000]</u> that borders the Red River;

(B) (No change.)

(C) with a population of 170,000 [130,000] or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

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

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(8) - (9) (No change.)
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(d) Extension beyond extraterritorial jurisdiction.

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

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Hidalgo, or Willacy Counties, or in a county:

(A) with a population of more than 30,000 and less than 36,000 [35,000] that borders the Red River;

(B) (No change.)

(C) with a population of 170,000 [130,000] or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

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

- (4) (No change.)
- (e) (No change.)

*§24.245.* Revocation of a Certificate of Convenience and Necessity or Amendment of a Certificate of Convenience and Necessity by Decertification, Expedited Release, or Streamlined Expedited Release.

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

(d) Revocation or amendment by decertification.

(1) At any time after notice and opportunity for hearing, the commission may revoke any CCN or amend any CCN by decertifying a portion of the service area if the commission finds that any of the circumstances identified in this paragraph exist.

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

(D) The current CCN holder failed to apply for a ceaseand-desist order under TWC §13.252 and §24.255 of this title (relating to <u>Content of Request for Cease and Desist Order by the Commission</u> [content of request for cease and desist order by the commission under TWC §13.252]) within 180 days of the date that the current CCN holder became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless the current CCN holder proves that good cause exists for its failure to timely apply for a cease-and-desist order.

(E) (No change.)

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

- (e) (No change.)
- (f) Expedited release.
  - (1) (11) (No change.)

(12) If the current CCN holder has never made service available through planning, design, construction of facilities, or

contractual obligations to provide service to the tract of land, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder, but only that the alternate retail public utility can provide the requested service. This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:

(A) the county has a population of more than 30,000 and less than 36,000 [35,000] and borders the Red River;

(B) (No change.)

(C) the county has a population of 170,000 [130,000] or more and is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

- (D) (No change.)
- (13) (14) (No change.)

(g) Determination of compensation to former CCN holder after revocation, decertification amendment or expedited release. The determination of the monetary amount of compensation to be paid to the former CCN holder, if any, will be determined at the time another retail public utility seeks to provide service in the removed area and before service is actually provided. This subsection does not apply to revocations or decertification amendments under <u>subsection [paragraph]</u> (d)(2) of this section or to streamlined expedited release under subsection (h) of this section.

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

(3) If the former CCN holder and prospective retail public utility have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission within 60 days of the filing of the notice of intent to provide service. The filing must state [stating] the amount of the compensation to be paid and provide sufficient details about how the compensation was calculated.

(4) If the former CCN holder and prospective retail public utility have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser as follows:

(A) If the former CCN holder and prospective retail public utility have agreed on an independent appraiser, they must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser and must file its appraisal with the commission within 60 days of the filing of the notice of intent [within ten days of the filing of the notice of intent under paragraph (1) of this subsection]. The costs of the independent appraiser must be borne by the prospective retail public utility.

(B) If the former CCN holder and prospective retail public utility cannot agree on an independent appraiser within ten days of the filing of the notice of intent, the former CCN holder and prospective retail public utility must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 60 [calendar] days of the filing of the notice of intent. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 30 days. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal of the appraisers engaged by the former CCN holder and prospective retail public utility. The former CCN holder and prospective retail public utility must each pay half the cost of the commission-appointed appraisel directly to the commission-appointed appraiser. (C) The appraisers must determine the amount of compensation in accordance with subsection (j) of this section.

(5) The determination of compensation by the agreed-upon appraiser under paragraph (4)(A) of this subsection or the commission-appointed appraiser under paragraph (4)(B) of this subsection is binding on the commission, the landowner, the former CCN holder, and the prospective retail public utility.

(6) If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or to file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero. If the prospective retail public utility fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or to file an appraisal within the timeframes required by this subsection, the presiding officer may recommend denial [dismissal] of the notice of intent to provide service to the removed area.

(7) (No change.)

(h) Streamlined expedited release.

(1) (No change.)

section:

(2) A qualifying county under paragraph (1)(C) of this sub-

(A) has a population of at least 1.2 [one] million;

(B) is adjacent to a county with a population of at least 1.2 [one] million, and does not have a population of more than 50,500 [45,000] and less than 52,000 [47,500]; or

(C) has a population of more than 200,000 and less than  $\underline{233,500}$  [ $\underline{220,000}$ ] and does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more.

(3) - (8) (No change.)

(9) The commission may require an award of compensation by the landowner to the former CCN holder as specified in subsection (i) <u>of this section</u>.

(i) Determination of compensation to former CCN holder after streamlined expedited release. The amount of compensation, if any, will be determined after the commission has granted a petition for streamlined expedited release filed under subsection (h) of this section. The amount of compensation, if any, will be decided in the same proceeding as the petition for streamlined expedited release.

(1) If the former CCN holder and landowner have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission within 70 days after the commission has granted streamlined expedited release. The filing must state the amount of the compensation to be paid and provide sufficient details about how the compensation was calculated [stating the amount of the compensation to be paid].

(2) If the former CCN holder and landowner have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser under the following procedure.

(A) If the former CCN holder and landowner have agreed on an independent appraiser, the former CCN holder and landowner must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser [within ten days] after the commission grants streamlined expedited release under subsection (h) of this section. The costs of the independent appraiser must be borne by the landowner. The appraiser must file its appraisal with the commission within 70 days after the commission grants streamlined expedited release.

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

(3) The determination of compensation by the agreed-upon appraiser under paragraph (2)(A) of this subsection or the commission-appointed appraiser under paragraph (2)(B) of this subsection is binding on the commission, former CCN holder, and landowner.

- (4) (6) (No change.)
- (j) (No change.)
- (k) Mapping information.
  - (1) (2) (No change.)

(3) All maps must be filed in accordance with §22.71 and §22.72 of this title (relating to Filing of Pleadings, Documents and Other Materials and Formal Requisites of Pleadings and Documents to be Filed with the Commission, respectively).

(l) (No change.)

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

Filed with the Office of the Secretary of State on April 25, 2024.

TRD-202401754

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 936-7322

## TITLE 19. EDUCATION

# PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

## CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §1.8

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A, §1.8, adopting the Comptroller's rules involving Historically Underutilized Businesses (HUBs) as required by Texas Government Code, §2161.003. Specifically, this amendment will adopt the Comptroller's rules rather than the Texas Building and Procurement Division rules. Further, this amendment will remove an outdated citation to the Administrative Code and replace it with a citation to the Comptroller's current HUB rules.

This rule is outdated and needs to be updated to conform with Texas Government Code, §2161.003.

The Board has the authority to amend this rule under its general rulemaking authority granted by Texas Education Code, §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 to conform with Texas Government Code, §2161.003. 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.

**Request for Comments** 

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 amendment 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 amendment makes conforming changes to the HUB Program rules.

§1.8. Historically Underutilized Business (HUBs) Program.

In accordance with the Government Code, §2161.003, the Board adopts by reference the rules of the <u>Comptroller</u> [Texas Building and Procurement Commission], found at Title <u>34</u> [4] Texas Administrative Code, <u>§§2.281 - 2.298</u> [§§111.11 - 111.28], concerning the Historically Underutilized Business (HUB) Program. For purposes of implementing the <u>Comptroller's</u> [GSC] rules at the board, references to state agency or agency shall be considered to be a reference to the board.

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

Filed with the Office of the Secretary of State on April 26, 2024. TRD-202401840

Nichole Bunker-Henderson General Counsel Texas Higher Education Coordinating Board Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 427-6271

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## CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION SUBCHAPTER B. APPROVAL PROCESS FOR A CERTIFICATE

#### 19 TAC §2.32

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter B, §2.32 concerning the approval process for new certificate programs. Texas Education Code, §61.0512(a), requires the Coordinating Board to approve all new certificate programs before an institution of higher education may offer the program. Specifically, the proposed amendments will revise the requirements for notification of new certificate programs.

Rule 2.32, Notification, will be amended to remove the provision requiring CIP codes for all courses in the certificate. Texas Education Code, §61.0512, gives the Coordinating Board authority to approve new certificate programs.

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

The amendment is proposed under Texas Education Code, Section 61.0512, which states that institutions may offer new certificate programs with the Board's approval.

The proposed amendments affect Texas Education Code Section 61.0512.

#### §2.32. Notification.

Not later than the ninetieth day after an institution initially offers a certificate program, each institution shall provide, in a manner prescribed by Board Staff, the following information:

- (1) The number of semester credit hours for the certificate;
  - (2) The CIP Code for the certificate[, if applicable];

[(3) The CIP Codes for all courses that comprise the certificate;]

- (3) [(4)] The name or designation of the certificate;
- (4) [(5)] The type of certificate, if applicable;

(5) [(6)] Whether the certificate when earned in combination with any other certificate, defined set of courses, or other requirements leads to the award of another credential, including an associate degree or bachelor's degree; and

(6) [(7)] Other information required to facilitate inclusion of the certificate program in a state credential repository or student advising 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.

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

TRD-202401841

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 9, 2024

For further information, please call: (512) 427-6182

# SUBCHAPTER D. APPROVAL PROCESS FOR NEW <u>ACADEMIC</u> ASSOCIATE DEGREES

#### 19 TAC §2.58

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter D, §2.58, concerning the approval process for new academic associate degree programs. Specifically, the proposed amendments clarify which institution type may offer the embedded academic associate degree and brings rule into alignment with statute. Texas Education Code (TEC), §§61.051 and 61.0512, provides the Coordinating Board with authority to approve new degree programs at public institutions of higher education. TEC, §130.001, 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. TEC, §130.0104, requires each public junior college district to establish a multidisciplinary studies associate degree, and authorizes the Board to adopt rules as necessary. TEC, §61.05151, requires that the number of semester credit hours required for the associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

The proposed amendment clarifies subchapter D (relating to Approval Process for New Associate Degrees) applies only to new academic associate degrees and §2.58 (relating to Embedded Credential: Academic Associate Degree) applies only to embedded academic associate degrees offered by public universities and health-related institutions.

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

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

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

**Government Growth Impact Statement** 

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

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

The amendment is proposed under Texas Education Code, Sections 61.051 and 61.0512, which provide that no new degree or certificate program may be added to any public institution of higher education expect with specific prior approval of the Coordinating Board.

The proposed amendments affect Texas Education Code, Sections 61.051 and 61.0512.

§2.58. Embedded Credential: Academic Associate Degree.

A [public two-year institution, a] public university[<sub>7</sub>] or a public healthrelated institution may offer an academic associate degree as an embedded credential in the same, a related, or supporting field as the bachelor's degree in which a student is currently or has been enrolled. The institution may request approval for the associate degree:

(1) In the application for the bachelor's degree program; or

(2) May request the embedded associate degree program subject to Assistant Commissioner Expedited Review under subchapter A, §2.4(2)(B)(ii), of this chapter (relating to Types of Approval Required).

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

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

TRD-202401797

Nichole Bunker-Henderson General Counsel Texas Higher Education Coordinating Board Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 427-6182

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## SUBCHAPTER E. APPROVAL PROCESS FOR NEW BACCALAUREATE PROGRAMS AT PUBLIC JUNIOR COLLEGES

#### 19 TAC §2.87

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter E, §2.87, concerning the criteria for new baccalaureate degree programs at public junior colleges. Specifically, the proposed amendments provide clarity on the number of baccalaureate degree programs each public junior college district is authorized to implement.

Texas Education Code, §61.0512(h)(2), gives the Coordinating Board authority to approve programs generally; and Texas Education Code, chapter 130, subchapter L, grants the Coordinating Board authority to administer approval processes for baccalaureate degree programs at public junior colleges specifically. Rule 2.87, Criteria for New Baccalaureate Degree Programs, contains the criteria Coordinating Board Staff use to evaluate baccalaureate degree program proposals submitted by public junior colleges. The amended section is proposed under Texas Education Code, §130.306, which limits public junior colleges to no more than five baccalaureate degree programs at any time. The proposed amendment makes clear this statutory limitation applies to each junior college district regardless of accreditation as one institution or a district with multiple independently accredited institutions. 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 improved communication between the Coordinating Board and institutions. The proposed amendments provide clarity on the number of baccalaureate degree programs each public junior college district is authorized to implement as authorized by statute. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

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

The amendment is proposed under Texas Education Code, Sections 61.0512(h)(2), 130.302, and 130.312, which provides the Coordinating Board with the authority to administer and approve certain baccalaureate degree programs at public junior colleges.

The proposed amendments affect Texas Education Code Sections 61.0512(h)(2), 130.302, and 130.312, and 19 Texas Administrative Code ch. 2, subchapter E.

§2.87. Criteria for New Baccalaureate Degree Programs.

(a) The Board may authorize baccalaureate degree programs at a public junior college in the fields of applied science, including a degree program in applied science with an emphasis on early childhood education, applied technology, or nursing, that have a demonstrated workforce need.

(b) All proposed baccalaureate degree programs must meet the criteria set out in this subsection, in addition to the general criteria in

subchapter A, \$2.5 (relating to General Criteria for Program Approval), and subchapter F, \$2.118 (relating to Post-Approval Program Reviews), of this chapter.

(c) Each public junior college seeking to offer a baccalaureate degree program must comply with the requirements and limitations specified in Tex. Educ. Code, chapter 130, subchapter L.

(d) A public junior college offering a baccalaureate degree program must meet all applicable accreditation requirements of the Southern Association of Colleges and Schools Commission on Colleges. A public junior college that has attained accreditation by the Southern Association of Colleges and Schools Commission on Colleges is authorized to change accreditors to any accrediting agency approved by the Board under chapter 4, subchapter J of this title (relating to Accreditation).

(e) A public junior college district may not offer more than five baccalaureate degree programs at any time not-withstanding if accredited as a single institution.

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

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

TRD-202401799 Nichole Bunker-Henderson General Counsel Texas Higher Education Coordinating Board Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 427-6182

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### SUBCHAPTER G. APPROVAL PROCESS FOR NEW DOCTORAL AND PROFESSIONAL DEGREE PROGRAMS

#### 19 TAC §2.145, §2.151

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter G, §2.145 and §2.151, concerning the approval process for new doctoral and professional degree programs. Specifically, the proposed amendments include removing language from §2.145(d) regarding costs associated with external review of proposed doctoral and professional degree programs and correcting a reference cited in §2.151.

Texas Education Code, §61.0512, states that a public institution of higher education may not offer any new degree program, including doctoral and professional degrees, without Board approval.

Rule 2.145, Presentation of Requests and Steps for Implementation, sets out the steps an institution must follow in order to request a new doctoral or professional degree, as well as the approval procedures Board Staff must follow for these programs. The proposed amendment removes language requiring institutions to pay costs associated with external review of a proposed doctoral or professional program. The Coordinating Board has borne the cost of the review, this repeal conforms the text to the practice.

Rule 2.151, Revisions to Approved Doctoral or Professional Programs, outlines how an institution requests a revision or modification of an approved doctoral or professional program. The proposed amendment clarifies that an institution may request a revision or modification of the program in line with §2.9 regarding Revisions and Modifications to an Approved Program, not §2.7 regarding Informal Notice and Comment on Proposed Local Programs. This corrects a typographical error.

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 improved communication between the Coordinating Board and institutions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

**Government Growth Impact Statement** 

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

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

The amendments are proposed under Texas Education Code, Sections 61.051 and 61.0512, which provide that no new degree program may be added at any public institution of higher education except with specific prior approval of the Coordinating Board.

The proposed amendments affect Texas Education Code, Sections 61.051 and 61.0512.

#### §2.145. Presentation of Requests and Steps for Implementation.

(a) The requesting institution must submit a Planning Notification in accordance with subchapter C, §2.41 of this chapter (relating to Planning Notification: Notice of Intent to Plan), at least one year prior to submitting an administratively complete program proposal. (b) Each institution must request new doctoral and professional degree programs using the New Doctoral and Professional Degree Proposal Form available on the Board's website.

(c) Board Staff will make the determination of administrative completeness in accordance with subchapter A, §2.6 of this chapter (relating to Administrative Completeness).

(d) Board Staff shall utilize out-of-state disciplinary experts to assist in the review process to evaluate the quality of a proposed doctoral or professional program. [The institution submitting the proposal is responsible for paying the costs of the external review.]

(e) Each proposed doctoral and professional degree program is subject to Board Approval under subchapter A, §2.4(4) of this chapter (relating to Types of Approval Required).

(f) Upon Board approval, Board Staff will add the new doctoral or professional program to the institution's official Program Inventory. The Program Inventory contains the list of programs with official Board approval.

§2.151. Revisions to Approved Doctoral or Professional Programs.

An institution may request a non-substantive or substantive revision or modification to an approved doctoral or professional program under subchapter A, §2.9 [§2.7] of this chapter (relating to <u>Revisions and</u> <u>Modifications to an Approved Program</u> [informal Notice and Comment of Proposed Local Programs]).

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

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

TRD-202401802 Nichole Bunker-Henderson General Counsel Texas Higher Education Coordinating Board Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 427-6182

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## SUBCHAPTER K. APPROVAL PROCESS FOR AN APPLIED ASSOCIATE DEGREE

#### 19 TAC §§2.230 - 2.241

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter K, §§2.230 - 2.241, concerning the approval process for an applied associate degree program at public junior colleges. Specifically, the new subchapter aligns the approval process for an applied associate degree with the approval process for other degree types required under chapter 2 of this title.

Rule 2.230, Purpose, establishes a process for a public junior college to request a new applied associate degree program from the Coordinating Board.

Rule 2.231, Authority, contains statutory provisions authorizing the Coordinating Board to approve new degree programs offered by public institutions of higher education. Texas Education Code (TEC), §61.0512, permits institutions to add new certificate and degree programs only with prior approval of the Coordinating Board. TEC, §130.001, 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. TEC, §61.05151, requires that the number of semester credit hours required for the applied associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

Rule 2.232, Submission of Planning Notification, requires a public junior college to submit a Planning Notification to the Coordinating Board prior to submitting a request for a new applied associate degree. The proposed rule requires Coordinating Board staff to provide labor market information to the public junior college within 60 days of receiving the planning notification. The purpose of this section is to ensure that each institution has adequately planned for a new degree program and has information about the potential value and need for the program on a local and statewide basis. The Coordinating Board intends to provide input to each institution about both the need for the program and the value of the resulting credential.

Rule 2.233, Applied Associate Degree Length and Program Content, contains the required criteria for approval of a new applied associate degree program. These provisions ensure the quality of each program and that the program complies with relevant statutes and rules.

Rule 2.234, Approval Required for an Applied Associate Degree, subjects new applied associate degree programs to the approval levels required in subchapter A of this chapter (relating to General Provisions). Proposed programs with more than 50 percent new content require Commissioner approval.

Rule 2.235, Presentation of Requests and Steps for Implementation for a New Applied Associate Degree, lays out the steps for public junior colleges to request a new applied associate degree program. The proposed rules require Coordinating Board staff to provide informal notice and 30-day opportunity for comment to other institutions of higher education in the region. Comments received are taken into consideration during the program review process. This process is intended to ensure there is sufficient statewide and regional demand for each program without unnecessary duplication of programs.

Rule 2.236, Approval Required for a Proposed Revision to an Applied Associate Degree Program, subjects program revisions to approval by notification as required in subchapter A, §2.4(1) of this chapter (relating to Types of Approval Required) if the modifications contain less than 50 percent new content, a new degree name, a new CIP code that will not result in the funding reclassification, the addition of a new Level 1 or 2 certificate consisting of courses in the applied associate program, phasing out an existing applied associate degree program, adding or removing a Special Topics or Local Need course from the curriculum, changing the semester credit hours or contact hours, or changing the length of the applied associate degree by one semester or more. Changes to the CIP code that result in funding reclassification to a high-demand field require Coordinating Board approval. The purpose of this section is to ensure that programs are meeting regional and statewide need, meet the required statutory and rule requirements, but also provide for a streamlined process where appropriate.

Rule 2.237, Criteria for an Applied Associate Degree, requires proposed applied associate degree programs at public junior colleges to meet criteria in subchapter A, §2.5 of this chapter (relating to General Criteria for Program Approval). This requirement ensures that all programs meet the same standards required by statute and rule, and align with the statewide plan for higher education while also providing credentials of value to students.

Rule 2.238, Approval and Semester Credit Hours, subjects new applied associate degrees to the 60 semester credit hours minimum set by the institutional accreditor. Programs exceeding the 60-hour limit must provide a compelling academic reason for the excess hours.

Rule 2.239, Post-Approval Program Reviews, requires the Coordinating Board to conduct post-approval reviews of applied associate degree programs as required in subchapter I of this chapter (relating to Review of Existing Degree Programs).

Rule 2.240, Deactivation and Phasing Out an Applied Associate Degree Program, requires that colleges request phase out of an approved applied associate degree program in accordance with subchapter H of this chapter (relating to Phasing Out Degree and Certificate Programs).

Rule 2.241, Effective Dates of Rules, establishes the effective date of the new rule as September 1, 2024.

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 adopting this rule will be a uniform process for approval of proposed degree programs, specifically the applied associate degree. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

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

The new sections are proposed under Texas Education Code, Sections 61.051, which provides the Coordinating Board with the authority to coordinate the efficient and effective use of higher education resources and avoid unnecessary duplication; 61.0512, which states that a public institution of higher education may not offer any new degree program without Coordinating Board approval; and 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.

The proposed new sections affect Texas Education Code, Sections 61.051, 61.0512, and 130.001.

#### §2.230. Purpose.

The purpose of this subchapter is to establish the process for an institution to request approval for an applied associate degree program from the Board.

#### §2.231. Authority.

The authority for this subchapter is Texas Education Code, §§61.051 and 61.0512, which provide that no new degree or certificate program may be added at any public institution of higher education except with specific prior approval of the Board. Texas Education Code, §130.001, grants the Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges. Texas Education Code, §61.05151, requires that the number of semester credit hours required for the applied associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

#### §2.232. Submission of Planning Notification.

An institution of higher education seeking approval to offer a new degree program under this subchapter must submit a Planning Notification to Board Staff in accordance with subchapter C of this chapter (relating to Preliminary Planning Process for New Degree Programs) prior to submitting an administratively complete request for a new applied associate degree proposal.

#### *§2.233. Applied Associate Degree Length and Program Content.*

(a) An applied associate degree may be called an associate of applied arts (AAA) or associate of applied science (AAS).

(b) The AAS program may serve as a foundation for the Bachelor of Applied Science (BAS), Bachelor of Applied Arts and Sciences (BAAS) and the Bachelor of Applied Technology (BAT) degree.

(c) Each applied associate degree program shall provide the necessary workforce skills, knowledge, and abilities necessary to attain entry-level employment in an occupation.

(1) The curriculum shall include a minimum of 15 semester credit hours of general education courses.

(2) The remaining curriculum may include both Workforce Education Manual (WECM) and Lower-Division Academic Course Guide Manual (ACGM) courses directly related to the discipline.

(3) Business and industry experts shall provide substantial input into curriculum design through participation in an advisory committee.

(4) The institution shall ensure basic and career technical/workforce skills are integrated into the curriculum.

(5) The institution has an enrollment management plan for the program.

(6) The institution shall review and consider for inclusion in the program skill standards recognized by the Texas Skill Standards Board, if they exist for the discipline.

#### *§2.234. Approval Required for an Applied Associate Degree.*

A public junior college, technical college, state college, or any general academic institution authorized by statute to offer the program may request approval for a new applied associate degree.

(1) A proposed applied associate degree is subject to Assistant Commissioner approval under §2.4(2) of this chapter (relating to Types of Approval Required), and in accordance with applicable provisions under subchapter A of this subchapter (relating to General Provisions), except as specifically provided by this rule.

(2) An institution in the Texas State Technical College system may offer the associate of applied science degree in accordance with the provisions of Texas Education Code, §135.04.

#### *§2.235. Presentation of Requests and Steps for Implementation for a* New Applied Associate Degree.

(a) A requesting institution may only submit a Planning Notification in accordance with subchapter C of this chapter (relating to Preliminary Planning Process for New Degree Programs) using the forms available on the Coordinating Board's website.

(b) The institution shall demonstrate that the proposed program obtained institution and governing board approval prior to submission.

(c) A requesting institution may only submit an application to offer a new applied associate degree using the forms available on the Coordinating Board's website.

(d) Not later than the sixtieth (60) 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 region in accordance with §2.7 of this chapter (relating to Informal Notice and Comment on Proposed Local Programs).

(e) Board Staff will make the determination of administrative completeness in accordance with §2.6 of this chapter (relating to Administrative Completeness).

(f) The Assistant Commissioner, Commissioner, or Board, as applicable, shall approve or deny the proposed program within the timelines specified in §2.4 of this chapter (relating to Types of Approval Required), after receipt of the complete program proposal. If the Assistant Commissioner, Commissioner, or Board does not act to approve or deny the proposal within one year of administrative completeness, the program is considered approved.

(g) Upon approval, Board Staff will add the new degree program to the institution's official Program Inventory. The Program Inventory contains the list of degrees and certificates with Board approval.

## <u>§2.236.</u> Approval Required for a Proposed Revision to an Applied Associate Degree Program.

An institution may request a revision or modification to an approved applied associate degree program.

(1) If the proposed applied associate degree program revision contains not greater than 50 percent new content, the proposal will be subject to approval by notification in accordance with §2.4(1) of this chapter (relating to Types of Approval Required).

(2) If the proposed applied associate degree program revision is a change to the CIP code that will result in the funding reclassification of the program to a high-demand field, the proposal will be subject to Assistant, Associate, or Deputy Commissioner, as applicable for review and approval.

(3) If the proposed applied associate degree program revision includes any of the following, the proposal is subject to approval by notification in accordance with §2.4(1) of this chapter:

(A) A change to the name of an applied associate de-

gree;

(B) A change to the CIP code of an applied associate degree program that will not result in the funding reclassification of the degree;

(C) The addition of a new Level 1 or Level 2 Certificate to an approved applied associate degree program. If a new Level 1 or Level 2 Certificate is added to an approved applied associate degree program, the new certificate content shall consist of courses included in the approved applied associate program;

(D) The phase-out and closure of a credential and the suspension of new student enrollment under §2.171 of this chapter (relating to Program Phase-Out Notification);

(E) The discontinuation of a credential to close the program and remove it from the institution's program inventory;

(F) Special Topics or Local Need courses are added to or removed from the curriculum;

(G) The number of SCH in the credential is changed or, for a CE program, the length is changed by 100 or more contact hours; or

(H) The length of the credential is changed by one semester or more.

#### §2.237. Criteria for An Applied Associate Degree.

(a) A proposed applied associate degree program shall meet the criteria set out in this subchapter, in addition to the general criteria in §2.5 of this chapter (relating to General Criteria for Program Approval).

(b) Board staff shall ensure that the institution certifies and provides required evidence that a proposed applied associate degree meets the criteria in §2.5 of this chapter.

(c) The institution shall certify that the proposed program complies with all applicable provisions contained in this subchapter and subchapter A of this chapter (relating to General Provisions).

#### §2.238. Approval and Semester Credit Hours.

An applied associate degree is limited to 60 SCH unless the institution determines that there is a compelling academic reason for requiring completion of additional semester credit hours for the degree (Texas Education Code, §61.05151). If the minimum number of semester credit hours required to complete a proposed applied associate program exceeds 60, the institution shall provide detailed documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 60-semester credit hour limit. Board Staff will review the documentation provided and make a determination to approve or deny a request to exceed the 60-semester credit hour limit.

#### §2.239. Post-Approval Program Reviews.

Board staff conduct post-approval reviews in accordance with subchapter I of this chapter (relating to Review of Existing Degree Programs).

*§2.240. Deactivation and Phasing Out an Applied Associate Degree Program.* 

An institution may request to phase out an applied associate degree program under subchapter H of this chapter (relating to Phasing Out Degree and Certificate Programs).

§2.241. Effective Date of Rules.

This rule applies to each applied associate degree program submitted by an institution of higher education for 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 26, 2024.

TRD-202401842 Nichole Bunker-Henderson General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 9, 2024

For further information, please call: (512) 427-6182

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## SUBCHAPTER L. APPROVAL PROCESS FOR A CAREER AND TECHNICAL EDUCATION CERTIFICATE

#### 19 TAC §§2.260 - 2.268

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter L, §§2.260 - 2.268, concerning the approval process for a career and technical education certificate. Specifically, this new section will clarify the categories of career and technical education certificates that may be developed by institutions and the process by which institutions may submit the certificates to receive approval. This new section will also provide clarification on certificate titles, program length and content. Lastly, the proposed rule describes the process required for an institution to submit a proposed revision or phaseout and closure of a certificate program.

Rule 2.260, Purpose, states that the purpose of the subchapter is to outline a process for institutions to request approval for new career and technical education certificates from the Coordinating Board.

Rule 2.261, Authority, contains statutory provisions authorizing the Coordinating Board to approve career and technical education certificates offered by Texas public institutions of higher education. Texas Education Code, §61.0512, permits institutions to add new certificate programs only with the specific prior approval of the Coordinating Board.

Rule 2.262, Certificate Titles, Length and Program Content, lists the types of career and technical education certificates institutions may offer and describes characteristics of those certificates. The certificate categories and characteristics in this proposed rule align with longstanding industry standards, as well as with certificate definitions used for purposes of community college funding, as adopted by the Coordinating Board in rule.

The proposed rule contains several categories of certificates already in longstanding use by institutions of higher education, some of which are defined in rule in detail for the first time. These categories include Level 1 Certificates, Level 2 Certificates, Advanced Technical Certificates, Continuing Education Certificates, Enhanced Skills Certificates, and Occupational Skills Awards. The proposed rule specifies the purpose of each certificate type, requirements, prerequisites, and thresholds for certificate lengths where relevant.

The proposed rule also incorporates two newer categories of certificate types: the Institutional Credential Leading to Licensure or Certification (ICLC) and the Third-Party Credential. These definitions align certificate approval rules with categories of credentials used in the new community college finance model as adopted by the Coordinating Board in rule. An ICLC is an institutional credential that has identifiable skill proficiency leading to licensure or certification. The definition is the same as an Occupational Skills Award, but an ICLC may provide training for an occupation that is not included in the Local Workforce Development Board's Target Occupation list. A Third-Party Credential is a certificate for which a third-party provider develops the program content and assessments to evaluate student mastery of content and awards the credential upon successful completion. The institution may embed the credential in an existing course or program or offer the credential as a stand-alone program. The proposed definition includes several criteria for this certificate type, including the inclusion of the certificate in the American Council on Education's (ACE) National Guide.

Rule 2.263, Criteria for Approval, provides clarity to the institution on the content and process requirements that the institution must meet in seeking approval for a certificate. The proposed rule specifically includes the documentation requirements that the institution must provide when seeking approval of a certificate for which no graduate or wage data exist to demonstrate that the certificate is a Credential of Value, including proxy data from a similar certificate program and an attestation from regional employers regarding the hiring of graduates from the program. Defining these documentation requirements will ensure that institutions provide evidence of the value of the new certificate in the labor market, thereby aligning with requirements for the funding of credentials used in the new community college finance model as adopted by the Coordinating Board in rule.

Rule 2.264, Approval Required, defines the factors and the level of approval for a new certificate. Specifically, a proposed new certificate that contains 50 percent or more new content will be subject to expedited review by the Assistant Commissioner. Expedited review will shorten the certificate approval process and must be indicated in the rule. The proposed rule provides clarification to institutions that if a new certificate is selected from an inventory of certificates that the Coordinating Board previously identified as a Credential of Value, the approval will be by notification only. An inventory of certificates that have been identified as Credentials of Value will provide institutions the option of seeking approval for a program that has already demonstrated value in the labor market. Finally, the proposed rule specifies that Third-Party Credentials, Occupational Skills Awards, Advanced Technical Certificates, and Enhanced Skills Certificates will be subject to approval by notification only, thereby significantly shortening the certificate submission and approval time, which will in turn shorten the time to program implementation.

Rule 2.265, Presentation of Requests and Steps for Approval of Proposed New Career and Technical Education Certificates, clarifies that an institution is required to submit an application prior to offering a new Continuing Education Certificate, Level 1 Certificate, Level 2 Certificate, Advanced Technical Certificate, Enhanced Skills Certificate, Occupational Skills Award, Institutional Credential Leading to Licensure or Certification, or ThirdParty Credential, and that the institution must gain approval from its governing board prior to submission. This clarification is important as new certificates are now included in these requirements, which is integral in implementing the community college finance model as adopted by the Coordinating Board in rule. The proposed rule also provides clarity on the Coordinating Board approval process and outlines the criteria, timeline, and process for approvals, as well as an institution's option to appeal a decision to the Commissioner of Higher Education. By outlining the certificates that are subject to the proposed rule; the process for submission, approval, and appeal; and the relevant timelines; institutions will have clarity for the planning and implementation of all certificates.

Rule 2.266, Approval Required for a Proposed Revision to a Certificate Program, defines the factors and levels of approval for a revised certificate. Specifically, a proposed revision to a certificate that contains not greater than 49 percent new content will be subject to approval by notification. The proposed rule provides clarity for the specific types of revisions that are allowable and subject to approval by notification. The delineation of the specific certificate revisions that are subject to notification only will shorten the revised certificate submission and approval time, which will in turn shorten the time to program implementation. The proposed rule also clarifies that if a revised certificate includes a change to the Classification of Instructional Program (CIP) code that will result in the funding reclassification of the certificate program to a high-demand field, the proposal will be subject to Assistant Commissioner review and approval. A CIP code change to a high-demand field in the community college funding model would result in the funding of a certificate at a higher rate. Therefore, because of the potential funding impact of this type of CIP code change, review by the Assistant Commissioner is warranted.

Rule 2.267, Phase-Out and Closure of a Certificate Program, provides that institutions must notify and provide a phase-out plan to the Coordinating Board to close a certificate program. This plan is to ensure students are provided the opportunity to be notified and complete the program without penalty.

Rule 2.268, Effective Date of Rules, defines the date of rule implementation. The Coordinating Board intends to adopt a delayed effective date of September 1, 2024, in order to give institutions and the agency time to adopt revised processes in alignment with the new rule.

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 approval process for a career and technical education certificate. The establishment of this rule will provide guidance to institutions on which certificates may be submitted for approval and the process to complete the submission. 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 sections are proposed under Texas Education Code, §61.0512, which provides the Coordinating Board with the authority to approve new certificate programs at institutions of higher education. Texas Education Code, §§130.001 and 130.008, grant the Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to a public junior college certificate or degree program. The Board has the responsibility to adopt policies and establish general rules necessary to carry out statutory duties related to a certificate or degree program with respect to Texas State Technical College under Texas Education Code, §135.04, and the Josey School of Vocational Education under Texas Education Code, §96.63.

The proposed new sections affect Texas Education Code, §130A.101.

#### §2.260. Purpose.

The purpose of this subchapter is to establish the process for an institution to request approval for a new or revised career and technical education certificate program from the Board.

#### §2.261. Authority.

The authority for this subchapter is Texas Education Code, §§61.003(12), 61.051, 61.0512, and 96.63, which provide that no new degree or certificate program may be added at any public institution of higher education except with specific prior approval of the Board. Texas Education Code, §§130.001 and 130.008, grant the Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to a public junior college certificate or degree program. The Board has the responsibility to adopt policies and establish general rules necessary to carry out statutory duties related to a certificate or degree program with respect to Texas State Technical College under Texas Education Code, §135.04, and the Josey School of Vocational Education under Texas Education Code, §96.63.

#### *§2.262. Certificate Titles, Length, and Program Content.*

(a) Career and Technical Education Certificate--A post-secondary credential, other than a degree, which a student earns upon successful completion of a career and technical education 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.

(b) Certificates subject to this subchapter are defined as follows:

(1) Advanced Technical Certificate (ATC)--has a specific associate or baccalaureate degree or junior level standing in an approved baccalaureate degree program as a prerequisite for admission. It consists of at least 16 semester credit hours and no more than 45 semester credit hours and must be focused, clearly related to the prerequisite degree, and justifiable to meet industry or external agency requirements.

(2) Continuing Education Certificate--is awarded for completion of a program of instruction that meets or exceeds 360 contact hours and earns continuing education units. The certificate program is intended to prepare the student to qualify for employment; to qualify for employment advancement; or to bring the student's knowledge or skills up to date in a particular field or profession.

(3) Enhanced Skills Certificate (ESC)--a certificate associated with an applied associate degree program intended to provide advanced skills identified by business and industry that are not part of the applied associate degree. The certificate must be clearly defined in course content and outcomes. It must consist of at least six (6) semester credit hours and no more than twelve (12) semester credit hours. An ESC may extend an applied associate degree to an overall total that must not exceed 72 semester credit hours. An ESC is awarded concurrently with a degree but may not be considered to be an intrinsic part of the degree or be used to circumvent the 60-semester credit hour associate degree limitation.

(4) Institutional Credential Leading to Licensure or Certification (ICLC)--is awarded by an institution upon a student's completion of a course or series of courses that represent the achievement of identifiable skill proficiency leading to licensure or certification. This definition includes a credential that meets the definition of an Occupational Skills Award in all respects except that the program may provide training for an occupation that is not included in the Local Workforce Development Board's Target Occupations list.

(5) Level 1 Certificate--is designed to provide the necessary academic skills and the workforce skills, knowledge, and abilities necessary to attain entry-level employment or progression toward a Level 2 Certificate or an applied associate degree, with at least 50 percent of course credits drawn from a single technical specialty. A Level 1 Certificate must be designed for a student to complete in one calendar year or less time and consists of at least 15 semester credit hours and no more than 42 semester credit hours.

(6) Level 2 Certificate--consists of at least 30 semester credit hours and no more than 51 semester credit hours.

(7) Occupational Skills Award (OSA)--a sequence of courses that meets the minimum standard for program length specified by the Texas Workforce Commission for the federal Workforce Innovation and Opportunity Act program (9-14 semester credit hours for credit courses or 144-359 contact hours for continuing education courses). An OSA must possess the following characteristics:

(A) The content of the credential must be recommended by an external workforce advisory committee, or the program must provide training for an occupation that is included on the Local Workforce Development Board's Target Occupations list; (B) In most cases, the credential should be composed of Workforce Education Course Manual (WECM) courses only. However, lower-division courses from the Academic Course Guide Manual (ACGM) may be used if recommended by the external committee and if appropriate for the content of the credential;

(C) The credential complies with the Single Course Delivery guidelines for WECM courses; and

(D) The credential prepares students for employment in accordance with guidelines established for the Workforce Innovation and Opportunity Act.

(8) Third-Party Credential--A certificate as defined in Texas Education Code, §61.003(12)(C). A Third-Party Credential meets the following requirements:

(A) The third-party credential is listed in the American Council on Education's ACE National Guide with recommended semester credit hours;

(B) The third-party credential program content is either embedded in a course, embedded in a program, or is a stand-alone program;

(C) The third-party credential is conferred for successful completion of the third-party instructional program in which a student is enrolled;

(D) The third-party credential is included on the workforce education, continuing education, or academic transcript from the college;

(E) The third-party provider of the certificate develops the instructional program content, develops assessments to evaluate student mastery of the instructional content, and confers the third-party credential; and

(F) The third-party credential meets the requirements in §13.556 of this part (relating to Performance Tier: Fundable Outcomes).

#### §2.263. Criteria for Approval.

(a) Each certificate program shall meet the requirements of §2.5, except subsection (a)(3), of this chapter (relating to General Criteria for Program Approval); and

(b) Each certificate program must provide the necessary technical and workforce skills necessary to attain entry-level or advanced employment in a related occupation, and shall meet the following requirements:

(1) The certificate program may include both Workforce Education Course Manual (WECM) and Lower-Division Academic Course Guide Manual (ACGM) courses that are directly related to the discipline.

(2) Business and industry experts shall provide substantial input into curriculum design through participation in an advisory committee.

(3) The institution shall integrate basic and career technical/workforce skills into the curriculum.

(4) The institution has reviewed and considered for inclusion in the curriculum of the program applicable skill standards recognized by the Texas Workforce Investment Council, if they exist for the discipline.

(c) A Level 1 Certificate, composed of either workforce or continuing education courses, may only be approved if the program meets or exceeds 360 contact hours.

(d) A course or program that meets or exceeds 780 contact hours in length shall result in the award of appropriate semester credit hours and be applicable to a career and technical education certificate or an applied associate degree program.

(c) The institution shall certify that the proposed certificate program complies with all applicable provisions contained in divisions of this subchapter and subchapter A of this chapter (relating to General Provisions).

(f) The Coordinating Board shall ensure that each institution certifies and provides required evidence that a proposed career and technical education certificate program meets the criteria in §2.5, except paragraph (3), of this chapter.

(g) A proposed new certificate for which there is no graduate and wage data shall be determined to be a Credential of Value, as defined in §13.556(b) of this part (relating to Performance Tier: Fundable Outcomes), based on one or more of the following documentation criteria:

(1) An attestation from one or more regional employers that the employer will hire graduates of the program and the starting wage at which the employer would pay the graduate;

(2) Graduate employment and wage data for an essentially similar program from a different institution of higher education in Texas; or

(3) Graduate employment and wage data for an essentially similar program from an institution of higher education in a state other than Texas.

#### §2.264. Approval Required.

An application for approval of a new certificate program under this subchapter is subject to the following levels of approval:

(1) If the proposed certificate program, other than a thirdparty credential, contains 50 percent or more new content, the proposal will be subject to Assistant Commissioner expedited review and approval under §2.4(2)(B)(ii) of this chapter (relating to Types of Approval Required). In this subchapter, Assistant Commissioner means the Assistant, Associate, or Deputy Commissioner designated by the Commissioner.

(2) If the proposed certificate program is included in the inventory of certificates that the Coordinating Board previously identified as Credentials of Value, the proposal will be subject to approval by notification under §2.4(1) of this chapter.

(3) A Third-Party Credential, Occupational Skills Award, Advanced Technical Certificate, and Enhanced Skills Certificate will be subject to approval by notification under 2.4(1) of this chapter.

*§2.265. Presentation of Requests and Steps for Approval of Proposed* New Career and Technical Education Certificates.

(a) An institution shall submit an application prior to offering a new Continuing Education Certificate, Level 1 Certificate, Level 2 Certificate, Advanced Technical Certificate, Enhanced Skills Certificate, Occupational Skills Award, Institutional Credential for Licensure or Certification, or Third-Party Credential using the forms available on the Coordinating Board's website.

(b) The institution's application shall demonstrate that the governing board approved the proposed certificate program prior to submission.

(c) Board Staff will make the determination of administrative completeness in accordance with §2.6 of this chapter (relating to Administrative Completeness).

(d) The Assistant Commissioner shall approve or deny the proposed certificate program within 60 days, after receipt of the complete certificate program proposal. If the Assistant Commissioner does not act to approve or deny the proposal within one year of administrative completeness, the certificate program is considered approved.

(e) Upon approval, Board Staff will add the new career and technical education certificate program to the institution's Program Inventory. The Program Inventory contains the institution's list of degrees and certificates approved by the Board.

(f) If the Assistant Commissioner denies the proposed certificate program, the institution may appeal the decision to the Commissioner. The Commissioner may, within 60 days after appeal, at his or her sole discretion:

(1) deny the proposed certificate program;

(2) approve the proposed certificate program; or

(3) allow the institution the opportunity to cure deficiencies in the proposed program.

(g) A new certificate program must be implemented within 24 months of the approved implementation date stated in the Coordinating Board approval letter. After 24 months, the institution must submit an application for approval of a new certificate program.

<u>§2.266.</u> Approval Required for a Proposed Revision to a Certificate Program.

An institution may request a revision or modification to an approved certificate program under §2.9(c) of this chapter (relating to Revisions and Modifications to an Approved Program).

(1) If the proposed certificate program revision contains not greater than 49 percent new content, the proposal will be subject to approval by notification.

(2) If the proposed certificate program revision is a change to the Classification of Instructional Program code that will result in the funding reclassification of the certificate program to a high-demand field, the proposal will be subject to Assistant Commissioner review and approval,

(3) If the proposed certificate program revision includes any of the following, the proposal will be subject to approval by notification:

(A) A change to the name of a certificate.

(B) A change to the Classification of Instructional Program code of the certificate program that will not result in the funding reclassification of the certificate.

(C) The revised certificate program is included in the inventory of certificates that the Coordinating Board previously identified as Credentials of Value.

(D) The addition of a new credential to an approved program, including a Level 1 Certificate or Level 2 Certificate to an Applied Associate Degree or an Occupational Skills Award to a Level 1 Certificate or Level 2 Certificate. If a new credential is added to an approved program, the new credential content shall consist of courses included in the approved program.

(E) The phase-out and closure of a credential, including the suspension of new student enrollment, under §2.171 of this chapter (relating to Program Phase-Out Notification).

(F) The certificate revision includes any of the follow-

(*i*) Special Topics or Local Need courses are added to or removed from the curriculum;

*(ii)* The number of semester credit hours in the credential is changed or, for a Continuing Education Certificate, the length is changed by 100 or more contact hours;

(*iii*) The length of the credential is changed by one semester or more;

(iv) The certificate level is changed from Level 1 to Level 2; or

(v) The certificate is changed from a Level 2 to a Level 1.

§2.267. Phase-Out and Closure of a Certificate Program.

An institution may request to phase-out and close a certificate program under §2.171 of this chapter (relating to Program Phase-Out Notification).

#### §2.268. Effective Date of Rules.

(a) Any certificate subject to approval under this subchapter offered for the first time on or after September 1, 2024, is subject to this rule.

(b) Section 2.266, Approval Required for a Proposed Revision to a Certificate Program, is effective on 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 26, 2024.

TRD-202401843

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 9, 2024

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

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## SUBCHAPTER O. APPROVAL PROCESS AND REQUIRED REPORTING FOR SELF-SUPPORTING DEGREE PROGRAMS

#### 19 TAC §§2.350 - 2.358

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter O, §§2.350 - 2.358, relating to the Approval Process and Required Reporting for Self-Supporting Degree Programs offered by public institutions of higher education in Texas. The new rules will replace existing rules regarding approval of self-supported courses and programs in Chapter 4, Subchapter Q, relating to Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions, which are repealed under separate rule making.

Self-supporting courses and programs have historically been integrated into distance education rules and processes despite self-supporting education not necessarily being delivered off-campus or through distance education. A separate subchapter emphasizes that regardless of the delivery method, self-supporting courses and programs have specific requirements to which they must adhere. Rule 2.350, Purpose, establishes the purpose of the subchapter, to provide rules and regulations for public institutions of higher education delivering self-supporting programs.

Rule 2.351, Authority, contains the legal authority for Chapter 2, Subchapter O, which is contained in Texas Education Code, §§61.0512(c), 61.059(a, and 61.051.

Rule 2.352, Definitions, provides key definitions related to selfsupporting programs and program funding models. Additional general definitions related to program approval can be found in Chapter 2, Subchapter A, §2.3.

Paragraph (1) ("Degree Program Funding Model") provides clarity for the field as to what is being referenced in the rules.

Paragraph (2) ("Formula Funded Degree Program"), and paragraph (5) ("Self-Supporting Degree Program") provides definitions that emphasize that an entire degree program or just a track within an existing degree program is subject to requirements based on the funding model for the degree or track.

Paragraph (3) ("Formula Funding"), amended from §4.272 with additional Education Code references.

Paragraph (4) ("Self-Supporting Courses and Programs"), amended from §4.272 to clarify that they are funded through assessment of fees to the student.

Rule 2.353, Standards and Criteria for Delivery of Self-Supporting Courses and Programs, establishes basic criteria for institutions to adhere to when delivering self-supporting programs. This section amends and simplifies existing standards criteria in §§4.274 - 4.277 and limits standards and criteria to those applicable only to self-supporting courses, certificates, and degree programs.

Rule 2.354, Approval of New Self-Supporting Programs and Tracks, outlines the process for applying for a new degree program with a self-supported funding model or with a self-supported track embedded in the new proposed program. To streamline requirements for institutions, institutions include the funding model information and costs for the degree program in the new degree program request form. This process is already in place through the Coordinating Board's new program approval forms.

Rule 2.355, Approval of Changes to Degree Program Funding Models, outlines the process for institutions to request changes to an existing approved degree program's funding model. Clarity added here emphasizes that a degree program funding model change could be changing the funding model entirely or adding a new funding model track to the degree program. The intent of this clarity is to (1) recognize that changing or adding a funding structure of a program is a significant departure from how the program was originally approved and (2) to ensure any new costs to the program for students is still in alignment with the existing general criteria for program approval as outlined in §2.5 of this subchapter relating to General Criteria for Program Approval.

Previous rules approved by the Board in January 2023, and effective September 1, 2023, specify that changing a funding model of a degree program is a substantive change and therefore changes to degree program funding models must adhere to requirements in §2.9(a)-(b) of this subchapter relating to Revision and Modifications to an Approved Program.

Rule 2.356, Modifications and Phase Out of Self-Supporting Programs, clarifies that requests to phase out or modify existing self-supporting programs, other than as outlined in §2.355, institutions shall follow the same requirements as outlined in §2.9 of this subchapter relating to Revision and Modifications to an Approved Program.

Rule 2.357, Reporting of Self-Supporting Courses, Certificates and Degree Programs, amends current required reporting for self-supporting programs in the CBM 00X as currently outlined in §4.274(5)-(6) and clarifies that required reporting includes courses in self-supported tracks of degree programs. There has been limited reporting of existing self-supporting courses in degrees and tracks across the state despite this reporting currently being a requirement in rule. To maintain an up-to-date program inventory for public institutions, the Coordinating Board must collect the appropriate information from institutions.

Rule 2.358, Effective Dates, ensures that mandatory reporting on the CBM00X does not start until the fall 2025 awards reporting cycle.

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 subchapter will be a separate and well-defined process for approval of self-supporting courses and degree programs that is more closely tied to statute. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

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

The new sections are proposed under Texas Education Code (TEC), §61.0512(c), which charges the Coordinating Board with ensuring that proposed academic programs have adequate financing from legislative appropriations or other sources of funding. TEC, §61.059(a), also charges the Coordinating Board to implement funding policies that allocate resources efficiently and provide incentives for programs of superior quality and provide incentives for supporting the master plan developed under TEC, §61.051.

The proposed amendments affect Texas Education Code  $\S$  (61.051, 62.051(c), and 61.059(a).

#### §2.350. Purpose.

This subchapter establishes rules for all public institutions of higher education in Texas regarding the delivery of self-supporting courses and programs, including those delivered through off-campus or distance education instruction. This subchapter does not apply to courses not delivered for academic credit.

#### §2.351. Authority.

The authority for this subchapter is Texas Education Code, §61.0512(c), which charges the Coordinating Board with ensuring that proposed academic programs have adequate financing from legislative appropriations or other sources of funding. Texas Education Code, §61.059(a), also charges the Board to implement funding policies that allocate resources efficiently and provide incentives for programs of superior quality and provide incentives for supporting the master plan developed under Texas Education Code, §61.051.

#### §2.352. Definitions.

(a) Degree Program Funding Model--The mechanism by which an institution acquires funding to support a new or existing academic degree program. Typically, degree programs are funded through student fees only (self-supported) or a combination of student fees and state funding (formula funded).

(b) Formula Funded Degree Program--A degree program or track within a degree program for which the institution reports students for formula-funding.

(c) Formula Funding--The method used to allocate appropriated sources of funds among institutions of higher education as required by Education Code, §61.059, chapter 130 or 130A. A formula-funded course is a for credit course for which an institution is authorized to submit semester credit hours or the equivalent for formula funding.

(d) Self-Supporting Courses and Programs-- For credit courses, certificates, and degree programs whose semester credit hours are not submitted for formula funding, and which are funded through the assessment of student fees by the institution.

(c) Self-Supporting Degree Program--A degree program or track within a degree program for which the institution does not receive formula funding and which are funded through the assessment of student fees by the institution.

## *§2.353.* Standards and Criteria for Delivery of Self-Supporting Courses and Programs.

An institution of higher education enrolling students in a self-supporting course or program shall:

(1) Comply with the standards and criteria of one of the THECB-recognized regional accrediting organizations as defined in §4.192 of this chapter (relating to Recognized Accrediting Organizations);

(2) Ensure each instructional site for a self-supporting program be of sufficient quality for the programs and courses offered; (3) Provide each student with equivalent academic support services as a student enrolled in a formula-funded course or program; and

(4) Select and evaluate faculty by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for formula funded courses and programs.

#### <u>§2.354.</u> Approval of New Self-Supporting Programs and Tracks. (a) Requests for Self-Supporting Status for New Programs.

(1) A Public Community or Technical College, Public University, or Health Related Institution may request Coordinating Board approval to offer a degree program or track under self-supporting status in its application materials for the proposed program. The determination of self-supporting status will be approved according to the same approval levels required for the proposed new program approval outlined in 19 TAC Ch. 2 and any applicable criteria under this subchapter.

(2) Board Staff will evaluate the request for self-supporting status according to:

(A) Program Approval. A proposed new program, including one that is self-supported or has a proposed self-supporting track, is subject to approval according to the criteria listed in §2.5 of this subchapter (relating to General Criteria for Program Approval).

(B) Self-Supporting Status. An institution that proposes to offer a degree program as self-supporting is subject to the additional criteria and approval under this subchapter.

(b) Approval. If the request for self-supporting status is approved for the new degree program, Coordinating Board staff will add the program to the institutions' inventory of programs maintained and publicly available for each public institution.

*§2.355. Approval Process for Changes to Degree Program Funding Models.* 

(a) An institution may request a change in the degree program funding model of an approved program. A request to change the degree program funding model for an existing approved degree program must follow the approval procedures outlined in §2.9(a)-(b) of this subchapter (relating to Revisions and Modifications to an Approved Program), outlining the requirements to process and approve substantive revisions and modifications.

(b) Changes to degree program funding models include, but are not limited to:

(1) Changing the degree program funding model from selfsupporting to formula funding, or vice versa.

(2) The addition of a new or removal of an existing selfsupporting or formula-funded degree program track.

(c) An institution seeking a substantive revision to a degree program funding model shall demonstrate how the proposed revision aligns to the criteria in §2.5 of this subchapter (relating to General Criteria for Program Approval), and approval is subject to that section.

(d) An institution shall seek approval using the forms developed by the Coordinating Board.

(e) An institution shall certify the program has not otherwise been substantially revised since its initial approval but is not required to obtain additional approval for the program under the current rules.

§2.356. Revisions and Phase Out of Approved Self-Supporting Programs.

(a) An institution seeking to modify an existing approved self-supporting degree program, except for a funding model change as outlined in 2.355 of this subchapter (relating to Approval Process for

Changes to Degree Program Funding Models), must follow substantive and non-substantive degree program revisions as outlined in 19 TAC §2.9.

(b) An institution seeking to phase out a degree program that is self-supporting must follow the policies outlined under subchapter H of this chapter (relating to Phasing Out Degree and Certificate Programs).

<u>§2.357.</u> Reporting of Approved Self-Supporting Courses, Certificates and Degree Programs.

Each institution shall report the following to the Coordinating Board in the manner prescribed by the CBM 00X Reporting Manual:

(1) Enrollments, courses, number of semester credit hours, and graduates associated with each self-supporting course, certificate, degree program or degree program track offered by the institution; and

(2) Fees charged to students for self-supporting courses in accordance with general institutional accounting practices.

#### §2.358. Effective Dates.

 $\underbrace{(a) \quad \text{Sections } 2.530 \ - \ 2.535 \ \text{are effective immediately upon}}_{adoption.}$ 

(b) Section 2.536 is effective November 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 26, 2024.

TRD-202401844 Nichole Bunker-Henderson General Counsel Texas Higher Education Coordinating Board Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 427-6182

CHAPTER 10. TEXAS WORKS

## SUBCHAPTER TT. TEXAS WORKING OFF-CAMPUS: REINFORCING KNOWLEDGE AND SKILLS (WORKS) INTERNSHIP PROGRAM

#### 19 TAC §§10.910 - 10.917

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter TT, §§10.910 - 10.917, concerning the establishment of internships for Texas undergraduate college students and Texas employers to develop and provide paid internship opportunities. These internships are funded in part by the state of Texas to enable students employed through the program to attend public or private institutions of higher education in Texas while exploring career options, developing, and improving career readiness, and strengthening workforce skills. Specifically, the Texas Works rules will provide more clarity of program processes and requirements. The proposed new rules will provide closer alignment to the statutory language, support efficiencies in program implementation by the workforce, and help to increase program participation among employers and students.

Texas Education Code (TEC), Chapter 56, Subchapter E-1, §§56.0851 - 56.0857, requires the Coordinating Board to adopt rules for the administration of the program.

Rule 10.910, Authority and Purpose, the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program is authorized by TEC, Chapter 56, Subchapter E-1, §§56.0851 - 56.0857, with the purpose of funding Texas student internships, with the intention of enabling students employed through the program to explore career options, become career ready, strengthen marketable skills, and attend institutions of higher education.

Rule 10.911, Definitions, provides clarity of the words and terms that are integral to understanding the administration of the rules.

Rule 10.912, Employer Eligibility and Participation Requirements, defines the employer eligibility and participation requirements, which encompass the following: must be a private nonprofit, for-profit, or governmental entity, have an agreement with the Coordinating Board, employ students within their career interest in nonpartisan and nonsectarian activities, and identify the marketable skills to be gained from the internship. The internship positions are to supplement and not supplant normal positions, full wages and benefits are to be covered by the eligible employer and only eligible wages are to be submitted to the Coordinating Board for reimbursement. Eligible employers must demonstrate their capacity to implement the program and follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admission or employment. Public or private institutions of higher education and career schools are not eligible to participate in the Texas Works program.

Rule 10.913, Employer Agreement, the employer agreement defines the roles and responsibilities, base wages, Coordinating Board reimbursement amounts, minimum work hours, employment laws, and defines the reporting terms and conditions. This agreement is to be held between the Coordinating Board and the eligible employer.

Rule 10.914, Employer Reimbursement, defines the employer reimbursement approach. Employer reimbursement is to take place upon the completion of reporting requirements per the program guidelines.

Rule 10.915, Qualified Internship Opportunity, defines a qualified internship opportunity. A qualified internship must meet the following components: marketable skills are to be identified, internships must be paid, a minimum of 96 hours in length, are not to be political or sectarian, no more than 25% of the internship work can be administrative and no more than 50% of the eligible employer's workforce may be interns. Federal work-study may not be utilized towards the internship hourly wages and the Coordinating Board sets the maximum number of internship opportunities per eligible employer. In the case that there are insufficient funds to award all selected eligible students, program guidelines will define the priority determination.

Rule 10.916, Student Eligibility, defines program student eligibility which consist of the following: students must be a resident of Texas, be enrolled as a half-time student or within an internship course either prior to or during the semester of the internship period, as an undergraduate student. Texas Works students must be high school graduates and may not participate in more than one Texas Works internship at a time. Additional eligibility criteria are defined within the program guidelines. Rule 10.917, Records and Retention, defines records retention stipulations for which eligible employers must maintain records and accounts of all transactions, student placements, benefits, and wages for a minimum of seven (7) years. Records are to be made available upon request.

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 beyond what is currently set out in College Work-Study appropriation (Article III, B.1.5) as a result of enforcing or administering the rules. There would be no fiscal implications for the local government. 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.

The proposed rules may have an impact on local employment by providing internship support to local businesses and local entities. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

The public benefit anticipated as result of adopting this rule is to provide Texas undergraduate college students and Texas employers an opportunity to develop and provide paid internships across the state. These internships enable students employed through the program to attend public or private institutions of higher education in Texas while exploring career options, developing, and improving career readiness, and strengthening workforce skills. In addition, adopting this rule is to provide clarity for students and participating entities to implement paid internships. 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 a government program required;

(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, Workforce Education Initiatives, 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 new sections are proposed under Texas Education Code, Chapter 56, Subchapter E-1, §§56.0851 - 56.0857, which provides the Coordinating Board with the authority to adopt rules necessary concerning the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program, to enforce program requirements, conditions, and limitations provided by Subchapter E-1. In addition, rules are to be adopted to ensure compliance with the Civil Rights Act of 1964, Title VI (Pub. L. No. 88-352), which concerns nondiscrimination in admissions or employment.

The proposed new sections affects Texas Education Code, Chapter 56, Subchapter E-1, §§56.0851 - 56.0857. The existing Texas Works Internship Program rules, Texas Administrative Code, Title 19, Chapter 21, Student Services, Subchapter W, Sections 21.700 - 21.707, are being repealed in a separate rule action.

§10.910.	Authority and	Purpose oj	f the Texas	Working	Off-Campus:
Reinforcin	g Knowledge ar	ıd Skills (V	VORKS) In	ternship l	Program.

(a) Authority. The Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program is authorized by Texas Education Code, chapter 56, subchapter E-1, §§56.0851 -56.0857.

(b) Purpose. The purpose of the program is to provide paid internships funded in part by the State of Texas to enable students employed through the program to attend public or private institutions of higher education in Texas while exploring career options, developing, and improving career readiness, and strengthening marketable skills.

#### §10.911. Definitions.

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

(1) Administrative and Financial Capacity--An employer must have legal authority to operate within the state of Texas, be in good standing and have the financial responsibility and administrative capability to administer the Texas Works Internship program.

(2) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(3) Commissioner--The Commissioner of Higher Education.

(4) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board.

(5) Eligible Employer--An entity that meets the requirements listed in §10.912 of this subchapter (relating to Employer Eligibility and Participation Requirements).

(6) Eligible Institution:

(A) an institution of higher education as defined by Texas Education Code (TEC), §61.003(8); or

(B) a private or independent institution of higher education, as defined by TEC, §61.003(15), other than a private or independent institution of higher education offering only professional or graduate degrees.

(7) Eligible Wages--Gross wages paid to an individual student as required by the student's internship.

(8) Half-Time Student--For undergraduates, enrollment or expected enrollment for the equivalent of six or more semester credit hours per regular semester.

(9) Program or Texas Works Internship Program--The Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program.

(10) Resident of Texas--A resident of the State of Texas as determined in accordance with chapter 21, subchapter B, of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

#### *§10.912. Employer Eligibility and Participation Requirements.*

(a) In order to participate in the Texas Works Internship Program, an employer must:

(1) be a private nonprofit or for-profit entity or a governmental entity;

(2) enter into an agreement with the Coordinating Board;

(3) provide employment to a student placed through the program in nonpartisan and nonsectarian activities that relate to the student's career interests with identifiable marketable skills;

(4) use program positions only to supplement and not supplant positions normally filled by persons who are not eligible to participate in the program, as provided by this subchapter;

(5) provide the entirety of an employed student's wages and employee benefits as well as submit eligible wages to the Coordinating Board for reimbursement;

(6) follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admission or employment; and

(7) Demonstrate the administrative and financial capacity to carry out the employer's responsibilities under the program, including the ability to pay full wages and benefits to a student employed through the program.

(A) An employer must demonstrate its ability to properly administer the Texas Works Internship program. Administrative capability focuses on the processes, procedures, and personnel used in administering the program and comply with reporting requirements. Eligible employers must have an adequate internal system of checks and balances, monitoring and evaluating marketable skills, authorizing, and disbursing funds, and reporting data accurately and in a timely manner.

(B) The Coordinating Board determines an employer's financial capacity based on its ability to meet all its financial obligations, meet third-party financial audit requirements, and satisfactorily resolved any past internship performance violations.

(b) An employer is not eligible to participate in the program if the employer is:

(1) a public or private institution of higher education in Texas; or

(2) a career school or college, as defined by Texas Education Code, §132.001.

#### §10.913. Employer Agreement.

An agreement between the Coordinating Board and eligible employers will establish the roles and responsibilities, base wages, Coordinating Board reimbursement amount, minimum work hours for students employed, compliance with hiring and employment laws, and data reporting terms and conditions.

#### §10.914. Employer Reimbursement.

Eligible employers must meet program reporting requirements defined within the program guidelines to receive reimbursement for eligible paid student wages.

#### §10.915. Qualified Internship Opportunity.

(a) A qualified internship position must meet a specific set of criteria, including:

(1) Internship must identify marketable skills to be strengthened or gained;

(2) Internship must be paid;

(3) Internship must be a minimum of 96 hours;

(4) Intern activities may not be political or sectarian in nature;

(5) No more than 25% of intern's work can be administrative in nature;

(6) No more than 50% of the eligible employer's workforce may be interns; and

(7) Federal work study funds may not be received or used for the internship position.

(b) The Coordinating Board has the right to set a maximum number of internship opportunities per eligible employer.

(c) In the event that available funds are insufficient to award all selected eligible students, a priority determination clause will be implemented per program guidelines provided to eligible employers.

§10.916. Student Eligibility.

(a) To be eligible for employment in the Program a person shall:

(1) be a resident of Texas;

(2) be enrolled for at least the number of hours required of a half-time student or enrolled within an internship course at an eligible institution the semester prior to the assigned internship as defined within program guidelines or actively enrolled at an eligible institution as a half-time student or within an internship course; and

(3) be an undergraduate student.

(b) A person is not eligible to participate in the Program if the person has not graduated from high school or received the equivalent of a high school diploma.

(c) A person may not be employed in more than one Texas Works internship at a time.

(d) Must meet additional eligibility criteria defined within the program guidelines provided to eligible employers.

#### §10.917. Records Retention.

All employers participating in the Texas Works Internship program shall:

(1) Maintain its records and accounts of all transactions related to intern placement, benefit and wages for not less than seven (7) years after agreement expiration to ensure a full accounting of all funds received, disbursed, and expended by the employer. A participating employer shall immediately make available, upon request of the Coordinating Board, its representative(s), or an auditing entity authorized by law or regulation, all documents and other information related to the Texas Works Internship program.

(2) Immediately make available upon request, records and accounts for inspecting, monitoring, programmatic or financial auditing, or evaluation by the Coordinating Board, its representative(s) and an auditing entity authorized by law or regulation for a period not less than seven (7) years, or whichever is later:

(A) after completion of all services under the Texas Works Internship program;

(B) after the date of the receipt of the participating employer's final claim for reimbursement or submission of the final expenditure report; or <u>(C)</u> upon final resolution of all invoice questions related to the Texas Works Internship program.

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

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

TRD-202401805 Nichole Bunker-Henderson General Counsel Texas Higher Education Coordinating Board Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 427-6267

**♦ ♦** ♦

## CHAPTER 15. RESEARCH FUNDS SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §15.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 15, Subchapter A, §15.10, concerning the administration of the Texas Research Incentive Program (TRIP). Specifically, amendments clarify the program administration and newly establish the processes for application review in administrative law. Negotiated rulemaking was used in the development of these proposed rules. Reports of negotiated rulemaking committees are available upon request from the Coordinating Board.

There are no amendments to §15.10(a) and (b).

Amendments to §15.10(c) revise definitions to improve the clarity of program administration. The new definitions added are: Administrative Correction, Board, Certification, Coordinating Board, Coordinating Board Staff or Board Staff, Date of Deposit, Date of Receipt, Donor Agreement Form, Internal Review Committee, Matching Grant, and Peer Review. The definitions that are amended are Bundled Gifts, Date of Certification, Eligible Gifts, and Ineligible Gifts. The definition of Gift is deleted.

Paragraph (1) defines administrative correction as the act of submitting additional supporting documentation to verify that a gift is an eligible gift. This provision is required to allow institutions to inform the review of applications by the Commissioner by addressing questions from the internal review committee.

Paragraphs (2), (5) and (6) specify three distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board; "Coordinating Board," meaning the state agency as a whole; and "Coordinating Board Staff or Board Staff," meaning the staff of the agency. Separating these terms allows the Coordinating Board to make a distinction between actions taken by the governing body, agency staff, and the agency as a whole.

Paragraph (3) clarifies that bundled gifts are combined from the same private source to determine eligibility for matching grants. The component gifts must be deposited within ten (10) calendar days of the first deposit.

Paragraphs (4) and (7) - (9) amend definitions of the specific dates on which actions occur in the TRIP to ensure specificity within the rule.

Paragraph (4) defines certification as the Board approval of the date of deposit of a gift and its qualification as an eligible gift for matching grants.

Paragraph (7) is an amended definition for date of certification. The previous definition was similar to the new definition for date of deposit.

Paragraphs (8) and (9) are new definitions for date of deposit and date of receipt. These are the date the institution receives cash from a gift and the date the Coordinating Board receives the TRIP application, respectively.

Paragraph (10) defines the donor agreement form, a form currently required as part of a TRIP application.

Paragraph (11) amends the term eligible funds as eligible gifts. The word gift is used consistently throughout the rule. The amendment specifies that non-cash gifts must be converted to cash to be an eligible gift.

Paragraph (13) amends the term ineligible funds to ineligible gifts and corrects the inclusion of bundled gifts to specify bundled gifts less than 100,000 (A). It adds a gift that has been pledged but not received (B), in-kind gifts or discounts (F), and a gift not originally donated for research purposes (H). The definition includes a gift for which an institution has made a commitment to the donor other than use of the gift in the manner the donor specifies (G).

Paragraph (14) defines internal review committee to provide clarity on the role of staff in application review.

Paragraph (15) defines matching grant as the state appropriations used to match eligible gifts in the TRIP program.

Paragraph (16) defines peer review as the review by eligible public institutions of all applications and the submission of challenges to eligibility for matching grants.

Amendments to §15.10(e) clarifies the order by which eligible gifts receive state matching grants when the legislature appropriates less than would be required to fully fund all applications that have been certified to receive state matching grants.

Amendments to §15.10(f) replace the rules for certification of a gift to receive state matching grants. The revised section provides clear and specific requirements on what an eligible application contains and how one must be delivered to the Coordinating Board. The amendment to the rule increases the length of time for institutions to submit an application from thirty (30) days to sixty (60) days to allow more time for institutions to get the required documentation and signatures. In line with current procedures, the amendments also require the submission of two applications - one without redactions and one with redactions to facilitate the peer review process.

Amendments to §15.10(g) delete a requirement to provide a list of university-affiliated entities to the Coordinating Board. New subsection (g) related to returned gifts (previously subsection (h)) improve the clarity of what institutions are expected to do when the eligibility of an application changes after it has received matching funds or after it has been submitted, but not yet received matching funds.

New §15.10(h) establishes how the Coordinating Board reviews applications for eligibility, when institutions engage in peer review of applications, when appeals may be submitted, and when the Commissioner shall make recommendations on appeals. The new subsection provides for the Coordinating

Board to facilitate the peer review process no less than twice in a fiscal year, anticipated to occur in the first and third quarter of a fiscal year. The rule provides discretion for the Commissioner to delay a peer review if necessary for business needs, provides clarity that the internal review committee may recommend that only a portion of a gift be found as an eligible gift for matching grants, and provides for the institution to submit administrative corrections in their appeal. This subsection codifies current procedures related to the TRIP.

New §5.10(i) details how certification occurs and specifically how applications recommended for state matching funds by the internal review committee and the Commissioner's decisions on appealed applications are approved at quarterly meetings of the Board.

Emily Cormier, Assistant Commissioner for Funding, 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.

The public benefit anticipated as the result of adopting this rule is improved clarity and definition to how the Coordinating Board administers the Texas Research Incentive 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 Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@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 62.122, which provides the Coordinating Board with the authority to adopt rules pertaining to the Texas Research Incentive Program.

The proposed amendment affects Texas Education Code Sections 62.121, 62.122, and 62.123.

§15.10. Texas Research Incentive Program (TRIP).

(a) Purpose. The purpose of this program is to provide matching funds to assist eligible public institutions in leveraging private gifts for the enhancement of research productivity and faculty recruitment.

(b) Authority.

(1) Texas Education Code, §62.122, establishes the Texas Research Incentive Program to provide matching funds to assist eligible public institutions in leveraging private gifts for the enhancement of research productivity and faculty recruitment.

(2) Texas Education Code, §62.123, establishes the rate of matching and authorizes the Board, to establish procedures for the certification of gifts.

(3) Texas Education Code, §62.124, authorizes the Board, to adopt rules for the administration of the program.

(c) Definitions.

(1) Administrative Correction--The submission of supplemental information or supporting financial documentation to verify that the gift as submitted is restricted to research purposes that meet the requirements of an eligible gift.

(2) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(3) [(4)] Bundled Gifts--Gifts from the same private source that are combined to determine eligibility for matching grants. All component gifts of a bundled gift must have deposit dates within ten (10) calendar days of the first deposit. [Gifts that would otherwise be an eligible gift, but that individually do not have sufficient monetary value to be eligible for Matching Grants, that are combined by the eligible public institution in an attempt to establish eligibility for Matching Grants.]

[(2) Date of Certification--The date the gift was deposited by the institution in a depository bank or invested by the institution as authorized by law. A non-cash gift shall be certified as the date the gift is converted to eash, and is considered to have been received on that date.]

(4) Certification--Board approval of the date of deposit of a gift and its qualification as an eligible gift for purposes of matching grants.

(5) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(6) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board and the Commissioner.

(7) Date of Certification--The date of the Board meeting upon which certification occurs.

(8) Date of Deposit--The date the institution receives cash or receives all proceeds of converting a non-cash gift to cash. For gifts that are converted to cash over multiple days, the date of deposit is when the entire gift has been converted to cash and received by the institution. A single gift of stocks or bonds that cannot be sold on a single day may be eligible if the sales are concluded and the proceeds are deposited in the institution's account within ten (10) calendar days from the start of sales.

(9) Date of Receipt--The date the Coordinating Board receives the TRIP application for matching grants.

(10) Donor Agreement Form--A form approved by the Commissioner that is required as part of the application for TRIP matching grants.

(11) [(3)] Eligible <u>Gifts</u> [Funds]--<u>Cash</u> [Gifts] or <u>an endow-</u> <u>ment</u> [endowments certified on or after September 1, 2009,] to an eligible public institution from private sources in a state fiscal year for the purpose of enhancing research activities at the institution, including [a gift or endowment] for endowed chairs, professorships, research facilities, research equipment, program costs, graduate research stipends or fellowships, or undergraduate research. <u>Gifts or endowments that are</u> not cash, including those listed in Texas Education Code, §62.121(2), <u>must be converted to cash before they can be submitted as an eligible gift</u>. These include gifts that are bundled from a private source. [All gifts, cash and non-cash, must have been originally donated for research purposes.]

(12) [(4)] Eligible Public Institution-An institution of higher education designated as an emerging research university under the Coordinating Board's Accountability System or a university affiliated entity of an emerging research university.

[(5) Gift--A contribution received by an institution for which the institution has made no commitment of resources or services that provide a direct benefit to the donor other than committing to use the gift as the donor specifies. Gifts include cash, cash equivalents, marketable securities, closely held securities, money market holdings, partnership interests, personal property, real property, minerals, and life insurance proceeds.]

[(6) Ineligible Funds--A gift for undergraduate scholarships or undergraduate financial aid grants, bundled gifts, or any portion in excess of \$10 million of gifts or endowments received from a single source in a state fiscal year or gifts that are bundled by a university-associated entity.]

(13) Ineligible Gifts--A gift that is not an eligible gift under paragraph (11) of this subsection, which may include the following:

(A) A gift or a bundled gift that is less than \$100,000;

(B) A gift that has been pledged but has not been received by the institution;

(C) A gift for undergraduate scholarships or undergraduate financial aid grants;

(D) Any portion in excess of \$10 million of gifts or endowments received from a single source in a state fiscal year;

(E) A gift that is bundled by a university-affiliated en-

tity;

(F) In-kind gifts or discounts;

(G) A gift for which an institution has made a commitment of resources or services to the benefit of the donor other than the use of the gift in the manner the donor specifies; or

(H) A gift not originally donated for research purposes.

(14) Internal Review Committee--Coordinating Board staff authorized by the Commissioner to review TRIP applications and provide a recommendation on the eligibility of TRIP applications to the Board.

(15) Matching Grant--State appropriations used to match eligible gifts in the program and administered by the Coordinating Board.

(16) Peer Review--The review of all institutional applications by representatives from each eligible public institution for eligibility criteria, including date of deposit and research enhancing activities. Institutions report any challenges of eligibility to the Internal Review Committee. (17) [(7)] Private Sources--Any individual or entity that cannot levy taxes  $[_3]$  and is not directly supported by tax funds.

(<u>18</u>) [<del>(8)</del>] Program--The Texas Research Incentive Program (TRIP) established under Texas Education Code, Chapter 62, Subchapter <u>F</u> [G].

(19) [(9)] University-Affiliated Entity--An entity whose sole purpose is to support the mission or programs of the university.

(d) Matching Grants. Eligible <u>gifts</u> [funds] will be matched at the following rates:

(1) 50 percent of the amount if the amount of a gift or endowment made by a donor on a certain date is at least \$100,000, but not more than \$999,999;

(2) 75 percent of the amount if the amount of a gift or endowment made by a donor on a certain date is at least \$1 million but not more than \$1,999,999; or

(3) 100 percent of the amount if the amount of a gift or endowment made by a donor on a certain date is \$2 million but not more than \$10 million.

(e) Distribution of Matching Grants.

(1) <u>The Coordinating Board will distribute matching</u> [Matching] grants [will be distributed] in order of the date of certification.

[(2) All eligible funds with the same date of certification will be considered in a block.]

(2) [(3)] If there are insufficient <u>appropriations to provide</u> <u>matching grants for eligible gifts</u> [funds to <u>match eligible funds</u>] with the same date of certification, the Coordinating Board shall fund those eligible gifts in chronological order of their date of receipt, [funds will be prorated] and any remaining unmatched eligible <u>gifts</u> [funds] shall be eligible for matching grants in the following fiscal years using funds appropriated to the program, to the extent funds are available.

(f) Application Requirements. An institution may only submit an eligible gift via application to the Coordinating Board to be certified by the Board as eligible for state matching funds.

(1) The application must contain the following information:

(A) Written documentation from the institution verifying the amount, date of deposit, and source of the gift. Acceptable documentation includes transaction receipts and statements from the institution's bank that identify the donor, recipient institution, amount of the transaction, and date of the transaction.

(B) A copy of the fully executed donor agreement form provided by the Coordinating Board describing the purpose and the restrictions of the gift meeting the definition of eligible gifts, including the following information:

(i) The description of the purpose shall describe how the gift would be used.

(*ii*) Gifts that are made as part of a pledge series may use the first signed donor agreement for subsequent gifts in that pledge series provided that the purpose is the same and a schedule of pledged gifts is provided using the pledge schedule template provided by the Coordinating Board.

(2) Applications shall exclude portions of a gift that do not meet the requirements of an eligible gift.

(3) An institution shall submit the applications electronically and shall include two versions of the application, one with and one without redactions of personally identifiable information or other information that is confidential by law. The redacted copy will be made available to all eligible public institutions for the purpose of eligibility peer review.

(4) Each institution shall provide all information to the Coordinating Board within sixty (60) days of the date of deposit.

[(f) Certification. Any gift must be certified by the Board in order to be considered eligible for Matching Grants. In order for a gift to be certified, the eligible public institution must submit the following information to the Board:]

[(1) A written statement by the bank verifying the amount, and date of the deposit, and name of the donor; or a credit eard certification showing the date the institution submitted a charge to the donor's eredit card company for payment;]

[(2) A copy of the fully executed donor agreement describing the purpose and the restrictions of the gift meeting the definition of eligible funds; and]

[(3) All information must be provided to the Coordinating Board within 30 days of the date of bank or credit card verification.]

[(g) Eligible public institutions shall provide a complete list of all university-affiliated entities to the Board upon initial application for matching grants and thereafter apprise the Board of any updates to the submitted list.]

(g) [(<del>h</del>)] <u>Returned Gifts.</u> If an eligible institution returns any portion of an eligible gift to the donor or the gift is no longer eligible for <u>matching grants</u> [for any reason any portion of a donation matched by this program is returned to the donor or for any other reason is no longer eligible for matching], the institution <u>shall</u> [must] take the following actions within thirty (30) [30] days of the change:

(1) If the institution has not yet received a matching grant for the eligible gift, the [The] institution shall [must] notify the Coordinating Board as to the amount and date of the change to withdraw the gift or portion of the gift; and

(2) If the institution has received a matching grant for the eligible gift, the [The] institution shall notify the Coordinating Board as to the amount and date of the change and [must] repay the matching grant [match] to the Coordinating Board. If [In the event that] only a portion of the gift [donation] is no longer eligible for matching, the institution may only retain the portion of the match that corresponds to the portion of the gift [donation] that remains eligible for matching.

(h) Application Review. Periodically, but at a minimum twice in a fiscal year, the Coordinating Board shall facilitate the review of submitted applications for TRIP matching grants. Coordinating Board staff shall anticipate beginning the review in the first and third quarter of a fiscal year; however, the Commissioner may delay a cycle if warranted, The Internal Review Committee shall facilitate the following:

(1) The Internal Review Committee shall make applications that have not yet been reviewed available to all eligible institutions so that they may submit peer review of a gift's eligibility. The Internal Review Committee shall provide no less than thirty (30) calendar days for the peer review.

(2) The Internal Review Committee shall, after receiving the peer review recommendations, recommend a preliminary determination on the eligibility of applications. The preliminary determination may find that only a portion of the gift is eligible for matching grants. The Coordinating Board shall communicate this determination to all eligible public institutions.

(3) Each institution shall have no less than thirty (30) calendar days from receipt of preliminary determinations to submit an appeal to the Internal Review Committee regarding a preliminary determination not to fund an application. An institution may provide corrective or explanatory information in their appeal which may include administrative corrections.

(4) The Commissioner shall review and recommend a decision on appealed applications.

(i) Certification. The applications recommended for approval by the Internal Review Committee and the Commissioner's decisions on appealed applications shall be presented at a quarterly meeting of the Board. The Board shall make the final determination of certification for each eligible gift. The Board may find only a portion of the gift to be eligible for matching grants. Certified eligible gifts shall be added to the queue for state matching grants in chronological order by date of certification.

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

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

TRD-202401807 Nichole Bunker-Henderson General Counsel Texas Higher Education Coordinating Board Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 427-6548

### CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS SUBCHAPTER N. TEXAS LEADERSHIP SCHOLARS PROGRAM

#### 19 TAC §22.288

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter N, §22.288, concerning the Texas Leadership Scholars Program. Specifically, this amendment will clarify a student's eligibility requirements and the requirements of the participating institution if a student no longer meets the financial need criteria.

Texas Education Code (TEC), Chapter 61, Subchapter T-3, requires the Coordinating Board to adopt rules for the administration of the program, including rules providing for the amount and permissible uses of a scholarship awarded under the program. The amended section provides clarity and guidance to students, participating institutions, and Coordinating Board staff for the program's implementation.

Rule 22.288 outlines the eligibility requirements students must meet to allow an institution to select a student as a scholar under the Texas Leadership Scholars Program. The requirements of this section establish a minimum criteria for a student to be eligible to receive a scholarship. Specifically, the amended section clarifies that a student must apply for financial aid every eligible year. If a student no longer meets the financial need criteria, a student may remain in the program. In addition, the institution shall make efforts to cover the student's tuition and fees, but is not required to do so. The amendment does not change the number or amount of scholarships available for award.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has determined that for each of the first five years the sections are in effect the rules do not impose additional costs of compliance beyond those provided in statute. 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. Jennielle Strother 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 increase in number of high-achieving, economically disadvantaged students who pursue higher education opportunities they may not have been able to afford or access otherwise. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the Texas Leadership Scholars program is voluntary.

**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. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at studentsuccess@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 61.897, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Texas Leadership Scholars Program.

The proposed new section affects Texas Education Code, Sections 61.891 - 61.897.

#### §22.288. Eligible Students.

(a) To receive an initial award through the Program, a student must:

(1) Submit an application for scholarship consideration through the Coordinating Board or Administrator;

(2) Have Texas resident status, as determined by chapter 21, subchapter B of this title (relating to Determination of Resident Status);

(3) Graduate from a Texas public high school, including an open-enrollment charter school;

(4) Be enrolled full-time in a baccalaureate degree program at a participating institution the fall semester immediately following high school graduation;

(5) Have applied for any available financial aid assistance;

(6) Be TEXAS Grant eligible, as determined by subchapter L, §22.228 of this chapter (relating to Eligible Students) and meet one of the following criteria under subparagraph (A) or (B) of this paragraph:

(A) Graduate with a distinguished level of achievement under the foundation high school program, and:

(i) Graduate in the top 10% of the student's high school graduating class; or

*(ii)* Submit with the application a nomination letter from the student's high school principal or counselor; or

(B) Be eligible to graduate with a Texas First Diploma as set out in chapter 21, subchapter D of this title (relating to Texas First Early High School Completion Program).

(b) To receive a continuation award through the Program, a scholar must:

(1) Have previously received an initial year award through this Program;

(2) Be enrolled full-time in a baccalaureate degree program where the scholar received initial award or at another participating eligible institution to which the student has transferred during the period of eligibility;

(3) Make satisfactory academic progress toward the baccalaureate degree at the eligible institution, as defined in §22.289 of this subchapter (relating to Satisfactory Academic Progress) unless the scholar is granted a hardship extension in accordance with §22.295 of this subchapter (relating to Hardship Provision);

(4) Have completed or is on target to complete programmatic requirements set forth in §22.291 and §22.292 of this subchapter (relating to Scholarship Selection Criteria and Academic Achievement Support, respectively) as reported by participating institution; and

each year of eligibility. (5) Apply for any available financial aid assistance during

(c) A student who does not meet the financial need criteria under subsection (a)(6) remains eligible for a continuation award and all benefits of the Program, but the participating institution in which the student is enrolled is not subject to \$22.287(a)(4) of this subchapter (relating to Eligible Institutions). Each institution shall make every effort to meet the requirements of \$22.287(a)(4) for each continuing student participating in the Program.

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

Filed with the Office of the Secretary of State on April 26, 2024. TRD-202401845

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# SUBCHAPTER R. NURSING STUDENTS SCHOLARSHIP PROGRAM

#### 19 TAC §§22.360 - 22.369

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter R, §§22.360 - 22.369, concerning the Nursing Students Scholarship Program. Specifically, this new subchapter will outline the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, conditions for continued or discontinued eligibility, hardship provisions, scholarship amounts, allocation methodology, and disbursement procedures for a scholarship program to support vocational and professional nursing students. Negotiated rulemaking was used in the development of these proposed rules. Reports of negotiated rulemaking committees are public information and are available upon request from the Coordinating Board.

Rule 22.360 establishes the authority for the subchapter and outlines the program's purpose. Texas Education Code (TEC), Chapter 61, Subchapter L, denotes the relevant sections for this program because the subchapter authorizes both a scholarship and loan repayment assistance program. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.361 establishes definitions for relevant words or terms throughout the subchapter. The definition of "professional nursing program" in paragraph (1) is limited to undergraduate degrees in professional nursing, including both associate and bachelor's degree programs. Given the current and anticipated workforce shortages of vocational and registered nurses and the surplus of advanced practice nurses (those with graduate degrees), the Coordinating Board determined limiting the scope of the program to only undergraduate programs would best serve the health care needs of the state at this time. This determination is in line with the agency's authority in Texas Education Code, Section 61.655(c), to establish categories of persons to receive scholarships, including by considering the type of academic degree pursued. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.362 establishes that institutions of higher education, private or independent institutions of higher education, or an institution described by Texas Education Code, Section 61.651(1)(C), are eligible to participate in the program, provided they enter an agreement with the Coordinating Board and are approved by April 1 each fiscal year. Institutions described by Texas Education Code, Section 61.651(1)(C), are included to align with statutory changes made by Senate Bill (SB) 25 during the 88th legislative session. Subsection (b)(3) provides for a later approval deadline for the 2024 - 2025 academic year to allow for adoption of the proposed rules. This section is implemented to provide

for consistent administration of the program by the Coordinating Board. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.363 establishes eligibility for students to participate in the scholarship program, including Texas residency, financial need, enrollment on at least a half-time basis in a professional or vocational nursing program, as defined in §22.361 of this subchapter (relating to Definitions), and satisfactory academic progress requirements. This section is implemented to ensure that appropriated funds for this program are offered to students in a manner that is most impactful, both in meeting the students' financial needs and the state's growing need for qualified vocational and professional nurses. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.364 establishes prioritization criteria for eligible institutions when appropriated funds are insufficient to offer scholarships to all eligible students. Subsections (a) and (b) provide that priority shall be given to students who received a scholarship in the prior academic year and to students who demonstrate the greatest financial need, respectively. Subsection (c) provides that priority shall be given to eligible students who are not yet licensed as a registered nurse in Texas or any other state, which will prioritize funds for new nurses to address the state's large deficit of registered nurses. Subsection (d) authorizes institutions to set additional prioritization criteria, provided they comply with Coordinating Board rules and Texas Education Code, Section 61.655, to allow institutions greater flexibility in determining how scholarships can be disbursed for maximum positive effects. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.365 establishes additional provisions related to student eligibility. Subsection (a) provides that a student's eligibility ends when the student has attempted 15 semester credit hours, or the equivalent, more than the amount required to complete his or her degree or certificate program. This mechanism, as opposed to a specific semester credit hour limit, was selected due to the varying number of semester credit hours required to complete various vocational and professional nursing programs. This provision ensures that limited appropriated funds are used efficiently. Subsection (b) provides for an otherwise eligible student's semester credit hour limit from Subsection (a) to be reset when pursuing a higher-level degree (e.g., vocational nursing to associate degree), provided the student completed the earlier course of study. This provision allows for upskilling within the nursing profession. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.366 provides for hardship provisions that allow institutions to consider otherwise eligible students to receive a scholarship even after failing to meet one of the program's eligibility criteria. The rule lists a non-exhaustive list of potential hardship conditions and requires institutions to document each approved hardship and maintain a publicly available hardship policy. This section is implemented to align with other state financial aid programs and to potentially avert dramatic changes in a student's financial aid emanating from difficult circumstances that may have affected the student's academic performance. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.367 establishes the method by which the Coordinating Board will determine the per-semester maximum scholarship amount. Depending on the type of institution, these amounts are tied to the maximum grant amounts of other state financial aid grant programs: Texas Educational Opportunity Grant (TEOG) for public junior colleges, state colleges, and technical colleges; Toward EXcellence, Access, and Success (TEXAS) Grant for public universities and health related institutions; and Tuition Equalization Grant (TEG) for private and independent universities and institutions described by Texas Education Code, Section 61.651(1)(C).

Subsection (a)(3) sets the award maximum as one half the TEG maximum because that figure is calculated on an annualized basis, whereas TEOG and TEXAS Grant maximums are semester-based. These award maximums are implemented to create administrative ease and flexibility for institutions, as well as to weight the allocation methodology established in §22.368 of this subchapter (relating to Allocation of Funds) based on the varying tuition and fee costs of the different types of institutions included in this program.

Subsection (c) prohibits the use of a Nursing Students Scholarship as matching funds for students also receiving TEOG or a TEXAS grant. This addition was included to ensure the program functions as new financial aid for vocational and professional nursing students, rather than a replacement for institutional aid that a student already would have received. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.368 establishes the allocation methodology for the program. Funds will be distributed based on each participating institution's proportional share of the overall need. Institutional need is calculated by multiplying the number of eligible students at an institution with an Expected Family Contribution (EFC) less than or equal to the Pell Grant eligibility cap by the institution's maximum scholarship amount per semester, established in §22.367 of this subchapter (relating to Scholarship Amount). This methodology was established to ensure a fair distribution of funds to participating eligible institutions, while weighting the distribution to account for the relatively higher cost of attendance at four-year institutions.

Subsections (a)(4), (5), and (6) relate to the Coordinating Board's procedures in calculating the allocation for a given year and notifying institutions about the results. These provisions are common throughout the agency's financial aid programs and are included to ensure that allocations are conducted in a consistent and transparent manner.

Subsection (b) limits the total amount of scholarship funds allocated in a fiscal year to an institution described by Texas Education Code, Section 61.651(1)(C), to ten (10) percent of the total allocation. This subsection is a requirement of Texas Education Code, Section 61.656(e), which was a provision of SB 25, passed during the 88th legislative session. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.369 outlines the Coordinating Board's standard practices related to disbursement of funds to institutions and unexpected reductions in funding. These provisions are common throughout the agency's financial aid programs and are included to ensure programs are administered efficiently and transparently. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

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 administering the section will be increased financial assistance to support the training of more vocational and registered nurses, of which there is a shortage statewide. 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 affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter R.

§22.360. 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. This

subchapter establishes procedures to administer Texas Education Code §§61.651, 61.652, and 61.655 - 61.659.

(b) Purpose. The purpose of the Nursing Students Scholarship Program is to promote the health care and educational needs of this state by providing scholarships to eligible professional and vocational nursing students.

#### §22.361. Definitions.

In addition to the words and terms defined in §22.1 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) Professional Nursing Program--A course of study at an eligible institution leading to an undergraduate degree in professional nursing.

(2) Program--The Nursing Students Scholarship Program.

(3) Scholarship(s)-A scholarship offered through this subchapter.

(3) Vocational Nursing Program--A course of study at an eligible institution intended to prepare a student for licensure as a licensed vocational nurse.

*§22.362. Eligible Institutions.* 

(a) Eligibility.

(1) A college or university defined as an institution of higher education as defined by Texas Education Code, §61.003(8), private or independent institution of higher education as defined by Texas Education Code, §61.003(15), or an institution described by Texas Education Code, §61.651(1)(C), is eligible to participate in the program.

(2) No participating institution may, on the grounds of race, color, national origin, gender, religion, age or disability exclude an individual from participation in, or deny the benefits of the program described in this subchapter.

(3) A participating institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) Approval.

(1) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner or his/her designee, prior to being approved to participate in the program.

(2) Approval Deadline. An institution must be approved by April 1 in order for qualified students enrolled in that institution to be eligible to receive scholarships in the following state fiscal year.

§22.363. Eligible Students.

To be eligible for a scholarship through the program, a student must:

(1) be a resident of Texas;

(2) show financial need;

(3) be enrolled in a professional or vocational nursing program on at least a half-time basis; and (4) have made satisfactory academic progress in accordance with the student's institutions' financial aid academic progress requirements.

#### §22.364. Priority in Scholarships to Students.

(a) If appropriations for the program are insufficient to allow scholarships to all eligible students, priority shall be given to those students who received a scholarship in the prior academic year and continue to demonstrate eligibility pursuant to this subchapter.

(b) In determining student eligibility for a scholarship pursuant to §22.363 of this subchapter (relating to Eligible Students), priority shall be given to those students who demonstrate the greatest financial need at the time the offer is made.

(c) In determining student eligibility for a scholarship pursuant to §22.363 of this subchapter (relating to Eligible Students), priority shall be given to those students enrolled in professional nursing or vocational nursing programs who are not yet licensed as a registered nurse in Texas or any other state.

(d) An institution may set additional prioritization criteria for the awarding of scholarships, so long as such criteria comply with this subchapter and Texas Education Code, §61.655.

§22.365. Discontinuation of Eligibility or Non-Eligibility.

(a) Unless granted a hardship extension in accordance with §22.366 of this subchapter (relating to Hardship Provisions), a student's eligibility ends when the student has attempted 15 semester credit hours, or the equivalent, more than the amount required to complete the degree or certificate program in which the student is enrolled.

(b) In determining eligibility with respect to subsection (a) of this section, a student who has received a scholarship during a previous course of study is considered to have started the student's new course of study with zero semester credit hours, or the equivalent, attempted if the student:

(1) meets all other eligibility criteria; and

(2) completed the previous course of study by earning the intended degree or certificate.

#### §22.366. Hardship Provisions.

(a) In the event of a hardship or for other good cause, the Program Officer at a participating institution may allow an otherwise eligible student to receive a scholarship:

(1) while failing to make satisfactory academic progress in accordance with the institution's financial aid academic progress requirements;

(2) while enrolled less than half-time; or

(3) while enrolled beyond the scholarship receipt limit, as defined in §22.365(a) of this subchapter (relating to Discontinuation of Eligibility or Non-Eligibility).

(b) Hardship conditions may include, but are not limited to:

(1) documentation of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) documentation that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance;

(3) documentation of the birth of a child or placement of a child with the student for adoption or foster care, that may affect the student's academic performance; or

(4) the requirement of less than half-time enrollment to complete one's degree or certificate plan.

(c) Documentation of the hardship circumstances approved for a student to receive a scholarship must be kept in the student's files, and the institution must identify students approved for a scholarship based on a hardship to the Coordinating Board.

(d) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

#### §22.367. Scholarship Amount.

(a) Scholarship Amount. Each state fiscal year, the maximum scholarship amount per semester shall be:

(1) for institutions eligible to offer grants through the Texas Educational Opportunity Grant Program, the maximum grant amount established in §22.261(b) of this chapter (relating to Grant Amounts);

(2) for institutions eligible to offer grants through the Toward EXcellence, Access, and Success (TEXAS) Grant Program, the maximum grant amount established in §22.234(b) of this chapter (relating to Grant Amounts); or

(3) for institutions eligible to offer grants through the Tuition Equalization Grant Program or an institution described by Texas Education Code, (61.651(1)(C)), one half of the maximum grant amount established in (22.28(a)(3)(A)) of this chapter (relating to Award Amounts and Adjustments).

(b) The amount of a scholarship plus any other gift aid may not exceed the student's financial need.

(c) For an eligible student who also is a Texas Educational Opportunity Grant or Toward EXcellence, Access, and Success (TEXAS) Grant recipient, a scholarship offered under this subchapter may not be used as financial aid to meet the requirements of §22.261(c) (for TEOG recipients) or §22.234(c) (for TEXAS Grant recipients) of this chapter (relating to Grant Amounts respectively).

§22.368. Allocation of Funds.

(a) Allocations. Allocations are to be determined as follows:

(1) Each institution's percent of the available funds will equal the ratio of its institutional need to the state-wide need.

(2) An institution's institutional need is calculated by multiplying:

(A) the number of students it reported in the most recent certified Financial Aid Database submission who met the following criteria:

(i) were classified as Texas residents;

*(ii)* were enrolled in a vocational or professional nursing program on at least a half-time basis; and

*(iii)* have a 9-month Expected Family Contribution, calculated using federal methodology, less than or equal to the Federal Pell Grant eligibility cap for the year reported in the Financial Aid Database submission; and

(B) the institution's maximum scholarship amount, as determined by the Coordinating Board under §22.367(a) of this subchapter (relating to Scholarship Amount).

(3) The state-wide need is calculated as the sum of all eligible institutions' institutional need.

(4) Allocations for both years of the state appropriations' biennium will be completed at the same time. The three most recent certified Financial Aid Database submissions will be used to forecast the data utilized in the calculation of the allocation for the second year of the biennium. Institutions will receive notification of their allocations for both years of the biennium at the same time.

(5) Notwithstanding subsection (a)(4) of this section, allocations for Fiscal Year 2025 will be based on the most recent certified Financial Aid Database submission.

(6) Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting and the institutions will be given ten (10) working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to notify the Coordinating Board in writing of any inaccuracies.

(b) Limited Allocation for Certain Institutions. Notwithstanding the allocation methodology established in subsection (a) of this section, an institution described by Texas Education Code,  $\S61.651(1)(C)$ , may not receive more than ten (10) percent of the total amount of scholarship funds allocated in a fiscal year. Excess funds that would otherwise be allocated to such an institution will instead be allocated to the remaining eligible institutions according to the allocation methodology established in subsection (a) of this section.

#### §22.369. Disbursement of Funds.

(a) Disbursement of Funds to Institutions. As requested by institutions throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Coordinating Board for utilization in scholarship processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.

(b) Reductions in Funding.

(1) If annual funding for the program is reduced after the start of a fiscal year, the Coordinating Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations

(2) If annual funding is reduced prior to the start of a fiscal year, the Coordinating Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

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 Higher Education Coordinating Board

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For further information, please call: (512) 427-6365

## CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS SUBCHAPTER G. NURSING FACULTY LOAN REPAYMENT ASSISTANCE PROGRAM

#### 19 TAC §§23.187 - 23.190, 23.193

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter G, §§23.187, 23.188, 23.189, and 23.193, and new §23.190, concerning the Nursing Faculty Loan Repayment Assistance Program. Specifically. these amendments and new rule will redefine Coordinating Board terminology used throughout the subchapter, expand program eligibility to nursing faculty members employed less than full-time, clarify eligibility provisions related to prior employment as nursing faculty, allow the Coordinating Board to set the maximum annual loan repayment assistance amount for the program based on available funds and the number of eligible applicants, and to prorate the maximum award for part-time nursing faculty based on hours worked in relation to their full-time counterparts, and eliminate the previous annual award limit to align with statute.

The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Faculty Loan Repayment Assistance program under Texas Education Code (TEC), §61.9828.

Section 23.187, Definitions, is amended to eliminate the definition of "Coordinating Board," which is being included in the Definitions section of a new General Provisions subchapter that will apply throughout Chapter 23. This change is being implemented to align terminology throughout the chapter. The definition of "service period" in this section is unchanged. Although part-time nursing faculty may now be eligible for loan repayment assistance through this program, their eligibility and awarding must be based on a year of employment, as referenced in TEC, §§61.9822(2) and 61.9823(a). In other words, employment in only a portion of a service period (e.g., for only one semester in an academic year) does not constitute part-time employment for the purposes of this program.

Section 23.187(4) is amended to create a definition of "full-time," to allow the Coordinating Board the ability to prorate loan repayment assistance awards for part-time nursing faculty based on the proportion of hours worked by a part-time applicant to a full-time nursing faculty member. This addition is being completed to implement statutory changes made to TEC, §61.9823, during the 88th legislative session.

Section 23.188, Applicant Eligibility, is amended to expand the eligibility requirement for employment status to allow part-time or full-time nursing faculty to participate. This amendment is being completed to implement statutory changes made to TEC, §61.9822, during the 88th legislative session.

Section 23.188 is further amended to clarify that an applicant must have been employed as nursing faculty for at least one service period during the last year to be eligible for the program. This change is being implemented to align with the program's intended function, which is to offer loan repayment assistance based on current and immediately recent employment as nursing faculty.

Section 23.189, Applicant Ranking Priorities, is amended to change the section title. This change is being implemented to

provide greater consistency between agency rules governing the various loan repayment assistance programs.

Section 23.190, Amount of Repayment Assistance, is proposed to allow the Coordinating Board to determine annually the maximum loan repayment assistance amount under the program and to prorate this maximum for eligible part-time nursing faculty. This addition is for the purpose of implementing statutory changes made to TEC, §61.9823, during the 88th legislative session. 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. The prior content of this section has been included in new subchapter A, along with other general provisions applicable to all Chapter 23 programs.

Section 23.193, Limitations, is amended to remove the \$7,000 annual award limit to allow the Coordinating Board more flexibility on determining award amounts for the program. Provisions related to the agency setting the annual maximum repayment assistance and proration for part-time nursing faculty are addressed in proposed amendments to \$23.190, see above. This update is being completed to implement statutory changes made to TEC, §61.9823, during the 88th legislative session.

Section 23.193 is further amended by adding paragraph (4), which clarifies that the amount of loan repayment assistance offered to an individual may not exceed the unpaid principal and interest owed on eligible education loans. This addition codifies existing agency practice and aligns with similar rule provisions in other loan repayment assistance programs administered by the agency.

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 administering the section will be the expansion of eligibility by allowing part-time nursing faculty to participate and greater consistency in rules across the Coordinating Board's 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 not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will 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 amendment 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 amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter G.

#### §23.187. Definitions.

In addition to the words and terms defined in §23.1 of this chapter (relating to Definitions), the [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.]

(1) [(2)] Eligible Institution--Texas institutions of higher education or private or independent institutions, as defined in 61.003 of the Texas Education Code.

(2) Full-Time--An average of at least 32 hours per week during the service period at an eligible institution.

(3) Service period-A period of service equal to a minimum of nine months of a 12-month academic year that qualifies an eligible faculty member for an annual education loan repayment award.

(4) Texas Center for Nursing Workforce Studies (TC-NWS)--Authorized by Chapter 105 of the Texas Health and Safety Code. Under the governance of the Statewide Health Coordinating Council's Nursing Advisory Committee, the TCNWS serves as a resource for data and research on the nursing workforce in Texas.

#### §23.188. Applicant Eligibility.

To be eligible to receive loan repayment assistance under this subchapter, an applicant [a nurse] must:

(1) hold a master's or doctoral degree in nursing;

(2) be licensed by the Texas Board of Nursing for the State of Texas;

(3) apply to the  $\underline{Coordinating}$  Board by the published application deadline; and

(4) at the time of application for repayment assistance, have been employed <u>part-time or</u> full time for at least one <u>service period during the last year as</u>, and be currently employed <u>part-time or</u> full time as a faculty member of a nursing program at an eligible institution in a position that requires an advanced degree in professional nursing.

*§23.189.* <u>Applicant Ranking Priorities</u> [Priorities of Application Acceptance].

If there are not sufficient funds to award loan repayment assistance for all eligible nursing faculty whose applications are received by the published deadline, priority shall be given to renewal applications. Initial applications shall be ranked in a manner that takes into account the following information, provided by the Texas Center for Nursing Workforce Studies:

(1) the number of vacant nursing faculty positions, as a percentage of the total number of nursing faculty positions at the eligible institutions; and

(2) the degree of difficulty in recruiting and retaining nursing faculty at the eligible institutions, indicated by the period of time nursing faculty positions remain vacant at the institutions.

#### §23.190. Amount of Repayment Assistance.

(a) Taking into consideration the amount of available funding and the number of eligible applicants, the Coordinating Board shall determine annually the maximum loan repayment assistance amount offered under this subchapter.

(b) The amount of loan repayment assistance received by a nursing faculty member for part-time employment will be calculated by the Coordinating Board based on the proportion of hours worked by the nursing faculty member in comparison to the hours worked by a full-time nursing faculty member, as defined in §23.187 of this subchapter (relating to Definitions).

#### §23.193. Limitations.

The following limitations apply to the Nursing Faculty Loan Repayment Assistance Program.

[(1) The total annual repayment to one or more eligible lenders shall not exceed \$7,000.00.]

(1) [(2)] A nursing faculty member may receive loan repayment assistance under this subchapter for a maximum of five [years] service periods.

(2) [(3)] Funds will be available for loan repayment assistance under this subchapter only if there are legislative appropriations, gifts, grants, and donations made for this purpose, and/or funds have been reallocated for this purpose from the Physician Education Loan Repayment Program Account at the end of a fiscal year.

(3) [(4)] Applications from nursing faculty will be considered by the <u>Coordinating</u> Board only if funds are available for this purpose at the end of the state fiscal year.

(4) An individual's loan repayment assistance amount may not exceed the unpaid principal and interest owed on one or more eligible education loans, as described in §23.2(c) of this chapter (relating to Eligible Lender and Eligible Education Loan).

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

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

TRD-202401847

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 9, 2024

For further information, please call: (512) 427-6365

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## TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

## CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

## SUBCHAPTER D. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

#### 22 TAC §§203.55 - 203.61

The Texas Funeral Service Commission (Commission) proposes new rules to Texas Administrative Code (TAC), Title 22, Part 10, Chapter 203 in new Subchapter D, Licensing Provisions Related to Military Service Members, Military Veterans, and Military Spouses, §§203.55 - 203.61, regarding the occupational licensure of military service members, military veterans, and military spouses in funeral directing and/or embalming.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 22 TAC, Chapter 203, Subchapter D implement Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses.

Proposed new Subchapter D brings the Commission's rules into compliance with existing state law and streamlines all rules regarding the funeral director and embalmer license application process, review, and approval of military service members, military veterans, and military spouses into a single location in Commission rules, making it easy for the public and potential and actual licensees to locate.

Specifically, the new proposed rules provide the following:

Proposed new §203.55 explains the legal basis for the military licensing provisions in subchapter D, and how the rules are interpreted in conjunction with Texas Occupations Code, Chapters 55 and 651. Additionally, the proposed §203.55 includes language to specify that the new proposed subchapter does not modify or alter rights that may be provided under federal law. The proposed rule further states that unless stated otherwise in the new subchapter D, military service member, military veteran, and military spouse license applicants are to comply with the appropriate licensing requirements elsewhere under Texas Administrative Code, title 22, part 10, chapter 203.

Proposed new §203.56 establishes definitions for certain terms that are used throughout the subchapter.

Proposed new §203.57 exempts active service members from paying any license fees while on active duty, and are exempt from paying license renewal fees, late fees or an administrative penalty if the military service member failed to renew the member's license because the license expired while the member was on active duty. The proposed rule also sets forth the type of official documentation acceptable for a military service member to prove the member's active duty status.

Proposed new §203.58 describes that when a military service member or military veteran applies for a license, the Texas Funeral Service Commission will meet to credit any verifiable military service, training or education obtained by an applicant to a license for which the applicant is seeking toward the requirements of that particular license whether a provisional or full license. The language also sets forth how the Commission may verify the applicant's experience, service, training, and education. Further, the proposed rule sets forth when the Commission will not credit an applicant's military experience, service, training or education consistent with §53.007, Texas Occupations Code.

Proposed new §203.59 establishes an alternative method for military service members, military veterans, and military spouses to be licensed as a funeral director or embalmer pursuant to §55.004 and §55.005. As an alternative to regular licensure, the above-described applicants may include a combination of education, continuing education, examinations, letters of good standing, letters of recommendation, work experience, training, clinical, and professional experience to show their competency to be issued a funeral director or embalmer license whether full or provisional. The executive director is given authority to waive any prerequisite of licensure requirements after reviewing and determining whether the military applicant satisfies the alternative licensing requirements as a funeral director or embalmer. The proposed rule also includes language that applicants must submit to a criminal background check and use a Commissionapproved form to demonstrate their competency. The Commission would have 30 days to process and approve or deny the license application.

Proposed new §203.60 implements §55.0041, Texas Occupations Code by requiring the Commission to authorize a military service member or military spouse to practice funeral directing or embalming in Texas without obtaining a license under Chapter 651, Texas Occupations Code, if the applicant notifies the Commission of the applicant's intent to practice funeral directing and/or embalming in Texas on a form prescribed by the Commission; holds an active license in funeral directing or embalming in another jurisdiction with licensing requirements that are substantially similar to Texas; has no pending investigation or disciplinary action against the applicant's license; and submits proof of active military duty status to the Commission. The rule sets forth the method the commission will use to determine whether another jurisdiction has funeral directing or embalming licensing requirements substantially equivalent to those in Texas. The proposed rule further states how the Commission may verify if the applicant's license is in good standing, and that the authorization may only be issued once, without renewal, for the period of the active duty orders or no longer than three years. Finally, the proposed rule reinforces that its provisions do not alter those authorized by federal law.

Proposed new §203.61 establishes the length of time that a license granted under the new proposed subchapter D is valid the same amount of time as a funeral director or embalmer license issued under §203.1 of title 22, part 10, or 12 months from the date of issuance, whichever is longer. The same provision applies to apprenticeship licenses granted under the new proposed subchapter D. The proposed rule further states that the Commission must notify the licensees in writing or electronically the requirements for license renewal.

Fiscal Impact on State and Local Government

Sarah Hartsfield, Staff Attorney, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated reductions in costs to state or local governments resulting from the enforcement or administration of the proposed rules. It is further determined that there are no estimated additional costs to local governments as a result of enforcing or administering the proposed rules. There may be an additional cost to the Commission to update its software system to process applications for military veterans and military spouses for the first year the proposed rules are in effect. However, any potential cost to the Commission will be covered by the Commission's current budget and resources. There are no other estimated costs to Commission for each year of the other four years the proposed rules are in effect.

There is no estimated loss in revenue to the state or to local governments or increase to local governments as a result of enforcing or administering the proposed rules. The Commission already waives licensing fees for active military service members pursuant to Texas Occupations Code § 651.155 and Texas Administrative Code, Title 22, Part 10, §§203.1(f)(6), 203.1(g), 204.2(b), 204.3(b), and 204.4(b).

According to the Commission's records, within the past five years, only six licensees who have applied for a funeral director or embalmer license were active military service members. Although the Commission's records do not account for military veterans or military spouses, it is estimated that the number of license applicants in each category will be less than 10 per year.

In addition to those fees already waived for active military service members, it is projected that in most situations for military veterans and military spouses, their fees would also be waived.

As a result, it is estimated that for each year for the next five years, the decrease in revenue to the state, if any, would be de minimis as a result of enforcing or administering the proposed rules.

Other than what is described above, there are no foreseeable implications relating to the cost or revenues of the state or local governments by enforcing or administering the proposed rules.

#### Public Benefits/Costs

Sarah Hartsfield also determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit from new rules, and improved clarity regarding the license application procedures and issuance of licenses to military service members, military veterans, and military spouses as funeral directors or embalmers. Further, updating the rules to allow for the expedited licensing process authorized under state law will increase those engaged in the occupation. By increasing the workforce, more Texas families will be served while undergoing the loss of a loved one.

Further, for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules have no significant economic costs to persons that are licensees, businesses, or the general public in Texas. The rules do not impose additional fees upon licensees, nor do they create requirements that would cause licensees to expend funds for equipment, technology, staff, supplies, or infrastructure.

#### Local Employment Impact Statement

The proposed rules will not affect local economy. Therefore, the Commission is not required to prepare a local employment impact statement under §2001.022, Texas Government Code.

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

The proposed rules have no anticipated adverse economic effect on small businesses, micro-businesses, or rural communities. Therefore, an economic impact statement is not required.

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

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

#### TAKINGS IMPACT ASSESSMENT

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

Government Growth impact Statements

Pursuant to Government Code §2001.0221, the Commission 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 would not require the creation of new employee positions or the elimination of existing employee positions.

3) Implementation of the proposed rules would not require an increase or decrease in future legislative appropriations to the Commission.

4) The proposed rules do require an increase or decrease in fees paid to the Commission.

5) The proposed rules create a new regulation. As described earlier, the Commission's rules regarding the licensure of military service members, military veterans, and military spouses are outdated, scattered, and ambiguous. To bring the Commission into full compliance with Texas Occupations Code chapter 55, the agency proposed a new regulation by creating new subchapter D in Texas Administrative Code, Title 22, Part 10, Chapter 203, in which all rules affecting the licensing of military service members, military veterans, and military spouses will be located.

6) The proposed rules expand and repeal existing regulations. The proposed rules expand the Commission's existing regulation regarding the licensing of military service members, military veterans, and military spouses to be consistent with current Texas Occupations Code Chapter 55. The expansion includes improving the process for military service members, military veterans, and military spouses to apply for a license as a funeral director or embalmer, including an apprenticeship license, as well as the Commission's process for expediting the review, approval, and issuance of a license to qualified applicants in the categories mentioned above.

The rule removes provisions of the Commission's existing regulations regarding the licensing of military service members, military veterans, and military spouses that are outdated, inconsistent with state statute and federal law, ambiguous or redundant because the provisions were added to the new proposed rules. The proposed rules do not limit existing regulations. 7) The proposed rules increase the number of individuals subject to the rules' applicability by expanding the options for military service members, military veterans, and military spouses to qualify and apply for a license as a funeral director or embalmer, including an apprentice license, in this state. The proposed rules do not decrease the number of individuals subject to their applicability.

8) The proposed rules would positively affect this state's economy by increasing the state's workforce by expediting the licensure of military service members, military veterans, and military spouses, and therefore enabling them to work in Texas sooner. The proposed rules do not adversely affect this state's economy.

#### PUBLIC COMMENTS

Comments on the proposed repeal may be submitted by mail to Sarah Hartsfield, Interim-Executive Director/Staff Attorney, Texas Funeral Service Commission, 1801 Congress Avenue Suite 11-800, Austin, Texas 78701 or submitted electronically to sarah.hartsfield@tfsc.texas.gov. The deadline for receipt of comments is 5:00 p.m. Central Time, on May 27, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules as necessary to administer and enforce that chapter.

The proposed rules are proposed under Texas Occupations Code §55.002, which authorizes the Commission to adopt rules to exempt a license holder from increased fees or penalties for failing to renew the individual's license if the individual can provide satisfactory proof that the individual was serving as a military service member at the time the Commission-issued license expired. The proposed rules are also based on Texas Occupations Code §55.004(a), which authorizes the Commission to adopt rules to for issuing a funeral director or embalmer license to military service members, military veterans, or military spouses who hold a current license in another jurisdiction with licensing requirements substantially equivalent to those for a funeral director or embalmer license in Texas or within the five years preceding the individual's application, held the same license in Texas. §55.004(c) authorizes the Commission to propose rules for adoption that establish alternate methods for military service members, military veterans, and military spouse to demonstrate competency to satisfy the requirements for obtaining a funeral director or embalmer license, including receiving appropriate credit for training, education, and clinical and professional experience.

These rules are also proposed under §55.0041(e), which gives the Commission the necessary authority to adopt rules to implement §55.0041, Texas Occupations Code, for recognizing a military service member or military spouse to practice funeral directing or embalming in Texas without first obtaining the required license if the member or spouse is currently licensed in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas. Furthermore, §55.0041(e) gives the Commission authority to adopt rules that 1) establish how such applicants are to notify the Commission of their intent to practice funeral directing or embalming in Texas; 2) submit proof to the Commission of the service member's or spouse's residency in Texas, as well as their military identification card; 3) method for the Commission to provide confirmation to the military service member or spouse applicant that the Commission has verified the applicant's license is in good standing with the other jurisdiction and authorize the applicant to practice funeral directing or embalming in Texas; 4) establish how the Commission will determine if another jurisdiction has substantially equivalent licensing requirements to Texas; and 5) creates a process for verifying the applicant's license is in good standing within 30 days of receiving all of the necessary information from the applicant.

The rules are proposed under §55.007, Texas Occupations Code, which provides the necessary authority to the Commission to adopt rules to credit verified military service, training, or education toward the funeral director or embalmer, full or provisional, licensing requirements for applicants who are a military service member or veteran. §55.007 further authorizes the Commission to limit its rules from applying to military service member or veteran license applicants who hold a restricted licensed issued by another jurisdiction or have an unacceptable criminal history pursuant to applicable law.

In addition, the rules are proposed under §55.008, Texas Occupations Code, which gives the Commission the authority to adopt rules to credit verified military service, training, or education that is relevant to funeral directing or embalming to provisional funeral director or provisional embalmer licensing requirements.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 55 and 651. No other statutes, articles, or codes are affected by the proposed rules.

#### §203.55. Purpose.

(a) This subchapter establishes requirements and procedures authorized or required by Texas Occupations Code, Chapters 55 and 651. Any requirements not provided in rule, but expressly set forth in Chapters 55 and 651 referenced above, apply and must be followed for the licensing of military service members, military veterans, and military spouses.

(b) This subchapter does not modify or alter rights that may be provided under federal law.

(c) Except as otherwise provided by this subchapter:

(1) a person applying for an apprenticeship license as a funeral director and/or embalmer must comply with all of the licensure requirements of §§203.5 - 203.7 of this chapter (regarding the Provisional License; Provisional License Case and Reporting Requirements; and Provisional License Reinstatement and Reapplication);

(2) a person applying for a full funeral director license or embalmer license must comply with all of the requirements of §203.1 of this chapter (regarding Funeral Director and Embalmer License Requirements and Procedure); and

(3) a person applying for the licenses listed in paragraphs (1) and (2) of this subsection must comply with all of the requirements in §§203.15 - 203.17 of this chapter (regarding Required Notification of Criminal Conviction; Consequences of Criminal Conviction; and Criminal History Evaluation Letter).

#### §203.56. Military Definitions.

For purposes of this subchapter, the following terms have the meanings assigned in §55.001, Texas Occupations Code: "active duty"; "armed forces of the United States"; "military service member"; "military spouse"; and "military veteran."

#### §203.57. License Fee Exemption or Waiver.

(a) The provisions in this section are in addition to the fee waivers or exemptions set forth in §55.009, Texas Occupations Code.

(b) Pursuant to §55.002, Texas Occupations Code, a licensee is exempt from any penalty or increased fee imposed by the Commission for failing to renew the license in a timely manner if the individual establishes to the satisfaction of Commission staff that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(c) An active duty military service member is exempt from the payment of license fees for the duration of the license holder's military service and for one year after the date the military service member's active duty status ends.

(d) For purposes of establishing fee exemption status under this section and §651.155(a), Texas Occupations Code, an individual may prove military status by providing a copy of the individual's active duty orders, DD214 form, or other official documentation showing the individual's military status or termination of such.

#### §203.58. Mandatory Credit for Military Service.

(a) Pursuant to §55.007, Texas Occupations Code, for an applicant who is a military service member or veteran, the Commission shall meet to credit any verifiable military service, training or education obtained by an applicant to a license for which the applicant is seeking toward the requirements of that particular license. The Commission may verify an applicant's military training or education through a joint services transcript, a comparable document issued by the U.S. military or other means available.

(b) If the applicant's verified military service, training or education listed in subsection (a) of this section is relevant to a funeral director or embalmer license, but does not satisfy the requirements for a full license, then the Commission shall credit the applicant's verified military service, training, or education that is relevant toward the requirements of the applicable provisional license.

(c) All applicants shall submit fingerprints for the retrieval of criminal history record information.

(d) This section does not apply to an applicant who holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to Texas Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) or Chapter 651 (Crematory Services, Funeral Directing, And Embalming).

*§203.59.* Alternative Method of Licensing for Military Service Members, Military Veterans, and Military Spouses.

(a) The executive director may waive any prerequisite to obtaining a license for an applicant who satisfies the requirements in §55.004(a), Texas Occupations Code after reviewing the applicant's credentials.

(b) For purposes of this section, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain an individual, provisional or full, funeral directing or embalming license issued by the Commission under Chapter 651, Texas Occupations Code. In lieu of the standard method(s) of demonstrating competency for license and based on applicant's circumstances, the alternative methods for demonstrating competency include, but are not limited to, any combination of the following:

(1) education;

(2) continuing education;

- (3) examinations (written and/or practical);
- (4) letters of good standing;
- (5) letters of recommendation;
- (6) work experience;
- (7) training;
- (8) clinical experience; and
- (9) professional experience.

(d) The Commission has 30 days from the date a military service member, military veteran, or military spouse submits an application for alternative licensing to process the application and issue a license to an applicant who qualifies for the license.

(e) A license issued under this section cannot be a limited provisional license pursuant to §55.005(b), Texas Occupations Code. For purposes of this section, "provisional license" does not mean a provisional license as set forth in Chapter 651, Texas Occupations Code.

(f) All applicants shall submit an application and proof of any relevant requirements on a form and in a manner prescribed by the Commission.

(g) All applicants shall submit fingerprints for the retrieval of criminal history record information.

*§203.60. Exemption from Licensure for Certain Military Service Members and Military Spouses.* 

(a) This section establishes rules pursuant to the authority granted in §55.0041, Texas Occupations Code.

(b) The executive director of the Commission must authorize a military service member or military spouse applicant, who meets the qualifications set forth in subsection (c) of this section and §55.0041(a), Texas Occupations Code, to practice funeral directing or embalming in Texas without obtaining a license.

(c) In order to receive authorization to practice in Texas, the military service member or military spouse must:

(1) hold an active license to practice funeral directing or embalming in another jurisdiction that:

(A) that has licensing requirements that are determined by the commission to be substantially equivalent to the requirements for licensure in Texas; and

(B) where the license is currently licensed in good standing in the other jurisdiction;

(2) notify the commission of the military service member or military spouse's intent to practice in Texas on a form prescribed by the commission;

(3) submit a copy of the military service member or military spouse's military identification card; and

(4) submit proof of the military service member or military spouse's residency in Texas and of the military service member's, or, with respect to a military spouse, the military service member to whom the military spouse is married, status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(d) For purposes of this section, the commission will determine whether another jurisdiction has licensing requirements that are substantially equivalent to those in Texas by reviewing the other jurisdiction's education, examination, criminal background history, and apprenticeship or internship requirements for a license to engage in funeral directing or embalming in that jurisdiction compared to this state.

(e) While authorized to practice funeral directing or embalming in this state, the military service member or military spouse shall comply with all other laws and regulations applicable to the practice of funeral directing or embalming in Texas.

(f) The commission has 30 days from the date a military service member or military spouse submits the information required by subsection (c) of this section to:

(1) verify that the member or spouse is active and currently licensed in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas; and

(g) This authorization to practice is valid during the time the military service member or, with respect to a military spouse, the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(h) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the authorization described by subsection (f) of this section. A similar event includes the death of the military service member or the military service member's discharge from the military.

(i) An authorization issued under this section may not be renewed.

(j) This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

#### §203.61. Length of License and Renewal.

(a) Licenses granted under this subchapter have the terms established by §203.1 of this chapter (related to Funeral Director and Embalmer License Requirements and Procedure), or a term of 12 months from the date the license is issued, whichever term is longer. This section does not apply to the authorization granted under §203.60 of this subchapter (relating to Exemption from Licensure for Certain Military Service Members and Military Spouses).

(b) Provisional licenses granted under this subchapter have the terms established by §§203.5 - 203.7 of this chapter (related to Provisional License; Provisional License Case and Reporting Requirements; and Provisional License Reinstatement and Reapplication). The provisions in this section do not affect the license renewal extensions according to §55.003, Texas Occupations Code. For the purposes of this section, provisional license has the meaning assigned in Texas Occupations Code, chapter 651, and not the meaning assigned in §55.005(b), Texas Occupations Code.

(c) The Commission shall notify the licensee in writing or by electronic means of the requirements for renewal.

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 25, 2024. TRD-202401767

Sarah Hartsfield

Interim Executive Director/Staff Attorney Texas Funeral Service Commission Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 936-2474

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**TITLE 25. HEALTH SERVICES** 

# PART 1. DEPARTMENT OF STATE HEALTH SERVICES

### CHAPTER 133. HOSPITAL LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §133.101, concerning Inspection and Investigation Procedures; and §133.102, concerning Complaint Against Department of State Health Services Surveyor; new §133.101, concerning Integrity of Inspections and Investigations; §133.102, concerning Inspections; §133.103, concerning Complaint Investigations; §133.104, concerning Notice; §133.105, concerning Professional Conduct; and 133.106, concerning Complaint Against an HHSC Representative; and amendments to §133.47, concerning Abuse and Neglect Issues; and §133.121, concerning Enforcement Action.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 49, 88th Legislature, Regular Session, 2023. H.B. 49 amended Texas Health and Safety Code (HSC) §241.051 to make certain information related to hospital investigations subject to disclosure and create a requirement for HHSC to post certain information related to hospital investigations on the HHSC website.

The proposal is also necessary to update the inspection, complaint investigation, and enforcement procedures for general and special hospitals. These updates are necessary to hold hospitals accountable during the inspection and investigation processes and ensure hospitals provide necessary documentation in a timely manner to HHSC representatives. The proposal revises enforcement procedures to ensure accuracy with current practices and conform to statute. These updates also ensure consistent practices across HHSC Health Care Regulation rulesets, correct outdated language and contact information, and reflect the transition of regulatory authority for hospitals from the Department of State Health Services to HHSC.

A previous version of these repeals, new sections, and amendments was proposed by HHSC in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4081) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous informal and public comment periods.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §133.47, Abuse and Neglect Issues, updates contact information for submitting a complaint, changes "department" to "the Texas Health and Human Services Commission" or "HHSC" to reflect the change of statutory authority from the Department of State Health Services to HHSC. The proposed amendment updates the title of 25 TAC §1.204 and makes other non-substantive updates to increase clarity and consistency with other Health Care Regulation rulesets.

The proposed repeal of  $\S133.101$ , Inspection and Investigation Procedures, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new  $\S\$133.102$  - 133.104.

Proposed new §133.101, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

The proposed repeal of §133.102, Complaint Against a Department of State Health Services Surveyor, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §133.106.

Proposed new §133.102, Inspections, implements HSC §241.051 and makes necessary updates to hospital and special hospital inspection requirements.

Proposed new §133.103, Complaint Investigations, implements HSC §241.051 and makes necessary updates to hospital and special hospital complaint investigation requirements.

Proposed new §133.104, Notice, informs hospitals of the required timeframes regarding responding to a written Statement of Deficiencies by returning a written Plan of Correction, together with any additional evidence of compliance.

Proposed new §133.105, Professional Conduct, informs providers that HHSC reports to the appropriate licensing authorities any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

Proposed new §133.106, Complaint Against an HHSC Representative, informs a hospital about registering a complaint against an HHSC inspector or investigator.

The proposed amendment to §133.121, Enforcement Action, updates the rule's title and creates consistency between this ruleset and other HHSC facility types regarding enforcement procedures. The proposed amendment also makes necessary corrections and updates to reflect current practices and conform with statute, including HSC Chapter 327.

#### 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.

# 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 new regulations;

(6) the proposed rules will expand and repeal existing regulations; (7) the proposed rules will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COM-MUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

# COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; 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 benefit will be greater clarity, consistency, and accountability in the inspection and investigation of hospitals. The public and the patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

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 impose any additional costs or fees on persons required 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 COMMENT

Written comments on the proposal may be submitted to the 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 22R101" in the subject line.

SUBCHAPTER C. OPERATIONAL REQUIREMENTS 25 TAC §133.47

#### STATUTORY AUTHORITY

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

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

#### §133.47. Abuse and Neglect Issues.

(a) Reporting. Incidents of abuse, neglect, exploitation, or illegal, unethical or unprofessional conduct as those terms are defined in subsections (b) and (c) of this section shall be reported to the Texas Health and Human Services Commission (HHSC) as provided in subsections (b) and (c)(3) of this section [department].

(b) Abuse or neglect of a child, and abuse, neglect, or exploitation of an elderly or disabled person. The following definitions apply only to this subsection.[+]

(1) Abuse [abuse] or neglect of a child, as defined in §1.204(a) and (b) of this title (relating to [Investigations of] Abuse, Neglect, or Exploitation Defined. [of Children or Elderly or Disabled Persons); and]

(2) Abuse [abuse], neglect, or exploitation of an elderly or disabled person, as defined in  $\S1.204(a) - (c) \left[ \frac{\$1.204(a)}{and} \frac{(b)}{b} \right]$  of this title.

(c) Abuse and neglect of individuals with mental illness, and illegal, unethical, and unprofessional conduct. The requirements of this subsection are in addition to the requirements of subsection (b) of this section.

(1) Definitions. The following definitions are in accordance with Texas Health and Safety Code (HSC), §161.131 and apply only to this subsection. [+]

#### (A) Abuse--

(i) Abuse (as the term is defined in [42] United States Code Title 42 (42 USC) Chapter 114 (relating to Protection and Advocacy for Individuals with Mental Illness) [(USC), §10801 et seq.)] is any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an [a] individual with mental illness, and includes acts such as:

(1) the rape or sexual assault of an [a] individual with mental illness;

(II) the striking of an [a] individual with mental

illness;

(III) the use of excessive force when placing an [a] individual with mental illness in bodily restraints; and [and/or]

(IV) the use of bodily or chemical restraints on an [a] individual with mental illness which is not in compliance with federal and state laws and regulations.

(*ii*) In accordance with  $HSC[_{5}]$  §161.132(j), abuse also includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy or treatment.

(B) Illegal conduct-Illegal conduct (as the term is defined in HSC[<sub>3</sub>] §161.131(4)) is conduct prohibited by law.

(C) Neglect--Neglect (as the term is defined in 42  $USC_{5}$  §10801 et seq.) is a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an [a] individual with mental illness or which placed an [a] individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for an [a] individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to an [a] individual with mental illness, or the failure to provide a safe environment for an [a] individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(D) Unethical conduct--Unethical conduct (as the term is defined in HSC[<sub>7</sub>] §161.131(11)) is conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(E) Unprofessional conduct--Unprofessional conduct (as the term is defined in HSC<sup>[7]</sup> §161.131(12)) is conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(2) Posting requirements. A hospital [facility] shall prominently and conspicuously post for display in a public area that is readily visible to patients, residents, volunteers, employees, and visitors a statement of the duty to report abuse and neglect, or illegal, unethical, or unprofessional conduct in accordance with HSC[,] §161.132(e). The statement shall be in English and in a second language appropriate to the demographic makeup of the community served and contain the current toll-free telephone number for submitting a complaint to HHSC as specified on the HHSC website [of the department's patient information and complaint line at (888) 973-0022].

(3) Reporting responsibility.

(A) Reporting abuse and neglect. A person, including an employee, volunteer, or other person associated with the hospital [facility] who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient of the hospital [facility] who is receiving mental health or chemical dependency services has been, is, or will be adversely affected by abuse or neglect (as those terms are defined in this subsection) by any person shall as soon as possible, but no later than 24 hours after, report the information supporting the belief to HHSC [the department] or to the appropriate state health care regulatory agency in accordance with  $HSC[_{7}]$  §161.132(a).

(B) Reporting illegal, unprofessional, or unethical conduct. An employee of or other person associated with a hospital, [facility] including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the hospital [facility] or an employee or health care professional associated with the hospital [facility], has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the hospital [facility] or mental health or chemical dependency services provided in the hospital [facility] shall as soon as possible, but no later than 48 hours after, report the information supporting the belief to HHSC [the department] or to the appropriate state health care regulatory agency in accordance with HSC[,] §161.132(b).

(4) Training requirements. A hospital that provides comprehensive medical rehabilitation, mental health, or substance use [abuse] services shall annually provide as a condition of continued licensure a minimum of eight hours of in-service training designed to assist employees and health care professionals associated with the <u>hospital</u> [facility] in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the <u>hospital</u> [facility] and establish a means for monitoring compliance with the requirement.

(d) Investigations. A complaint under this subsection will be investigated or referred by HHSC [the department] as follows:

(1) Allegations under subsection (b) of this section will be investigated in accordance with §1.205 of this title (relating to Reports and Investigations) and §1.206 of this title (relating to Completion of Investigation);

(2) Allegations under subsection (c) of this section will be investigated in accordance with  $\S133.103$  [\$133.101] of this chapter [title] (relating to Complaint Investigations [Inspection and Investigation Procedures]). Allegations concerning a health care professional's failure to report abuse and neglect or illegal, unprofessional, or unethical conduct will not be investigated by <u>HHSC</u> [the department] but will be referred to the individual's licensing board for appropriate disciplinary action.

(3) Allegations under both subsections (b) and (c) will be investigated in accordance with §1.205 and §1.206 of this title except as noted in paragraph (2) of this subsection concerning a health care professional's failure to report.

(e) Submission of complaints. A complaint made under this section may be submitted in writing or verbally to <u>HHSC</u> [the Patient Quality Care Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, telephone, (888) 973-0022].

(f) Notification.

(1) For complaints under subsection (b) of this section,  $\underline{\text{HHSC}}$  [the department] shall provide notification according to the following.

(A)  $\underline{\text{HHSC}}$  [The department] shall notify the reporter, if known, in writing of the outcome of the <u>completed</u> [complete] investigation.

(B) <u>HHSC</u> [The department] shall notify the alleged victim, and the alleged victim's [his or her] parent or guardian if a minor, in writing of the outcome of the completed investigation.

(2) For complaints under subsection (c) of this section, <u>HHSC informs</u> [the department shall inform], in writing, the complainant who identifies themselves by name and address of the following:

(A) the receipt of the complaint;

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

(C) whether the complaint will be investigated by <u>HHSC</u> [the department];

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

(E) the findings of the complaint investigation.

(g) HHSC [Department] reporting and referral.

(1) Reporting health care professional to licensing board.

(A) In cases of abuse, neglect, or exploitation, as those terms are defined in subsection (b) of this section, by a licensed, certified, or registered health care professional, <u>HHSC</u> [the department] may forward a copy of the completed investigative report to the state agency <u>that</u> [which] licenses, certifies, or registers the health care professional. Any information which might reveal the identity of the reporter or any other patients [or elients] of the <u>hospital</u> [facility] must be blacked out or deidentified.

(B) A health care professional who fails to report abuse and neglect or illegal, unprofessional, or unethical conduct as required by subsection (c)(3) of this section may be referred by <u>HHSC</u> [the department] to the individual's licensing board for appropriate disciplinary action.

(2) Sexual exploitation reporting requirements. In addition to the reporting requirements described in subsection (c)(3) of this section, a mental health services provider must report suspected sexual exploitation in accordance with Texas Civil Practice and Remedies  $Code[_{7}]$  §81.006.

(3) Referral follow-up. <u>HHSC</u> [The department] shall request a report from each referral agency of the action taken by the agency six months after the referral.

(4) Referral of complaints. A complaint containing allegations which are not a violation of  $HSC[_7]$  Chapter 241[ $_7$ ] or this chapter will not be investigated by <u>HHSC</u> [the department] but shall be referred to law enforcement agencies or other agencies, as appropriate.

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 29, 2024.

TRD-202401857 Karen Ray General Counsel Department of State Health Services Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591

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# SUBCHAPTER F. INSPECTION AND INVESTIGATION PROCEDURES

# 25 TAC §133.101, §133.102

STATUTORY AUTHORITY

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

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.101. Inspection and Investigation Procedures.

*§133.102.* Complaint Against a Department of State Health Services Surveyor.

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 29, 2024.

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# 25 TAC §§133.101 - 133.106

# STATUTORY AUTHORITY

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

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.101. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, a hospital:

(1) may not record, listen to, or eavesdrop on any HHSC interview with hospital staff or patients that the hospital staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; and

(2) may not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of hospital staff when HHSC has requested a private room or office or distanced themselves from hospital staff and the hospital obtains HHSC's written approval before beginning to record or listen to the discussion.

(b) A hospital shall inform HHSC when security cameras or other existing recording devices in the hospital are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits hospital staff to be present, an interview or conversation for which hospital staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

# §133.102. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an inspection of each hospital prior to the issuance or renewal of a license.

(1) A hospital is not subject to additional annual licensing inspections subsequent to the issuance of the initial license while the hospital maintains:

(A) certification under Title XVIII of the Social Security Act, 42 United States Code (USC), §§1395 et seq.; or

(B) accreditation from The Joint Commission, the American Osteopathic Association, or other national accreditation organization for the offered services.

(2) HHSC may conduct an inspection of a hospital exempt from an annual licensing inspection under paragraph (1) of this subsec-

tion before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and HHSC determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days of the license expiration date.

(b) HHSC may conduct an unannounced, on-site inspection of a hospital at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) a hospital's plan of correction;

(3) an order or special order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the hospital.

(c) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its hospitals by HHSC.

(d) HHSC inspections to evaluate a hospital's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed hospital is offering or providing, or purporting to offer or provide, treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(c) A hospital shall cooperate with any HHSC inspection and shall permit HHSC to examine the hospital's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the hospital, unless prohibited by law.

(f) A hospital shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(g) A hospital shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the hospital, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(h) Upon entry, HHSC holds an entrance conference with the hospital's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the hospital representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the hospital representative to inform the

hospital representative of any preliminary findings of the inspection, including possible health and safety concerns. The hospital may provide any final documentation regarding compliance during the exit conference.

(k) HHSC shall maintain the confidentiality of hospital records as applicable under state or federal law. Except as provided by subsection (l) of this section, all information and materials in the possession of or obtained or compiled by HHSC in connection with an inspection are confidential and not subject to disclosure under Texas Government Code Chapter 552 (relating to Public Information), and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with HHSC in the enforcement action against the hospital;

(2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individualidentifying and hospital-identifying information has been deleted.

(1) The following information is subject to disclosure in accordance with Texas Government Code Chapter 552, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the hospital's alleged violation, which must include the provisions of law the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;

 $\frac{(2) \quad \text{the number of investigations HHSC conducted of the}}{\text{hospital;}}$ 

(3) the pleadings in any administrative proceeding to impose a penalty against the hospital for the alleged violation;

(4) the outcome of each investigation HHSC conducted of the hospital, including:

(A) reprimand issuance;

(B) license denial or revocation;

(C) corrective action plan adoption; or

(D) administrative penalty imposition and the penalty

(5) a final decision, investigative report, or order issued by HHSC to address the alleged violation; and

(6) any other information required by law to be disclosed under public information request laws.

(m) Within 90 days after the date HHSC issues a final decision, investigative report, or order to address a hospital's alleged violation, HHSC posts certain information on the HHSC website in accordance with Texas Health and Safety Code §241.051.

§133.103. Complaint Investigations.

amount;

(a) A hospital shall provide each patient and applicable legally authorized representative at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the hospital. (1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The hospital shall prominently and conspicuously post this statement in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints directed to HHSC CII based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to a hospital may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC conducts investigations to evaluate a hospital's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients. Complaint investigations may be coordinated with the federal Centers for Medicare & Medicaid Services and its agents responsible for the inspection of hospitals to determine compliance with the Conditions of Participation under Title XVIII of the Social Security Act, (42 USC, §§1395 et seq.), so as to avoid duplicate investigations.

(e) HHSC may conduct an unannounced, on-site investigation of a hospital at any reasonable time, including when treatment services are provided, to inspect or investigate:

(1) a hospital's compliance with any applicable statute or rule;

(2) a hospital's plan of correction;

(3) a hospital's compliance with an order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a hospital's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the hospital.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A hospital shall cooperate with any HHSC investigation and shall permit HHSC to examine the hospital's grounds, buildings, books, records, video surveillance, and other documents and information maintained by, or on behalf of, the hospital, unless prohibited by law.

(h) A hospital shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(i) A hospital shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the hospital, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner. (j) Upon entry, the HHSC representative holds an entrance conference with the hospital's designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) The HHSC representative holds an exit conference with the hospital representative to inform the hospital representative of any preliminary findings of the investigation. The hospital may provide any final documentation regarding compliance during the exit conference.

(1) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

(m) HHSC shall maintain the confidentiality of hospital records as applicable under state or federal law. Except as provided by subsection (n) of this section, all information and materials in the possession of or obtained or compiled by HHSC in connection with an investigation are confidential and not subject to disclosure under Texas Government Code Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with HHSC in the enforcement action against the hospital;

(2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individualidentifying and hospital-identifying information has been deleted.

(n) The following information is subject to disclosure in accordance with Texas Government Code Chapter 552, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the hospital's alleged violation, which must include the provisions of law the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;

<u>hospital;</u> (2) the number of investigations HHSC conducted of the

(3) the pleadings in any administrative proceeding to impose a penalty against the hospital for the alleged violation;

(4) the outcome of each investigation HHSC conducted of the hospital, including:

(A) reprimand issuance;

(B) license denial or revocation;

(C) corrective action plan adoption; or

 $\underbrace{(D) \quad administrative \ penalty \ imposition \ and \ the \ penalty}{amount; \ and}$ 

(5) a final decision, investigative report, or order issued by HHSC to address the alleged violation; and

(6) any other information required by law to be disclosed under public information request laws.

(o) Within 90 days after the date HHSC issues a final decision, investigative report, or order to address a hospital's alleged violation, HHSC posts certain information on the HHSC website in accordance

with Texas Health and Safety Code Section 241.051 (relating to Inspections).

### §133.104. Notice.

(a) A hospital is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the hospital with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the hospital's receipt of the SOD, the hospital shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the hospital in writing.

(B) If HHSC does not accept the POC, HHSC notifies the hospital in writing and requests the hospital submit to HHSC a modified POC and any additional evidence of compliance no later than 10 business days after HHSC notifies the hospital in writing.

(C) The hospital shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of a hospital's compliance with this subsection or HHSC's acceptance of a hospital's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

#### §133.105. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§133.106. Complaint Against an HHSC Representative.

A hospital may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

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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General Counsel

Department of State Health Services

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# SUBCHAPTER G. ENFORCEMENT

# 25 TAC §133.121

# STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.121. Enforcement [Action].

Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, and orders [Enforcement action may be taken for the following reasons].

(1) Denial, suspension or revocation of a license or imposition of an administrative penalty. <u>HHSC</u> [The department] has jurisdiction to enforce violations of the Act or the rules adopted under this chapter. <u>HHSC</u> [The department] may deny, suspend, or revoke a license or impose an administrative penalty for [if the licensee or applicant]:

(A) <u>failure [fails]</u> to comply with any <u>applicable</u> provision of <u>the Texas</u> Health and Safety Code (HSC), <u>including</u> Chapters 241, [ΘF] 311, and 327;

(B) <u>failure [fails]</u> to comply with any provision of this chapter or any other applicable laws [(25 Texas Administrative Code, Chapter 133)];

(C) the hospital, or any of its employees, committing an act which causes actual harm or risk of harm to the health or safety of a patient [fails to comply with a special license condition];

(D) the hospital, or any of its employees, materially altering any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide a complete license application;

<u>(G)</u> [(D)] <u>failure</u> [fails] to comply with an order of the <u>HHSC executive commissioner</u> [department] or another enforcement procedure under  $HSC_{[7]}$  Chapters 241, [ $\Theta$ #] 311, or 327;

 $(\underline{H})$   $[(\underline{E})]$  [has] a history of failure to comply with the <u>applicable</u> rules [adopted under this chapter] relating to patient environment, health, safety, and rights <u>that reflect more than nominal non-</u>compliance;

 $\underbrace{(I)}_{\text{permitting [has aided, abetted or permitted]}} \underbrace{(I)}_{\text{permitting [has aided, abetted or permitted]}} \\ the commission of an illegal act;$ 

(J) [(G)] the hospital, or any of its employees, committing [has committed] fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to <u>HHSC</u> [the department] or required to be maintained by the <u>hospital</u> [facility] pursuant to HSC Chapter 241 and the provisions of this chapter;

affecting the health, safety, and rights of hospital patients;

(L) [(H)] failure [fails] to timely pay an assessed administrative penalty as required by HHSC [penalties in accordance with HSC, Chapter 241];

(M) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(O) [(J)] <u>failure</u> [fails] to comply with applicable requirements within a designated probation period; or [-]

(P) the hospital terminating the hospital's Medicare provider agreement if the hospital is certified under Title XVIII of the Social Security Act, 42 United States Code (USC), §1395 et seq.

(2) Denial of a license. <u>HHSC</u> [The department] has jurisdiction to enforce violations of [the] HSC[ $_{7}$ ] Chapters 241, [and] 311, and <u>327 and this chapter</u>. <u>HHSC</u> [The department] may deny a license if the applicant:

(A) fails to provide timely and sufficient information required by  $\underline{HHSC}$  [the department] that is directly related to the application; or

(B) has had the following actions taken against the applicant within the two-year period preceding the application:

*(i)* decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

*(ii)* federal Medicare or state Medicaid sanctions or penalties;

(iii) unsatisfied federal or state tax liens;

(iv) unsatisfied final judgments;

(v) eviction involving any property or space used as a hospital in any state;

(vi) unresolved [state Medicaid or] federal Medicare or state Medicaid audit exceptions;

*(vii)* denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

*(viii)* a court injunction prohibiting ownership or operation of a facility.

(3) Emergency suspension. Following notice and opportunity for hearing, the <u>executive</u> commissioner of <u>HHSC</u> [the department of state health services (commissioner)] or a person designated by the <u>executive</u> commissioner may issue an emergency order in relation to the operation of a hospital licensed under this chapter if the <u>executive</u> commissioner or the <u>executive</u> commissioner's designee determines that the hospital is violating this chapter, a rule adopted pursuant to this chapter, a special license provision, injunctive relief, an order of the <u>executive</u> commissioner or the <u>executive</u> commissioner's designee, or another enforcement procedure permitted under this chapter and the provision, rule, license provision, injunctive relief, order, or enforcement procedure relates to the health or safety of the hospital's patients.

(A) <u>HHSC</u> [The department] shall send written notice of the hearing and shall include within the notice the time and place of the hearing. The hearing must be held within 10 days after the date of the hospital's receipt of the notice.

(B) The hearing shall be held in accordance with  $\underline{\rm HHSC's}$  [the department's] informal hearing rules.

(C) The order shall be effective on delivery to the hospital or at a later date specified in the order.

(4) Probation. In lieu of <u>denying</u>, suspending, or revoking the license, <u>HHSC</u> [the department] may place [schedule] the <u>hospital</u> on [facility for a] probation for a period of not less than 30 days<sub>2</sub> if  $\overline{\text{HHSC}}$  finds that the hospital [facility] is [found] in repeated noncompliance with these rules or HSC[7] Chapter 241, and the hospital's [facility's] noncompliance does not endanger the public's health and safety [of the publie].

(A) HHSC shall provide notice to the hospital of the probation and of the items of noncompliance not later than the 10th day before the probation period begins.

(B) During the probation period, the hospital shall correct the items of noncompliance and report the corrections to HHSC for approval.

(5) Administrative penalty. <u>HHSC</u> [The department] has jurisdiction to impose an administrative penalty against a <u>hospital</u> [facility] licensed or regulated under this chapter for violations of [the] HSC[ $_{3}$ ] Chapters 241, [and] 311, and <u>327 and</u> this chapter. The imposition of an administrative penalty shall be in accordance with the provisions of [the] HSC[ $_{3}$ ] §241.059, [and] §241.060, and §327.008.

(6) Licensure of persons or entities with criminal backgrounds. <u>HHSC</u> [The department] may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a <u>hospital [facility]</u>. <u>HHSC</u> [The department] shall apply the requirements of <u>Texas</u> [the] Occupations Code[<sub>5</sub>] Chapter 53.

(A) <u>HHSC</u> [The department] is entitled <u>under Texas</u> <u>Government Code Chapter 411</u> to obtain criminal history information maintained by the Texas Department of Public Safety [(Government Code, §411.122)], the Federal Bureau of Investigation, [(Government Code, §411.087)] or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(B) In determining whether a criminal conviction directly relates, <u>HHSC</u> [the department] shall apply the requirements and consider the provisions of <u>Texas</u> Occupations Code[ $_5$ ] <u>Chapter 53</u> [\$53.022 and \$53.023].

(C) The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of a health care facility because these criminal offenses indicate an ability [inability] or a tendency for the person to be unable to own or operate a hospital [facility]:

(*i*) a misdemeanor violation of HSC[<sub>7</sub>] Chapter 241;

(ii) a misdemeanor or felony involving moral turpi-

tude;

*(iii)* a misdemeanor or felony relating to deceptive business practices;

*(iv)* a misdemeanor or felony of practicing any health-related profession without a required license;

(v) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(vi) a misdemeanor or felony under [the] Texas Penal Code (TPC), Title 5, involving a patient, resident, or a client of any health care facility, a home and community support services agency or a health care professional; or

(vii) a misdemeanor or felony under the TPC:

(*I*) Title 4 [offenses of attempting or conspiring to commit any of the offenses in this clause];

(II) Title 5 [offenses against the person];

(III) Title 7 [offenses against property];

(IV) Title 8 [offenses against public administra-

(V) Title 9 [offenses against public order and de-

(VI) Title 10 [offenses against public health, safety and morals]; or

tion]:

cency];

(VII) Title 11 [offenses involving organized erime].

(7) [(viii)] Offenses listed in paragraph (6)(C) [subparagraph(C)] of this subsection [paragraph] are not exclusive in that <u>HHSC</u> [the department] may consider similar criminal convictions from other state, federal, foreign, or military jurisdictions that <u>indicate an</u> [demonstrate the] inability or tendency for [of] the person or entity to own or operate a hospital [facility].

(8) [(ix)] <u>HHSC shall revoke a</u> [A] license [shall be revoked] on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

<u>(9)</u> [(7)] Notice. If <u>HHSC</u> [the department] proposes to deny, suspend, or revoke a license, or impose an administrative penalty, <u>HHSC</u> [the department] shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of <u>HHSC</u> [the department] or <u>HHSC</u> [the department] may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before <u>taking</u> [imposition of] the action.

(10) [(8)] Acceptance. Within 20 <u>calendar</u> days after receipt of the notice, the applicant or licensee may notify <u>HHSC</u> [the department], in writing, of acceptance of <u>HHSC's</u> [the department's] determination or request a hearing.

(11) [(9)] Hearing request.

(A) A request for a hearing by the applicant or licensee shall be in writing and submitted to <u>HHSC</u> [the department] within 20 calendar days of receipt of the notice <u>of the proposed action described</u> <u>in paragraph (9) of this subsection</u>. Receipt of the notice is presumed to occur on the <u>third [30th]</u> day after the date <u>HHSC mails</u> the notice [is mailed by the department] to the last <u>known</u> address [known] of the applicant or licensee.

(B) A hearing shall be conducted pursuant to <u>Texas</u> <u>Government Code Chapter 2001, and Title 1, Chapter 357, Subchapter</u> <u>I (relating to Hearings under the Administrative Procedure Act)[</u>, <u>Government Code, Chapter 2001</u>].

 conclusions of law on which  $\underline{\mathrm{HHSC}}$  [the department] based its decision.

(14) Admission of new patients upon suspension or revocation. Upon HHSC's determination to suspend or revoke a license, the license holder may not admit new patients until HHSC reissues the license.

(15) [(12)] Decision to suspend or revoke. When <u>HHSC's</u> [the department's] decision to suspend or revoke a license is final, the licensee must immediately cease operation, unless <u>the district court is-</u> <u>sues</u> a stay of such action [is issued by the district court].

(16) [(13)] Return of original license. Upon suspension, revocation or non-renewal of the license, the original license shall be returned to <u>HHSC</u> within 30 calendar days of HHSC's notification [the department upon the effective date of the department's determination].

(17) [(14)] Reapplication following denial or revocation.

(A) <u>One year after HHSC's [After the department's]</u> decision to deny or revoke, or the voluntary surrender of a license by a <u>hospital</u> [facility] while enforcement action is pending, a <u>hospital</u> [facility] may petition <u>HHSC</u> [the department], in writing, for a license. Expiration of a license prior to HHSC's decision becoming final shall not affect the one-year waiting period required before a petition can be submitted.

(B) <u>HHSC [The department]</u> may allow a reapplication for licensure if there is proof that the reasons for the original action no longer exist.

(C) <u>HHSC</u> [The department] may deny reapplication for licensure if HHSC [the department] determines that:

(i) the reasons for the original action continues;

*(ii)* the petitioner has failed to offer sufficient proof that conditions have changed; or

*(iii)* the petitioner has demonstrated a repeated history of failure to provide patients a safe environment or has violated patient rights.

(D) If <u>HHSC</u> [the department] allows a reapplication for licensure, the petitioner shall be required to meet the requirements as described in \$133.22 of this <u>chapter</u> [title] (relating to Application and Issuance of Initial License).

(19) [(16)] Surrender of a license. In the event that enforcement, as defined in this subsection, is pending or reasonably imminent, the surrender of a <u>hospital</u> [facility] license shall not deprive <u>HHSC</u> [the department] of jurisdiction in regard to enforcement against the <u>hospital</u> [facility].

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

Filed with the Office of the Secretary of State on April 29, 2024. TRD-202401860

Karen Ray General Counsel Department of State Health Services Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591

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# CHAPTER 135. AMBULATORY SURGICAL CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §135.21, concerning Inspections; §135.24, concerning Enforcement; and §135.25, concerning Complaints; an amendment to §135.22, concerning Renewal of License; and new §135.61, concerning Integrity of Inspections and Investigations; §135.62, concerning Inspections; §135.63, concerning Complaint Investigations; §135.64, concerning Notice; §135.65, concerning Professional Conduct; §135.66, concerning Complaint Against an HHSC Representative; and §135.67, concerning Enforcement.

# BACKGROUND AND PURPOSE

The purpose of the proposal is to update the inspection, complaint investigation, and enforcement procedures for ambulatory surgical centers (ASCs). These updates are necessary to hold ASCs accountable during the inspection and investigation processes and ensure ASCs provide necessary documentation in a timely manner to HHSC representatives. The proposal revises enforcement procedures to ensure accuracy with current practices and conform to statute. These updates also ensure consistent practices across HHSC Health Care Regulation rulesets, correct outdated language and contact information, and reflect the transition of regulatory authority for ASCs from the Department of State Health Services (DSHS) to HHSC.

A previous version of these repeals, amendment, and new sections was proposed by HHSC in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4087) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous informal and public comment periods.

# SECTION-BY-SECTION SUMMARY

The proposed repeal of \$135.21, Inspections, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new \$135.62.

The proposed amendment to §135.22, Renewal of License, makes necessary updates to reflect the transition of regulatory authority from DSHS to HHSC. The proposed amendment also specifies the time frame for an ASC to return the license to HHSC when the ASC cannot provide sufficient evidence that it submitted a renewal application and fee within 30 days prior to the expiration date of the license.

The proposed repeal of §135.24, Enforcement, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §135.67.

The proposed repeal of \$135.25, Complaints, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new \$135.63.

Proposed new §135.61, Integrity of Inspections and Investigations, places limits on an ASC's authority to record HHSC interviews and internal discussions. Proposed new §135.62, Inspections, makes necessary updates to ASC inspection requirements.

Proposed new §135.63, Complaint Investigations, makes necessary updates to ASC complaint investigation requirements.

Proposed new §135.64, Notice, informs an ASC of the required timeframes for responding to a written Statement of Deficiencies by returning a written Plan of Correction, together with any additional evidence of compliance.

Proposed new §135.65, Professional Conduct, informs providers that HHSC reports to the appropriate licensing authorities any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

Proposed new §135.66, Complaint Against an HHSC Representative, informs an ASC about registering a complaint against an HHSC inspector or investigator.

Proposed new §135.67, Enforcement, creates consistency between this ruleset for ASCs and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to reflect current practices and conform with statute.

# 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.

# GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create a new regulation;

(6) the proposed rules will expand and repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COM-MUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

# LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

# COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health,

safety, and welfare of the residents of Texas; and do not impose a cost on regulated persons.

#### 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 benefit will be greater clarity, consistency, and accountability in the inspection and investigation of ASCs. The public and the patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

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 impose any additional costs or fees on persons required 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 COMMENT

Written comments on the proposal may be submitted to the 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 22R101" in the subject line.

# SUBCHAPTER A. OPERATING REQUIRE-MENTS FOR AMBULATORY SURGICAL CENTERS

# 25 TAC §§135.21, 135.24, 135.25

## STATUTORY AUTHORITY

The repeals 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 §243.009, which requires HHSC to adopt rules for licensing of ASCs; and §243.010, which requires those rules to include minimum standards applicable to ASCs.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 243.

§135.21. Inspections.

§135.24. Enforcement.

§135.25. Complaints.

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 29, 2024.

TRD-202401861 Karen Ray General Counsel Department of State Health Services Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591

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# 25 TAC §135.22

# 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 §243.009, which requires HHSC to adopt rules for licensing of ASCs; and §243.010, which requires those rules to include minimum standards applicable to ASCs.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 243.

§135.22. Renewal of License.

(a) The <u>Texas Health and Human Services Commission</u> (<u>HHSC</u>) sends [department shall send] written notice of expiration of a license to an ambulatory surgical center (ASC) at least 60 days before the expiration date. If the applicant has not received notice, it is the duty of the ASC to notify <u>HHSC</u> [the department] and request a renewal application.

(b) <u>HHSC</u> [The department] shall issue a renewal license to an ASC that meets the minimum standards for a license set forth in <u>this</u> <u>chapter</u> [these sections].

(1) The ASC shall submit the following to <u>HHSC</u> [the department] no later than 30 days prior to the expiration date of the license:

- (A) a completed renewal application form;
- (B) a nonrefundable license fee; and

(C) if the ASC is accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory Surgery Facilities, documented evidence of current accreditation status.

(2) Renewal licenses shall be valid for two years.

(c) If <u>an</u> [the] applicant fails to timely submit an application and fee in accordance with subsection (b) of this section, <u>HHSC</u> [the department] shall notify the applicant that the ASC shall cease providing ambulatory surgical services. If the ASC can provide <u>HHSC</u> [the department] with sufficient evidence that the submission was completed in a timely manner and all dates were adhered to, <u>HHSC dismisses</u> the cease to perform [shall be dismissed]. If the ASC cannot provide sufficient evidence, the ASC shall [immediately thereafter] return the license to <u>HHSC</u> within 30 days after <u>HHSC's notification</u> by certified mail. If <u>an</u> [the] applicant wishes to provide ambulatory surgical services after the expiration date of the license, the applicant shall reapply for a license under §135.20 of this <u>chapter</u> [title] (relating to Initial Application and Issuance of License).

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 29, 2024. TRD-202401862 Karen Ray General Counsel Department of State Health Services Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591

SUBCHAPTER D. INSPECTION, INVESTIGATION, AND ENFORCEMENT PROCEDURES

### 25 TAC §§135.61 - 135.67

## STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §243.009, which requires HHSC to adopt rules for licensing of ASCs; and §243.010, which requires those rules to include minimum standards applicable to ASCs.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 243.

#### §135.61. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, an ambulatory surgical center's (ASC's) staff:

(1) may not record, listen to, or eavesdrop on any HHSC interview with ASC staff or patients that the ASC staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; and

(2) may not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of ASC staff when HHSC has requested a private room or office or distanced themselves from ASC staff and the ASC obtains HHSC's written approval before beginning to record or listen to the discussion.

(b) An ASC shall inform HHSC when security cameras or other existing recording devices in the ASC are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits ASC staff to be present, an interview or conversation for which ASC staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

#### §135.62. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of an ambulatory surgical center (ASC) at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) an ASC's plan of correction;

(3) an order or special order of the HHSC executive commissioner or the executive commissioner's designee; (4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the ASC.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its ASCs by HHSC.

(c) HHSC inspections to evaluate an ASC's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed ASC is offering or providing, or purporting to offer or provide, treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(d) An ASC shall cooperate with any HHSC inspection and shall permit HHSC to examine the ASC's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the ASC, unless prohibited by law.

(e) An ASC shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(f) An ASC shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the ASC, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) HHSC shall maintain the confidentiality of ASC records as applicable under state and federal law.

(h) Upon entry, HHSC holds an entrance conference with the ASC's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the ASC representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the ASC representative to inform the facility representative of any preliminary findings of the inspection, including any possible health and safety concerns. The ASC may provide any final documentation regarding compliance during the exit conference.

#### §135.63. Complaint Investigations.

(a) An ambulatory surgical center (ASC) shall provide each patient and applicable legally authorized representative at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the ASC.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The ASC shall prominently and conspicuously post this statement in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints directed to HHSC CII based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC conducts investigations to evaluate an ASC's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of an ASC at any reasonable time, including when treatment services are provided, to inspect or investigate:

(1) an ASC's compliance with any applicable statute or rule;

(2) an ASC's plan of correction;

(3) an ASC's compliance with an order of the HHSC executive commissioner or the executive commissioner's designee;

(4) an ASC's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the ASC.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its ASCs by HHSC.

(g) An ASC shall cooperate with any HHSC investigation and shall permit HHSC to examine the ASC's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the ASC, unless prohibited by law.

(h) An ASC shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(i) HHSC shall maintain the confidentiality of ASC records as applicable under state and federal law.

(j) An ASC shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the ASC, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(k) Upon entry, the HHSC representative holds an entrance conference with the ASC's designated representative to explain the nature, scope, and estimated duration of the investigation.

(1) The HHSC representative holds an exit conference with the ASC representative to inform the ASC representative of any preliminary findings of the investigation. The ASC may provide any final documentation regarding compliance during the exit conference.

(m) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

#### §135.64. Notice.

(a) An ambulatory surgical center (ASC) is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the ASC with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the facility's receipt of the SOD, the ASC shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the ASC in writing.

(B) If HHSC does not accept the POC, HHSC notifies the ASC in writing and requests the ASC submit a modified POC and any additional evidence of compliance no later than 10 business days after HHSC notifies the ASC in writing.

(C) The ASC shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of an ASC's compliance with this subsection or HHSC's acceptance of an ASC's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§135.65. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§135.66. Complaint Against an HHSC Representative.

An ambulatory surgical center may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

# §135.67. Enforcement.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, and orders.

(b) HHSC has jurisdiction to enforce violations of the Act or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(1) failure to comply with any applicable provision of the Texas Health and Safety Code (HSC), including Chapter 243;

(2) failure to comply with any provision of this chapter or any other applicable laws;

(3) the ambulatory surgical center (ASC), or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(4) the ASC, or any of its employees, materially alters any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide a complete license application;

(7) failure to comply with an order of the HHSC executive commissioner or another enforcement procedure under the Act;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(9) the ASC aiding, committing, abetting, or permitting the commission of an illegal act;

(10) the ASC, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the ASC pursuant to the Act and the provisions of this chapter;

(11) failure to timely pay an assessed administrative penalty as required by HHSC;

(12) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(13) failure to timely implement plans of correction to deficiencies cited by HHSC within the dates designated in the plan of correction;

(14) failure to comply with applicable requirements within a designated probation period; or

(15) the ASC terminating the ASC's Medicare provider agreement if the ASC is certified under Title XVIII of the Social Security Act, 42 United States Code (USC), §1395 et seq.

(c) HHSC has jurisdiction to enforce violations of the Act and this chapter. HHSC may deny a license if the applicant:

(1) fails to provide timely and sufficient information required by HHSC that is directly related to the license application; or

(2) has had the following actions taken against the applicant within the two-year period preceding the license application:

(A) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(B) federal Medicare or state Medicaid sanctions or penalties;

(C) unsatisfied federal or state tax liens;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as an ASC in any state;

(F) unresolved federal Medicare or state Medicaid audit exceptions;

(G) denial, suspension, or revocation of an ASC license, a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(H) a court injunction prohibiting ownership or operation of a facility. (d) HHSC may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of an ASC.

(1) In determining whether a criminal conviction directly relates, HHSC shall apply the requirements and consider the provisions of Texas Occupations Code Chapter 53.

(2) The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of an ASC because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate an ASC:

(A) a misdemeanor violation of the Act;

(B) a misdemeanor or felony involving moral turpitude;

(C) a misdemeanor or felony relating to deceptive business practices;

(D) a misdemeanor or felony of practicing any healthrelated profession without a required license;

(E) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) a misdemeanor or felony under Texas Penal Code (TPC) Title 5, involving a patient, resident, or a client of any health care facility, a home and community support services agency, or a health care professional;

(G) a misdemeanor or felony under the TPC:

(*i*) Title 4; (*ii*) Title 5; (*iii*) Title 7; (*iv*) Title 8; (*v*) Title 9;

- (vi) Title 10; or
- (vii) Title 11.

(H) Offenses listed in paragraph (2) of this subsection are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions that indicate an inability or tendency for the person or entity to be unable to own or operate an ASC.

(3) HHSC shall revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(c) If HHSC proposes to deny, suspend, or revoke a license, or impose an administrative penalty, HHSC shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or licensee has an opportunity for a hearing before taking the action.

(f) Within 20 calendar days after receipt of the notice described in subsection (e) of this section, the applicant or licensee shall notify HHSC, in writing, of acceptance of HHSC's determination or request a hearing. (g) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC within 20 calendar days after receipt of the notice described in subsection (e) of this section. Receipt of the notice is presumed to occur on the third day after the date HHSC mails the notice to the last known address of the applicant or licensee.

(1) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001 and Texas Administrative Code Title 1 Chapter 357, Subchapter I (relating to Hearings Conducted Under the Administrative Procedure Act).

(2) If an applicant or licensee does not request a hearing in writing within 20 calendar days after receiving the notice of the proposed action described in subsection (e) of this section, the applicant or licensee is deemed to have waived the opportunity for a hearing and HHSC shall take the proposed action.

(h) If HHSC finds that a violation of the standards or licensing requirements prescribed by the Act creates an immediate threat to the health and safety of patients of an ASC, HHSC may petition the district court for a temporary restraining order to restrain continuing violations.

(i) If a person violates the licensing requirements or the standards prescribed by the Act, HHSC may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an ASC without a license issued under the Act.

(j) HHSC may issue an emergency order to suspend a license issued under this chapter, if HHSC has reasonable cause to believe that the conduct of a licensee creates an immediate danger to public health and safety.

(1) An emergency suspension is effective immediately without a hearing on notice to the licensee.

(2) On written request of the licensee to HHSC for a hearing, HHSC refers the matter to the State Office of Administrative Hearings (SOAH). An administrative law judge of the office conducts a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by HHSC's rules for a contested case hearing and Texas Government Code Chapter 2001.

(k) In lieu of denying, suspending or revoking the license, HHSC may place the ASC on probation for a period of not less than 30 days, if HHSC finds the ASC is in repeated non-compliance with this chapter or the Act, and the ASC's noncompliance does not endanger the public's health and safety.

(1) HHSC shall provide notice of the probation to the ASC not later than the 10th day before the date the probation begins. The notice includes the items of noncompliance that resulted in placing the ASC on probation and shall designate the period of the probation.

(2) During the probationary period, the ASC shall correct the items of noncompliance and report the corrections to HHSC for approval.

(3) HHSC may verify the corrective actions through an on-site inspection.

(1) HHSC may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or an order adopted under this chapter.

(1) A penalty collected under this section shall be deposited in the state treasury in the general revenue fund. (2) A proceeding to impose an administrative penalty is considered a contested case hearing under Texas Government Code Chapter 2001.

(3) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed \$5,000.

(4) In determining the amount of an administrative penalty assessed under this section, HHSC shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(5) If HHSC initially determines that a violation occurred, HHSC shall give written notice of the report by certified mail to the person alleged to have committed the violation following the exit conference date. The notice includes:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended administrative penalty; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(6) Within 20 calendar days after the date the person receives the notice under paragraph (5) of this subsection, the person in writing may:

(A) accept the determination and recommended administrative penalty of HHSC; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the administrative penalty, or both.

(7) If the person accepts the determination and recommended administrative penalty or if the person fails to respond to the notice, the HHSC executive commissioner or the executive commissioner's designee by order approves the determination and imposes the recommended penalty.

(8) If the person requests a hearing under paragraph (6)(B) of this subsection, the HHSC executive commissioner refers the matter to SOAH. The hearing shall be conducted in accordance with Texas Government Code Chapter 2001, and all applicable SOAH and HHSC rules.

(9) Based on the proposal for the decision made by the administrative law judge under paragraph (8) of this subsection, the HHSC executive commissioner by order may find that a violation occurred or a violation did not occur.

(10) The HHSC executive commissioner or the executive commissioner's designee sends notice of the executive commissioner's order under paragraph (9) of this subsection to the person alleged to have committed the violation in accordance with Texas Government Code Chapter 2001. The notice shall include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(11) Within 30 calendar days after the date an order of the HHSC executive commissioner under paragraph (9) of this subsection that imposes an administrative penalty becomes final, the person shall:

(A) pay the penalty; or

(B) appeal the penalty by filing a petition for judicial review of the executive commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(12) Within the 30-day period prescribed by paragraph (11) of this subsection, a person who files a petition for judicial review may:

(A) stay enforcement of the penalty by:

(*i*) paying the penalty to the court for placement in an escrow account; or

(*ii*) giving the court a supersedeas bond that is approved by the court for the amount of the penalty, and that is effective until all judicial review of the HHSC executive commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

*(i)* filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(*ii*) sending a copy of the affidavit to the HHSC executive commissioner by certified mail.

(C) If the HHSC executive commissioner receives a copy of an affidavit under subparagraph (B) of this paragraph, the executive commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with HSC §243.016(c), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(13) If the person does not pay the penalty and the enforcement of the penalty is not stayed, HHSC may refer the matter to the attorney general for collection of the penalty. As provided by HSC  $\S243.016(d)$ , the attorney general may sue to collect the penalty.

(14) A decision by the court is governed by HSC §243.016(e) and (f), and provides the following.

(A) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(B) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(15) The remittance of penalty and interest is governed by HSC 243.016(g) and provides the following.

(A) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. (B) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(C) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(A) If the person gave a supersedeas bond and the court does not uphold the penalty, the court shall order, when the court's judgment becomes final, the release of the bond.

(B) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

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 29, 2024.

TRD-202401863 Karen Ray General Counsel Department of State Health Services Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591

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# **TITLE 26. HEALTH AND HUMAN SERVICES** PART 1. HEALTH AND HUMAN SERVICES COMMISSION

# CHAPTER 506. SPECIAL CARE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §506.61, concerning Inspection and Investigation Procedures; and §506.62, concerning Complaint Against a Texas Department of Health Representative; new §§506.61, concerning Integrity of Inspections and Investigations; 506.62, concerning Inspections; 506.63, concerning Complaint Investigations; 506.64, concerning Notice; 506.65, concerning Professional Conduct; and 506.66, concerning Complaint Against an HHSC Representative; and amendments to §506.71, concerning License Denial, Suspension, Revocation and Probation; and §506.73, concerning Administrative Penalties.

# BACKGROUND AND PURPOSE

The purpose of the proposal is to update the inspection, complaint investigation, and enforcement procedures for special care facilities. These updates are necessary to hold facilities accountable during the inspection and investigation processes and ensure facilities provide necessary documentation in a timely manner to HHSC representatives. The proposal revises enforcement procedures to ensure accuracy with current practices and conform to statute. These updates also ensure consistent practices across HHSC Health Care Regulation rulesets and correct outdated language and contact information, and reflect the transition of regulatory authority for special care facilities from the Department of State Health Services (DSHS) to HHSC. A previous version of these repeals, new sections, and amendments was proposed by HHSC in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4093) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous informal and public comment periods.

### SECTION-BY-SECTION SUMMARY

The proposed repeal of \$506.61, Inspection and Investigation Procedures, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new \$\$506.62 - 506.64.

Proposed new §506.61, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

The proposed repeal of §506.62, Complaint Against a Texas Department of Health Representative, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §506.66.

Proposed new §506.62, Inspections, makes necessary updates to special care facility inspection requirements.

Proposed new §506.63, Complaint Investigations, makes necessary updates to special care facility complaint investigation requirements.

Proposed new §506.64, Notice, informs a facility of the required timeframes for responding to a written Statement of Deficiencies by returning a written Plan of Correction, together with any additional evidence of compliance.

Proposed new §506.65, Professional Conduct, informs providers that HHSC reports to the appropriate licensing authorities any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

Proposed new §506.66, Complaint Against an HHSC Representative, informs a facility about registering a complaint against an HHSC inspector or investigator.

The proposed amendment to §506.71, License Denial, Suspension, Revocation and Probation, creates consistency between this ruleset for a special care facility and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to this section to reflect current practices and conform with statute.

The proposed amendment to §506.73, Administrative Penalties, makes necessary updates to reflect the transition of responsibility for special care facilities from DSHS to HHSC.

# 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.

# 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 new regulation;

(6) the proposed rules will expand and repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COM-MUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

# COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and do not impose a cost on regulated persons.

# 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 benefit will be greater clarity, consistency, and accountability in the inspection and investigation of special care facilities. The public and the patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

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 impose any additional costs or fees on persons required 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 COMMENT

Written comments on the proposal may be submitted to the 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 22R101" in the subject line.

# SUBCHAPTER E. INSPECTIONS AND INVESTIGATIONS

# 26 TAC §506.61, §506.62

# STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code § 248.026, which requires HHSC to adopt rules that establish minimum standards for special care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 248.

§506.61. Inspection and Investigation Procedures.

*§506.62.* Complaint Against a Texas Department of Health Representative.

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 29, 2024.

TRD-202401864

Karen Ray Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 9, 2024

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



# 26 TAC §§506.61 - 506.66

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code § 248.026, which requires HHSC to adopt rules that establish minimum standards for special care facilities.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 248.

#### §506.61. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, a facility:

(1) may not record, listen to, or eavesdrop on any HHSC interview with facility staff or residents that the facility staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; and

(2) may not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of facility staff when HHSC has requested a private room or office or distanced themselves from facility staff and the facility obtains HHSC's written approval before beginning to record or listen to the discussion. (b) A facility shall inform HHSC when security cameras or other existing recording devices in the facility are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits facility staff to be present, an interview or conversation for which facility staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

#### §506.62. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) a facility's plan of correction;

(3) an order or special order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility, unless prohibited by law.

(c) A facility shall permit HHSC access to interview members of the governing body, personnel, and residents, including the opportunity to request a written statement.

(f) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) HHSC shall maintain the confidentiality of facility records as applicable under state and federal law.

(h) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the facility representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection, including possible health and safety concerns. The facility may provide any final documentation regarding compliance during the exit conference.

§506.63. Complaint Investigations.

(a) A facility shall provide each resident and applicable legally authorized representative at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this statement in resident common areas and in visitor's areas and waiting rooms so that it is readily visible to residents, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints directed to HHSC CII based on the seriousness of the alleged violation and the level of risk to residents, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC shall conduct investigations to evaluate a facility's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of residents.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect or investigate:

 $\underbrace{(1) \quad a \ facility's \ compliance \ with \ any \ applicable \ statute \ or \ rule;}$ 

(2) a facility's plan of correction;

(3) a facility's compliance with an order of the executive commissioner or the executive commissioner's designee;

(4) a facility's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC. (g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility, unless prohibited by law.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and residents, including the opportunity to request a written statement.

(i) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) HHSC shall maintain the confidentiality of facility records as applicable under state and federal law.

(k) Upon entry, the HHSC representative holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(1) The HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the investigation. The facility may provide any final documentation regarding compliance during the exit conference.

(m) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

#### §506.64. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the facility's receipt of the SOD, the facility shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If HHSC does not accept the POC, HHSC notifies the facility in writing and requests the facility submit a modified POC and any additional evidence of compliance no later than 10 business days after HHSC notifies the facility in writing.

(C) The facility shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of a facility's compliance with this subsection or HHSC's acceptance of a facility's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

#### §506.65. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure. §506.66. Complaint Against an HHSC Representative.

A facility may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

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 29, 2024.

TRD-202401865 Karen Ray Chief Counsel Health and Human Services Commission Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591

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SUBCHAPTER F. ENFORCEMENT

### 26 TAC §506.71, §506.73

### 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 § 248.026, which requires HHSC to adopt rules that establish minimum standards for special care facilities.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 248.

§506.71. License Denial, Suspension, Revocation and Probation.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, and orders. [The department may deny, suspend, suspend on an emergency basis, or revoke a license if the applicant or facility fails to comply with any provision of the Act or this chapter.]

(b) Denial, suspension or revocation of a license or imposition of an administrative penalty. HHSC has jurisdiction to enforce violations of Health and Safety Code (HSC) Chapter 248 (relating to Special Care Facilities) and this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(1) failure to comply with any applicable provision of the HSC, including Chapter 248;

(2) failure to comply with any provision of this chapter or any other applicable laws;

(3) the facility, or any of its employees, committing an act which causes actual harm or risk of harm to the health or safety of a resident;

(4) the facility, or any of its employees, materially altering any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide a complete license application;

(7) failure to comply with an order of the HHSC executive commissioner or another enforcement procedure under HSC Chapter 248;

(8) a history of failure to comply with the applicable rules relating to resident environment, health, safety, and rights;

(9) the facility aiding, committing, abetting, or permitting the commission of an illegal act;

(10) the facility, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapter 248 and the provisions of this chapter;

(11) failure to timely pay an assessed administrative penalty as required by HHSC;

(12) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(13) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction; or

(14) failure to comply with applicable requirements within a designated probation period.

[(b) The department may take action under subsection (a) of this section for fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the facility pursuant to the provisions of this ehapter.]

(c) <u>HHSC</u> [The department] may deny a person or entity a license or suspend or revoke an existing [valid license, or disqualify a person from receiving a] license on the grounds that the person or entity has been convicted [because of a person's conviction] of a felony or misdemeanor that [if the erime] directly relates to the duties and responsibilities of the ownership or operation of a facility.

(1) In determining whether a criminal conviction directly relates, <u>HHSC</u> [the department] shall apply the requirements and consider the provisions of Texas Occupations Code Chapter 53. [:]

[(A) the nature and seriousness of the crime;]

[(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;]

[(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and]

[(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.]

[(2) In addition to the factors that may be considered under paragraph (1) of this subsection, the department, in determining the present fitness of a person who has been convicted of a crime, shall consider the provisions of Texas Occupations Code, §53.022 and §53.023 (relating to Ineligibility for License).]

(2) [(3)] The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of <u>a health care facility</u> because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a facility:

(A) a <u>misdemeanor</u> violation of <u>HSC Chapter 248</u> [the

(B) <u>a misdemeanor or felony</u> [an offense] involving moral turpitude;

(C) <u>a misdemeanor or felony</u> [an offense] relating to deceptive business practice;

(D) <u>a misdemeanor or felony [an offense]</u> of practicing any health-related profession without a required license;

(E) <u>a misdemeanor or felony</u> [an offense] under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) <u>a misdemeanor or felony [an offense]</u> under [Title 5 of the] Texas Penal Code (TPC) Title 5, involving a patient, resident, or client of any [a] health care facility, [or] <u>a home and community</u> <u>support services</u> agency, or a health care professional; [or]

(G) <u>a misdemeanor or felony</u> [an offense] under <u>TPC</u> [various titles of the Texas Penal Code]:

son];

erty];

(ii) [(i)] Title 5 [concerning offenses against the per-

(iii) [(iii)] Title 7 [concerning offenses against prop-

(iv) Title 8;

(v) [(iii)] Title 9 [concerning offenses against public order and decency];

(vi) [(iv)] Title 10 [concerning offenses against publie health, safety, and morals]; or

### (vii) Title 11; or

f(v) Title 4 concerning offenses of attempting or eonspiring to commit any of the offenses in this subsection; or]

(H) Offenses listed in paragraph (2) of this subsection are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions that [other misdemeanors or felonies which] indicate an inability or tendency for the person to be unable to own or operate a facility[if action by the department will promote the intent of the Act, this chapter or Texas Occupations Code, §53.022 and §53.023].

(d) <u>HHSC shall revoke a license on the [Upon a]</u> licensee's imprisonment following a felony conviction, felony community supervision [probation] revocation, revocation of parole, or revocation of mandatory supervision[ $_{5}$  his license shall be revoked].

(e) If HHSC [the department] proposes to deny, suspend, or revoke a license, or impose an administrative penalty, HHSC [the director] shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC, or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before taking the action [notify the applicant or the facility by mail of the reasons for the proposed action and offer the applicant or facility an opportunity for a hearing. The applicant or facility must request a hearing within 30 calendar days of receipt of the notice. The request must be in writing and submitted to the Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001,

Act];

and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If the applicant or facility does not request a hearing, in writing, within 30 calendar days of receipt of the notice or does not appear at a scheduled hearing, the applicant or facility is deemed to have waived the opportunity for a hearing and the proposed action shall be taken. Receipt of the notice is presumed to occur on the tenth calendar day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt].

(f) Within 20 calendar days after receipt of the notice, the applicant or licensee may notify HHSC, in writing, of acceptance of HHSC's determination or request a hearing.

(g) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC within 20 calendar days after receipt of the notice. Receipt of the notice is presumed to occur on the third day after the date HHSC mails the notice to the last known address of the applicant or licensee.

(1) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001 and Texas Administrative Code Title 1 Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(2) If an applicant or licensee does not request a hearing in writing within 20 calendar days after receiving the notice of the proposed action described in subsection (e) of this section, the applicant or licensee is deemed to have waived the opportunity for a hearing and HHSC shall take the proposed action.

(h) [(f)] <u>HHSC</u> [The department] may issue an emergency order to suspend [or revoke] a license [to be] effective immediately when <u>HHSC</u> [the department] has reasonable cause to believe that the conduct of a license holder creates an immediate danger to public [the] health and safety [of persons are threatened]. <u>HHSC</u> [The department] shall notify the facility of the emergency action by mail or personal delivery of the notice. <u>On written request of [If requested by]</u> the license holder to <u>HHSC for</u> [,the department shall conduct] a hearing, <u>HHSC</u> refers the matter to the State Office of Administrative Hearings [which shall be not earlier than ten calendar days from the effective date of the suspension or revocation]. [The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).]

[(g) If a person violates a requirement of the Act or this chapter, the department may petition the district court to restrain the person from continuing the violation.]

(i) [(h)] In lieu of <u>denying</u>, suspending or revoking the license, <u>HHSC</u> [the department] may <u>place</u> [sehedule] the facility <u>on</u> [for a] probation for a period of not less than 30 days, if <u>HHSC</u> finds that the facility is [found] in repeated non-compliance with this chapter or <u>HSC</u> <u>Chapter 248</u>, and the facility's noncompliance does not endanger the public's health and safety [of the public].

#### §506.73. Administrative Penalties.

(a) Imposition of penalty. The <u>Texas Health and Human Services Commission (HHSC)</u> [department] may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or <u>an</u> order adopted under this chapter.

(b) Deposit of penalty. A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(c) Contested case. A proceeding to impose the penalty is considered to be a contested case under  $\underline{\text{Texas}}$  Government Code [ $_{\overline{3}}$ ] Chapter 2001.

(d) Amount of penalty.

(1) The amount of the penalty may not exceed 1,000 for each violation, except for violations of 506.31(b)(6) of this chapter (relating to General Functions) [125.31(b)(6) of this title (pertaining to General Functions)], which are limited to 500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed 5,000.

(2) In determining the amount of an administrative penalty assessed under this section, <u>HHSC</u> [the department] shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

- (C) the history of previous violations;
- (D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(e) Report and notice of violation and penalty.

(1) If <u>HHSC</u> [the department] initially determines that a violation occurred, <u>HHSC sends</u> [the department will give] written notice of the report by <u>certified</u> mail to the person alleged to have committed the violation following the exit conference date.

(2) The notice must include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty based on the factors listed in subsection (d)(2) of this section; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Penalty to be paid or hearing requested.

(1) Within 20 <u>calendar</u> days after the date the person receives the notice sent under subsection (e) of this section, the person in writing may:

(A) accept  $\underline{HHSC's}$  [the] determination and recommended penalty [of the department]; or

(B) [make a] request [for] a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the <u>HHSC executive</u> commissioner [of public health commissioner)] or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(g) Hearing.

(1) If the person requests a hearing, the <u>HHSC executive</u> commissioner or the commissioner's designee shall refer the matter to the State Office of Administrative Hearings (SOAH). The hearing

shall be conducted in accordance with Texas Government Code Chapter 2001 and all applicable SOAH and HHSC rules.

(2) As mandated by Health and Safety Code (HSC) [5] §248.105(a), [the] SOAH shall promptly set a hearing date and give written notice of the time and place of the hearing to the person.

 $(A) \;\;$  An administrative law judge of the SOAH shall conduct the hearing.

(B) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the <u>HHSC executive</u> commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(h) Decision by HHSC executive commissioner.

(1) Based on the findings of fact, conclusions of law, and proposal for a decision made by the administrative law judge under subsection (g)(2) of this section, the <u>HHSC executive</u> commissioner or the commissioner's designee by order may find that a violation has occurred and may impose a penalty or may find that no violation has occurred.

(2) The <u>HHSC executive</u> commissioner or the <u>executive</u> commissioner's designee shall give notice of the <u>executive</u> commissioner's order under paragraph (1) of this subsection to the person alleged to have committed the violation in accordance with <u>Texas</u> Government Code [ $_{7}$ ] Chapter 2001. The notice must include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(i) Options following decision. Within 30 <u>calendar</u> days after the date the order of the HHSC <u>executive</u> commissioner under subsection (h) of this section that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) appeal the penalty by filing a petition for judicial review of the <u>HHSC executive</u> commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(j) Stay of enforcement of penalty.

(1) Within the 30-day period prescribed by subsection (i) of this section, a person who files a petition for judicial review in accordance with subsection (i)(2) of this section may:

(A) stay enforcement of the penalty by:

*(i)* paying the penalty to the court for placement in an escrow account; or

(ii) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the <u>HHSC executive</u> commissioner's order is final; or

(B) request the court to stay enforcement of the penalty

by:

*(i)* filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(*ii*) sending a copy of the affidavit to the <u>HHSC executive</u> commissioner by certified mail.

(2) If the <u>HHSC executive</u> commissioner receives a copy of an affidavit under paragraph (1)(B) of this subsection, the <u>executive</u> commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with [Health and Safety Code (HSC),] §248.108(b), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(k) Collection of penalty.

(1) If the person does not pay the penalty and the enforcement of the penalty is not stayed, <u>HHSC</u> [the department] may refer the matter to the attorney general for collection of the penalty.

(2) As provided by HSC  $[_{5}]$  §248.109(b), the attorney general may sue to collect the penalty.

(1) Decision by court. A decision by the court is governed by HSC  $[\frac{1}{2}]$  §248.110  $[\frac{1}{2}]$  and provides the following.

(1) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(2) If the court does not sustain the finding that a violation occurred, the court shall order that no penalty is owed.

(m) Remittance of penalty and interest and release of supersedeas bond. The remittance of penalty and interest is governed by HSC  $[_{7}]$  §248.111 $[_{7}]$  and provides the following.

(1) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(2) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(3) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(n) Release of bond. The release of supersedeas bond is governed by HSC [5] §248.112 [5] and provides the following.

(1) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(2) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

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 29, 2024.

TRD-202401866 Karen Ray Chief Counsel Health and Human Services Commission Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591

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# CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §510.1, concerning Purpose; §510.2, concerning Definitions; §510.21, concerning General; §510.22, concerning Application and Issuance of Initial License; §510.23, concerning Application and Issuance of Renewal License; §510.24, concerning Change of Ownership; §510.25, concerning Time Periods for Processing and Issuing Licenses; §510.26, concerning Fees; §510.41, concerning Facility Functions and Services; §510.42, concerning Discrimination or Retaliation Standards; §510.43, concerning Patient Transfer Policy; §510.46, concerning Abuse and Neglect Issues; §510.61, concerning Patient Transfer Agreements; §510.62, concerning Cooperative Agreements; §510.101, concerning Fire Prevention and Protection; §510.121, concerning Requirements for Buildings in which Existing Licensed Facilities are Located; §510.122, concerning New Construction Requirements; §510.123, concerning Spatial Requirements for New Construction; §510.125, concerning Building with Multiple Occupancies; §510.127, concerning Preparation, Submittal, Review and Approval of Plans: §510.128, concerning Construction, Surveys, and Approval of Project; §510.129, concerning Waiver Requests, and §510.131, concerning Tables.

### BACKGROUND AND PURPOSE

The proposal is necessary to correct cross-references throughout 26 TAC Chapter 510 after the rules were administratively transferred from 25 TAC Chapter 134 to 26 TAC Chapter 510. These proposed non-substantive amendments will maintain accurate references to 25 TAC and 26 TAC. The proposed amendments also correct outdated citations and references to programs that no longer exist; update language to reflect current HHSC organization; and increase consistency with statute, HHSC rules, and HHSC rulemaking guidelines.

A previous version of these amended rules was proposed in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4099) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous public comment period. The public will have another 31-day period to comment on this version of these proposed amended rules.

# SECTION-BY-SECTION SUMMARY

The proposed amendment to §510.1, Purpose, updates the statutory reference for the rules and replaces the term "Department of Health" with "HHSC" to reflect the transition of regulatory authority to HHSC. The proposed amendment also replaces the term "mental hospitals" with "psychiatric hospitals."

The proposed amendment to §510.2, Definitions, adds definitions for "HHSC" and "plan of correction" to increase consistency across the rule sets for licensed health care facilities.

The definitions for "action plan," "applicant," "community center," "contaminated linen," "crisis stabilization unit," "dentist," "dietitian," "emergency medical condition," "fast-track projects," "governing body," "inpatient services," "licensed vocational nurse," "mental illness," "mobile unit," "owner," "pharmacist," "physician," "podiatrist," "premises," "registered nurse," "transfer," "universal precautions," and "violation" are updated to ensure clarity, update outdated language and punctuation, ensure consistency with statute and across rule sets for licensed health care facilities, and reflect updated entity names.

The definitions for "board," "department," "director," "division," "learning disability," and "mental retardation" are deleted as they refer to defunct entities, inactive programs, or outdated terms no longer used in the chapter.

The proposed amendment deletes the definition for "legally reproduced form" from this section and provides the definition for the term in \$510.41(g)(6) and deletes the definition for "oral surgeon" and provides the definition for the term in \$510.41(a)(1)(C). The terms only appear in these sections.

The proposed amendment also removes definitions for "medical error," "reportable event," and "root cause analysis" related to the patient safety program, which was created by House Bill (H.B.) 1614, 78th Legislature, Regular Session, 2003, and expired in 2007. The proposed amendment also makes other non-substantive edits in this section to improve clarity and ensure consistency with HHSC rulemaking guidelines, including renumbering the section for the deletion and addition of paragraphs.

The proposed amendment to §510.21, General, updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," updates rule language to ensure consistency with statute, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.22, Application and Issuance of Initial License, updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines. The proposed amendment also updates §510.22(d)(2)(A) regarding "expiration date" by removing outdated language for initial licenses issued prior to 2005 because these licenses have expired, and the language is no longer needed to distinguish between licenses issued prior to 2005. The reference to §510.87, located in §510.22(f), refers to rules proposed elsewhere in this issue of the Texas Register. The proposed amendment also updates or clarifies the term "survey" to refer either to a "field survey" or "inspection," as applicable, to ensure consistency with current HHSC terminology and statutory language and replaces "pre-survey conference" with "pre-licensure conference" to reflect current HHSC terminology.

The proposed amendment to §510.23, Application and Issuance of Renewal License, replaces the term "department" with "HHSC" and updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC. The proposed amendment updates the annual fire safety inspection report requirements language to provide additional clarity, updates a reference to the Joint Commission to accurately refer to its current name, and removes language in §510.23(b)(1) related to the patient safety program. The reference to §510.82, located in §510.23(b)(2), refers to rules proposed elsewhere in this issue of the Texas Register. The proposed amendment also updates §510.23(b)(3)-(5) by removing outdated language for renewal licenses issued prior to 2005 because these licenses have expired, and the language is no longer needed to distinguish between licenses issued prior to 2005. The proposed amendment also updates the term "survey" to "inspection" to ensure consistency with current HHSC terminology and statutory language.

The proposed amendment to §510.24, Change of Ownership, replaces the term "department" with "HHSC", updates rule ref-

erences to reflect the rule chapter transfer from 25 TAC to 26 TAC, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines. The proposed amendment also updates or clarifies the term "survey" to refer either to a "field survey" or "inspection," as applicable, to ensure consistency with current HHSC terminology and statutory language.

The proposed amendment to §510.25, Time Periods for Processing and Issuing Licenses, replaces the term "division" with "HHSC," updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.26, Fees, replaces the term "department" with "HHSC," updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, and clarifies the term "survey" under §510.26(a)(1) and §510.26(d) is a "field survey" to ensure consistency with current HHSC terminology and statutory language. The proposed amendment also updates the licensure period from 12 to 24 months in §510.26(b)(1) to align with the 24-month licensure period indicated in §510.22 and §510.23, and updates licensure fees accordingly. The proposed amendment also makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.41, Facility Functions and Services, updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC; updates references to the Code of Federal Regulations (CFR) to accurately reflect the titles of the references to various parts of 42 CFR; and replaces the term "department" with "HHSC". The proposed amendment also adds clarity by indicating the licensing entity for oral surgeons and describes the types of legally reproduced medical records. The proposed amendment also makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.42, Discrimination or Retaliation Standards, makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.43, Patient Transfer Policy, updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," removes a reference to a defunct agency, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.46, Abuse and Neglect Issues, replaces the term "department" with "HHSC," updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines. The proposed amendment to §510.46(c)(2) updates the abuse and neglect, or illegal, unethical or unprofessional conduct posting requirements to require the posting include HHSC's current toll-free telephone number for submitting complaints. The proposed amendment also removes outdated information in §510.46(g)(2) requiring HHSC to refer certain complaints to the Texas Department of Mental Health and Mental Retardation because that agency no longer exists and HHSC is responsible for carrying out its duties. The reference to §510.83, located in §510.46(d)(2), refers to rules proposed elsewhere in this issue of the Texas Register.

The proposed amendment to §510.61, Patient Transfer Agreements, updates rule references to reflect the rules transfer from 25 TAC to 26 TAC and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.62, Cooperative Agreements, updates a rule reference to reflect the rules transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," replaces the term "mental hospital" with "psychiatric hospital," and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment revises the title of Subchapter F to "Fire Prevention and Protection."

The proposed amendment to §510.101, Fire Prevention and Protection, updates outdated information, corrects a typographical error, and updates rule references to reflect the rules transfer from 25 TAC to 26 TAC. Other non-substantive edits are made to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.121, Requirements for Buildings in which Existing Licensed Facilities are Located, replaces the term "department" with "HHSC," removes outdated information, and updates rule references to reflect the rules transfer from 25 TAC to 26 TAC. Other non-substantive edits are made to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.122, New Construction Requirements, makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines, removes outdated information, replaces the term "department" with "HHSC," and updates rule references to reflect the rules transfer from 25 TAC to 26 TAC.

The proposed amendment to §510.123, Spatial Requirements for New Construction, updates outdated information, updates rule references to reflect the rules transfer from 25 TAC to 26 TAC, and makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.125, Building with Multiple Occupancies, removes outdated information, updates rule references to reflect the rules transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," and makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.127, Preparation, Submittal, Review and Approval of Plans, replaces the term "department" with "HHSC," updates rule references to reflect the rules transfer from 25 TAC to 26 TAC, removes outdated information, and updates a reference to the Texas Board of Professional Engineers to correctly refer to the board's current name. Other non-substantive edits are made to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.128, concerning Construction, Surveys, and Approval of Project, updates rule references to reflect the rules transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," removes outdated information, and makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.129, Waiver Requests, removes outdated information, updates rule references to reflect the rules transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," and makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.131, Tables, updates the figure titles to reflect the rules transfer from 25 TAC to 26 TAC.

#### 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 have foreseeable implications relating to costs or revenues of state and local governments.

Applicants for initial and renewal facility licensure must pay a license fee for a two-year license term, as required by the Texas Health and Safety Code (HSC) §577.006(a), rather than the current rule requirement for an applicant to pay for a one-year license term, which will increase costs for the applicant in the first year of the licensing term.

Specifically, an applicant for licensure must pay a licensure fee of \$200 per bed with a \$6,000 minimum for the two-year license term rather than \$100 per bed with a \$3,000 minimum. Paying the entire licensing fee up front results in a decrease of revenue to the state in the second year of the licensing term.

HHSC cannot estimate the increase in revenue because HHSC is unable to estimate how many applicants there will be for private psychiatric hospital and crisis stabilization unit (CSU) licenses in any year and the number of beds in these facilities.

#### 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 affect fees paid to HHSC;

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

(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 COM-MUNITY IMPACT ANALYSIS

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities as the rules are proposed.

The proposed rules require the approximately 66 private psychiatric hospitals and CSUs to pay a license fee for a two-year license term, as required by HSC §577.006(a), rather than the current rule requirement for an applicant to pay for a one-year license term. HHSC is unable to estimate the number of private psychiatric hospitals meeting the definition of a small business, micro-business, or rural community that will be impacted by the proposed rules as well as the adverse economic effect of the proposal.

#### 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.

# PUBLIC BENEFIT AND COSTS

Stephen Pahl, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from accurate and up-to-date rule language and statutory and rule references, greater clarity in the rules, and consistency between existing statutes and HHSC rules.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the proposed rules require facilities to pay a license fee for a two-year license term, as required by HSC §577.006(a), rather than the current rule requirement for an applicant to pay for a one-year license term.

#### 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 the 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 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 "24R041" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

## 26 TAC §510.1, §510.2

# STATUTORY AUTHORITY

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

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

#### §510.1. Purpose.

(a) The purpose of this chapter is to implement Texas [the Private Mental Hospitals and Other Mental Health Facilities licensing Act,] Health and Safety Code [ $_{7}$ ] Chapter 577, which requires psychiatric [mental] hospitals and mental health facilities that provide court-ordered mental health services to be licensed by the Texas [Department of] Health and Human Services Commission.

(b) This chapter provides definitions, and establishes licensing procedures, operational requirements, standards for voluntary agreements, enforcement procedures, fire prevention and safety requirements, and physical plant and construction requirements for private psychiatric hospitals and crisis stabilization units.

(c) Compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local laws, codes, rules, regulations and ordinances. This chapter must be followed where it exceeds other codes and ordinances.

#### §510.2. Definitions.

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

(1) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling, or eliminating identified problem areas.

(2) Adverse event--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(3) Applicant--<u>A</u> [The] person who seeks a private psychiatric hospital license or crisis stabilization unit license from the Texas Health and Human Services Commission (HHSC) and who is legally responsible for the operation of the facility [, whether by lease or ownership, who seeks a license from the department].

[(4) Board--The Texas Board of Health.]

(4) [(5)] Community center--A center established under Texas Health and Safety Code[7] Chapter 534, Subchapter A.

(5) [(6)] Contaminated linen--Linen [which has been] solied with blood or other potentially infectious materials or linen containing [may contain] sharps. Other potentially infectious materials means:

(A) [the following] human body fluids <u>such as</u> [:] semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, [any] body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(C) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV) containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(6) [(7)] Crisis stabilization unit (CSU)--A mental health facility operated by a community center or other entity designated by the local mental health authority [Texas Department of Mental Health and Mental Retardation] in accordance with Texas Health and Safety Code [ $_3$ ] §534.054, that provides treatment to individuals who are the

subject of a protective custody order issued in accordance with Texas Health and Safety Code [5] §574.022.

(7) [(8)] Dentist--A person licensed to practice dentistry by the <u>Texas</u> State Board of Dental Examiners. This includes a doctor of dental surgery or a doctor of dental medicine.

[(9) Department--The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.]

(8) [(10)] Dietitian--A person who is currently licensed by the Texas Department of Licensing and Regulation [State Board of Examiners of Dietitians] as a licensed dietitian or provisional licensed dietitian [ $_{_{7}}$ ] or who is a registered dietitian with the American Dietetic Association.

[(11) Director--The director of the Health Facility Licensing and Compliance Division, Texas Department of Health.]

[(12) Division--The Health Facility Licensing and Compliance Division, Texas Department of Health.]

(9) [(13)] Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance <u>use</u> <u>disorder [abuse]</u>) such that the absence of immediate medical attention could reasonably be expected to result in one or <u>more [all]</u> of the following:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) with respect to a pregnant woman who is having contractions:

(*i*) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

*(ii)* that transfer may pose a threat to the health or safety of the woman or the unborn child.

(10) [(14)] Facility--A private psychiatric hospital or a crisis stabilization unit.

(11) [(15)] Facility administration--Administrative body of a facility headed by an individual who has the authority to represent the facility and who is responsible for the operation of the facility according to the policies and procedures of the facility governing body.

(12) [(16)] Fast-track project [projects] --A construction project for [in] which it is necessary to begin initial phases of construction before later phases of the construction documents are fully completed in order to establish other design conditions or because of time constraints [such as mandated deadlines].

(13) [(47)] Governing body--The governing authority of a facility [which is] responsible for the facility's organization, management, control, and operation, including appointment of the medical staff. This term  $[\frac{1}{2}]$  includes the owner or partners for facilities owned or operated by an individual or partners.

 $(\underline{14})$  [(18)] Governmental unit--A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

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

(16) [(19)] Hospital--A private psychiatric hospital.

(17) [(20)] Inpatient services--Services provided to a patient admitted to a hospital for an intended length of stay of 24 hours or more [greater].

[(21) Learning disability--When a severe discrepancy exists when the individual's assessed intellectual ability is above the mentally retarded range, but where the individual's assessed educational achievement in areas specified is more than one standard deviation below the individual's intellectual ability.]

[(22) Legally reproduced form--A medical record retained in hard copy, microform (microfilm or microfiche), or other electronic medium.]

(18) [(23)]Licensed vocational nurse--An individual who is currently licensed as a licensed vocational nurse (LVN) by the <u>Texas</u> Board of <u>Nursing [Vocational Nurse Examiners]</u> in accordance with Texas Occupations Code [ $_3$ ] Chapter 301 [302].

(19) [(24)] Licensee--A person or governmental unit who has been granted a private psychiatric hospital license or crisis stabilization unit license.

[(25) Medical error--The failure of a planned action to be completed as intended, the use of a wrong plan to achieve an aim, or the failure of an unplanned action that should have been completed, that results in an adverse event.]

(20) [(26)] Medical staff--Licensed physicians and other licensed practitioners permitted by law and by the facility to provide medical care independently in the facility.

(21) [(27)] Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental illness.

(22) [(28)] Mental illness-An illness, disease, or condition, other [(other] than [a sole diagnosis of] epilepsy, dementia [senility], substance use disorder, [mental retardation, autism,] or intellectual disability [pervasive developmental disorder)] that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs [an individual's] behavior as demonstrated by recent disturbed behavior.

[(29) Mental retardation—Significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.]

(23) [(30] Minor--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(24) [(31)] Mobile unit--Any pre-manufactured structure, trailer, or self-propelled unit equipped with a chassis on wheels and intended to provide shared medical services to the community on a temporary basis. Some of these units are equipped with expanding walls<sup>[5]</sup> and designed to be moved on a daily basis.

[(32) Oral surgeon--A person licensed by the State Board of Dental Examiners in the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial regions.]

(25) [(33)] Outpatient services--Services provided to patients whose medical needs can be met in less than 24 hours and are provided within the facility.

(26) [(34)] Owner--One of the following persons who [which] will hold or does hold a license issued under Texas Health and Safety Code [ $_{7}$ ] Chapter 577, in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(27) [(35)] Patient--An individual who is receiving mental health services under this chapter.

(28) [(36)] Person--An individual, firm, partnership, corporation, association, joint stock company, joint venture, or local authority, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(29) [(37)] Pharmacist--A person who is licensed to practice pharmacy by the Texas <u>State</u> Board of Pharmacy in accordance with Texas Occupations Code[ $_{5}$ ] Chapter 558.

(30) [(38)] Physician--An individual who is:

(A) licensed as a physician by the Texas [State Board of] Medical <u>Board</u> [Examiners] in accordance with [Chapter 155 of the] Texas Occupations Code <u>Chapter 155</u>; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas [State Board of] Medical Board [Examiners].

(31) Plan of correction--A documented and directed response to any compliance issue identified in a report provided to the facility by HHSC staff after a facility inspection or investigation, which is required to state how and when any compliance issues identified in the report will be corrected.

(32) [(39)] Podiatrist--A podiatrist licensed by the Texas Department of Licensing and Regulation [State Board of Podiatry Examiners].

(33) [(40)] Political subdivision--A county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.

(34) [(41)] Practitioner-A health care professional licensed in the state [State] of Texas, other than a physician.

(35) [(42)] Premises--A premises is [may be any of the following]:

(A) a single building where inpatients receive hospital services; or

(B) multiple buildings where inpatients receive hospital services, provided that the following criteria are met:

*(i)* all inpatient buildings and inpatient services are subject to the control and direction of the governing body of the hospital;

*(ii)* all inpatient buildings are within a 30-mile radius of the main address of the licensee;

(iii) there is integration of the organized medical staff of the hospital;

*(iv)* there is a single chief executive officer who reports directly to the governing body and through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of the hospital;

(v) there is a single chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of the hospital; and

(vi) each building that is geographically separate from other buildings contains at least one nursing unit for inpatients, unless providing only diagnostic or laboratory services, or a combination thereof, in the building for hospital inpatients.

(36) [(43)] Private psychiatric hospital--A hospital that provides inpatient mental health services to individuals with a mental illness or with a substance use disorder except that, at all times, a majority of the individuals admitted are individuals with a mental illness. Such services include psychiatric assessment and diagnostic services, physician services, professional nursing services, and monitoring for patient safety provided in a restricted environment.

(37) [(44)] Registered nurse--An individual who is licensed as a registered nurse by the <u>Texas</u> Board of <u>Nursing</u> [Nurse Examiners] in accordance with Texas Occupations Code [5] Chapter 301.

(38) [(45)] Relocatable unit--Any structure, not on wheels, built to be relocated at any time and provide medical services. These structures vary in size.

[(46) Reportable event—A medical error or adverse event or occurrence which the facility is required to report to the department, as set out in §134.47 of this title (relating to Patient Safety Program).]

[(47) Root eause analysis—An interdisciplinary review process for identifying the basic or contributing causal factors that underlie a variation in performance associated with an adverse event or reportable event. It focuses primarily on systems and processes, includes an analysis of underlying cause and effect, progresses from special causes in elinical processes to common eauses in organizational processes, and identifies potential improvements in processes or systems.]

(39) [(48)] Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.

(40) [(49)] Transfer--The movement (including the discharge) of an individual outside a facility at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the facility, but does not include such a movement of an individual who has been declared dead [ $_{5}$ ] or leaves the facility without the permission of any such person.

(41) [(50)] Transportable unit-Any pre-manufactured structure or trailer, equipped with a chassis on wheels, intended to provide shared medical services to the community on an extended

temporary basis. These units are designed to be moved periodically, depending on need.

(42) [(51)] Universal precautions--Procedures for disinfecting [disinfection] and sterilizing [sterilization of] reusable medical devices and [the] appropriate use of infection control, including hand washing, [the] use of protective barriers, and [the] use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control and Prevention (CDC) of the United States Department of [Publie] Health and Human Services [Service]. This term includes standard precautions as defined by CDC which are designed to reduce the risk of transmission of blood borne and other pathogens in facilities.

 $(43) \quad [(52)] \ Violation-Failure to comply with a [the] licensing statute, [a] rule or standard, special license provision, or [an] order issued by <u>HHSC</u> [the commissioner of health or the commissioner's designee,] adopted or enforced under the licensing statute. Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative [a] penalty.$ 

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

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

TRD-202401851 Karen Ray Chief Counsel Health and Human Services Commission Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591



# SUBCHAPTER B. APPLICATION AND ISSUANCE OF A LICENSE

# 26 TAC §§510.21 - 510.26

#### STATUTORY AUTHORITY

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

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.21. General.

(a) License required.

(1) A facility shall obtain a license prior to admitting patients.

(2) Upon written request, the <u>Texas Health and Human Services Commission (HHSC)</u> [department] shall furnish a person with an application for a private psychiatric hospital or a crisis stabilization unit license.

(3) An applicant shall submit a [The] license application [shall be submitted ]in accordance with \$510.22 [\$134.22] of this subchapter [title] (relating to Application and Issuance of Initial Li-

cense). The applicant shall retain copies of all application documents submitted to HHSC [the department].

(b) Compliance.

(1) A hospital shall comply with <u>Texas</u> [the provisions of the] Health and Safety Code (HSC)[<sub>5</sub>] Chapter 577, this chapter, and the following rules: [administered by the Texas Board of Mental Health and Mental Retardation (TDMHMR) during the licensing period.]

(A) <u>25 TAC</u> Chapter 404, Subchapter E [of this title ] (relating to Rights of Persons Receiving Mental Health Services);

(B) <u>25 TAC</u> Chapter 405, Subchapter E [of this title ] (relating to Electroconvulsive Therapy (ECT));

(C) <u>25 TAC</u> Chapter <u>414</u> [405], Subchapter <u>1</u> [FF of this title] (relating to Consent to Treatment with Psychoactive <u>Medication</u>-Mental Health Services [<u>Medication</u>]);

(D) <u>25 TAC</u> Chapter <u>415</u> [405], Subchapter F [of this title] (relating to [Voluntary and Involuntary Behavioral] Interventions in Mental Health Services [Programs]); and[<sub>7</sub>]

(E) Chapter <u>568</u> [411, Subchapter J] of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals).

(2) A <u>Crisis stabilization unit (CSU)</u> [CSU] shall comply with [the provisions of] HSC[ $_3$ ] Chapter 577, this chapter, Chapter <u>306</u> [411], Subchapter <u>B</u> [M] of this title (relating to <u>Standards of Care in</u> Crisis Stabilization Units), and paragraph (1)(A)-(D) of this subsection.

(c) Scope of facility license.

(1) A facility license is issued for the premises and person or governmental unit named in the application.

(2) A facility license shall not include outpatient services located apart from the licensed premises.

(3) A facility license shall not include spaces licensed by another licensing agency.

(4) Multiple facilities may share one building.

(A) Each facility shall be licensed separately.

(B) Spaces within the building may not be included under more than one facility license.[; and]

(C) Each facility in the building shall comply with <u>Subchapter G</u> [the requirements] of this chapter [§134.125] (relating to <u>Physical Plant and Construction Requirements</u>) [Building with <u>Multiple Occupancies</u>]].

(5) Multiple hospitals may be licensed under one license number.

(A) Hospitals must comply with the following in order to be licensed under a multiple hospital license:

(*i*) meet the criteria for multiple buildings in the definition of premises in  $\S510.2(35)$  [\$134.2(39)] (relating to Definitions); and

(*ii*) when the multiple site location is a previously licensed hospital, the hospital must meet the architectural requirements contained in <u>Subchapter G [\$134.121(b)]</u> of this <u>chapter [title (relating</u> to Requirements for Buildings in which Existing Licensed Facilities are Located)] and be approved for occupancy by <u>HHSC's [the division's]</u> Architectural Review Unit [and Engineering Program].

(B) <u>HHSC</u> [The department] will issue a license listing the primary hospital and <u>all</u> multiple location <u>sites</u> [site(s)] when the

hospitals meet the requirements of subparagraph (A) of this paragraph, and the primary hospital has submitted:

(*i*) a written request to  $\underline{\text{HHSC}}$  [the department] for a multiple location application; and

*(ii)* a completed application and licensing fee.

(C) When <u>HHSC receives</u> a multiple location application and a change of ownership application [are received] simultaneously, <u>HHSC</u> [the department] will process the change of ownership application separately prior to the multiple location addendum.

(d) Display. A facility shall prominently and conspicuously display the license in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(e) Alteration. A facility license shall not be altered.

(f) Transfer or assignment prohibited. A facility license shall not be transferred or assigned. The facility shall comply with the provisions of  $\S510.24$  [\$134.24] of this subchapter [title] (relating to Change of Ownership) in the event of a change in the ownership.

(g) Changes which affect the license.

(1) A facility shall notify <u>HHSC</u> [the department] in writing prior to the occurrence of any of the following:

(A) addition or deletion of those services indicated on the license application;

(C) request to change license classification; and

(D) any construction, renovation, or modification of the facility buildings.

(2) A facility shall notify <u>HHSC</u> [the department] in writing at the time of the occurrence of any of the following:

(A) cessation of operation of the facility <u>which</u>[- The facility] shall include in the written notice the location where the medical records will be stored and the identity and telephone number of the custodian of the medical records;

(B) change in certification or accreditation status; and

(C) change in facility name, telephone number, or administrator.

§510.22. Application and Issuance of Initial License.

(a) Application submittal. The applicant shall submit the following documents to the <u>Texas Health and Human Services Commis-</u> <u>sion (HHSC)</u> [department] no earlier than 60 calendar days prior to the projected opening date of the facility:

(1) an accurate and complete application form;

(2) a copy of the facility's patient transfer policy which is developed in accordance with  $\S510.43$  [\$134.43] of this <u>chapter</u> [title] (relating to Patient Transfer Policy) and is signed by both the chairman and secretary of the governing body attesting to the date the policy was adopted by the governing body and the effective date of the policy;

(3) a copy of the facility's memorandum of transfer form which contains at a minimum the information described in  $\frac{510.43(d)(10)(B)}{134.43(d)(10)(B)}$  of this <u>chapter</u> [title];

(4) for existing facilities, a copy of a fire safety <u>inspection</u> [survey] indicating approval by the local fire authority in whose jurisdiction the facility is based that is dated no earlier than one year prior

to the opening date. For new construction, additions, and renovation projects, written approval by the local building department and local fire authority shall be submitted at the time of the final construction field survey by HHSC [the department];

(5) documentation of accreditation by <u>an accrediting or-</u> ganization approved by the <u>Centers for Medicare & Medicaid Services</u> [Joint Commission on Accreditation of Healthcare Organizations], if applicable;

(6) the appropriate license fee as required in <u>§510.26</u> [<del>§134.26</del>] of this <u>subchapter</u> [title] (relating to Fees);

(7) if the applicant is a sole proprietor, partnership with individuals as a partner, or a corporation in which an individual has an ownership interest of at least  $\underline{25}$  percent [ $\underline{25\%}$ ] of the business entity, the names and social security numbers of the individuals; and

(8) a multiple hospital location application form for multiple hospitals to be licensed under a single license number, if applicable.

(b) Additional documentation for new facilities or conversions from <u>non-facility</u> [nonfacility] buildings. In addition to the document submittal requirements in subsection (a) of this section, <u>an applicant</u> <u>shall complete</u> the following [shall be completed] prior to the issuance of a license.

(1) <u>The applicant shall submit preliminary</u> [Preliminary] and final architectural plans and specifications [shall be submitted] for review and approval by <u>HHSC</u> [the department] in accordance with <u>Subchapter G</u> [§134.127] of this <u>chapter [title]</u> (relating to [Preparation, Submittal, Review] Physical Plant and <u>Construction</u> Requirements) [Approval of Plans)].

(2) For new construction, <u>HHSC shall conduct field</u> surveys [shall be eonducted by the department] in accordance with <u>Subchapter G [§134.128(b)]</u> of this <u>chapter [title (relating to Construction, Surveys, and Approval of Project)]</u> to determine that the facility was constructed or remodeled in accordance with this chapter.

(3) When an applicant intends to reopen and license a building formerly licensed as a hospital or crisis stabilization unit, HHSC shall conduct an on-site field survey [shall be conducted by the department] in accordance with Subchapter G [\$134.128(b)] of this chapter [title] to determine compliance with applicable construction and fire safety requirements.

(4) <u>The applicant shall pay all [All] plan review and con-</u> struction <u>field</u> survey fees [shall be paid] to <u>HHSC</u> [the department].

(5) <u>The applicant shall obtain a [A]</u> certificate of occupancy approved by the local fire authority, and issued by the city building inspector, if applicable, [shall be obtained] and <u>submit</u> a copy [submitted] to <u>HHSC</u> [the department].

(6) <u>The applicant shall submit a [A]</u> complete and accurate Final Construction Approval form signed by facility administration to <u>HHSC</u> [shall be submitted to the department].

(c) <u>Prelicensure</u> [Presurvey] conference. The applicant or the <u>applicant's</u> [applicants] representative shall attend a <u>prelicensure</u> [presurvey] conference at the office designated by <u>HHSC</u> [the department]. The purpose of the <u>prelicensure</u> [presurvey] conference <u>that</u> <u>HHSC[7</u> which is conducted by department] staff <u>conducts[7]</u> is to review licensure rules and <u>inspection</u> [survey] documents and provide consultation <u>before</u> [prior to] the on-site licensure inspection [survey]. The department]. <u>HHSC</u> may waive the <u>prelicensure</u> [presurvey] conference requirement.

(d) Issuance of license. When <u>HHSC determines [it is determined that]</u> the facility has complied with subsections (a)-(c) of this section, <u>HHSC [the department]</u> shall issue the license to the applicant.

(1) Effective date. The license shall be effective on the date the facility is determined to be <u>compliant</u> [in compliance] with subsections (a)-(c) of this section. The effective date shall not be <u>before</u> [prior to] the date of the final construction <u>field</u> survey conducted by <u>HHSC</u> [the department].

(2) Expiration date. For initial licenses issued:

[(A) For initial licenses issued prior to January 1, 2005.]

f(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 11th month after issuance.]

f(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 12th month after issuance.]

 $[(B) \quad \mbox{For initial licenses issued January 1, 2005, or after.}]$ 

 $(\underline{A})$   $[(\underline{i})]$  If the effective date of the license is the first day of a month, the license expires on the last day of the 23rd month after issuance.

(B) [(ii)] If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 24th month after issuance.

(c) Withdrawal of application. If an applicant decides not to continue the application process for a license or renewal of a license, the <u>applicant may withdraw the</u> application [may be withdrawn. The <u>department</u>]. <u>HHSC</u> shall acknowledge receipt of the request to withdraw.

(f) Denial of a license. Denial of a license shall be governed by  $\frac{510.87}{\frac{134.83}{510.87}}$  of this <u>chapter [title]</u> (relating to Enforcement).

(g) <u>Inspection</u> [Survey]. During the initial licensing period, <u>HHSC</u> [the department] shall conduct <u>an inspection</u> [a survey] of the facility to ascertain compliance with the provisions of <u>Texas</u> [the] Health and Safety Code[ $_{7}$ ] Chapter 577 and this chapter.

(1) A facility shall request <u>HHSC conduct</u> an on-site <u>inspection</u> [survey to be conducted] after the facility [one inpatient] has [been] admitted and provided services to one inpatient.

(2) A facility shall be providing services to at least one inpatient in the facility at the time of the <u>inspection [survey]</u>.

(3) If a hospital has applied to participate in the federal Medicare program, <u>HHSC</u> [the survey] may <u>conduct the inspection</u> [be eonducted] in conjunction with the licensing <u>inspection</u> [survey] to determine compliance with <u>Code of Federal Regulations Title</u> 42 [Code of Federal Regulations,] Part 482 [(relating to Medicare Conditions of Participation for Hospitals)].

*§510.23. Application and Issuance of Renewal License.* 

(a) Renewal notice. The <u>Texas Health and Human Services</u> <u>Commission (HHSC)</u> [department] shall send a renewal notice to a facility at least 60 calendar days before the expiration date of a license.

(1) If the facility has not received the renewal notice from <u>HHSC</u> [the department] within 45 calendar days <u>before</u> [prior to] the expiration date, it is the duty of the facility to notify <u>HHSC</u> [the department] and request a renewal application for a license.

(2) If the facility fails to submit the application and fee within 15 calendar days <u>before [prior to]</u> the expiration date of the li-

cense, <u>HHSC</u> [the department] shall send by certified mail to the facility a letter advising that unless the license is renewed, the facility must cease operations upon the expiration of the license.

(b) Renewal license. <u>HHSC</u> [The department] shall issue a renewal license to a facility which meets the minimum requirements for a license.

(1) The facility shall submit the following to <u>HHSC before</u> [the department prior to] the expiration date of the license:

(A) a complete and accurate application form;

(B) a copy of a passing fire safety inspection report conducted within the last 12 months and one from the year prior [survey] indicating approval by the local fire authority in whose jurisdiction the facility is based, as HHSC requires annual fire safety inspections for a facility's continued licensure [that is dated no earlier than one year prior to the application date];

(C) the renewal license fee; and

(D) documentation of accreditation by <u>an accrediting</u> organization approved by the Centers for Medicare & Medicaid Ser<u>vices</u> [the Joint Commission on Accreditation of Healthcare Organizations], if applicable.  $[\vdots]$ 

[(E) an annual events report in accordance with §134.47(b)(1) of this title (relating to Patient Safety Program); and]

[(F) a best practices report in accordance with  $\frac{134.47(b)(2)}{2}$  of this title.]

(2) <u>HHSC [The department]</u> may conduct <u>an inspection be-</u> <u>fore</u> [a survey prior to] issuing a renewal license in accordance with  $\underline{\$510.82$  [\$134.81] of this <u>chapter [title]</u> (relating to <u>Inspections [Survey</u> and Investigation Procedures]).

(3) Renewal licenses <u>are valid for 24 months</u> [issued prior to January 1, 2005, will be valid for 12 months].

[(4) Renewal licenses issued January 1, 2005, through December 31, 2005, will be valid for either 12 or 24 months, to be determined by the department prior to the time of license renewal.]

[(5) Renewal licenses issued January 1, 2006, or after will be valid for 24 months.]

(c) Notice to cease operation and return license. If a facility fails to submit the <u>complete and accurate</u> application form, documents, and fee by the expiration date of the license, <u>HHSC</u> [the department] shall notify the facility by certified mail that it must cease operation and immediately return the license by certified mail to <u>HHSC</u> [the department]. If the facility wishes to provide services after the expiration date of the license, it shall apply for a license under §510.22 [§134.22] of this <u>subchapter</u> [title] (relating to Application and Issuance of Initial License).

§510.24. Change of Ownership.

(a) Change of ownership defined. A change of ownership occurs when there is a change in the person legally responsible for the operation of the facility, whether by lease or by ownership.

(1) If a corporate licensee amends its articles of incorporation to revise its name and the tax identification number does not change, this subsection does not apply, except that the corporation must notify the Texas Health and Human Services Commission (HHSC) [department] within 10 calendar days after the effective date of the name change.

(2) The sale of stock of a corporate licensee does not cause this subsection to apply.

(b) License application required. The new owner shall submit an application for an initial license to <u>HHSC before</u> [the department prior to] the date of the change of ownership or not later than 10 calendar days following the date of a change of ownership. The application shall be in accordance with <u>§510.22</u> [§134.22] of this <u>subchapter</u> [title] (relating to the Application and Issuance of Initial License). In addition to the documents required in <u>§510.22</u> [§134.22] of this <u>subchapter</u> [title], the applicant shall include the effective date of the change of ownership.

(c) <u>Inspections.</u> For a change of ownership, HHSC may waive the [Surveys. The] on-site construction <u>field survey</u> and health inspection [surveys] required by <u>§510.22</u> [<u>§134.22</u>] of this <u>subchapter</u> [title may be waived by the department].

(d) Issuance of license. When the new owner has complied with the provisions of  $\S510.22$  [\$134.22] of this subchapter, HHSC [title, the department] shall issue a license which shall be effective the date of the change of ownership.

(e) Expiration of license. The expiration date of the license shall be in accordance with  $\S{510.22(d)(2)}$  [ $\${134.22(d)(2)}$ ] of this subchapter [title].

(f) License void. The previous owner's license shall be void on the effective date of the new owner's license.

*§510.25.* Time Periods for Processing and Issuing Licenses.(a) General.

(1) The receipt date for an application for an initial license or a renewal license is the date the application is received by the <u>Texas</u> Health and Human Services Commission (HHSC) [division].

(2) An application for an initial license is complete when <u>HHSC</u> [the division] has received, reviewed, and found acceptable the information described in  $\S510.22(a)$  [\$134.22(a)] and (b) of this <u>subchapter</u> [title] (relating to Application and Issuance of Initial License).

(3) An application for a renewal license is complete when <u>HHSC</u> [the division] has received, reviewed, and found acceptable the information described in §510.23(b) [\$134.23(b)] of this <u>subchapter</u> [title] (relating to Application and Issuance of Renewal License).

(b) Time periods. An application for an initial license or renewal license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date <u>HHSC</u> [the division] receives the application and ends on the date the license is issued, or, if the application is received incomplete, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The first time period is 20 <u>business</u> [working] days.

(2) The second time period begins on the date  $\underline{\text{HHSC}}$  [the division] receives the last item necessary to complete the application and ends on the date the license is issued. The second time period is 20  $\underline{\text{business}}$  [working] days.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods [as] stated in subsection (b) of this section, the applicant has the right to request <u>HHSC</u> [the division to] reimburse in full the fee paid for [im] that [particular] application process. If <u>HHSC</u> [the division] does not agree [that] the established periods have been violated or finds [that] good cause existed for exceeding the established periods, the request shall be denied.

(2) Good cause for exceeding the period established <u>exists</u> [is considered to exist] if:

(A) the number of applications for licenses to be processed exceeds by 15 percent [15%] or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed which gave good cause for exceeding the established periods.

(d) Appeal. If the request for full reimbursement authorized by subsection (c) of this section is denied, the applicant may then appeal to the <u>HHSC Executive Commissioner [commissioner of health]</u> (commissioner) for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting full reimbursement of all filing fees paid because the application was not processed within the adopted time period. <u>HHSC [The division</u>] shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and HHSC [the division].

(c) Contested case hearings. The procedures set out in 1 TACChapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) [§1.21 of this title] apply to all hearings requested under this chapter.

§510.26. Fees.

(a) General.

(1) All fees paid to the <u>Texas Health and Human Services</u> <u>Commission (HHSC)</u> [department] are nonrefundable except for [with the exception of] fees for <u>field</u> surveys that were not conducted.

(2) All fees shall be paid to HHSC [the department].

(b) License fees.

(1) The fee for an initial license or a renewal license is  $\underline{\$200}$ [ $\underline{\$100}$ ] per bed per  $\underline{24}$  [ $\underline{12}$ ] months based upon the designed bed capacity. The total fee may not be less than  $\underline{\$6,000}$  [ $\underline{\$3,000}$ ] per  $\underline{24}$  [ $\underline{12}$ ] months. The designed bed capacity is determined as follows.

(A) The designed bed capacity is the maximum number of patient beds that can be accommodated in rooms that comply with the requirements for patient room suites in <u>Subchapter G [\$134.123]</u> of this <u>chapter [title]</u> (relating to <u>Physical Plant and Construction [Spatial]</u> Requirements [for New Construction]].

(B) The maximum designed bed capacity includes beds that comply with the requirements in <u>Subchapter G [\$134.123]</u> of this <u>chapter [title]</u> even if the beds are unoccupied or the space is used for other purposes such as offices or storage rooms, provided such rooms can readily be returned to patient use. All required support and service areas must be maintained in place. For example, the removal of a nurse station in an unused patient bedroom wing of 20 beds would <u>effectively eliminate</u> [effectivelyeliminate] those 20 beds from the designed capacity.

(C) The number of licensed beds in a multiple occupancy room shall be determined by the design even if the number of beds actually placed in the room is less than the designed capacity.

(2) An additional fee shall be submitted with the Final Construction Approval form for an increase in the number of beds resulting from an approved construction project and an additional plan review fee if the construction cost increases to the next higher fee schedule according to subsection (c)(4) of this section. (3) A facility will not receive a refund of previously submitted fees should the designed bed capacity decrease as a result of an approved construction project.

(c) Plan review fees. This subsection outlines the fees which must accompany the application for plan review and all proposed plans and specifications covering the construction of new buildings or alterations to existing buildings which must be submitted for review and approval by <u>HHSC</u> [the department] in accordance with <u>Subchapter G</u> [§134.127] of this chapter [title (relating to Preparation, Submittal, Review and Approval of Plans)].

(1) Construction plans will not be reviewed or approved until the required fee and an application for plan review are received by <u>HHSC</u> [the department].

(2) Plan review fees are based upon the estimated construction project costs which are the total expenditures required for a proposed project from initiation to completion, including at least the following items.

(A) Construction project costs shall include expenditures for physical assets such as:

- (i) site acquisition;
- (*ii*) soil tests and site preparation;

*(iii)* construction and improvements required as a result of the project;

- *(iv)* building, structure, or office space acquisition;
- (v) renovation;
- (vi) fixed equipment; and
- (vii) energy provisions and alternatives.

(B) Construction project costs shall include expenditures for professional services including:

- (*i*) planning consultants;
- (ii) architectural fees;
- (iii) fees for cost estimation;
- (iv) legal fees;
- (v) management fees; and
- (vi) feasibility study.

(C) Construction project costs shall include expenditures or costs associated with financing, excluding long-term interest, but including:

- (i) financial advisor;
- (ii) fund-raising expenses;
- (iii) lender's or investment banker's fee; and
- (iv) interest on interim financing.

(D) Construction project costs shall include expenditure allowances for contingencies including:

(i) inflation;

and

- (ii) inaccurate estimates;
- (iii) unforeseen fluctuations in the money market;
- (iv) other unforeseen expenditures.

(3) Regarding purchases, donations, gifts, transfers, and other comparable arrangements whereby the acquisition is to be made for no consideration or at less than the fair market value, the project cost shall be determined by the fair market value of the item to be acquired as a result of the purchase, donation, gift, transfer, or other comparable arrangement.

(4) The plan review fee schedule based on cost of construction is:

- (A) \$100,000 or less: \$300;
- (B) \$100,001 to \$600,000: \$850;
- (C) \$600,001 to \$2,000,000: \$2,000;
- (D) \$2,000,001 to \$5,000,000: \$3,000;
- (E) \$5,000,001 to \$10,000,000: \$4,000; and
- (F) \$10,000,001 and over: \$5,000.

(5) If an estimated construction cost cannot be established, the estimated cost shall be based on \$105 per square foot. No construction project shall be increased in size, scope, or cost unless the appropriate fees are submitted with the proposed changes.

(d) Construction <u>field</u> survey fees. A fee of \$500 and an <u>application [Application for Survey]</u> form for each <u>field</u> survey shall be submitted to <u>HHSC</u> [the department] at least three weeks prior to the anticipated <u>field</u> survey date. Construction <u>field</u> surveys will not be conducted until all required fees are received by <u>HHSC</u> [the department]. If additional construction <u>field</u> surveys of the proposed project are requested, the appropriate additional fees shall be submitted <u>before [prior to]</u> any <u>field</u> surveys conducted by <u>HHSC</u> [the] staff [of the department]. When follow up [followup] construction <u>field</u> surveys are performed to verify plans of correction, the fee shall be submitted upon completion of the <u>field</u> survey.

(c) Cooperative agreement application fee. The application fee for a cooperative agreement, established under <u>Texas</u> Health and Safety Code[ $_7$ ] Chapter 314[ $_7$ ] is \$10,000. The application fee shall be submitted with an application for a cooperative agreement.

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

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Health and Human Services Commission Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591



# SUBCHAPTER C. OPERATIONAL REQUIREMENTS

# 26 TAC §§510.41, - 510.43, 510.46

#### 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 §577.010, which requires HHSC to

adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.41. Facility Functions and Services.

(a) Anesthesia services. If the hospital furnishes anesthesia services, these services shall be provided in a well-organized manner under the direction of a qualified physician. The anesthesia service is responsible for all anesthesia administered in the hospital.

(1) Organization and staffing. The organization of anesthesia services shall be appropriate to the scope of the services offered. Anesthesia shall be administered only by:

(A) a qualified anesthesiologist;

(B) a physician (other than an anesthesiologist);

(C) a dentist, oral surgeon <u>(licensed by the State Board</u> of <u>Dental Examiners</u>), or podiatrist who is qualified to administer anesthesia under state law; or

(D) a certified registered nurse anesthetist who is under the supervision, as set forth in [the Medical Practice Act,] Texas Occupations Code[<sub>5</sub>] Title 3, Subtitle B, and [the Nursing Practice Act,] Texas Occupations Code[<sub>5</sub>] Chapter 301, of the operating physician or of an anesthesiologist who is immediately available if needed.

(2) Delivery of services. Anesthesia services shall be consistent with needs and resources. Policies on anesthesia procedures shall include the delineation of pre-anesthesia and post-anesthesia responsibilities. The policies shall ensure that the following are provided for each patient.

(A) A pre-anesthesia evaluation by an individual qualified to administer anesthesia under paragraph (1) of this subsection shall be performed within 48 hours prior to the procedure.

(B) An intraoperative anesthesia record shall be provided. The record shall include any complications or problems occurring during the anesthesia including time, description of symptoms, review of affected systems, and treatments rendered. The record shall correlate with the controlled substance administration record.

(C) A post-anesthesia follow-up report shall be written by the person administering the anesthesia before transferring the patient from the recovery room and shall include evaluation for recovery from anesthesia, level of activity, respiration, blood pressure, level of consciousness, and patient color.

(*i*) With respect to inpatients, a post-anesthesia evaluation for proper anesthesia recovery shall be performed after transfer from recovery and within 48 hours after the procedure by the person administering the anesthesia, registered nurse (RN), or physician in accordance with policies and procedures approved by the medical staff.

*(ii)* With respect to outpatients, immediately prior to discharge, a post-anesthesia evaluation for proper anesthesia recovery shall be performed by the person administering the anesthesia, RN, or physician in accordance with policies and procedures approved by the medical staff.

(b) Dietary services. The facility shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a facility that has a contract with an outside food management company or an arrangement with another facility may meet this requirement if the company or other facility has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company or other facility maintains at least the minimum requirements specified in this section, and provides for the frequent and systematic liaison with the facility medical staff for recommendations of dietetic policies affecting patient treatment. The facility shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) Organization.

(A) A facility shall have an employee who is qualified by experience or training to serve as director of the food and dietetic service[ $_3$ ] and is [be] responsible for the daily management of the dietary services. This employee shall be full-time in a hospital; the crisis stabilization unit employee does not have to be full-time.

(B) There shall be a qualified dietitian who works fulltime, part-time, or on a consultant basis. If by consultation, such services shall occur at least once per month for not less than eight hours. The dietitian shall:

(*i*) be currently licensed under the laws of this state to use the titles of licensed dietitian or provisional licensed dietitian, or be a registered dietitian;

(ii) maintain standards for professional practice;

(iii) supervise the nutritional aspects of patient care;

*(iv)* make an assessment of the nutritional status and adequacy of nutritional regimen, as appropriate;

(v) provide diet counseling and teaching, as appropriate;

*(vi)* document nutritional status and pertinent information in patient medical records, as appropriate;

- (vii) approve menus; and
- (viii) approve menu substitutions.

(C) There shall be administrative and technical personnel competent in their respective duties. The administrative and technical personnel shall:

*(i)* participate in established departmental or facility training pertinent to assigned duties;

*(ii)* conform to food handling techniques in accordance with paragraph (2)(E)(vii) of this subsection;

*(iii)* adhere to clearly defined work schedules and assignment sheets; and

*(iv)* comply with position descriptions which are job specific.

(2) Director. The director shall:

(A) comply with a position description which is job spe-

cific;

(B) clearly delineate responsibility and authority;

(C) participate in conferences with administration and department heads;

(D) establish, implement, and enforce policies and procedures for the overall operational components of the department to include [ $_{3}$  but not be limited to]:

- (i) quality assurance;
- (ii) frequency of meals served;
- (iii) non-routine occurrences; and

(iv) identification of patient trays;

(E) maintain authority and responsibility for the following[, but not be limited to]:

- (i) orientation and training;
- (*ii*) performance evaluations;
- (iii) work assignments;

(iv) supervision of work and food handling tech-

niques;

vices;

(v) procurement of food, paper, chemical, and other supplies, to include implementation of first-in first-out rotation system for all food items;

(vi) menu planning; and

*(vii)* ensuring compliance with <u>25 TAC</u> Chapter 228 [of this title] (relating to Retail Food <u>Establishments</u>).

(3) Diets. Menus shall meet the needs of the patients.

(A) Therapeutic diets shall be prescribed by <u>a physician</u> [the physician(s)] responsible for the care of the patients. The dietary department of the facility shall:

(*i*) establish procedures for the processing of therapeutic diets to include [ $_{3}$  but not be limited to]:

- (I) accurate patient identification;
- (II) transcription from nursing to dietary ser-
- (III) diet planning by a dietitian;
- $(IV) \,$  regular review and updating of diet when necessary; and

(V) written and verbal instruction to patient and family. It shall be in the patient's primary language, if practicable, prior to discharge. What is or would have been practicable shall be determined by the facts and circumstances of each case;

*(ii)* ensure that therapeutic diets are planned in writing by a qualified dietitian;

*(iii)* ensure that menu substitutions are approved by a qualified dietitian;

*(iv)* document pertinent information about the patient's response to a therapeutic diet in the medical record; and

(v) evaluate the rapeutic diets for nutritional adequacy.

(B) Nutritional needs shall be met in accordance with recognized dietary practices and in accordance with orders of <u>a physician [the physician(s)]</u> responsible for the care of the patients. The following requirements shall be met.

(*i*) Menus shall provide a sufficient variety of foods served in adequate amounts at each meal according to the guidance provided in the Recommended Dietary Allowances (RDA), as published by the Food and Nutrition Board, National Academy of Sciences, National Research Council, Tenth edition, 1989[, which may be obtained by writing the National Academy Press, 2101 Constitution Avenue, Box 285, Washington, D.C. 20055, telephone (888) 624-8373].

*(ii)* A maximum of 15 hours shall not be exceeded between the last meal of the day (i.e. supper) and the breakfast meal, unless a substantial snack is provided. The facility shall adopt, imple-

ment, and enforce a policy on the definition of "substantial" to meet each patient's varied nutritional needs.

(C) A current therapeutic diet manual approved by the dietitian and medical staff shall be readily available to all medical, nursing, and food service personnel. The therapeutic manual shall:

(i) be revised as needed, not to exceed five [5] years;

*(ii)* be appropriate for the diets routinely ordered in the facility;

(iii) have standards in compliance with the RDA;

(iv) contain specific diets which are not in compliance with RDA; and

(v) be used as a guide for ordering and serving diets.

(c) Governing body.

(1) Legal responsibility. There shall be a governing body responsible for the organization, management, control, and operation of the facility, including appointment of the medical staff. For facilities owned and operated by an individual or by partners, the individual or partners shall be considered the governing body.

(2) Organization. The governing body shall be formally organized in accordance with a written constitution or bylaws which clearly set forth the organizational structure and responsibilities.

(3) Meeting records. Records of governing body meetings shall be maintained.

(4) Responsibilities relating to the medical staff. The governing body shall:

(A) ensure that the medical staff has current bylaws, rules, and regulations which are implemented and enforced;

(B) approve medical staff bylaws and other medical staff rules and regulations;

(C) determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff;

(D) ensure that criteria for selection include individual character, competence, training, experience, and judgment;

(E) ensure that under no circumstances is the accordance of staff membership or professional privileges in the facility dependent solely upon certification, fellowship or membership in a specialty body or society;

(F) ensure the process for considering applications for medical staff membership and privileges affords each candidate for appointment procedural due process;

(G) ensure in granting or refusing medical staff membership or privileges, the facility does not differentiate on the basis of the academic medical degree;

(H) ensure that equal recognition is given to training programs accredited by the Accreditation Council on Graduate Medical Education and by the American Osteopathic Association if graduate medical education is used as a standard or qualification for medical staff membership or privileges for a physician;

(I) ensure that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists if board certification is used as a standard or qualification for medical staff membership or privileges for a physician; (J) ensure that the medical staff is accountable to the governing body for the quality of care provided to patients;

(K) ensure that a facility's credentials committee acts expeditiously and without unnecessary delay when a candidate for appointment submits a completed application, as defined by each hospital, for medical staff membership or privileges, in accordance with the following:

(*i*) <u>the [The]</u> credentials committee shall take action on the completed application not later than the 90th day after the date on which the application is received;

(ii) the [The] governing body shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received; and

(*iii*) the [The] facility must notify the applicant in writing of the facility's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken;

(L) ensure the facility complies with the requirements for reporting to the Texas Medical Board the results and circumstances of any professional review action in accordance with Texas [the Medical Practice Act,] Occupations Code[ $_3$ ] §160.002 and §160.003.

(5) Facility administration. The governing body shall appoint a chief executive officer or administrator who is responsible for managing the facility.

(6) Patient care. In accordance with facility policy, the governing body shall ensure that:

(A) every patient is under the care of a physician, but this[- This] provision is not to be construed to limit the authority of a physician to delegate tasks to other qualified health care personnel to the extent recognized under state law;

(B) patients are admitted to the facility only by members of the medical staff who have been granted admitting privileges; and

(C) a physician is on duty or on-call at all times.

(7) Contracted services. The governing body shall be responsible for services furnished in the facility whether or not they are furnished directly or under contracts. The governing body shall ensure that a contractor of services (including one for shared services and joint ventures) furnishes services in a safe and effective manner that permits the facility to comply with all applicable rules and standards for contracted services.

(8) Nurse staffing. The governing body shall adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The governing body policy shall require that hospital administration adopt, implement, and enforce a nurse staffing plan and policies that:

(A) require significant consideration be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(B) are based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(C) ensure that all nursing assignments consider client safety [<sub>7</sub>] and are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

(D) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(E) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(F) protect from retaliation nurses who provide input to the nurse staffing committee; and

(G) comply with subsection (j) of this section.

(d) Infection control. The facility shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There shall be an active program for the prevention, control, and investigation of infections and communicable diseases.

(1) Organization and policies. A person shall be designated as infection control coordinator. The facility shall ensure that policies governing prevention, control and surveillance of infections and communicable diseases are developed, implemented, and enforced.

(A) There shall be a system for identifying, reporting, investigating, and controlling nosocomial infections and communicable diseases between patients and personnel.

(B) The infection control coordinator shall maintain a log of all reportable diseases and nosocomial infections designated as epidemiologically significant according to the facility's infection control policies.

(C) There shall be a written policy for reporting all reportable diseases to the local health authority or the Infectious Disease Epidemiology and Surveillance Division, Department of State Health Services[, Mail Code 2822, P.O. Box 149347, Austin, TX 78714-9347,] in accordance with <u>25 TAC</u> Chapter 97 [of this title] (relating to Communicable Diseases).

(2) Responsibilities of the chief executive officer (CEO), medical staff, and chief nursing officer (CNO). The CEO, the medical staff, and the CNO shall be responsible for the following.

(A) The facility-wide quality assurance program and training programs shall address problems identified by the infection control coordinator.

(B) Successful corrective action plans in affected problem areas shall be implemented.

(3) Universal precautions. The facility shall adopt, implement, and enforce a written policy to monitor compliance of the facility and its personnel and medical staff with universal precautions in accordance with <u>Texas</u> Health and Safety Code [5] Chapter 85, Subchapter I [(relating to the Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers):].

(e) Laboratory services. The facility shall provide [directly;] or have available, adequate laboratory services to meet the needs of its patients.

(1) Facility laboratory services. A facility that provides laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in [42] Code of Federal Regulations (CFR) Title 42 [(CFR),] Part 493 [§§493.1 - 493.1780]. CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Contracted laboratory services. The facility shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(3) Adequacy of laboratory services. The facility shall ensure the following.

(A) Emergency laboratory services shall be available 24 hours a day.

(B) A written description of services provided shall be available to the medical staff.

(C) The laboratory shall make provision for proper receipt and reporting of tissue specimens.

(4) Chemical hygiene. A facility that provides laboratory services directly shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory which may occur during the normal course of job performance.

(f) Linen and laundry services. The facility shall provide sufficient clean linen to ensure the comfort of the patient. The facility, whether it operates its own laundry or uses commercial service, shall ensure the following.

(1) Employees of a facility involved in transporting, processing, or otherwise handling clean or soiled linen shall be given initial and follow-up <u>in-service</u> [inservice] training to ensure a safe product for patients and to safeguard employees in their work.

(2) Clean linen shall be handled, transported, and stored by methods that will ensure its cleanliness.

(3) All contaminated linen shall be placed and transported in bags or containers labeled or color-coded.

(4) Employees who have contact with contaminated linen shall wear gloves and other appropriate personal protective equipment.

(5) Contaminated linen shall be handled as little as possible and with minimum agitation. Contaminated linen shall not be sorted or rinsed in patient care areas.

(6) All contaminated linen shall be bagged or put into carts at the location where it was used.

(A) Bags containing contaminated linen shall be closed prior to transport to the laundry.

(B) Whenever contaminated linen is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container, the linen shall be deposited and transported in bags that prevent leakage of fluids to the exterior.

(C) All linen placed in chutes shall be bagged.

(D) If chutes are not used to convey linen to a central receiving or sorting room, then adequate space shall be allocated on the various nursing units for holding the bagged contaminated linen.

(7) Linen shall be processed as follows.[:]

(A) If hot water is used, linen shall be washed with detergent in water with a temperature of at least 71 degrees Centigrade (160 degrees Fahrenheit) for 25 minutes. Hot water requirements specified in <u>Subchapter G [Table 5 of \$134.131(e)] of this chapter [title] (relating to Physical Plant and Construction Requirements [Tables]) shall be met.</u>

(B) If low temperature (less than or equal to 70 degrees Centigrade) (158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentration shall be used.

(C) Commercial dry cleaning of fabrics soiled with blood also renders these items free of the risk of pathogen transmission.

(8) Flammable liquids shall not be used in the laundry.

(g) Medical record services. The facility shall have a medical record service that has administrative responsibility for medical records. A medical record shall be maintained for every individual who presents to the hospital for evaluation or treatment.

(1) The organization of the medical record service shall be appropriate to the scope and complexity of the services performed. The facility shall employ adequate personnel to ensure prompt completion, filing, and retrieval of records.

(2) The facility shall have a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) The facility shall adopt, implement, and enforce a policy to ensure that the facility complies with <u>Texas</u> Health and Safety Code[ $_{7}$ ] §576.005 [(relating to Confidentiality of Records)] and <u>Texas Health and Safety Code</u> Chapter 611[ $_{5}$  (relating to Mental Health Records)].

(4) The medical record shall contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible.

(5) The facility shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all entries to the records.

(A) The author of each entry shall be identified and shall authenticate the author's [his or her] entry.

(B) Authentication shall include signatures, written initials, or computer entry.

(C) Use of signature stamps by physicians may be allowed in facilities when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative offices of the facility shall have on file a signed statement to the effect that the individual [he or she] is the only person [one] who has and uses the stamp [and uses it]. Delegation of use to another individual shall not be acceptable.

(D) A list of computer codes and written signatures shall be readily available and shall be maintained under adequate safeguards.

(E) Signatures by facsimile shall be acceptable. If received on a thermal machine, the facsimile document shall be copied onto regular paper.

(6) Medical records (reports and printouts) shall be retained by the facility in their original or legally reproduced form, which is a medical record retained in hard copy, microform (microfilm or microfiche), or another electronic medium, for a period of at least 10 [ten] years. Films, scans, and other image records shall be retained for a period of at least five years. For retention purposes, medical records that shall be preserved for ten years include:

- (A) identification data;
- (B) the medical history of the patient;

(C) evidence of a physical examination and psychiatric evaluation;

(D) admitting diagnosis;

(E) diagnostic and therapeutic orders;

(F) properly executed informed consent forms for procedures and treatments specified by the medical staff, or by federal or state laws if applicable, to require written patient consent;

(G) treatment plans;

(H) clinical observations, including the results of therapy and treatment, all orders, nursing notes, medication records, vital signs, and other information necessary to monitor the patient's condition;

(I) reports of procedures, tests, and their results, including laboratory, pathology, and radiology reports;

(J) results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient;

(K) discharge summary with outcome of hospitalization, disposition of care, and provisions for follow-up care; and

(L) final diagnosis with completion of medical records within 30 calendar days following discharge.

(7) If a patient was <u>younger</u> [less] than 18 years of age at the time <u>the patient</u> [he] was last treated, the facility may authorize the disposal of those medical records relating to the patient on or after the date of <u>the patient's</u> [his] 20th birthday or on or after the 10th anniversary of the date on which <u>the patient</u> [he] was last treated, whichever date is later.

(8) The facility shall not destroy medical records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(9) If a licensed facility <u>closes</u> [should elose], the facility shall notify the <u>Texas Health and Human Services Commission</u> (<u>HHSC</u>) [department] at the time of closure, the disposition of the medical records, including the location of where the medical records will be stored and the identity and telephone number of the custodian of the records.

(h) Medical staff.

(1) The medical staff shall be composed of physicians and may also be composed of podiatrists, dentists, and other practitioners appointed by the governing body.

(A) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(B) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(2) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(A) The medical staff shall be organized in a manner approved by the governing body.

(B) If the medical staff has an executive committee, a majority of the members of the committee shall be doctors of medicine or osteopathy.

(C) Records of medical staff meetings shall be main-

(D) The responsibility for organization and conduct of the medical staff shall be assigned only to an individual physician.

(E) Each medical staff member shall sign a statement signifying they will abide by medical staff and hospital policies.

(3) The medical staff shall adopt, implement, and enforce bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(A) be approved by the governing body;

(B) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(C) describe the organization of the medical staff;

(D) describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body; and

(E) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges.

(i) Mobile, transportable, and relocatable units. If the facility provides diagnostic procedures or treatments in mobile, transportable, or relocatable units, the facility shall adopt, implement, and enforce procedures which address the potential emergency needs for those inpatients who are taken to mobile units on the facility premises for diagnostic procedures or treatment.

(j) Nurse staffing.

(1) The hospital shall establish a nurse staffing committee as a standing committee of the hospital. As used in this subsection, "committee" or "staffing committee" means a nurse staffing committee established under this paragraph.

(A) The committee shall be composed of:

(*i*) at least <u>60 percent [60%]</u> registered nurses who are involved in direct patient care at least <u>50 percent [50%]</u> of their work time and selected by their peers who provide direct care during at least <u>50 percent [50%]</u> of their work time;

*(ii)* members who are representative of the types of nursing services provided at the hospital; and

*(iii)* the chief nursing officer of the hospital who is a voting member.

(B) Participation on the committee by a hospital employee as a committee member shall be part of the employee's work time and the hospital shall compensate that member for that time accordingly. The hospital shall relieve the committee member of other work duties during committee meetings.

(C) The committee shall meet at least quarterly.

(D) The responsibilities of the committee shall be to:

(*i*) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of paragraph (2) of this subsection;

*(ii)* review, assess<sub>2</sub> and respond to staffing concerns expressed to the committee;

*(iii)* identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan; (iv) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(v) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(2) The hospital shall adopt, implement, and enforce a written official nurse services staffing plan. As used in this subsection, "patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

(A) The official nurse services staffing plan and policies shall:

*(i)* require significant consideration be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

*(ii)* be based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

*(iii)* require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

*(iv)* encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(v) protect nurses who provide input to the nurse staffing committee from retaliation; and

(vi) comply with this subsection.

(B) The plan shall:

*(i)* set minimum staffing levels for patient care units that are:

(I) based on multiple nurse and patient consider-

ations; and [an]

*(II)* determined by the nursing assessment and in accordance with evidence-based safe nursing standards; and

*(ii)* include a method for adjusting the staffing plan shift to shift for each patient care unit to provide staffing flexibility to meet patient needs;

*(iii)* include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources;

(iv) include how on-call time will be used;

(v) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations;

*(vi)* include a mechanism for evaluating the effectiveness of the official nurse services staffing plan based on patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence\_based nurse staffing standards; and

(vii) be used by the hospital as a component in setting the nurse staffing budget and guiding the hospital in assigning nurses hospital wide.

(C) The hospital shall make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

tained.

(3) The hospital shall annually report to  $\underline{\rm HHSC}$  [the department] on:

(A) whether the hospital's governing body has adopted a nurse staffing policy;

(B) whether the hospital has established a nurse staffing committee that meets the membership requirements of paragraph (1) of this subsection;

(C) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan and has reported the results of the evaluation to the hospital's governing body; and

(D) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(4) Mandatory overtime. The hospital shall adopt, implement, and enforce policies on use of mandatory overtime.

(A) As used in this subsection:

(*i*) "on-call time" means time spent by a nurse who is not working but who is compensated for availability; and

*(ii)* "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. Mandatory overtime does not include prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety.

(B) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(C) This section does not prohibit a nurse from volunteering to work overtime.

(D) A hospital may not use on-call time as a substitute for mandatory overtime.

(E) The prohibitions on mandatory overtime do not apply if:

(*i*) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

*(ii)* a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

*(iii)* there is an emergency or unforeseen event of a

(I) does not regularly occur

(*II*) increases the need for health care personnel at the hospital to provide safe patient care; and

hospital; or

kind that:

(III) could not prudently be anticipated by the

*(iv)* the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient. The nurse staffing committee shall ensure that scheduling a nurse for a procedure that could be anticipated to require the nurse to stay beyond the end of his or her scheduled shift does not constitute mandatory overtime.

(F) If a hospital determines that an exception exists under subparagraph (E) of this paragraph, the hospital shall, to the extent possible, make and document a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

(G) A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

(k) Outpatient services. If the facility provides outpatient services within the facility, written policies and procedures describing the operation of the services shall be adopted, implemented, and enforced.

(l) Pharmacy services. The facility shall provide pharmaceutical services that meet the needs of the patients.

(1) License. A facility that stores and dispenses prescription drugs for administration to a patient by a person authorized by law to administer the drug, shall be licensed, as required, by the Texas State Board of Pharmacy.

(2) Organization. The facility shall have a pharmacy directed by a licensed pharmacist.

(3) Medical staff. The medical staff shall be responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the facility's organized pharmaceutical services.

(4) Pharmacy management and administration. The pharmacy or drug storage area shall be administered in accordance with accepted professional principles.

(A) Standards of practice as defined by state law shall be followed regarding the provision of pharmacy services.

(B) The pharmaceutical services shall have an adequate number of personnel to ensure quality pharmaceutical services including emergency services.

(*i*) The staff shall be sufficient in number and training to respond to the pharmaceutical needs of the patient population being served. There shall be an arrangement for emergency services.

*(ii)* Employees shall provide pharmaceutical services within the scope of their license and education.

(C) Drugs and biologicals shall be properly stored to ensure ventilation, light, security, and temperature controls.

(D) Records shall have sufficient detail to follow the flow of drugs from entry through dispensation.

(E) There shall be adequate controls over all drugs and medications including floor stock. Drug storage areas shall be approved by the pharmacist, and floor stock lists shall be established.

(F) Inspections of drug storage areas shall be conducted throughout the hospital under pharmacist supervision.

(G) There shall be a drug recall procedure.

(H) A full-time, part-time, or consulting pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy services.

*(i)* Direction of pharmaceutical services may not require on premises supervision but may be accomplished through regularly scheduled visits in accordance with state law.

*(ii)* A job description or other written agreement shall clearly define the responsibilities of the pharmacist.

(I) Current and accurate records shall be kept of the receipt and disposition of all scheduled drugs.

*(i)* There shall be a record system in place that provides the information on controlled substances in a readily retrievable manner which is separate from the patient record.

*(ii)* Records shall trace the movement of scheduled drugs throughout the services, documenting utilization or wastage.

*(iii)* The pharmacist shall be responsible for determining that all drug records are in order and that an account of all scheduled drugs is maintained and reconciled with written orders.

(5) Delivery of services. In order to provide patient safety, drugs and biologicals shall be controlled and distributed in accordance with applicable standards of practice, consistent with federal and state laws.

(A) All compounding, packaging, and dispensing of drugs and biologicals shall be under the supervision of a pharmacist and performed consistent with federal and state laws.

(B) Drugs and biologicals shall be kept in a locked storage area.

*(i)* A policy shall be adopted, implemented, and enforced to ensure the safeguarding, transferring, and availability of keys to the locked storage area.

*(ii)* Dangerous drugs as well as controlled substances shall be secure from unauthorized use.

(C) Outdated, mislabeled, or otherwise unusable drugs and biologicals shall not be available for patient use.

(D) When a pharmacist is not available, drugs and biologicals shall be removed from the pharmacy or storage area only by personnel designated in the policies of the medical staff and pharmaceutical service, in accordance with federal and state laws.

*(i)* There shall be a current list of individuals identified by name and qualifications who are designated to remove drugs from the pharmacy.

*(ii)* Only amounts sufficient for immediate therapeutic needs shall be removed.

(E) Drugs and biologicals not specifically prescribed as to time or number of doses shall automatically be stopped after a reasonable time that is predetermined by the medical staff.

*(i)* Stop order policies and procedures shall be consistent with those of the nursing staff and the medical staff rules and regulations.

*(ii)* A protocol shall be established by the medical staff for the implementation of the stop order policy, in order that drugs shall be reviewed and renewed, or automatically stopped.

*(iii)* A system shall be in place to determine compliance with the stop order policy.

(F) Drug administration errors, adverse drug reactions, and incompatibilities shall be immediately reported to the attending physician and, if appropriate, to the facility-wide quality assurance program. There shall be a mechanism in place for capturing, reviewing, and tracking medication errors and adverse drug reactions.

(G) Abuses and losses of controlled substances shall be reported, in accordance with applicable federal and state laws, to the individual responsible for the pharmaceutical services, and to the chief executive officer, as appropriate. (H) Information relating to drug interactions and information on drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration shall be immediately available to the professional staff.

(*i*) A pharmacist shall be readily available by telephone or other means to discuss drug therapy, interactions, side effects, dosage, assist in drug selection, and assist in the identification of drug induced problems.

*(ii)* There shall be staff development programs on drug therapy available to facility staff to cover such topics as new drugs added to the formulary, how to resolve drug therapy problems, and other general information as the need arises.

(I) A formulary system shall be established by the medical staff to ensure quality pharmaceuticals at reasonable costs.

(m) Quality assurance. The governing body shall ensure that there is an effective, ongoing, facility-wide, data-driven quality assurance (QA) program to evaluate the provision of patient care.

(1) Implementation plan. The facility-wide QA program shall be on-going and have a written plan of implementation.

(A) All organized services related to patient care, including services furnished by contract, shall be evaluated.

(B) Nosocomial infections and medication therapy shall be evaluated.

(C) All medical services performed in the facility shall be evaluated as they relate to appropriateness of diagnosis and treatment.

(2) Implementation. The facility shall take and document appropriate remedial action to address deficiencies found through the QA program. The facility shall document the outcome of the remedial action.

(3) Discharge planning. The facility shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from facility. In accordance with 42 <u>CFR</u> [Code of Federal Regulations (CFR);] Part 483, Subpart C [(relating to Requirements for Long Term Care Facilities)] and the rules [of the Department of Aging and Disability Services (DADS)] set forth in [40 TAC] Chapter 303 of this title [47,] (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the facility to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the facility and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability.

(*i*) If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code[ $_7$ ] §533.035[ $_7$ ] to conduct, prior to facility discharge, an evaluation of the patient in accordance with the applicable provisions of the PASRR rules.

(ii) The purpose of PASRR is:

 $(\underline{I})$  [(+)] to ensure that placement of the patient in a nursing facility is necessary;

 $(\underline{II})$  [(ii)] to identify alternate placement options when applicable; and

(III) [(iii)] to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(n) Radiology services. When radiology services are provided, written policies and procedures shall be adopted, implemented, and enforced which describe the radiology services provided in the facility and how employee and patient safety will be maintained.

(1) <u>Safety Precautions</u>. Proper safety precautions shall be maintained against radiation hazards. This includes adequate shielding for patients, personnel, and facilities.

(2) <u>Equipment Inspections</u>. Inspection of equipment shall be made periodically. Defective equipment shall be promptly repaired or replaced.

(3) <u>Radiation Exposure</u>. Radiation workers shall be checked, by the use of exposure meters or badge tests, for amount of radiation exposure. Exposure reports and documentation shall be available for review.

(4) <u>Service Provision</u>. Radiology services shall be provided only on the order of individuals with privileges granted by the medical staff and of other physicians or practitioners authorized by the medical staff and governing body to order such services.

(5) Personnel.

(A) A qualified full-time, part-time, or consulting radiologist shall supervise the ionizing radiology services and shall interpret only those radiology tests that are determined by the medical staff to require a radiologist's specialized knowledge. For purposes of this section a radiologist is a physician who is qualified by education and experience in radiology in accordance with medical staff bylaws.

(B) Only personnel designated as qualified by the medical staff shall use the radiology equipment and administer procedures.

(6) Records. Records of radiology services shall be maintained. The radiologist or other individuals who have been granted privileges to perform radiology services shall sign reports of his or her interpretations.

(o) Respiratory care services. When respiratory care services are provided, written policies and procedures shall be adopted, implemented, and enforced which describe the provision of respiratory care services in the facility. Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(p) Waste and waste disposal.

(1) Special waste and <u>liquid or sewage</u> [liquid/sewage] waste management.

(A) The hospital shall comply with the requirements set forth by the <u>Texas Department of State Health Services</u> [department] in <u>25 TAC</u> §§1.131 - 1.137 [of this title] (relating to Definition, Treatment, and Disposition of Special Waste from Health <u>Care-Related</u> [Care Related] Facilities) and the Texas Commission on Environmental Quality (TCEQ) requirements in 30 TAC <u>Chapter 326</u> [§330.1207] (relating to [Generators of] Medical Waste Management).

(B) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by

the TCEQ in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(2) Waste receptacles.

(A) Waste receptacles shall be conveniently available in all toilet rooms, patient areas, staff work areas, and waiting rooms. Receptacles shall be routinely emptied of their contents at <u>one or more</u>
[a] central <u>locations</u> [location(s)] into closed containers.

(B) Waste receptacles shall be properly cleaned with soap and hot water, followed by treatment of inside surfaces of the receptacles with a germicidal agent.

(C) All containers for other municipal solid waste shall be leak-resistant, have tight-fitting covers, and be rodent-proof.

(D) Non-reusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

## §510.42. Discrimination or Retaliation Standards.

(a) Posting requirements for reporting a violation of law. In accordance with <u>Texas</u> Health and Safety Code (HSC)[ $_{5}$ ] §161.134(j) and §161.135(h), each facility shall prominently and conspicuously post for display in a public area of the facility that is readily visible to patients, residents, employees, and visitors a statement that employees, staff, and nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) Discrimination relating to employee reporting a violation of law. In accordance with HSC[5] §161.134(a), a facility may not suspend or terminate the employment of, discipline, or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the hospital, a state regulatory agency, or a law enforcement agency, a violation of law, including a violation of [the] Texas Health and Safety Code Chapter 577 [Aet] or this chapter.

(c) Retaliation relating to nonemployee reporting a violation of law. In accordance with HSC  $[_3]$  §161.135(a), a facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of <u>Texas Health and Safety Code Chapter</u> 577 [the ACT] or this chapter.

*§510.43. Patient Transfer Policy.* 

(a) Definitions.

(1) For purposes of this section, a transferring facility is a private psychiatric hospital licensed under <u>Texas</u> Health and Safety Code (HSC)[<sub>7</sub>] Chapter 577.

(2) For purposes of this section, a receiving facility is one of the following:

(A) a private psychiatric hospital licensed under  $HSC[_{7}]$ Chapter 577;

(B) a general or special hospital licensed under HSC[5] Chapter 241;

(C) a hospital operated by  $\underline{HHSC}$  [the Texas Department of Mental Health and Mental Retardation];

(D) a hospital operated by a federal agency; or

(E) a chemical dependency treatment facility licensed under HSC[5] Chapter 464.

(3) For purposes of this section, patient is defined as an individual:

(A) seeking treatment who may or may not be under the immediate supervision of a personal attending physician, and who, within reasonable medical probability, requires immediate or continuing services and medical care; or

## (B) admitted as a patient.

## (b) Applicability.

(1) If a transferring facility or a receiving facility is licensed under  $HSC[_{5}]$  Chapter 577, it must comply with all requirements of this section.

(2) Receiving facilities, other than those licensed under  $HSC[_{7}]$  Chapter 577, are not governed by these rules.

(c) General.

(1) The governing body of each transferring facility shall adopt, implement, and enforce a policy relating to patient transfers that is consistent with this section and contains each of the requirements in subsection (d) of this section. Facility administration has the authority to represent a facility during the transfer from or receipt of patients into the facility.

(2) The transfer policy shall be adopted by the governing body of the facility after consultation with the medical staff.

(3) The policy shall govern transfers not covered by a transfer agreement in accordance with  $\S510.61$  [\$134.61] of this chapter [title] (relating to Patient Transfer Agreements).

(4) The movement of a stable patient from a transferring facility to a receiving facility is not considered to be a transfer under this section if it is the understanding and intent of both facilities that the patient is going to the receiving facility only for tests, the patient will not remain overnight at the receiving facility, and the patient will return to the transferring facility. This paragraph applies only when a patient remains stable during transport to and from the facilities and during testing.

(5) The policy shall include a written operational plan to provide for patient transfer transportation services if the transferring facility does not provide its own patient transfer transportation services.

(6) Each governing body, after consultation with the medical staff, may implement its transfer policy by adopting transfer agreements with other receiving facilities in accordance with  $\S510.61$  [\$134.61] of this chapter [title].

(d) Requirements for transfer of patients between facilities.

(1) Discrimination. Except as is specifically provided in paragraphs (5)(E) and (5)(F) [(F)] and (6)(A) and (6)(B) [(B)] of this subsection, relating, respectively, to mandated providers and designated providers, the policy shall provide that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status.

(2) Disclosure. The policy shall recognize the right of an individual to request transfer into the care of a physician and a receiving facility of <u>the individual's</u> [his] own choosing; however, if a patient is transferred for economic reasons and the patient's choice is predicated upon or influenced by representations made by the transferring physician or transferring facility administration regarding the availability of medical care and services at a reduced cost or no cost to the patient, the physician or facility administration shall fully disclose to the patient the eligibility requirements established by the patient's chosen physician or receiving facility.

(3) Patient evaluation. The policy shall provide that each patient who arrives at a transferring facility is evaluated in accordance with <u>§568.41</u> [the Texas Department of Mental Health and Mental Retardation §411.468] of this title (relating to Responding to an Emergency Medical Condition [of a Patient, Prospective Patient, or Individual who Arrives on Hospital Property Requesting Examination or Treatment]).

(A) After receiving a report on the patient's condition from the nursing staff by telephone or radio, if the physician on call determines that an immediate transfer of the patient is medically appropriate and that the time required to conduct a personal examination and evaluation of a patient will unnecessarily delay the transfer to the detriment of the patient, the physician on call may order the transfer by telephone or radio.

(B) Physician orders for the transfer of a patient which are issued by telephone or radio shall be reduced to writing in the patient's medical record, signed by the staff member receiving the order, and countersigned by the physician authorizing the transfer as soon as possible. The patient transfers resulting from physician orders issued by telephone or radio shall be subject to automatic review by the medical staff pursuant to paragraph (8) of this subsection.

(4) Facility personnel, written protocols, standing delegation orders, eligibility, and payment information. The policy of the transferring facility and receiving facility shall provide that licensed nurses and other qualified personnel are available and on duty to assist with patient transfers and to provide accurate information regarding eligibility and payment practices. The policy shall provide that written protocols or standing delegation orders are in place to guide personnel when a patient requires transfer.

(5) Transfer of patients who have emergency medical conditions.

(A) If a patient has an emergency medical condition which has not been stabilized or when stabilization of the patient's vital signs is not possible because the transferring facility does not have the appropriate equipment or personnel to correct the underlying process, evaluation and treatment shall be performed and transfer shall be carried out as quickly as possible.

(B) The policy shall provide that the transferring facility may not transfer a patient with an emergency medical condition which has not been stabilized unless:

*(i)* the patient or a legally responsible person acting on the patient's behalf, after being informed of the transferring facility's obligations under this section and of the risks and benefits of transfer, requests transfer in writing;

*(ii)* a physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at a receiving facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer; or

*(iii)* if the physician who made the determination to transfer a patient with an emergency condition is not physically present at the time of transfer, a qualified medical person, as designated by facility policy, may sign a certification described in clause (ii) of this subparagraph after consultation with the physician and the [-The] physician shall countersign the physician certification within a reasonable period of time.

(C) Except as provided by subparagraphs (E) and (F) of this paragraph and paragraph (6)(A) and (6)(B) [(B)] of this sub-

section, the policy shall provide that the transfer of patients who have emergency medical conditions, as determined by a physician, shall be undertaken for medical reasons only.

(D) Except as expressly permitted in clauses (i) and (ii) of this subparagraph, the policy shall provide for the receipt of patients who have an emergency medical condition so that upon notification of and prior to a transfer, the receiving facility shall, after determining whether or not space, personnel and services necessary to provide appropriate care for the patient are available, respond to the transferring facility, within 30 minutes, either accepting or refusing the transfer. The 30-minute time period begins at the time a member of the staff of the receiving facility receives the call initiating the request to transfer.

(*i*) The policy may permit response within a period of time in excess of 30 minutes but no longer than one hour if there are extenuating circumstances for the delay. If the transfer is accepted, the reason for the delay shall be documented on the memorandum of transfer.

*(ii)* The response time may be extended before the expiration of the initial 30 minutes period by agreement among the parties to the transfer. If the transfer is accepted, the agreed extension shall be documented in the memorandum of transfer.

(E) The policy shall recognize and comply with the requirements of <u>HSC</u> [the Indigent Health Care and Treatment Act, <u>HSC</u>;] §§61.030-61.032 and §§61.057-61.059 [(relating to Mandated Providers)] since those requirements may apply to a patient.

(F) The policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(G) The policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include:

*(i)* a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring facility;

*(ii)* a factual explanation of any increased risks to the patient from not effecting the transfer; and

*(iii)* a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at a receiving facility.

(H) The informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or facility employee, and placed in the patient's medical record.

(I) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized health care entity.

(6) Transfer of patients who do not have emergency medical conditions.

(A) The policy shall recognize and comply with the requirements of <u>HSC</u> [the Indigent Health Care and Treatment Act, <u>HSC</u>;] §§61.030-61.032 and §§61.057-61.059 [(relating to Mandated Providers)] as those requirements may apply to a patient.

(B) The policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(C) The policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include:

*(i)* a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring facility;

*(ii)* a factual explanation of any increased risks to the patient from not effecting the transfer; and

*(iii)* a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at a receiving facility.

(D) The informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or facility employee, and placed in the patient's medical record.

(E) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized health care entity.

(F) The policy shall recognize the right of an individual to request a transfer into the care of a physician and a receiving facility of the individual's own choosing.

(7) Physician's duties and standard of care.

(A) The policy shall provide that the transferring physician shall determine and order life support measures which are medically appropriate to stabilize the patient prior to transfer and to sustain the patient during transfer.

(B) The policy shall provide that the transferring physician shall determine and order the utilization of appropriate personnel and equipment for the transfer.

(C) The policy shall provide that in determining the use of medically appropriate life support measures, personnel, and equipment, the transferring physician shall exercise that degree of care which a reasonable and prudent physician exercising ordinary care in the same or similar locality would use for the transfer.

(D) The policy shall provide that except as allowed under paragraph (3)(B) of this subsection, prior to each patient transfer, the physician who authorizes the transfer shall personally examine and evaluate the patient to determine the patient's medical needs and to ensure that the proper transfer procedures are used.

(E) The policy shall provide that prior to transfer, the transferring physician shall secure a receiving physician and a receiving facility that are appropriate to the medical needs of the patient and that will accept responsibility for the patient's medical treatment and care.

(8) Record review for standard of care. The policy shall provide that the medical staff review appropriate records of patients transferred to determine that the appropriate standard of care has been met.

(9) Medical record.

(A) The policy shall provide that a copy of those portions of the patient's medical record which are available and relevant to the transfer and to the continuing care of the patient be forwarded to the receiving physician and receiving facility with the patient. If all necessary medical records for the continued care of the patient are not available at the time the patient is transferred, the records shall be forwarded to the receiving physician and receiving facility as soon as possible.

(B) The medical record shall contain at a minimum:

*(i)* a brief description of the patient's medical history and physical examination;

*(ii)* a working diagnosis and recorded observations of physical assessment of the patient's condition at the time of transfer;

(iii) the reason for the transfer;

*(iv)* the results of all diagnostic tests, such as laboratory tests;

(v) pertinent X-ray films and reports; and

(vi) any other pertinent information.

(10) Memorandum of transfer.

(A) The policy shall provide that a memorandum of transfer be completed for every patient who is transferred.

(B) The memorandum shall contain the following information:

(*i*) the patient's full name, if known;

*(ii)* the patient's race, religion, national origin, age, sex, physical disability [handicap], if known;

*(iii)* the patient's address and next of kin, address, and phone number if known;

*(iv)* the names, telephone numbers and addresses of the transferring and receiving physicians;

(v) the names, addresses, and telephone numbers of the transferring and receiving facilities;

(vi) the time and date on which the patient first presented or was presented to the transferring physician and transferring facility;

(vii) the time and date on which the transferring physician secured a receiving physician;

(*viii*) the name, date, and time administration was contacted in the receiving facility;

*(ix)* signature, time, and title of the transferring facility administration who contacted the receiving facility;

(x) the certification required by paragraph (5)(B)(ii) of this subsection, if applicable (the certification may be part of the memorandum of transfer form or may be on a separate form attached to the memorandum of transfer form);

*(xi)* the time and date on which the receiving physician assumed responsibility for the patient;

(*xii*) the time and date on which the patient arrived at the receiving facility;

(xiii) signature and date of receiving administration;

(xiv) type of vehicle and company used;

(xv) type of equipment and personnel needed in

(xvi) name and city of facility to which patient was transported;

(xvii) diagnosis by transferring physician; and

(xviii) attachments by transferring facility.

(C) A copy of the memorandum of transfer shall be retained by the transferring and receiving facilities. The memorandum shall be filed separately from the patient's medical record and in a manner <u>that facilitates</u> [which will facilitate] its inspection by <u>HHSC</u> [the department]. All memorandum of transfer forms filed separately shall be retained for five years.

(e) Violations. A facility violates  $HSC[_{5}]$  Chapter 577 and this section if:

(1) the facility fails to comply with the requirements of this section; or

(2) the governing body fails or refuses to:

(A) adopt a transfer policy which is consistent with this section and contains each of the requirements in subsection (d) of this section;

(B) adopt a memorandum of transfer form which meets the minimum requirements for content contained in this section; or

(C) enforce its transfer policy and the use of the memorandum of transfer.

#### §510.46. Abuse and Neglect Issues.

transfers:

(a) Reporting. Incidents of abuse, neglect, exploitation, or illegal, unethical or unprofessional conduct shall be reported to the <u>Texas</u> <u>Health and Human Services Commission (HHSC)</u> [department] as provided in subsections (b) and (c) of this section.

(b) Abuse or neglect of a child, and abuse,  $neglect_2$  or exploitation of an elderly or disabled person. The following definitions apply only to this subsection.

(1) Abuse or neglect of a child, as defined in 25 <u>TAC</u> [Texas Administrative Code (TAC)] §1.204(a) and (b) (relating to [Investigations of] Abuse, Neglect, and [or] Exploitation <u>Defined</u> [of Children or Elderly or Disabled Persons]).

(2) Abuse, neglect, or exploitation of an elderly or disabled person, as defined in 25 TAC (1.204(a) - (c) [and (b) of this title].

(c) Abuse and neglect of individuals with mental illness, and illegal, unethical, and unprofessional conduct. The requirements of this subsection are in addition to the requirements of subsection (b) of this section.

(1) Definitions. The following definitions are in accordance with <u>Texas</u> Health and Safety Code (HSC)  $[_{3}]$  §161.131 and apply only to this subsection. [ $\div$ ]

(A) Abuse--[-]

(*i*) Abuse (as the term is defined in [42] United States Code (USC) <u>Title 42 Chapter 114[ $_{5}$  §10801 et seq.</u>)] is any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to <u>an</u> [a] individual with mental illness, and includes acts such as:

(1) the rape or sexual assault of  $\underline{an} [a]$  individual with mental illness;

(II) the striking of an [a] individual with mental

*(III)* the use of excessive force when placing <u>an</u> [a] individual with mental illness in bodily restraints; and

(IV) the use of bodily or chemical restraints on <u>an</u> [a] individual with mental illness which is not in compliance with federal and state laws and regulations.

(*ii*) In accordance with  $HSC[_{7}]$  §161.132(j), abuse also includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

(B) Illegal conduct--Illegal conduct (as the term is defined in  $HSC[_{7}]$  §161.131(4)) is conduct prohibited by law.

(C) Neglect--Neglect (as the term is defined in 42  $USC[_{\overline{2}}]$  §10801 et seq.) is a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an [a] individual with mental illness or which placed an [a] individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for an [a] individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to an [a] individual with mental illness, or the failure to provide a safe environment for an [a] individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(D) Unethical conduct--Unethical conduct (as the term is defined in  $HSC[_{5}]$  §161.131(11)) is conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(E) Unprofessional conduct--Unprofessional conduct (as the term is defined in  $HSC[_{5}]$  §161.131(12)) is conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(2) Posting requirements. A facility shall prominently and conspicuously post for display in a public area that is readily visible to patients, residents, volunteers, employees, and visitors a statement of the duty to report abuse and neglect, or illegal, unethical or unprofessional conduct in accordance with HSC[<sub>5</sub>] §161.132(e). The statement shall be in English and in a second language appropriate to the demographic makeup of the community served and contain the number of the current toll-free telephone number for submitting a complaint to HHSC as specified on the HHSC website [department's patient information and complaint line at (888) 973-0022].

(3) Reporting responsibility.

(A) Reporting abuse and neglect. A person, including an employee, volunteer, or other person associated with the facility who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient of the facility who is receiving mental health or chemical dependency services has been, is, or will be adversely affected by abuse or neglect (as those terms are defined in this subsection) by any person shall as soon as possible, but no later than 24 hours after, report the information supporting the belief to <u>HHSC</u> [the department] or to the appropriate state health care regulatory agency in accordance with  $HSC[_{7}]$  §161.132(a).

(B) Reporting illegal, unprofessional, or unethical conduct. An employee of or other person associated with a facility includ-

ing a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee or health care professional associated with the facility, has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health or chemical dependency services provided in the facility shall as soon as possible, but no later than 48 hours after, report the information supporting the belief to <u>HHSC</u> [the department] or to the appropriate state health care regulatory agency in accordance with HSC[ $_{3}$ ] §161.132(b).

(4) Training requirements. A facility providing mental health or substance use services shall comply with <u>§568.121 of this title (relating to Staff Member Training)</u> [the memorandum of understanding (MOU) adopted by the Texas Commission on Alcohol and Drug Abuse in 40 TAC §148.205 (relating to Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct). The MOU applies] to all employees and associated health care professionals who are assigned to or who provide services in the facility.

(d) Investigations. A complaint under this subsection will be investigated or referred by <u>HHSC</u> [the department] as follows.

(1) Allegations under subsection (b) of this section will be investigated in accordance with  $\underline{25}$  TAC §1.205 [of this title] (relating to Reports and Investigations [of Children or Elderly or Disabled Persons]) and  $\underline{25}$  TAC §1.206 [of this title] (relating to Completion of Investigation).

(2) Allegations under subsection (c) of this section will be investigated in accordance with §510.83 [§134.81] of this chapter [title] (relating to <u>Complaint Investigations</u> [Survey and Investigation Procedures]). Allegations concerning a health care professional's failure to report abuse and neglect or illegal, unprofessional, or unethical conduct will not be investigated by <u>HHSC</u> [the department] but will be referred to the individual's licensing board for appropriate disciplinary action.

(3) Allegations under both subsections (b) and (c) will be investigated in accordance with  $\underline{25}$  TAC §§1.205 and 1.206 [of this title] except as noted in paragraph (2) of this subsection concerning a health care professional's failure to report.

(e) Submission of complaints. A complaint made under this section <u>shall</u> [may] be submitted in writing or <u>orally</u> [verbally] to <u>HHSC</u> [the Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone, (888) 973-0022].

(f) Notification.

(1) For complaints under subsection (b) of this section,  $\underline{\text{HHSC}}$  [the department] shall provide notification according to the following:

(A) <u>HHSC</u> [The department] shall notify the reporter, if known, in writing of the outcome of the complete investigation.

(B) <u>HHSC</u> [The department] shall notify the alleged victim, and the alleged victim's [his or her] parent or guardian if a minor, in writing of the outcome of the completed investigation.

(2) For complaints under subsection (c) of this section, <u>HHSC</u> [the department] shall inform, in writing, the complainant who identifies themselves by name and address of the following:

(A) the receipt of the complaint;

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

illness;

(C) whether the complaint will be investigated by <u>HHSC</u> [the department];

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

- (E) the findings of the complaint investigation.
- (g) <u>HHSC</u> [Department] reporting and referral.
  - (1) Reporting health care professional to licensing board.

(A) In cases of abuse, neglect, or exploitation, as those terms are defined in subsection (b), by a licensed, certified, or registered health care professional, <u>HHSC</u> [the department] may forward a copy of the completed investigative report to the state agency which licenses, certifies or registers the health care professional. Any information which might reveal the identity of the reporter or any other patients or clients of the facility must be blacked out or deidentified.

(B) A health care professional who fails to report abuse and neglect or illegal, unprofessional, or unethical conduct as required by subsection (c)(3) of this section may be referred by <u>HHSC</u> [the department] to the individual's licensing board for appropriate disciplinary action.

[(2) Abusive treatment methods. The department shall report or forward a copy of a complaint concerning an abusive treatment method to the Texas Department of Mental Health and Mental Retardation.]

(2) [(3)] Sexual exploitation reporting requirements. In addition to the reporting requirements described in subsection (c)(3) of this section, a mental health services provider must report suspected sexual exploitation in accordance with Texas Civil Practice and Remedies Code[ $_{7}$ ] §81.006.

 $\underbrace{(3)} [(4)] Referral follow-up. \underbrace{HHSC}[The department] shall request a report from each referral agency of the action taken by the agency six months after the referral.$ 

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. VOLUNTARY AGREEMENTS

## 26 TAC §510.61, §510.62

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

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

## §510.61. Patient Transfer Agreements.

(a) General provisions.

(1) Transfer agreements between transferring facilities and receiving facilities as those terms are defined in  $\S510.43$  [\$134.43] of this chapter [title] (relating to Patient Transfer Policy) are voluntary.

(2) If transfer agreements are executed that are consistent with the requirements of subsection (b) of this section, any patient transfers shall be governed by the agreement. The memorandum of transfer described in  $\S510.43(d)(10)$  [\$134.43(d)(10)] of this chapter [title] is not required for transfers governed by an agreement.

(3) Multiple transfer agreements may be entered into based upon the type or level of medical services available at other facilities.

(b) Rules for patient transfer agreements.

(A) Except as specifically provided in paragraph (4) of this subsection, relating to mandated providers, the transfer of a patient shall not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status.

(B) The transfer or receipt of patients in need of emergency care shall not be based upon the individual's inability to pay for the services rendered.

(2) The patient transfer agreement shall require that patient transfers be accomplished in a medically appropriate manner by determining the availability of appropriate facilities, services, and staff for providing care to the patient and by providing:

(A) medically appropriate life support measures which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer;

(B) appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the transfer; and

(C) all necessary records for continuing the care for the patient.

(3) The facility shall recognize the right of an individual to request transfer into the care of a physician and facility of the individual's own choosing.

(4) The facility shall recognize and comply with the requirements of <u>Texas</u> [the Indigent Health Care and Treatment Act,] Health and Safety Code §61.030 through §61.032 and §61.057 through §61.059[; Chapter 61 (relating to the Transfer of Patients to Mandated Providers)].

(5) The patient transfer agreement shall provide that a patient with an emergency medical condition which has not been stabilized shall not be transferred unless the following occurs. (A) The patient, or a legally responsible person acting on the patient's behalf, after being informed of the facility's obligations under this section and of the risk of transfer, has requested transfer to another facility in writing.

(B) A physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer.

(C) If a physician is not physically present at the time a patient is transferred, a qualified medical person has signed a certification described in subparagraph (B) of this paragraph after consultation with a physician who has made the determination described in subparagraph (B) of this paragraph and who will subsequently countersign the certification within a reasonable period of time.

§510.62. Cooperative Agreements.

(a) A cooperative agreement is an agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services, and may be established in accordance with Texas Health and Safety Code (HSC) [<sub>3</sub>] Chapter 314.

(b) For purposes of this section only, a hospital is a private <u>psychiatric [mental]</u> hospital licensed under  $HSC[_7]$  Chapter 577, or a general or special hospital licensed under  $HSC[_7]$  Chapter 241.

(c) A hospital may negotiate and enter into cooperative agreements with other hospitals in the state if the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreements. Acting through their boards of directors, a group of hospitals may conduct discussions or negotiations concerning cooperative agreements, provided that the discussions or negotiations do not involve price fixing or predatory pricing.

(d) Parties to a cooperative agreement may apply to <u>HHSC</u> [the department] for a certification of public advantage governing the cooperative agreement. The application must include the application fee in accordance with <u>§510.26(e)</u> [<u>§134.26(e)</u>] of this <u>chapter</u> [title] (relating to Fees), and a written copy of the cooperative agreement that describes the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the attorney general and to <u>HHSC</u> [the department] at the same time.

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 F. FIRE PREVENTION AND SAFETY REQUIREMENTS 26 TAC §510.101

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

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.101. Fire Prevention and Protection.

(a) Fire inspections.

(1) Annual inspection. Approval of the fire protection of a facility by the local fire department or State Fire Marshall's Office shall be a prerequisite for licensure.

(2) Purpose of inspection. The purpose of these inspections shall be to ascertain and to cause to be corrected any conditions liable to cause fire or violations of any of the provisions or intent of these rules, or of any other applicable ordinances, which affect fire safety in any way.

(3) Hazardous or dangerous conditions or materials. Whenever any of the officers, members, or inspectors of the fire department or bureau of fire prevention find in any building or upon any premises dangerous or hazardous conditions or materials, removal or remedy of dangerous conditions or materials shall be carried out in a manner specified by the inspector or officer [inspector/officer].

(4) Access for inspection. At all reasonable hours, the chief of the fire department, the chief of the bureau of fire prevention, or any of the fire inspectors may enter any building or premises for the purpose of making an inspection or investigation which may be deemed necessary under the provisions of these rules.

(b) Fire reporting. All occurrences of fire shall be reported to the local fire authority and shall be reported in writing to the <u>Texas</u> [Hospital Licensing Director,] Health [Facility Licensing] and <u>Human</u> <u>Services Commission</u> [Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756], as soon as possible but not later than 10 calendar days following the occurrence.

(1) The fire incident report shall indicate as a minimum the following information:

(A) the fire origin and area or location [area/location];

(B) amount of damage;

(C) were patients or <u>employees or staff</u> [employees/staff] injured;

(D) was the fire department notified and did they re-

tion; and

spond;

(F) how was the fire extinguished;

(E) how was the fire detected;

(G) what caused the fire;

(H) was there a general evacuation or just area evacua-

(I) has the fire  $\underline{\text{area or location}}$  [ $\underline{\text{area/location}}$ ] been re-occupied.

(2) The fire incident report shall be provided on facility letterhead and signed by hospital administration. (3) A copy of the fire <u>marshal</u> [marshall] incident report shall be provided if the fire marshal [marshall] wrote an incident report.

(c) Fire protection. Fire protection shall be provided in accordance with the requirements of National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101), §18-7, and §510.121(a)(1) [§134.121(a)(1)] of this chapter [title] (relating to Requirements for Buildings in which Existing Licensed Facilities are Located), and §510.122(a)(1) [§134.122(a)(1)] and (d) of this chapter [title] (relating to New Construction Requirements). When required or installed, sprinkler systems for exterior fire exposures shall comply with National Fire Protection Association 80A, Recommended Practice for Protection of Buildings from Exterior Fire Exposures, 1999 edition. [All doeuments published by NFPA as referenced in this section may be obtained by writing or ealling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Post Office Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.]

(d) Smoking rules. Each facility shall adopt, implement, and enforce a smoking policy. The policy shall include the minimal provisions of NFPA  $101[_{5}]$  §18-7.4.

(e) Fire extinguishing systems. Inspection, testing, and maintenance of fire-fighting equipment shall be conducted by each facility.

(1) Water-based fire protection systems. All fire sprinkler systems, fire pumps, fire standpipe and hose systems, water storage tanks, and valves and fire department connections shall be inspected, tested and maintained in accordance with National Fire Protection Association 25, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, 1995 edition.

(2) Range hood extinguishers. Fire extinguishing systems for commercial cooking equipment, such as at range hoods, shall be inspected and maintained in accordance with National Fire Protection Association 96, Standard for Ventilation Control and Fire Protection of Cooking Operations, 1998 edition.

(3) Portable fire extinguishers. Every portable fire extinguisher located in a facility or upon facility property shall be installed, tagged, and maintained in accordance with National Fire Protection Association 10, Standard for Portable Fire Extinguishers, 1998 edition.

(f) Fire protection and evacuation plan. A plan for the protection of patients in the event of fire and their evacuation from the building when necessary shall be formulated according to NFPA  $101[_{7}]$  §18-7. Copies of the plan shall be available to all staff.

(1) Posting requirements. An evacuation floor plan shall be prominently and conspicuously posted for display throughout the facility in public areas that are readily visible to patients, residents, employees, and visitors.

(2) Annual training. Each facility shall conduct an annual training program for instruction of all personnel in the location and use of fire-fighting equipment. All employees shall be instructed regarding their duties under the fire protection and evacuation plan.

(g) Fire drills. The facility shall conduct at least one fire drill per shift per quarter, which shall include communication of alarms, simulation of evacuation of patients and other occupants, and use of fire-fighting equipment. Documentation of the drills shall be maintained for a period of not less than one year.

(h) Fire alarm system. Every facility and building used for patient care shall have an approved fire alarm system. Each fire alarm system shall be installed and tested in accordance with  $\S510.121(a)(1)(A)$  [\$134.121(a)(1)(A)] of this chapter [title] for existing facilities, and

 $\underline{\$510.122(d)(5)(M)}$  [ $\underline{\$134.122(d)(5)(N)}$ ] of this chapter [title] for new construction.

(i) System for communicating an alarm of fire. A reliable communication system shall be provided as a means of reporting a fire to the fire department. This is in addition to the automatic alarm transmission to the fire department required by NFPA 101 [ $_{2}$ ] §18-3.4.3.2.

(j) Fire department access. As an aid to fire department services, every facility shall provide the following.

(1) Driveways. The facility shall maintain driveways, free from all obstructions, to main buildings for fire department apparatus use.

(2) Floor plans. Upon request, the facility shall submit a copy of the floor plans of the building to the local fire department officials.

(3) Outside identification. The facility shall place proper identification on the outside of the main building showing the locations of siamese connections and standpipes as required by the local fire department services.

(k) Fire department protection. When a facility is located outside of the service area or range of the public fire protection, arrangements shall be made to have the nearest fire department respond in case of a fire.

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

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Health and Human Services Commission

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

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SUBCHAPTER G. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

## 26 TAC §§510.121 - 510.123, 510.125, 510.127 - 510.129, 510.131

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

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

*§510.121.* Requirements for Buildings in which Existing Licensed Facilities are Located.

(a) Compliance. All buildings in which existing facilities licensed by the <u>Texas Health and Human Services Commission (HHSC)</u> [department] are located shall comply with this subsection.

(1) Minimum fire safety and construction requirements.

(A) Existing licensed facilities shall meet the requirements for health care occupancies contained in the 1985, 1988, 1991 or 2000 editions of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, (NFPA 101), and the facility licensing rules (1988, 1989 or 1994) under which the buildings or sections of buildings were constructed or last modified. [All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quiney, MA 02269-9101 or (800) 344-3555.]

(B) Existing facilities or portions of existing facilities constructed prior to the adoption of any of the editions of NFPA 101, the Facility Licensing Standards, and the facility licensing rules listed in subparagraph (A) of this paragraph, shall comply with this section and Chapter 19, NFPA 101, 2000 edition.

(C) Compliance with the requirements of Chapter 3 of the National Fire Protection Association 101A, Alternative Approaches to Life Safety, 1998 edition, (relating to Fire Safety Evaluation System for Health Care Occupancies) will be acceptable in lieu of complying with the requirements of Chapter 19, NFPA 101, 2000 edition.

(2) Remodeling of existing facilities. All requirements listed in this chapter relating to new construction are applicable to renovations, additions and alterations unless stated otherwise.

(A) Alteration or installation of new equipment. Any alteration or any installation of new equipment shall be accomplished as nearly as practicable with the requirements for new construction, except that when existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted if the intent of the requirements is met and if the care and safety of patients will not be jeopardized. A request for deviation must be submitted in writing to <u>HHSC</u> [the Hospital Licensing Director, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and approved by the department].

(B) Installation, alteration, or extension approval. No new system of mechanical, electrical, plumbing, fire protection, or piped medical gas system may be installed or any such existing system be replaced, materially altered or extended in an existing building licensed as a facility, until complete plans and specifications for the replacement, installation, alteration, or extension have been submitted to <u>HHSC</u> [the department], reviewed and approved in accordance with <u>§510.127</u> [§134.127] of this <u>subchapter</u> [title] (relating to Preparation, Submittal, Review and Approval of Plans).

(C) Minor remodeling or alterations. All remodeling or alterations which do not involve alterations to load bearing members or partitions, change functional operation, affect fire safety (e.g. modifications to the fire, smoke, and corridor walls), add or subtract beds or services for which the facility is licensed, and do not involve changes listed in subparagraph (B) of this paragraph, shall be submitted for approval without submitting contract documents. Such approval shall be requested in writing with a brief description of the proposed changes and a simple floor plan for evaluation and determination of disposition.

(D) Major remodeling or alterations. Plans shall be submitted in accordance with  $\S510.127$  [\$134.127] of this subchapter [title] for all major remodeling or alterations. All remodeling or alterations which involve alterations to load bearing members or partitions, change functional operation, affect fire safety (e.g. modifications to the fire, smoke, and corridor walls), or change the designed bed capacity or services over those for which the facility is licensed are considered as major remodeling and alterations.

(E) Phasing of construction in existing facilities. Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions. Access, exit access, and fire protection shall be maintained so that the safety of the occupants will not be jeopardized during construction. Dust and vapor barriers shall be provided to separate areas undergoing demolition and construction from occupied areas. Temporary sound barriers shall be provided where intense prolonged construction noises will disturb patients or staff in the occupied portions of the building.

(F) Nonconforming conditions. When doing renovation work, if it is found to be infeasible to correct all of the nonconforming conditions in the existing facility in accordance with these rules, a conditional approval may be granted by <u>HHSC</u> [the department] if the operation of the facility, necessary access by the handicapped, and safety of the patients are not jeopardized by the nonconforming condition.

(b) Previously licensed facilities. Buildings which have been licensed previously as facilities but have been vacated or used for purposes other than as facilities and which are not in compliance with the 1985, 1988, 1991 or 2000 editions of the NFPA 101, and facility licensing rules (1988, 1989 or 1994) under which the building or sections of buildings were constructed shall comply with the requirements of §510.122 [\$134.122] of this <u>subchapter</u> [title] (relating to New Construction Requirements), §510.123 [\$134.123] of this <u>subchapter</u> [title] (relating to Spatial Requirements for New Construction), §510.125 [\$134.125] of this <u>subchapter</u> [title] (relating to Building with Multiple Occupancies), §510.127 [\$134.127] of this <u>subchapter</u> [title], and §510.130 [\$134.130] of this <u>subchapter</u> [title] (relating to Record Drawings, Manuals and Design Data), inclusively.

## §510.122. New Construction Requirements.

(a) Facility location. Any proposed new facility shall be easily accessible to the community and to service vehicles such as delivery trucks, ambulances, and fire protection apparatus. No building may be converted for use as a facility which, because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health and safety of the patients.

(1) Hazardous locations.

(A) Underground and above ground hazards. New facilities or additions to existing facilities shall not be built within 125 feet of right away/easement of hazardous locations including [but not limited to] underground liquid butane or propane, liquid petroleum or natural gas transmission lines, high pressure lines, and not under high voltage electrical lines.

(B) Fire hazards. New facilities shall not be built within 300 feet of above ground or underground storage tanks containing liquid petroleum or other flammable liquids used in connection with a bulk plant, marine terminal, aircraft refueling, bottling plant of a liquefied petroleum gas installation, or near other hazardous or hazard producing plants.

(2) Undesirable locations.

(A) Nuisance producing sites. New facilities shall not be located near nuisance producing industrial sites, feed lots, sanitary landfills, or manufacturing plants producing excessive noise or air pollution.

(B) Cemeteries. New facilities shall not be located near a cemetery in a manner that allows direct view of the cemetery from patient windows.

(C) Flood plains. Construction of new facilities shall be avoided in designated flood plains. Where such is unavoidable, access and required functional facility components shall be constructed above the designated flood plain. This requirement also applies to new additions to existing facilities or portions of facilities which have been licensed previously as facilities but which have been vacated or used for purposes other than facilities. This requirement does not apply to remodeling of existing licensed facilities.

(D) Airports. Construction of new facilities shall be avoided in close proximity to airports. When facilities are proposed to be located near airports, recommendations of the Texas Aviation Authority and the Federal Aviation Authority shall apply. A facility may not be constructed within a rectangular area formed by lines perpendicular to and two miles (10,560 feet) from each end of any runway and by lines parallel to and one-half mile (2,640 feet) from each side of any runway.

(b) Environmental considerations. Development of a facility site and facility construction shall be governed by state and local regulations and requirements with respect to the effect of noise and traffic on the community and the environmental impact on air and water.

(c) Facility site.

(1) Paved roads and walkways. Paved roads shall be provided within the lot lines to provide access from public roads to the main entrance, entrances serving community activities, and to service entrances, including loading and unloading docks for delivery trucks. Finished surface walkways shall be provided for pedestrians.

(2) Parking. Off-street parking shall be available for visitors, employees, and staff. Parking structures directly accessible from a facility shall be separated with two-hour fire rated noncombustible construction. When used as required means of egress for facility occupants, parking structures shall comply with National Fire Protection Association 88A, Standard for Parking Structures, 1998 edition. This requirement does not apply to freestanding parking structures. [All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quiney, MA 02269-9101 or (800) 344-3555.]

(A) Number of parking places. In the absence of a formal parking study, one parking space shall be provided for each day shift employee plus one space for one and one-half patient beds. This ratio may be reduced in an area convenient to a public transportation system or to public parking facilities on the basis of a formal parking study. Parking shall be increased accordingly when the size of an existing facility is increased.

(B) Additional parking. Additional parking shall be required to accommodate medical staff, outpatient and other services when such services are provided.

(C) Delivery parking. Separate parking facilities shall be provided for delivery vehicles.

(D) <u>Accessible [Handicapped]</u> parking. Parking spaces for [handicapped] persons with disabilities shall be provided in accordance with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(d) Building design and construction requirements. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards and the local governing building codes. Where there is no local governing building code, one of the following codes shall be adhered to: Uniform Building Code, 1999 edition, published by the International Conference of Building Officials [, 5360 Workman Mill Road, Whittier, California 90601, telephone (562) 699-0541; or the Standard Building Code, 1997 edition, published by the Southern Building Code Congress International, Inc., 900 Montelair Road, Birmingham, Alabama 35213-1206, telephone (205) 591-1853].

(1) General architectural requirements. All new construction, including conversion of an existing building to a facility, establishing a separately licensed facility in a building with an existing licensed health care occupancy, and establishing a licensed facility in a <u>non-health</u> [nonhealth] care occupancy shall comply with Chapter 18 of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101), and <u>Subchapters</u> [subchapters] F and G of this chapter (relating to Fire Prevention and Safety Requirements [ $_5$ ] and Physical Plant and Construction Requirements, respectively). The facility shall comply with the requirements of this paragraph and any specific architectural requirements for the particular unit or suite of the facility in accordance with <u>§510.123</u> [<u>§134.123</u>] of this <u>subchapter</u> [title] (relating to Spatial Requirements for New Construction).

(A) Special design provisions. Special provisions shall be made in the design of a facility in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, or floods.

(B) Foundations. Foundations shall rest on natural solid bearing if satisfactory bearing is available. Proper soil-bearing values shall be established in accordance with recognized requirements. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement, except that one-story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and certification of compliance with the job specifications. All footings shall extend to a depth not less than one foot below the estimated maximum frost line.

(C) Physical environment. A physical environment that protects the health and safety of patients, personnel, and the public shall be provided in each facility. The physical premises of the facility and those areas of the facility's physical structure that are used by the patients (including all stairwells, corridors, and passageways) shall meet the local building and fire safety codes and subchapters F and G of this chapter.

(D) Construction type. A facility may occupy an entire building or a portion of a building, provided the facility portion of the building is separated from the rest of the building in accordance with subparagraph (E) of this paragraph and the entire building or the facility portion of the building complies with new construction requirements (type of construction permitted for facilities by NFPA 101, §18-1.6.2), and the entire building is protected with a fire sprinkler system conforming with requirements of National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 1999 Edition (NFPA 13).

(E) Separate buildings. Portions of a building divided horizontally with two-hour fire rated walls which are continuous (without offsets) from the foundation to above the roof shall be considered as a separate building. Communicating openings in the two-hour wall shall be limited to public spaces such as lobbies and corridors. All such openings shall be protected with self-closing one and one-half hour, Class B fire door assemblies.

(F) Design for <u>people with disabilities</u> [the handicapped]. Special considerations benefiting [handicapped] staff, visitors, and patients <u>with disabilities</u> shall be provided. Each facility shall comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(G) Other regulations. Certain projects may be subject to other regulations, including those of federal, state, and local authorities. The more stringent standard or requirement shall apply when a difference in requirements for construction exists.

(H) Exceeding minimum requirements. Nothing in this subchapter shall be construed to prohibit a better type of building construction, more exits, or otherwise safer conditions than the minimum requirements specified in this subchapter.

(I) Equivalency. Nothing in this subchapter is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by this subchapter, providing technical documentation which demonstrates equivalency is submitted to the department for approval.

(J) Freestanding buildings (not for patient use). Separate freestanding buildings for nonpatient use such as the heating plant, boiler plant, laundry, repair workshops, or general storage may be of unprotected non-combustible construction, protected non-combustible construction, or fire-resistive construction and be designed in accordance with other occupancy classifications requirements listed in NFPA 101.

(K) Freestanding buildings (for patient use other than sleeping). Buildings containing areas for patient use which do not contain patient sleeping areas and in which care or treatment is rendered to ambulatory inpatients who are capable of judgment and appropriate physical action for self-preservation under emergency conditions, may be classified as ambulatory health care occupancies or business occupancies as listed in NFPA  $101[_{7}]$  Chapters 20 and 38, respectively, instead of facility occupancy. Such buildings shall be located at least 20 feet from the facility unless protected by an approved automatic sprinkler system.

(L) Energy conservation. In new construction and in major alterations and additions to existing buildings and in new buildings, electrical and mechanical components shall be selected for efficient utilization of energy.

(2) General detail and finish requirements. Details and finishes in new construction projects, including additions and alterations, shall be in compliance with this paragraph, with NFPA 101, Chapter 18, with local building codes, and with any specific detail and finish requirements for the particular unit or suite as contained in  $\S510.123$ [\$134.123] of this subchapter [title].

(A) General detail requirements.

(*i*) Fire safety. Fire safety features, including compartmentation, means of egress, automatic extinguishing systems, inspections, smoking regulations, and other details relating to fire prevention and fire protection shall comply with <u>§510.121</u> [§134.121] of this <u>subchapter</u> [title] (relating to Requirements for Buildings in which Existing Licensed Facilities are Located), and NFPA 101[<sub>7</sub>] Chapter 18 requirements for facilities. The Fire Safety Evaluation System for Health Care Occupancies contained in the National Fire Protection Association 101A, Alternative Approaches to Life Safety, 1998 edition, Chapter 3, shall not be used in new building construction, renovations, or additions to existing facilities.

(*ii*) Access to exits. Corridors providing access to all patient, diagnostic, treatment, and sleeping rooms and exits shall be at least six feet in clear and unobstructed width (except as allowed by NFPA 101, §18-2.3.3, Exceptions 1 and 2), not less than 7 feet 6 inches in height, and constructed in accordance with requirements listed in NFPA  $101[_{7}]$  §18-3.6.

*(iii)* Corridors in other occupancies. Public corridors in outpatient, administrative, and service areas which are designed to other than facility requirements and are the required means of egress from the facility shall be not less than five feet in width.

*(iv)* Encroachment into the means of egress. Items such as drinking fountains, telephone booths or stations, and vending machines shall be so located as to not project into and restrict exit corridor traffic or reduce the exit corridor width below the required minimum. Portable equipment shall not be stored so as to project into and restrict exit corridor traffic or reduce the exit corridor width below the required minimum.

(v) Doors in means of egress. All door leaves in the means of egress shall be not less than 36 inches wide or as otherwise permitted for facilities by NFPA  $101[_3]$  §18-2.3.5.

*(vi)* Sliding doors. When sliding doors are provided to a means of egress corridor, the sliding doors shall have break-away provisions, positive latching devices, and shall be installed to resist passage of smoke.

(vii) Control doors. Designs that include cross-corridor control doors should be avoided. When unavoidable, cross-corridor control doors shall consist of two 32-inch wide leaves which swing in a direction opposite from the other, or of the double acting type, and be provided with view panels.

(viii) Emergency access. Rooms containing bathtubs, showers, or water closets, intended for patient use shall be provided with at least one outswinging door or special frame and hardware which will permit the door to swing out for staff access to a patient who may have collapsed against the door. The width of such doors shall not be less than 36 inches.

(ix) Obstruction of corridors. All doors which swing towards the corridor must be recessed. Corridor doors to rooms not subject to occupancy (any room that you can walk into and close the door behind you is considered occupiable) may swing into the corridor, provided that such doors comply with the requirements of NFPA  $101[_{5}]$  §7-2.1.4.3.

(x) Stair landing. Doors shall not open immediately onto a stair without a landing. The landing shall be 44 inches deep or have a depth at least equal to the door width, whichever is greater.

(xi) Doors to rooms subject to occupancy. All doors to rooms subject to occupancy shall be of the swing type except that horizontal sliding doors complying with the requirements of NFPA  $101[_{7}]$  §18-2.2.2.9 are permitted. Door leaves to rooms subject to occupancy shall not be less than 36 inches wide unless noted otherwise.

*(xii)* Operable windows and exterior doors. Windows that can be opened without tools or keys and outer doors without automatic closing devices shall be provided with insect screens.

(xiii) Glazing. Glass doors, lights, sidelights, borrowed lights, and windows located within 12 inches of a door jamb or with a bottom-frame height of less than 18 inches and a top-frame height of more than 36 inches above the finished floor which may be broken accidentally by pedestrian traffic shall be glazed with safety glass or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials shall be used for wall openings in activity areas such as recreation and exercise rooms, unless otherwise required for fire safety. Safety glass, tempered or plastic glazing materials shall be used for shower doors and bath enclosures, interior windows and doors. Plastic and similar materials used for glazing shall comply with the flame-spread ratings of NFPA  $101[_{7}]$  §18-3.3.

(xiv) Fire doors. All fire doors shall be listed by an independent testing laboratory and shall meet the construction requirements for fire doors in National Fire Protection Association 80, Standard for Fire Doors and Fire Windows, 1999 edition. Reference to a labeled door shall be construed to include labeled frame and hardware.

(xv) Elevator doors. Elevator shaft openings shall be protected with a B labeled one-hour fire protection rated doors in buildings less than four stories; and one and one-half hour fire protection rated doors in buildings four or more stories.

*(xvi)* Elevator lobbies. Elevator lobbies shall have at least 10 feet of clear floor space in front of the elevator doors.

(xvii) Grab bars. Grab bars shall be provided at patient toilets, showers and tubs. The bars shall have sufficient strength and anchorage to sustain a concentrated vertical or horizontal load of 250 pounds. Grab bars are not permitted at bathing and toilet fixtures unless designed and installed to eliminate the possibility of patients harming themselves. Grab bars intended for use by <u>persons with a dis-</u> ability [the disabled] shall also comply with ADA requirements.

*(xviii)* Soap dishes. Recessed soap dishes shall be provided at all showers and bathtubs.

(xix) Hand washing facilities. Location and arrangement of fittings for hand washing facilities shall permit their proper use and operation. Hand washing fixtures with hands-free operable controls shall be provided within each procedure room, workroom, examination and treatment room and all toilet rooms unless noted otherwise. Hands-free includes blade-type handles, and foot, knee, or sensor operated controls. Particular care shall be given to the clearances required for blade-type operating handles. Lavatories and hand washing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the front of the fixture. In addition to the specific areas noted, hand washing facilities shall be provided and conveniently located for staff use throughout the facility where patient care and services are provided.

(xx) Hand drying. Provisions for hand drying shall be included at all hand washing facilities except scrub sinks. There shall be hot air dryers or individual paper or cloth units enclosed in such a way as to provide protection against dust or soil and ensure single unit dispensing.

*(xxi)* Mirrors. Mirrors shall not be installed at hand washing fixtures where asepsis control and sanitation requirements would be lessened by hair combing.

*(xxii)* Ceiling heights. The minimum ceiling height shall be eight feet with the following exceptions.

(1) Minor rooms. Ceilings in storage rooms, toilet rooms, and other minor rooms shall be not less than 7 feet 6 inches.

*(II)* Boiler rooms. Boiler rooms shall have ceiling clearances not less than 2 feet 6 inches above the main boiler header and connecting piping.

*(III)* Overhead clearance. Suspended tracks, rails, pipes, signs, lights, door closers, exit signs, and other fixtures that protrude into the path of normal traffic shall not be less than 6 feet 8 inches above the finished floor.

*(xxiii)* Areas producing impact noises. Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed area unless special provisions are made to minimize noise.

(xxiv) Noise reduction. Noise reduction criteria in accordance with the Table 1 in §510.131(a) [§134.131(a)] of this subchapter [title] (relating to Tables) shall apply to partitions, floor, and ceiling construction in patient areas.

(xxv) Rooms with heat producing equipment. Rooms containing heat-producing equipment such as heater rooms, laundries, etc. shall be insulated and ventilated to prevent any occupied floor surface above from exceeding a temperature differential of 10 degrees Fahrenheit above the ambient room temperature.

(xxvi) Chutes. Linen and refuse chutes shall comply with the requirements of National Fire Protection Association 82, Standard on Incinerators and Waste and Linen Handling Systems and Equipment, 1999 edition, and NFPA 101[7] §18-5.4.

*(xxvii)* Thresholds and expansion joint covers. Thresholds and expansion joint covers shall be flush with the floor surface to facilitate the use of wheelchairs and carts. Expansion and seismic joints shall be constructed to restrict the passage of smoke and fire and shall be listed by a nationally recognized testing laboratory.

### (xxviii) Housekeeping room.

(1) In addition to the housekeeping rooms [room(s)] required in certain suites, sufficient housekeeping rooms shall be provided throughout the facility as required to maintain a clean and sanitary environment.

*(II)* Each housekeeping room shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(xxix) Public toilets. In addition to the public toilets required for the main lobby, a <u>public toilet [public toilet(s)]</u> shall be provided convenient to each public and visitor waiting area. This may be a single unisex toilet for small waiting areas.

(B) General finish requirements.

(i) Cubicle curtains and draperies.

(1) Cubicle curtains, draperies and other hanging fabrics shall be noncombustible or flame retardant and shall pass both the small scale and the large scale tests of National Fire Protection Association 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films, 1999 edition. Copies of laboratory test reports for installed materials shall be submitted to the <u>Texas Health and Human</u> <u>Services Commission</u> [department] at the time of the final construction inspection.

(II) Cubicle curtains shall be provided to assure patient privacy.

(*ii*) Flame spread, smoke development and noxious gases. Flame spread and smoke developed limitations of interior finishes shall comply with Table 2 of  $\S510.131(b)$  [\$134.131(b)] of this subchapter [title] and NFPA 101 [5] \$10-2.1. The use of materials known to produce large or concentrated amounts of noxious or toxic gases shall not be used in exit accesses or in patient areas. Copies of laboratory test reports for installed materials tested in accordance with

National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 edition, and National Fire Protection Association 258, Standard Research Test Method for Determining Smoke Generation of Solid Materials, 1997 edition, shall be provided.

*(iii)* Floor finishes. Flooring shall be easy to clean and have wear resistance appropriate for the location involved. Floors that are subject to traffic while wet (such as shower and bath areas, kitchens, and similar work areas) shall have a nonslip surface. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. The following are acceptable floor finishes:

(1) painted concrete;

(II) vinyl and vinyl composition tiles and sheets;

(III) monolithic or seamless flooring: [-]

(-a-) where [Where] required, seamless flooring shall be impervious to water, coved, and installed integral with the base, tightly sealed to the wall, and without voids that can harbor insects or retain dirt particles; and [-]

(-b-) welded [Welded] joint flooring is ac-

- (IV) ceramic and quarry tile;
- (V) wood floors;

*(VI)* carpet flooring, which if [- Carpeting] installed in patient rooms and similar patient care areas, shall be treated to prevent bacterial and fungal growth;

(VII) terrazzo; and

(VIII) poured in place floors.

(*iv*) Wall finishes. Wall finishes shall be smooth, washable, moisture resistant, and cleanable by standard housekeeping practices. Wall finishes shall comply with requirements contained in Table 2 of  $\frac{510.131(b)}{510.131(b)}$  [ $\frac{134.131(b)}{510.131(b)}$ ] of this <u>subchapter</u> [title<sub>7</sub>] and NFPA 101 [ $\frac{1}{51}$  §18-3.3.

(*I*) Wall finishes shall be water resistant in the immediate area of plumbing fixtures.

(II) Wall finishes in areas subject to frequent wet cleaning methods shall be impervious to water, tightly sealed and without voids.

(v) Floor, wall and ceiling penetrations. Floor, wall, and ceiling penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of dirt particles, rodents, and insects. Joints of structural elements shall be similarly sealed.

(vi) Ceiling types. All occupied rooms and spaces shall be provided with finished ceilings. Ceilings which are a part of a rated <u>roof or ceiling</u> [roof/ceiling] assembly or a floor or ceiling [floor/ceiling] assembly shall be constructed of listed components and installed in accordance with the listing. Three types of ceilings that are required in various areas of the facility are <u>the following.[±]</u>

(1) Ordinary ceilings. Ceilings such as acoustical tiles installed in a metal grid which are dry cleanable with equipment used in daily housekeeping activities such as dusters and vacuum cleaners.

*(II)* Washable ceilings. Ceilings that are made of washable, smooth, moisture impervious materials such as painted lay-in gypsum wallboard or vinyl faced acoustic tile in a metal grid.

*(III)* Monolithic ceilings. Ceilings which are monolithic from wall to wall (painted solid gypsum wallboard), smooth and without fissures, open joints, or crevices and with a washable and moisture impervious finish.

(vii) Special construction. Special conditions may require special wall and ceiling construction for security in areas such as storage of controlled substances and areas where patients are likely to attempt suicide or escape.

(viii) Materials finishes. Materials known to produce noxious gases when burned shall not be used for mattresses, upholstery, and wall finishes.

(3) General mechanical requirements. This paragraph contains common requirements for mechanical systems; steam and hot and cold water systems; air-conditioning, heating and ventilating systems; plumbing fixtures; piping systems; and thermal and acoustical insulation. The facility shall comply with the requirements of this paragraph and any specific mechanical requirements for the particular unit or suite of the facility in accordance with <u>§510.123</u> [<del>§134.123</del>] of this subchapter [title].

(A) Cost. All mechanical systems shall be designed for overall efficiency and life cycle costing, including operational costs. Recognized engineering procedures shall be followed to achieve the most economical and effective results. In no case shall patient care or safety be sacrificed for conservation.

(B) Equipment location. Mechanical equipment may be located indoors or outdoors (when in a weatherproof enclosure), or in separate <u>buildings</u> [building(s)].

(C) Vibration isolation. Mechanical equipment shall be mounted on vibration isolators as required to prevent unacceptable structure-borne vibration. Ducts, pipes, etc. connected to mechanical equipment which is a source of vibration shall be isolated from the equipment with vibration isolators.

(D) Performance and acceptance. Prior to completion and acceptance of the facility, all mechanical systems shall be tested, balanced, and operated to demonstrate to the design engineer or <u>the</u> <u>design engineer's</u> [his] representative that the installation and performance of these systems conform to the requirements of the plans and specifications.

*(i)* Material lists. Upon completion of the contract, the owner shall be provided with parts lists and procurement information with numbers and description for each piece of equipment.

*(ii)* Instructions. Upon completion of the contract, the owner shall be provided with instructions in the operational use of systems and equipment as required.

(E) Heating, ventilating and air conditioning (HVAC) systems. All HVAC systems shall comply with and shall be installed in accordance with the requirements of National Fire Protection Association 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 1999 edition, (NFPA 90A), NFPA 99, Chapter 5, the requirements contained in this subparagraph, and the specific requirements for a particular unit in accordance with <u>§510.123</u> [§134.123] of this subchapter [title].

(*i*) General ventilation requirements. All rooms and areas in the facility listed in Table 3 of  $\S510.131(c)$  [\$134.131(c)] of this <u>subchapter</u> [title] shall have provision for positive ventilation. Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service. Exhaust systems may be combined, unless otherwise noted, for efficient use of recovery devices required for energy conservation. The ventilation rates shown in Table

3 of §510.131(c) [§134.131(c)] of this <u>subchapter</u> [title] shall be used only as minimum requirements since they do not preclude the use of higher rates that may be appropriate. Supply air to the building and exhaust air from the building shall be regulated to provide a positive pressure within the building with respect to the exterior.

(1) Cost reduction methods. To reduce utility costs, the building design and systems proposed shall utilize energy conserving procedures including recovery devices, variable air volume, load shedding, systems shut down or reduction of ventilation rates (when specifically permitted) in certain areas when unoccupied, insofar as patient care is not jeopardized.

*(II)* Economizer cycle. Mechanical ventilation shall be arranged to take advantage of outside air supply by using an economizer cycle when appropriate to reduce heating and cooling systems loads. Innovative design that provides for additional energy conservation while meeting the intent of this section for acceptable patient care will be considered.

*(III)* Outside air intake locations. Outside air intakes shall be located at least 25 feet from exhaust outlets of ventilating systems, combustion equipment stacks, medical-surgical vacuum systems, plumbing vents, or areas which may collect vehicular exhaust or other noxious fumes. (Prevailing winds and proximity to other structures may require other arrangements.) Plumbing and vacuum vents that terminate five feet above the level of the top of the air intake may be located as close as 10 feet.

(IV) Low air intake location limit. The bottom of outside air intakes serving central systems shall be located as high as practical but at least six feet above ground level, or if installed above the roof, three feet above the roof level.

(V) Contaminated air exhaust outlets. Exhaust outlets from areas (kitchen hoods, ethylene oxide sterilizers, etc.) that exhaust contaminated air shall be above the roof level and arranged to exhaust upward.

(VI) Directional air flow. Ventilation systems shall be designed and balanced to provide directional flow as shown in Table 3 of  $\S510.131(c)$  [\$134.131(c)] of this <u>subchapter</u> [title]. For reductions and shut down of ventilation systems when a room is unoccupied, the provisions in Note 4 of Table 3 of \$510.131(c) [\$134.131(c)] of this <u>subchapter</u> [title] shall be followed.

*(VII)* Areas requiring fully ducted systems. Fully ducted supply, return and exhaust air for HVAC systems shall be provided for all general patient care areas and where required for fire safety purposes. Combination systems, utilizing both ducts and plenums for movement of air in these areas shall not be permitted. Such areas include isolation rooms and food preparation areas.

*(VIII)* Ventilation start-up requirements. Air handling systems shall not be started up and operated without the filters installed in place. This includes the 90% efficiency filters where required. Ducts shall be cleaned thoroughly by an air duct cleaning contractor when the air handling systems have been operating without the required filters in place.

(IX) Humidifier location. When duct humidifiers are located upstream of the final filters, they shall be located at least 15 feet from the filters. Ductwork with duct-mounted humidifiers shall be provided with a means of removing water accumulation. An adjustable high-limit humidistat shall be located downstream of the humidifier to reduce the potential of condensation inside the duct. All duct take-offs should be sufficiently downstream of the humidifier to ensure complete moisture absorption. Reservoir-type water spray or evaporative pan humidifiers shall not be used.

(ii) Filtration requirements. All central air handling systems serving patient care areas, including nursing unit corridors, shall be equipped with filters having efficiencies equal to, or greater than, those specified for those types of areas in Table 4 of §510.131(d)  $\left[\frac{134.131(d)}{10}\right]$  of this subchapter [title]. Filter efficiencies shall be average efficiencies tested in accordance with American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), Inc., Standard 52, 1999 edition [, (relating to Gravimetric and Dust Spot Procedures for Testing Air Cleaning Devices Used in General Ventilation for Removing Particulate Matter)]. All joints between filter segments [,] and between filter segments and the enclosing ductwork, shall have gaskets and seals to provide a positive seal against air leakage. Air handlers serving more than one room shall be considered as central air handlers. [All documents published by ASHRAE as referenced in this section may be obtained by writing or calling the ASHRAE, Inc. at the following address or telephone number: ASHRAE, Inc., 1791 Tullie Circle, N. E., Atlanta, GA 30329; telephone (404) 636-8400.]

(1) Filtration requirements for air handling units serving single rooms requiring asepsis control. Dedicated air handlers serving only one room where asepsis control is required, <u>including</u> [such as, but not limited to,] operating rooms, delivery rooms, special procedure rooms, and nurseries shall be equipped with filters having efficiencies equal to, or greater than, those specified for patient care areas in Table 4 of §510.131(d) [§134.131(d)] of this subchapter [title].

(11) Filtration requirements for air handling units serving other single rooms. Dedicated air handlers serving all other single rooms shall be equipped with nominal filters installed at the return air grille.

(*III*) Location of multiple filters. Where two filter beds are required by Table 4 of  $\S510.131(d)$  [\$134.131(d)] of this <u>subchapter</u> [title], filter bed number one shall be located upstream of the air-conditioning equipment [5] and filter bed number two shall be downstream of the supply fan or blowers.

(IV) Location of single filters. Where only one filter bed is required by Table 4 of <u>§510.131(d)</u> [<del>§134.131(d)</del>] of this <u>subchapter</u> [title], it shall be located upstream of the supply fan. Filter frames shall be durable and constructed to provide an airtight fit with the enclosing ductwork.

(V) Pressure monitoring devices. A manometer or draft gauge shall be installed across each filter bed having a required efficiency of 75% or more including hoods requiring high efficiency particulate air (HEPA) filters.

*(iii)* Thermal and acoustical insulation for air handling systems. Asbestos insulation shall not be used.

(1) Thermal duct insulation. Air ducts and casings with outside surface temperature below ambient dew point or temperature above 80 degrees Fahrenheit shall be provided with thermal insulation.

(*II*) Insulation in air plenums and ducts. Linings in air ducts and equipment shall meet the Erosion Test Method described in Underwriters Laboratories, Inc., Standard Number 181 [(relating to Factory-Made Duct Materials and Air Duct Connectors). This document may be obtained from the Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096].

(*III*) Insulation flame spread and smoke developed ratings. Interior and exterior insulation, including finishes and adhesives on the exterior surfaces of ducts and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as required by NFPA 90A [ $_7$ ] Chapters 2 and 3. (IV) Linings and acoustical traps. Duct lining and acoustical traps exposed to air movement shall not be used in ducts serving critical care areas. This requirement shall not apply to mixing boxes and acoustical traps that have approved nonabrasive coverings over such linings.

(V) Frangible insulation. Insulation of soft and spray-on types shall not be used where it is subject to air currents or mechanical erosion or where loose particles may create a maintenance problem.

*(VI)* Existing duct linings. Internal linings shall not be used in ducts, terminal boxes, or other air system components supplying operating rooms, delivery rooms, birthing rooms, labor rooms, recovery rooms, nurseries, trauma rooms, isolation rooms, and intensive care units unless terminal filters of at least 90% efficiency are installed downstream of linings.

(*iv*) Fire damper requirements. Fire dampers shall be located and installed in all ducts at the point of penetration of a two-hour or higher fire rated wall or floor in accordance with the requirements of NFPA 101 [ $_{3}$ ] §18-5.2.

(v) Smoke damper requirements. Smoke dampers shall be located and installed in accordance with the requirements of NFPA  $101[_7]$  §18-3.7.3, and NFPA 90A  $[_7]$  Chapter 3.

(1) Fail-safe installation. Smoke dampers shall close on activation of the fire alarm system by smoke detectors installed and located as required by National Fire Protection Association 72, National Fire Alarm Code, 1999 edition (NFPA 72), Chapter 5; NFPA 90A, Chapter 4; and NFPA 101, §18-3.7; the fire sprinkler system; and upon loss of power. Smoke dampers shall not close by fan shut-down alone.

(II) Interconnection of air handling fans and smoke dampers. Air handling fans and smoke damper controls may be interconnected so that closing of smoke dampers will not damage the ducts.

*(III)* Frangible devices. Use of frangible devices for shutting smoke dampers is not permitted.

(vi) Acceptable damper assemblies. Only fire damper and smoke damper assemblies integral with sleeves and listed for the intended purpose shall be acceptable.

(vii) Duct access doors. Unobstructed access to duct openings in accordance with NFPA 90A  $[_{7}]$  §2-3.4, shall be provided in ducts within reach and sight of every fire damper, smoke damper and smoke detector. Each opening shall be protected by an internally insulated door which shall be labeled externally to indicate the fire protection device located within.

(viii) Restarting controls. Controls for restarting fans may be installed for convenient fire department use to assist in evacuation of smoke after a fire is controlled, provided that provisions are made to avoid possible damage to the system because of closed dampers. To accomplish this, smoke dampers shall be equipped with remote control devices.

(ix) Make-up air. If air supply requirements in Table 3 of §510.131(c) [§134.131(c)] of this subchapter [title] do not provide sufficient air for use by exhaust hoods and safety cabinets, filtered make-up air shall be ducted to maintain the required air flow direction in that room. Make-up systems for hoods shall be arranged to minimize short circuiting of air and to avoid reduction in air velocity at the point of contaminant capture.

(4) General piping systems and plumbing fixture requirements. All piping systems and plumbing fixtures shall be designed and installed in accordance with the requirements of the National Standard Plumbing Code, published by the National Association of Plumbing-Heating-Cooling Contractors (PHCC), 2000 edition, and this paragraph. [The National Standard Plumbing Code may be obtained by writing or ealling the PHCC at the following address or telephone number: Plumbing-Heating-Cooling Contractors, P. O. Box 6808, Falls Church, VA 22040; telephone (800) 533-7694. The facility shall comply with the requirements of this paragraph and any specific piping systems and plumbing requirements for the particular unit or suite of the facility in accordance with §134.123 of this title.]

(A) Piping systems.

(i) Water supply systems. Water service pipe to point of entrance to the building shall be brass pipe, copper tube (not less than type M when buried directly), copper pipe, cast iron water pipe, galvanized steel pipe, or approved plastic pipe. Water distribution system piping within buildings shall be brass pipe, copper pipe, copper tube, or galvanized steel pipe. Piping systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand.

(1) Valves. Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

*(II)* Backflow preventers. Backflow preventers (vacuum breakers) shall be installed on hose bibbs, laboratory sinks, janitor sinks, bedpan flushing attachments, and on all other fixtures to which hoses or tubing can be attached.

*(III)* Flushing valves. Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.

(IV) Capacity of water heating equipment. Water heating equipment shall have sufficient capacity to supply water for clinical, dietary and laundry use at the temperatures and amounts specified in Table 5 of §510.131(e) [§134.131(e)] of this subchapter [title].

(V) Water temperature measurements. Water temperatures shall be measured at hot water point of use or at the inlet to processing equipment.

*(VI)* Water storage tanks. Water storage <u>tanks</u> [tank(s)] shall be fabricated of corrosion-resistant metal or lined with noncorrosive material.

*(VII)* Hot water distribution. Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times.

*(VIII)* Emergency water supply. Emergency potable water storage shall be provided. The storage capacity shall not be less than 500 gallons or 12 gallons per patient bed, whichever is greater. Capacity of hot water storage tanks may be included as part of the required emergency water capacity when valves and piping systems are arranged to make this water available at all times.

(*ii*) Fire sprinkler systems. Fire sprinkler systems shall be provided in facilities as required by NFPA 101, §18-3.5. All fire sprinkler systems shall be designed, installed, and maintained in accordance with the requirements of NFPA13, and shall be certified as required by  $\S510.127(d)(3)(C)$  [\$134.127(d)(3)(C)] of this subchapter [title] (relating to Preparation, Submittal, Review and Approval of Plans).

*(iii)* Nonflammable medical gas and clinical vacuum systems. Nonflammable medical gas and clinical vacuum system installations shall be designed, installed and certified in accordance with the requirements of NFPA 99, §4-3 for Level I systems and the requirements of this clause.

(*I*) Outlets. Nonflammable medical gas and clinical vacuum outlets shall be provided in accordance with Table 6 of  $\frac{510.131(f)}{10}$  of this subchapter [title].

*(II)* Installer qualifications. All installations of the medical gas piping systems shall be done only by, or under the direct supervision of a holder of a master plumber license or a journeyman plumber license with a medical gas piping installation endorsement issued by the Texas State Board of Plumbing Examiners.

*(III)* Installer tests. Prior to closing of walls, the installer shall perform an initial pressure test, a blowdown test, a secondary pressure test, a cross-connection test, and a purge of the piping system as required by NFPA 99.

(IV) Qualifications for conducting verification tests and inspections. Verification tests and inspections by a party, other than the installer, shall be conducted by individuals who are technically competent and experienced in the field of piped medical gas systems.

(V) Verification tests. Upon completion of the installer inspections and tests and after closing of walls, verification tests of the medical gas piping systems, the warning system, and the gas supply source shall be conducted. The verification tests shall include a cross-connection test, valve test, flow test, piping purge test, piping purity test, final tie-in test, operational pressure tests, and medical gas concentration test.

*(VI)* Verification test requirements. Verification tests of the medical gas piping system, the warning system, shall be performed on all new piped medical gas systems, additions, renovations, or repaired portions of an existing system. All systems that are breached and components that are added, renovated, or replaced shall be inspected and appropriately tested. The breached portions of the systems subject to inspection and testing shall be all of the new and existing components in the immediate zone or area located upstream of the point or area of intrusion and downstream to the end of the system or a properly installed isolation valve.

*(VII)* Warning system verification tests. Verification tests of piped medical gas systems shall include tests of the source alarms and monitoring safeguards, master alarm systems, and the area alarm systems.

*(VIII)* Source equipment verification tests. Source equipment verification tests shall include medical gas supply sources (bulk and manifold) and the compressed air source systems (compressors, dryers, filters, and regulators).

(IX) Written certification. Upon successful completion of all verification tests, written certification for affected piped medical gas systems and piped medical vacuum systems including the supply sources and warning systems shall be provided by a party technically competent and experienced in the field of medical gas pipeline testing stating that the provisions of NFPA 99 have been adhered to and systems integrity has been achieved. The written certification shall be submitted directly to the facility and the installer. A copy shall be forwarded to <u>HHSC</u> [the department] by the facility.

(X) Facility responsibility. Before new piped medical gas systems, additions, renovations, or repaired portions of an existing system are put into use, the facility shall be responsible for

ensuring that the gas delivered at the outlet is the gas shown on the outlet label and that the proper connecting fittings are checked against their labels.

(XI) Documentation of medical gas and clinical vacuum outlets. Documentation of the installed, modified, extended, or repaired medical gas piping system shall be submitted to <u>HHSC</u> [the department] by the same party certifying the piped medical gas systems. The number and type of medical gas outlets (oxygen, vacuum, medical air, nitrogen, nitrous oxide, etc.) shall be documented and arranged tabularly by room numbers and room types.

(iv) Steam and hot water systems.

(1) Boilers. Boilers shall have the capacity, based upon the net ratings as published in The I-B-R Ratings Book for Boilers, Baseboard Radiation and Finned Tube (commercial) by the Hydronics Institute Division of GAMA, to supply the normal requirements of all systems and equipment. The number and arrangement of boilers shall be such that, when one boiler breaks down or routine maintenance requires that one boiler be temporarily taken out of service, the capacity of the remaining boilers [boiler(s)] shall be sufficient to provide hot water service for clinical, dietary, and patient use, steam for sterilization and dietary purposes, and heating for emergency, recovery, treatment, and general patient rooms. However, reserve capacity for space heating of noncritical care areas (e.g. general patient rooms and administrative areas) is not required in geographical areas where a design dry bulb temperature equals 25 degrees Fahrenheit or higher as based on the 99% design value shown in the Handbook of Fundamentals, 1999 edition, published by ASHRAE, Inc. [The document published by the Hydronics Institute Division of GAMA as referenced in this rule may be obtained by writing or calling the Hydronics Institute Division of GAMA, P. O. Box 218, Berkeley Heights, N.J. 07922-0218, telephone (908) 464-8200.]

(*II*) Boiler accessories. Boiler feed pumps, heating circulating pumps, condensate return pumps, and fuel oil pumps shall be connected and installed to provide normal and standby service.

*(III)* Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(v) Drainage systems.

(1) Above ground piping. Soil stacks, drains, vents, waste lines, and leaders installed above ground within buildings shall be drain-waste-vent (DWV) weight or heavier and shall be [÷] copper pipe, copper tube, cast iron pipe, or galvanized iron pipe.

(*II*) Underground piping. All underground building drains shall be [±] cast iron soil pipe, hard temper copper tube (DWV or heavier), acrylonitrile-butodiene-styrene (ABS) plastic pipe (DWV Schedule 40 or heavier), polyvinyl chloride (PVC) plastic pipe (DWV Schedule 40 or heavier), or extra strength vitrified clay pipe (VCP) with compression joints or couplings with at least 12 inches of earth cover.

*(III)* Drains for chemical wastes. Separate drainage systems for chemical wastes (acids and other corrosive materials) shall be provided. Materials acceptable for chemical waste drainage systems shall include chemically resistant glass pipe, high silicone content cast iron pipe, VCP, plastic pipe, or plastic lined pipe.

*(IV)* Drains above sensitive areas. Drainage pipes shall not be located above sensitive clean or sterile areas such as

sterile processing, storage of food or of food preparation and serving areas, etc. unless protected from leaks or condensation by an approved method such as drip pans.

(V) Sewers. Building sewers shall discharge into a community sewerage system. Where such a system is not available, a facility providing sewage treatment must conform to applicable local and state regulations.

*(vi)* Thermal insulation for piping systems and equipment. Insulation shall be provided for the following:

(1) boilers, smoke breeching, and stacks;

(II) steam supply and condensate return piping;

*(III)* hot water piping and all hot water heaters, generators, converters, and storage tanks;

(IV) chilled water, refrigerant, other process piping, equipment operating with fluid temperatures below ambient dew point, and water supply and drainage piping on which condensation may occur <u>and insulation</u> [- Insulation] on cold surfaces shall include an exterior vapor barrier; <u>and</u>

(V) other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(vii) Pipe and equipment insulation rating. Flame spread shall not exceed 25 and smoke development rating shall not exceed 150 for pipe insulation as determined by an independent testing laboratory in accordance with National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 edition. Smoke development rating for pipe insulation located in environmental air areas shall not exceed 50.

(viii) Identification. All piping including heating, ventilating, air-conditioning (HVAC) shall be color coded or otherwise marked for easy identification.

(ix) Asbestos insulation. Asbestos insulation shall not be used.

(B) Plumbing fixtures. Plumbing fixtures shall be made of nonabsorptive acid-resistant materials and shall comply with the recommendations of the National Standard Plumbing Code, and this paragraph.

(*i*) Sink and lavatory controls. All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands. Blade handles used for this purpose shall not be less than four inches in length. Single lever or wrist blade devices may be used.

*(ii)* Clinical sink traps. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

*(iii)* Back flow or siphoning. All plumbing fixtures and equipment shall be designed and installed to prevent the back-flow or back-siphonage of any material into the water supply. The over-therim type water inlet shall be used wherever possible. Vacuum-breaking devices shall be properly installed when an over-the-rim type water inlet cannot be utilized.

*(iv)* Drinking fountain. Each drinking fountain shall be designed so that the water issues at an angle from the vertical, the end of the water orifice is above the rim of the bowl, and a guard is located over the orifice to protect it from lip contamination.

(v) Sterilizing equipment. All sterilizing equipment shall be designed and installed to prevent not only the contamination of the water supply but also the entrance of contaminating materials into the sterilizing units.

(vi) Hose attachment. No hose shall be affixed to any faucet if the end of the hose can become submerged in contaminated liquid unless the faucet is equipped with an approved, properly installed vacuum-breaker.

(vii) Bedpan washers and sterilizers. Bedpan washers and sterilizers shall be designed and installed so that both hot and cold water inlets shall be protected against back-siphonage at maximum water level.

(viii) Flood level rim clearance. The water supply spout for lavatories and sinks required in patient care areas shall be mounted so that its discharge point is a minimum of five inches above the rim of the fixture.

*(ix)* Floor drains or floor sinks. Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned by removal of the cover. Removable stainless steel mesh shall be provided in addition to grilled drain cover to prevent entry of large particles of waste which might cause stoppages.

(x) Under counter piping. Under counter piping and above floor drains shall be arranged (raised) so as not to interfere with cleaning of floor below the equipment.

*(xi)* Ice machines. All ice making machines shall be of the self-dispensing type, unless otherwise specified.

(5) General electrical requirements. This paragraph contains common electrical requirements. The facility shall comply with the requirements of this paragraph and with any specific electrical requirements for the particular unit or suite of the facility in accordance with \$510.123 [\$134.123] of this <u>subchapter</u> [title]. Electrical systems shall comply with NFPA 99 [ $_3$ ] Chapter 3.

(A) Electrical installations. All new electrical material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of the National Fire Protection Association 70, National Electrical Code, 1999 edition (NFPA 70), and NFPA 99 and as necessary to provide a complete electrical system. Electrical systems and components shall be listed by nationally recognized listing agencies as complying with available standards and shall be installed in accordance with the listings and manufacturers' instructions.

*(i)* All fixtures, switches, sockets, and other pieces of apparatus shall be maintained in a safe and working condition.

*(ii)* Extension cords and cables shall not be used for permanent wiring.

*(iii)* All electrical heating devices shall be equipped with a pilot light to indicate when the device is in service, unless equipped with a temperature limiting device integral with the heater.

*(iv)* All equipment, fixtures, and appliances shall be properly grounded in accordance with NFPA 70.

(v) Under-counter receptacles and conduits shall be arranged (raised) to not interfere with cleaning of floor below the equipment.

(B) Installation testing and certification.

(*i*) Installation testing. The electrical installations, including alarm, nurses calling system and communication systems,

shall be tested to demonstrate that equipment installation and operation is appropriate and functional.

(1) Grounding continuity shall be tested as described in NFPA 99 for new or existing work.

*(II)* A written record of performance tests on special electrical systems and equipment shall show compliance with applicable codes and standards.

*(ii)* Installation certification. Certifications in affidavit form signed by a registered electrical engineer attesting that the electrical service, electrical equipment, and electrical appliances have been installed in compliance with the approved plans, [and/or] applicable standards, <u>or both</u> shall be submitted to <u>HHSC</u> [the department] when requested.

(C) Electrical safeguards. Shielded isolation transformers, voltage regulators, filters, surge suppressors, and other safeguards shall be provided as required where power line disturbances are likely to affect fire alarm components, data processing, equipment used for treatment, and automated laboratory diagnostic equipment.

(D) Services and switchboards. Main switchboards shall be located in separate rooms, separated from adjacent areas with one-hour fire rated enclosures containing only electrical switchgear and distribution panels and shall be accessible to authorized persons only. These rooms shall be ventilated to provide an environment free of corrosive or explosive fumes and gases, or any flammable and combustible materials. Switchboards shall be located convenient for use and readily accessible for maintenance as required by NFPA 70, Article 384. Overload protective devices shall operate properly in ambient temperatures.

(E) Panelboards. Panelboards serving normal lighting and appliance circuits shall be located on the same floor as the circuits they serve. Panelboards serving critical branch emergency circuits may serve three floors, the floor where the panelboard is located, the floor above and the floor below. Panelboards serving life safety branch circuits may serve three floors, the floor where the panelboard is located, and the floors above and below.

(*i*) Circuiting shall minimize the number of receptacles on a single branch circuit, in order to limit the effects of a branch circuit outage, caused by one faulted device. Any life-support equipment on that circuit would be lost.

*(ii)* Loading of branch circuits is limited by NFPA 70, Articles 210, 220, and 384.

(F) Wiring. All conductors for controls, equipment, lighting and power operating at 100 volts or higher shall be installed in accordance with the requirements of NFPA 70, Article 517. All surface mounted wiring operating at less than 100 volts shall be protected from mechanical injury with metal raceways to a height of seven feet above the floor. Conduits and cables shall be supported in accordance with NFPA 70, Article 300.

(G) Lighting.

(*i*) Lighting intensity for staff and patient needs shall comply with Chapter 17, Institution and Public Building Lighting, Health Care Facilities, of the Illuminating Engineering Society of North America (IES) Lighting Handbook, published by the IES [5 345 East 47th Street, N.Y., N.Y. 10017].

(I) Consideration should be given to controlling intensity and wavelength to prevent harm to the patient's eyes (i.e., cataracts due to ultraviolet light).

(*II*) Approaches to buildings and parking lots, and all spaces within buildings shall have fixtures that can be illuminated as necessary. All rooms including storerooms, electrical and mechanical equipment rooms, and all attics shall have sufficient artificial lighting so that all parts of these spaces shall be clearly visible.

*(III)* Consideration should be given to the special needs of the elderly. Excessive contrast in lighting levels that makes effective sight adaptation difficult shall be minimized.

*(ii)* Means of egress and exit sign lighting intensity shall comply with NFPA 101[<sub>7</sub>] §§7-8, 7-9 and 7-10.

*(iii)* Electric lamps which may be subject to breakage or which are installed in fixtures in confined locations when near woodwork, paper, clothing, or other combustible materials, shall be protected by wire guards, or plastic shields.

*(iv)* Ceiling mounted examination light fixtures shall be suspended from rigid support structures mounted above the ceiling.

(H) Receptacles. Only listed "hospital" grade singlegrounding or duplex-grounding receptacles shall be used in all patient care areas. This does not apply to special purpose receptacles.

*(i)* Installations of multiple ganged receptacles shall be permitted in patient care areas.

(ii) Electrical outlets powered from the critical branch shall be provided in all patient care, procedure and treatment locations in accordance with NFPA 99[ $_7$ ] §3-4.2.2.2(c). At least one receptacle at each patient treatment or procedure location shall be powered from the normal power panel.

*(iii)* Replacement of malfunctioning receptacles and installation of new receptacles powered from the critical branch in existing facilities shall be accomplished with receptacles of the same distinct color as the existing receptacles.

*(iv)* In locations where mobile X-ray or other equipment requiring special electrical configuration is used, the additional receptacles shall be distinctively marked for the special use.

(v) Each receptacle shall be grounded to the reference grounding point by means of a green insulated copper equipment grounding conductor.

(I) Equipment.

(*i*) Equipment required for safe operation of the facility shall be powered from the equipment system in accordance with the requirements contained in NFPA 99 [ $_{5}$ ] §3-4.2.2.3.

*(ii)* Boiler accessories including feed pumps, heatcirculating pumps, condensate return pumps, fuel oil pumps, and waste heat boilers shall be connected and installed to provide both normal and standby service.

(J) Ground fault circuit interrupters (GFCI). GFCIs shall comply with NFPA 70. When GFCIs are used in critical areas, provisions shall be made to ensure that other essential equipment is not affected by activation of one interrupter.

(K) Nurses calling systems. Three different types of nurses calling systems are required to be installed in a facility: a nurses regular calling system; a nurses emergency calling system; and a staff emergency assistance calling system. The facility shall comply with the requirements of this paragraph and any specific requirements for nurses calling systems for the particular unit of the facility in accordance with \$510.123 [\$134.123] of this subchapter [title].

(*i*) A nurses regular calling system is intended for routine communication between each patient and the nursing staff. Activation of the system at a patient's regular calling station will sound a repeating (every 20 seconds) audible signal at the nurse station, indicate type and location of call on the system monitor, and activate a distinct visible signal in the corridor at the patient suites door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. The audible signal shall be canceled and two-way voice communication between the patient room and the nursing staff shall be established at the unit's nursing station when the call is answered by the nursing staff. The visible <u>signals [signal(s)]</u> in the corridor shall be canceled upon termination of the call. An alarm shall activate at the nurses station when the call cable is unplugged.

(*ii*) A nurses emergency calling system shall be installed in all toilets used by all patients to summon nursing staff in an emergency. Activation of the system shall sound a repeating (every 5 seconds) audible signal at the nurse station, indicate type and location of call on the system monitor, and activate a distinct visible signal in the corridor at the patient suites door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. The visible and audible signals shall be cancelable only at the patient calling station. Activation of the system shall also activate distinct visible signals in the clean workroom, in the soiled workroom, medication, charting, clean linen storage, nourishment, nurse lounge and equipment storage. When conveniently located and accessible from both the bathing and toilet fixtures, one emergency call station may serve one bathroom. A nurses emergency call system shall be accessible to a collapsed patient lying on the floor.

(iii) A staff emergency assistance calling system (code blue) is intended to be used by staff to summon additional help in an emergency. In open suites, an emergency assistant call system device shall be located at the head of each bed and in each individual room. The emergency assistance calling device can be shared between two beds if conveniently located. Activation of the system will sound an audible signal at the nursing unit's nurses station, indicate type and location of call on the system monitor and activate a distinct visible signal in the corridor at the patient suites door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. Activation of the system shall also activate visible and audible signals in the clean workroom, in the soiled workroom, medication, charting, clean linen storage, nourishment, equipment storage, and examination or treatment rooms [examination/treatment room(s)] with back up to a continuously staffed area (other than the nurse station or an administrative center) from which assistance can be summoned. The system shall have voice communication capabilities so that the type of emergency or help required may be specified.

(L) Emergency electric service. A Type I essential electrical system shall be provided in each facility in accordance with requirements of <u>NFPA 99</u>, [NFPA 99;] NFPA 101, and National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1999 edition. Exception: Crisis stabilization units have the option of providing a Type II essential electrical system in accordance with the requirements of NFPA 99 and NFPA 101.

*(i)* The number of transfer switches to be used shall be based on reliability, design and load considerations.

(*ii*) All wiring installation of the emergency system of the essential electrical system shall be mechanically protected in nonflexible metal raceways in compliance with NFPA 70 [ $_5$ ] §517-30(c)(3).

*(iii)* The stored fuel capacity for emergency generators shall be sufficient to permit continuous operation for at least 24 hours at full load.

(M) Fire alarm system. A fire alarm system which complies with NFPA 101 [ $_3$ ] §18-3.4, and with NFPA 72 [ $_5$ ] Chapter 3 requirements, shall be provided in each facility. The required fire alarm system components are as follows. [ $\div$ ]

(*i*) A fire alarm control panel (FACP) shall be installed at a continuously attended (24 hour) location. A remote fire alarm annunciator listed for fire alarm service and installed at a continuously attended location and is capable of indicating both visual and audible alarm, trouble and supervisory signals in accordance with the requirements of NFPA 72 may be substituted for the FACP.

(*ii*) Manual fire alarm pull stations shall be installed in accordance with NFPA  $101[_{7}]$  §18-3.4.

(*iii*) Smoke detectors for door release service shall be installed on the ceiling at each door opening in the smoke partition in accordance with NFPA 72 [ $_3$ ] §2-10.6, where the doors are held open with electromagnetic devices conforming with NFPA 101 [ $_3$ ] §18-2.2.6.

(*iv*) Ceiling mounted smoke detectors [detector(s)] shall be installed in room containing the FACP when this room is not attended continuously by staff as required by NFPA 72 [ $_{3}$ ] §1-5.6.

(v) Smoke detectors shall be installed in supply air ducts in accordance with NFPA 72  $[_{5}]$  §2-10.4.2 and §2-10.5, and with NFPA 90A §4-4.2.

(vi) Smoke detectors shall be installed in return air ducts in accordance with requirements of NFPA 72 [ $_3$ ] §2-10.4.2.2 and §2-10.5, and NFPA 90A [ $_5$ ] §4-4.2(2).

(vii) Fire sprinkler system water flow switches shall be installed in accordance with requirements of NFPA 101 [ $_{5}$ ] §9-6.2; NFPA 13 [ $_{5}$ ] §3-10; and NFPA 72 [ $_{5}$ ] §3-8.5.

(viii) Sprinkler system valve supervisory switches shall be installed in accordance with the requirements of NFPA 72  $[_{5}]$  §3-8.6.

(ix) Audible alarm indicating devices shall be installed in accordance with the requirements of NFPA 101, §18-3.4., and NFPA 72  $[_{5}]$  §6-3.

(x) Visual fire alarm indicating devices which comply with the requirements of  $\frac{510.122(d)(1)(F)}{134.122(d)(1)(F)}$  of this <u>subchapter</u> [title] (relating to New Construction Requirements) and NFPA 72 [<sub>3</sub>] §6-4 [<sub>3</sub>] shall be provided.

(xi) Devices for transmitting alarm for alerting the local fire brigade or municipal fire department of fire or other emergency shall be provided. The devices shall be listed for the fire alarm service by a nationally recognized laboratory  $[_{7}]$  and be installed in accordance with such listing and the requirements of NFPA 72.

(*xii*) A smoke detection system for spaces open to corridor(s) shall be provided when required by NFPA 101 [ $_{51}$  §18-3.6.1.

(xiii) A fire alarm signal notification which complies with NFPA 101 [ $_{7}$ ] §9-6.3, shall be provided to alert occupants of fire or other emergency.

*(xiv)* Wiring for fire alarm detection circuits and fire alarm notification circuits shall comply with requirements of NFPA 70, Article 760.

(xv) A smoke detection system for elevator recall shall be located in elevator lobbies, elevator machine rooms and at the top of elevator hoist ways as required by NFPA 72 [5] §3-9.3.7.

(*I*) The elevator recall smoke detection system in new construction shall comply with requirements of American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) A17.1, Safety Code for Elevators and Escalators, 1996 edition. [The publications of the ASME/ANSI referenced in this seetion may be obtained by writing ASME/ANSI, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.]

*(II)* The elevator recall smoke detection system in existing facilities shall comply with requirements of ASME/ANSI A17.3, Safety Code for Existing Elevators and Escalators, 1995 edition.

(xvi) A smoke detection system for initiating smoke removal from atriums shall be located above the highest floor level of the atrium and at return intakes from the atrium in accordance with National Fire Protection Association 92B, Guide for Smoke Management Systems in Malls, Atria, and Large Areas, 1995 edition.

(xvii) Smoke detectors [detector(s)] for shut-down of air handling units shall be provided. The detectors shall be installed in accordance with NFPA 90A [ $_{3}$ ] §4-4.2.

*(xviii)* New or modified fire alarm systems shall be certified as meeting <u>applicable</u> [pplicable] NFPA standards such as NFPA 101, 72A, 72E, etc. on form FML-009 040392 of the Office of the State Fire Marshal. A copy of the fire alarm system certification shall be submitted to <u>HHSC</u> [the department].

(N) Telecommunications and information systems. Telecommunications and information systems central equipment shall be installed in a separate location designed for the intended purpose. Special air conditioning and voltage regulation shall be provided as recommended by the manufacturer.

(O) Lightning protection systems. When installed, lightning protection systems shall comply with National Fire Protection Association 780, Standard for the Installation of Lightning Protection Systems, 1997 edition.

§510.123. Spatial Requirements for New Construction.

(a) Administration and public suite. The following rooms or areas shall be provided.

(1) Primary entrance. An entrance at grade level shall be accessible and protected from inclement weather with a drive-under canopy for loading and unloading passengers.

(2) Lobby. A main lobby shall be located at the primary entrance and shall include a reception and information counter or desk, waiting <u>spaces</u> [space(s)], public toilet facilities, public telephones, drinking <u>fountains</u> [fountain(s)], and storage room or alcove for wheel-chairs.

(3) Admissions area. An admissions area shall include a waiting area, work counters or desk, private interview spaces, and storage room or alcove for wheelchairs. The waiting area and wheelchair storage may be shared with similar areas located in the main lobby.

(4) General or individual <u>offices</u> [office(s)]. Office space shall be provided for business transactions, medical and financial records, and administrative and professional staffs.

(5) Multipurpose <u>rooms [room(s)]</u>. <u>Rooms [Room(s)]</u> shall be provided for conferences, meetings, and health education purposes including provisions for showing visual aids.

(6) Storage. Storage for office equipment and supplies shall be provided. The construction protection for the storage room or area shall be in accordance with the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition (NFPA 101) [ $_3$ ] §18-3.1. [All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.]

(b) Cart cleaning and sanitizing unit. A cart cleaning and sanitizing unit is optional for crisis stabilization units.

(1) Architectural requirements.

(A) Cart cleaning, sanitizing and storage shall be provided for carts serving dietary services and linen services.

(B) Cart facilities may be provided for each service or be centrally located.

(C) Hand washing fixtures shall be provided in cart cleaning, sanitizing and storage areas.

(2) Details and finishes. Details and finishes shall be in accordance with  $\frac{510.122(d)(2)}{[\$134.122(d)(2)]}$  of this subchapter [title] (relating to New Construction Requirements) and this paragraph.

(A) Flooring in the cart cleaning and sanitizing unit shall be of the seamless type, or ceramic or quarry tile as required by  $\frac{510.122(d)(2)(B)(iii)(III)}{[\$134.122(d)(2)(B)(iii)(III)]}$  or (IV) of this subchapter [title].

(B) Ceilings in the cart cleaning and sanitizing unit shall be the monolithic type as required by  $\S510.122(d)(2)(B)(vi)(III)$  [\$134.122(d)(2)(B)(vi)(III)] of this subchapter [title].

(3) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with  $\frac{510.122(d)(4)}{\frac{134.122(d)(4)}{2}}$  of this subchapter [title] and this paragraph.

(A) Hand washing fixtures shall be provided with hot and cold water. Hot and cold water fixtures shall be provided in cart cleaning and sanitizing locations.

(B) Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned by removal of the cover. Removable stainless steel mesh shall be provided in addition to a grilled drain cover to prevent entry of large particles of waste which might cause stoppages. Floor drains and floor sinks shall be located to avoid conditions where removal of covers for cleaning is difficult.

(c) Central sterile supply suite. A central sterile supply suite is optional for crisis stabilization units.

(1) Architectural requirements.

(A) Supply storage. A storage room for clean and sterile supplies shall be provided. The storage room shall have adequate areas and counters for breakdown of prepackaged supplies.

(B) Equipment storage. An equipment storage room shall be provided.

(2) Details and finishes. Details and finishes shall be in accordance with \$510.122(d)(2) [\$134.122(d)(2)] of this subchapter [title] and this paragraph. Ceilings in supply storage room shall be monolithic type in accordance with \$510.122(d)(2)(B)(vi)(III) [\$134.122(d)(2)(vi)(III)] of this subchapter [title].

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with  $\S510.122(d)(3)$  [\$134.122(d)(3)] of this subchapter [title] and this paragraph.

(A) The sterile supply room shall include provisions for ventilation, humidity, and temperature control.

(B) Filtration requirements for air handling units serving the central sterile supply suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of  $\frac{510.131(d)}{\frac{131(d)}{510}}$  of this subchapter [title] (relating to Tables).

(C) Duct linings exposed to air movement shall not be used in ducts serving the central sterile supply suite unless terminal filters of at least 90% efficiency are installed downstream of linings. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(d) Dietary suite.

(1) Architectural requirements.

(A) General. Construction, equipment, and installation shall comply with the standards specified in <u>25 TAC</u> Chapter 228 [of this title](relating to Retail Food <u>Establishments</u>).

(B) Food service facilities. Food services shall be provided by an on-site food preparation system or an off-site food service system or a combination of the two. The following minimum functional elements shall be provided on-site regardless of the type of dietary services.

(*i*) Dining area. Provide dining <u>space</u> [space(s)] for ambulatory patients, staff, and visitors with a minimum floor space of 15 square feet per person to be seated. The footage requirement does not include serving areas. The dining area and service areas shall be separate from the food preparation and distribution areas.

*(ii)* Receiving area. This receiving area shall have direct access to the outside for incoming dietary supplies or off-site food preparation service and shall be separate from the general receiving area. The receiving area shall contain a control station and an area for breakout for loading, unloading, uncrating, and weighing supplies. The entrance area to the receiving area shall be covered from the weather.

*(iii)* Storage spaces. Storage spaces shall be convenient to receiving area and food preparation area and shall be located to exclude traffic through the food preparation area. Regardless of the type of food services provided, the facility shall provide storage of food for emergency use for a minimum of four calendar days.

*(I)* Storage <u>space</u> [space(s)]. Storage <u>space</u> [space(s)] shall be provided for bulk, refrigerated, and frozen foods.

*(II)* Cleaning supply storage. This room or closet shall be used to store non-food items that might contaminate edibles. This storage area may be combined with the housekeeping room.

*(iv)* Food preparation area. Counter space shall be provided for food prep work, equipment, and an area to assemble trays for distribution for patient meals.

(v) Ice making equipment. Ice making equipment shall be provided for both drinks and food products (self-dispensing equipment) and for general use (storage-bin type equipment).

*(vi)* Hand washing. Hand washing fixtures with hands-free operable controls shall be conveniently located at all food preparation areas and serving areas.

*(vii)* Food service carts. When a cart distribution system is provided, space shall be provided for storage, loading, distribution, receiving, and sanitizing of the food service carts. The cart traffic shall be designed to eliminate any danger of cross-circulation between outgoing food carts and incoming soiled carts, and the clean-

ing and sanitizing process. Cart circulation shall not be through food processing areas.

(viii) Ware washing room. A ware washing room equipped with commercial type dishwasher equipment shall be located separate from the food preparation and serving areas. Space shall be provided for receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to the using areas. Hand washing facilities with hands-free operable controls shall be located within the soiled dish wash area. A physical separation to prevent cross traffic between the dirty side and clean side of the dish wash areas shall be provided.

*(ix)* Pot washing facilities. A three compartmented sink of adequate size for intended use shall be provided convenient to the food preparation area. Supplemental heat for hot water to clean pots and pans shall be by booster heater or by steam jet.

(x) Waste storage room. A food waste storage room shall be conveniently located to the food preparation and ware washing areas but not within the food preparation area. It shall have direct access to the <u>facility's</u> [facility's] waste collection and disposal facilities. A waste storage room is optional for crisis stabilization units [CSUs].

(xi) Sanitizing facilities. Storage areas and sanitizing facilities for garbage or refuse cans, carts, and mobile tray conveyors shall be provided. All containers for trash storage shall have tight-fitting lids.

*(xii)* Housekeeping room. A housekeeping room shall be provided for the exclusive use of the dietary department. Where hot water or steam is used for general cleaning, additional space within the room shall be provided for the storage of hoses and nozzles.

(xiii) Office spaces. An office shall be provided for the use of the food service manager or the dietary service manager. In smaller facilities, a designated alcove may be located in an area that is part of the food preparation area.

*(xiv)* Toilets and locker spaces. A toilet <u>room</u> [room(s)] shall be provided for the exclusive use of the dietary staff. Toilets shall not open directly into the food preparation areas [5] but must be in close proximity to them. For larger facilities, a locker room or space for lockers shall be provided for staff belongings.

(C) Additional service areas, rooms, and facilities. When an on-site food preparation system is used, in addition to the items required in subparagraph (B), the following service areas, rooms, and facilities shall be provided.

*(i)* Food preparation facilities. When food preparation systems are provided, there shall be space and equipment for preparing, cooking, and baking.

*(ii)* Tray assembly line. A patient tray assembly and distribution area shall be located within close proximity to the food preparation and distribution areas.

*(iii)* Food storage. The food storage room shall be adequate in size to accommodate food for a seven calendar day menu cycle.

*(iv)* Additional storage <u>areas</u> [area(s)]. Additional <u>areas</u> [area(s)] shall be provided for the storage of cooking wares, extra trays, flatware, plastic and paper products, and portable equipment.

(v) Drying storage area. Provisions shall be made for drying and storage of pots and pans from the pot washing room.

(D) Equipment. Equipment for use in the dietary suite shall meet the following requirements.

(*i*) Mechanical devices shall be heavy duty, suitable for the use intended, and easily cleaned. Where equipment is movable, provide heavy duty locking casters. Equipment with fixed utility connections shall not be equipped with casters.

*(ii)* Floor, wall, and top panels of walk-in coolers, refrigerators, and freezers shall be insulated. Coolers and refrigerators shall be capable of maintaining a temperature down to freezing. Freezers shall be capable of maintaining a temperature of 20 degrees below 0 degrees Fahrenheit. Coolers, refrigerators, and freezers shall be thermostatically controlled to maintain desired temperature settings in increments of two degrees or less. Interior temperatures shall be indicated digitally and visible from the exterior. Controls shall include audible and visible high and low temperature alarm. The time of alarm shall be automatically recorded.

*(iii)* Walk-in units may be lockable from the outside but must have a release mechanism for exit from inside at all times. The interior shall be lighted. All shelving shall be corrosion resistant, easily cleaned, and constructed and anchored to support a loading of at least 100 pounds per linear foot.

*(iv)* All cooking equipment shall be equipped with automatic shut-off devices to prevent excessive heat buildup.

(E) Vending services. When vending machines are provided, a dedicated room or an alcove shall be located so that access is available at all times.

(2) Details and finishes. Details and finishes shall be in accordance with  $\frac{510.122(d)(2)}{\frac{134.122(d)(2)}{2}}$  of this subchapter [title] and this paragraph.

(A) Details.

(*i*) Food storage shelves shall not be less than six inches above the finished floor and the space below the bottom shelf shall be closed in and sealed tight for ease of cleaning.

*(ii)* Operable windows and doors not equipped with automatic closing devices shall be equipped with insect screens.

*(iii)* Food processing areas in the central dietary kitchen shall have ceiling heights not less than nine feet. Ceiling mounted equipment shall be supported from rigid structures located above the finished ceiling.

*(iv)* Mirrors shall not be installed at hand washing fixtures in the food preparation areas.

(B) Finishes.

*(i)* Floors in areas used for food preparation, food assembly, soiled and clean ware cleaning shall be water-resistant and grease-proof. Floor surfaces, including tile joints, shall be resistant to food acids.

*(ii)* Wall bases in food preparation, food assembly, soiled and clean ware cleaning and other areas which are frequently subject to wet cleaning methods shall be made integral and coved with the floor, tightly sealed to the wall, constructed without voids that can harbor insects, retain dirt particles, and be impervious to water.

*(iii)* In the dietary and food preparation areas, the wall construction, finishes, and trim, including the joints between the walls and the floors, shall be free of voids, cracks, and crevices.

(*iv*) The ceiling in food preparation and food assembly areas shall be washable as required by \$510.122(d)(2)(B)(vi)(II) of this subchapter [\$134.122(d)(2)(B)(vi)(II)].

(v) The ceiling in the food storage room  $[_5]$  and solied and clean ware cleaning area shall be of the monolithic type as required by  $\frac{510.122(d)(2)(B)(vi)(III)}{(110)}$  of this subchapter  $[\frac{134.122(d)(2)(B)(vi)(III)}{(110)}]$ .

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with  $\S510.122(d)(3)$  [\$134.122(d)(3)] of this subchapter [title] and this paragraph.

(A) Exhaust hoods handling grease-laden vapors in food preparation centers shall comply with National Fire Protection Association 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 1998 edition. All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat-actuated fan controls. Clean out openings shall be provided every 20 feet and at any changes in direction in the horizontal exhaust duct systems serving these hoods. (Horizontal runs of ducts serving range hoods should be kept to a minimum.)

(B) When air change standards in Table 3 of  $\underline{\$510.131(c)}$  [ $\underline{\$134.131(c)}$ ] of this <u>subchapter</u> [title] do not provide sufficient air for proper operation of exhaust hoods (when in use), supplementary filtered makeup air shall be provided in these rooms to maintain the required airflow direction and exhaust velocity. Makeup systems for hoods shall be arranged to minimize "short circuiting" of air and to avoid reduction in air velocity at the point of contaminant capture.

(C) Air handling units serving the dietary suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of 510.131(d) [134.131(d)] of this subchapter [title].

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with  $\frac{510.122(d)(4)}{\frac{134.122(d)(4)}{10}}$  of this <u>subchapter</u> [title] and this paragraph.

(A) The kitchen grease traps shall be located and arranged to permit easy access without the need to enter food preparation or storage areas. Grease traps shall be of capacity required and shall be accessible from outside of the building without need to interrupt any services.

(B) Grease traps or grease interceptors shall be located outside the food preparation area and shall comply with the requirements in the National Association of Plumbing-Heating-Cooling Contractors (PHCC), National Standard Plumbing Code, 2000 edition. [This publication may be obtained from the National Association of Plumbing-Heating-Cooling Contractors, 180 South Washington Street, Falls Church, VA 22046; telephone (703) 237-8100.]

(C) The material used for plumbing fixtures shall be non-absorptive and acid-resistant.

(D) Water spouts used at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and containers.

(E) Hand washing fixtures used by food handlers shall be trimmed with valves that can be operated without hands. Single lever or wrist blade devices may be used. Blade handles used for this purpose shall not be less than four inches in length.

(F) Drainage and waste piping shall not be installed in the space above the ceiling or installed in an exposed location in food preparation centers, food serving facilities and food storage areas unless special precautions are taken to protect the space below from leakage and condensation from necessary overhead piping.

(G) No plumbing lines may be exposed overhead or on walls where possible leaks would create a potential for food contamination.

(5) Electrical requirements. Electrical requirements shall be in accordance with  $\frac{510.122(d)(5)}{510.122(d)(5)}$  [ $\frac{134.122(d)(5)}{510.122(d)(5)}$ ] of this subchapter [title] and this paragraph.

(A) Exhaust hoods shall have an indicator light indicating that the exhaust fan is in operation.

(B) The electrical <u>circuits</u> [eireuit(s)] to equipment in wet areas shall be provided with five milliampere GFCI.

(e) Emergency treatment room.

(1) Architectural requirements.

(A) Emergency treatment room. As a minimum requirement, a facility shall provide at least one emergency treatment room to handle emergencies. The emergency treatment room may be located anywhere in the facility and shall meet the following requirements.

(*i*) The emergency treatment room shall have a minimum clear area of 120 square feet clear floor area exclusive of fixed and movable cabinets and shelves. The minimum clear room dimension exclusive of fixed cabinets and built-in shelves shall be 10 feet. The emergency treatment room shall contain cabinets, medication storage, work counter, examination light, and hand washing fixtures with hands-free operable controls. Exception: Crisis stabilization units are not required to have medication storage in the emergency treatment room.

*(ii)* Storage space shall be provided within the room or on an emergency cart and be under staff control for general medical emergency supplies and medications. Adequate space shall be provided for emergency equipment.

(B) Secured holding room. When provided, this room shall be constructed to allow for security, patient and staff safety, patient observation, and sound proofing.

(C) Service areas. The following service areas shall be provided.

(*i*) Soiled workroom. The workroom shall contain a work counter, a clinical sink or equivalent flushing type fixture, hand washing fixture with hands-free operable controls, waste receptacles, and soiled linen receptacles. The soiled workroom in the nursing suite may be shared with the emergency treatment room if it is located conveniently nearby.

*(ii)* Housekeeping room. The housekeeping room shall be located nearby.

(*iii*) Patient toilet [toilet(s)]. A toilet room shall be provided and located nearby.

(2) Details and finishes. Details and finishes shall be in accordance with  $\frac{510.122(d)(2)}{\frac{134.122(d)(2)}{2}}$  of this subchapter [title] and this paragraph.

(A) Flooring used in the treatment room, secure holding area, and soiled workroom shall be of the seamless type as required by \$510.122(d)(2)(B)(iii)(III) [\$134.122(d)(2)(B)(iii)(III)] of this subchapter [title].

(B) Ceilings in soiled workrooms and secure holding rooms shall be of the monolithic type as required by  $\frac{510.122(d)(2)(B)(vi)(III)}{[\$134.122(d)(2)(B)(vi)(III)]}$  of this subchapter [title].

(3) Mechanical requirements. Mechanical requirements shall be in accordance with  $\S510.122(d)(3)$  [\$134.122(d)(3)] of this subchapter [title] and this paragraph. Duct linings exposed to air

movement shall not be used in ducts serving any treatment rooms and secure holding rooms. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with  $\frac{510.122(d)(4)}{\frac{134.122(d)(4)}{1}}$  of this <u>subchapter</u> [title]. When provided, medical gas systems shall be in accordance with  $\frac{510.122(d)(4)(A)(iii)}{\frac{134.122(d)(4)(A)(iii)}{1}}$  of this <u>subchapter</u> [title].

(5) Electrical requirements. Electrical requirements shall be in accordance with  $\frac{510.122(d)(5)}{510.122(d)(5)}$  [ $\frac{134.122(d)(5)}{510.122(d)(5)}$ ] of this subchapter [title] and this paragraph.

(A) General.

*(i)* Each treatment room shall have a minimum of six duplex electrical receptacles. Two duplex electrical receptacles shall be located convenient to the head of the bed.

*(ii)* Each work counter and table shall have access to two duplex receptacles connected to the critical branch of the emergency electrical system and be labeled with panel and circuit number.

(B) Nurses calling systems. A nurses regular calling system shall be provided for the treatment room in accordance with  $\frac{510.122(d)(5)(K)(i)}{134.122(d)(5)(K)(i)}$  of this subchapter [title].

(f) Employees suite. Lockers, lounges, toilets, and other amenities as determined by the facility shall be provided throughout the facility for employees and volunteers. These amenities are in addition to, and separate from, those required for the medical staff and the public.

(g) Engineering suite and equipment areas.

(1) General. The following areas or rooms shall be provided:

(A) an engineer's office with file space and provisions for protected storage of facility drawings, records, manuals, etc.;

(B) a general maintenance  $\underline{shop} [\underline{shop}(\underline{s})]$  for repair and maintenance;

(C) a separate  $\underline{room}$  [room(s)] for building maintenance supplies and equipment  $\underline{and \ storage}$  [-  $\underline{storage}$ ] of bulk solvents and flammable liquids shall be in a separate building and not within the facility building;

(D) a medical equipment room which includes provisions for the storage, repair, and testing of electronic and other medical equipment;

(E) a separate room or building for yard maintenance equipment and supplies. When a separate room is within the physical plant the room shall be located so that equipment may be moved directly to the exterior. Yard equipment or vehicles using flammable liquid fuels shall not be stored or housed within the facility building; and

(F) sufficient space in all mechanical and electrical equipment rooms for proper maintenance of equipment. Provisions shall also be made for removal and replacement of equipment.

(2) Additional areas or <u>rooms</u> [room(s)]. Additional areas or <u>rooms</u> [room(s)] for mechanical, and electrical equipment shall be provided within the physical plant or installed in separate buildings or weatherproof enclosures with the following exceptions.

(A) An area shall be provided for cooling towers and heat rejection equipment when such equipment is used.

(B) An area for the medical gas park and equipment shall be provided. For smaller medical gas systems, the equipment may be housed in a room within the physical plant in accordance with National Fire Protection Association 99, Standard for Health Care Facilities, 1999 edition (NFPA 99), Chapters 4 and 8.

(C) When provided, compactors, dumpsters, and incinerators shall be located in an area remote from public entrances.

(h) General stores.

(1) General. In addition to storage rooms in individual departments, a central storage room shall also be provided. General stores may be located in a separate building on-site with provisions for protection against inclement weather during transfer of supplies.

(2) Receiving. Central storage areas shall be provided with an off-street unloading and receiving area protected from inclement weather.

(3) General storage room. General storage room with a total area of not less than 12 square feet per inpatient bed shall be provided. The storage room may be within the facility, or separate building on-site. A portion of the storage may be provided off-site.

(4) Outpatient suite storage room. A storage room for the outpatient services shall be provided at least equal to five percent [5.0%] of the total area of the outpatient suite. This required storage room area may be combined with general stores.

(i) Geriatric, Alzheimer, and other dementia nursing suites. When geriatric, Alzheimer, or other dementia nursing suites are provided, the nursing suite shall comply with the requirements in subsection (o) of this section with the following exceptions.

(1) A patient bedroom suite shall be 120 square feet in a single patient bedroom suite and 200 square feet in multiple-bed room suites.

(2) Each patient bedroom shall have storage for extra blankets, pillows, and linen.

(3) Patient bedroom doors shall be a minimum of three feet eight inches in width.

(4) Patients shall have access to at least one bathtub in each nursing suite.

(5) A minimum of two separate social spaces, one appropriate for noisy activities and the other for quiet activities, shall be provided. The combined total area shall be not less than 30 square feet per bed space with not less than 140 square feet for each of the two spaces, whichever is greater. This space may be shared with the dining area or room.

(6) Storage space for wheelchairs shall be provided in the nursing unit.

(j) Imaging suite.

(1) Architectural requirements.

(A) General. When diagnostic imaging services are provided, the minimum the facility shall provide is a diagnostic radiographic (X-ray) room.

*(i)* Diagnostic radiographic (x-ray) room <u>sizes</u> [size(s)] shall be in compliance with manufacturer's recommendation. When portable x-ray equipment is used, the portable unit shall be stored in a secured room.

*(ii)* When radiation protection is required for any diagnostic imaging room, a medical physicist licensed under [the] Texas

[Medical Physics Practice Act<sub>7</sub>] Occupations Code [<sub>7</sub>] Chapter 602, shall specify the type, location, and amount of radiation protection to be installed for the layout and equipment selections.

*(iii)* Each X-ray room shall include a shielded control alcove. The control alcove shall be provided with a view window designed to permit full view of the examination table and the patient at all times.

*(iv)* Warning signs capable of indicating that the equipment is in use shall be provided.

(B) Service areas. The following service areas shall be provided.

*(i)* Patient waiting area. The area shall be out of traffic and under direct staff visual control.

(*ii*) Patient toilet rooms. Toilet  $\underline{rooms} [\underline{room(s)}]$  with hand washing amenities shall be located convenient to the waiting area.

*(iii)* Patient dressing rooms. Dressing rooms shall be convenient to the waiting areas and X-ray rooms.

*(iv)* Hand washing facilities. A freestanding hand washing fixture with hands-free controls shall be provided in or near the entrance to each diagnostic and procedure room unless noted otherwise. Hand washing facilities shall be arranged to minimize any incidental splatter on nearby personnel or equipment.

(v) Contrast media preparation. This room shall include a work counter, a sink with hands-free operable controls, and storage. One preparation room may serve any number of rooms. When prepared media is used, this area may be omitted, but storage shall be provided for the media.

(vi) Film processing room. A darkroom shall be provided for processing film unless the processing equipment normally used does not require a darkroom for loading and transfer. When daylight processing is used, the darkroom may be minimal for emergency and special uses. Film processing shall be located convenient to the procedure rooms and to the quality control area.

(vii) Quality control area or room. An area or room for film viewing shall be located near the film processor. All view boxes shall be illuminated to provide light of the same color value and intensity.

*(viii)* Film storage (active). A room shall include a cabinet or shelves for filing patient film for immediate retrieval.

(*ix*) Film storage (inactive). A room for inactive film storage shall be provided. It may be outside the imaging suite [5] but must be under the administrative control of imaging suite personnel and be properly secured to protect films against loss or damage.

(x) Storage for unexposed film. Storage amenities for unexposed film shall include protection of film against exposure or damage.

(xi) Storage of cellulose nitrate film. When used, cellulose nitrate film shall be stored in accordance with the requirements of National Fire Protection Association 40, Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film, 1994 edition.

*(xii)* Housekeeping room. The room may serve multiple departments when conveniently located.

(2) Details and finishes. Details and finishes shall be in accordance with  $\frac{510.122(d)(2)}{\frac{134.122(d)(2)}{2}}$  of this subchapter [title] and this paragraph.

(A) Details.

*(i)* Radiation protection shall be designed, tested, and approved by a medical physicist licensed under [the] Texas [Medical Physics Practice Act<sub>7</sub>] Occupations Code [<sub>3</sub>] Chapter 602.

*(ii)* The design and environmental controls associated with licensable quantities of radioactive material in laboratories, [and/or] imaging rooms, or both shall be approved by the Texas Department of <u>State Health Services</u> [Health's Bureau of] Radiation Control Program prior to licensed authorizations.

*(iii)* Where protected alcoves with view windows are required, provide a minimum of 1 foot 6 inches between the view window edge or frame [edge/frame] and the outside partition edge.

*(iv)* Imaging procedure rooms shall have ceiling heights not less than nine feet. Ceilings containing ceiling-mounted equipment shall be of sufficient height to accommodate the equipment of fixtures and their normal movement.

(B) Finishes.

(*i*) Flooring used in contrast media preparation and soiled workroom shall be of the seamless type as required by  $\S510.122(d)(2)(B)(iii)(III)$  of this subchapter [\$134.122(d)(2)(B)(iii)(III)].

*(ii)* A lay-in type ceiling is acceptable for the diagnostic room.

(3) Mechanical Requirements.

(A) Mechanical requirements shall be in accordance with  $\S510.122(d)(3)$  [\$134.122(d)(3)] of this subchapter [title] and this paragraph.

(B) Air handling units serving the imaging suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of  $\S510.131(d)$  [\$134.131(d)] of this subchapter [title].

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with  $\frac{510.122(d)(4)}{\frac{134.122(d)(4)}{10}}$  of this <u>subchapter</u> [title] and this paragraph. When automatic film processors are used, a receptacle of adequate size with hot and cold water for cleaning the processor racks shall be provided.

(5) Electrical requirements. Electrical requirements shall be in accordance with  $\S510.122(d)(5)$  [\$134.122(d)(5)] of this subchapter [title] and this paragraph.

(A) General.

*(i)* Each imaging procedure room shall have at least four duplex electrical receptacles.

(*ii*) A special grounding system in areas such as imaging procedures rooms where a patient may be treated with an internal probe or catheter shall comply with Chapter 9 of NFPA 99  $[_{5}]$  and Article 517 of NFPA 70.

*(iii)* General lighting with at least one light fixture powered from a normal circuit shall be provided in imaging procedures rooms in addition to special lighting units at the procedure or diagnostic tables.

(B) Nurses calling system.

(*i*) Nurses regular calling system. The nurses regular calling system shall be provided for patient dressing rooms [room(s)] in accordance with \$510.122(d)(5)(K)(i) [\$134.122(d)(5)(K)(i)] of this subchapter [title].

(*ii*) Nurses emergency calling system. In toilet  $\underline{rooms}[room(s)]$  used by inpatients and outpatients, a nurses emergency call station shall be provided in accordance with  $\underline{\$510.122(d)(5)(K)(ii)}$  [ $\underline{\$134.122(d)(5)(K)(ii)}$ ] of this <u>subchapter</u> [title].

(*iii*) Staff emergency assistance calling system. A staff emergency assistance calling system (code blue) shall be provided for staff to summon additional assistance for each imaging procedure room in accordance with \$510.122(d)(5)(K)(iii) [\$134.122(d)(5)(K)(iii)] of this subchapter [title].

(k) Laboratory suite.

(1) Architectural requirements.

(A) General. The required laboratory testing shall be performed on-site or provided through a contractual arrangement with a laboratory service.

*(i)* Provisions for laboratory services shall be provided within the facility for urinalysis, blood glucose and electrolytes.

*(ii)* Each laboratory unit shall meet the requirements of Chapter 10 of NFPA 99 [(relating to Laboratories),] and Chapter 18 of NFPA 101 [(relating to New Health Care Occupancies)].

(B) Minimum laboratory. When laboratory services are provided off-site by contract, the following minimum areas or rooms shall be provided within the facility.

(*i*) Laboratory work room. The laboratory work-room shall include a counter and a sink with hands-free operable controls.

*(ii)* General storage. Cabinets or closets shall be provided for supplies and equipment used in obtaining samples for testing. A refrigerator or other similar equipment shall be provided for specimen storage waiting for transfer to off-site testing.

*(iii)* Specimen collection room. A blood collection room shall be provided with a counter, space for seating, and hand washing fixture with hands-free operable controls. A toilet and lavatory with hands-free operable controls shall be provided for specimen collection. This room may be outside the laboratory suite if conveniently located.

(C) On-site laboratory. When the facility provides on-site laboratory services, the following areas or rooms shall be provided in addition to the requirements in paragraph (1)(A) and (1)(B) [(B)] of this subsection.

(*i*) Laboratory <u>workrooms</u> [workroom(s)]. The laboratory work room shall include  $\underline{counters}$  [counter(s)], space appropriately designed for laboratory equipment,  $\underline{sinks}$  [sink(s)] with handsfree operable controls, vacuum, gases, air, and electrical services as needed.

*(ii)* General storage. Storage, including refrigeration for reagents, standards, supplies, and stained specimen microscope slides, etc. shall be provided. Separate spaces shall be provided for such incompatible materials as acids and bases, and vented storage shall be provided for volatile solvents.

*(iii)* Chemical safety. When chemical safety is a requirement, provisions shall be made for an emergency shower and eye flushing devices. *(iv)* Flammable liquids. When flammable or combustible liquids are used, the liquids shall be stored in approved containers, in accordance with National Fire Protection Association 30, Flammable and Combustible Liquids Code, 1996 edition.

(v) Radioactive materials. When radioactive materials are employed, storage amenities shall be provided.

(D) Service areas or rooms. The following service areas or rooms shall be provided.

(*i*) Hand washing amenities. Each laboratory room or work area shall be provided with a hand washing  $\underline{\text{fixture}(s)}$  with hands-free operable controls.

*(ii)* Office spaces. The scope of laboratory services shall determine the size and quantity for administrative areas including offices as well as space for clerical work, filing, and record maintenance. At a minimum, an office space shall be provided for the use of the laboratory service director.

*(iii)* Staff facilities. Lounge, locker, and toilet amenities shall be conveniently located for male and female laboratory staff. These may be outside the laboratory area and shared with other departments.

*(iv)* Housekeeping room. A housekeeping room shall be located nearby.

(2) Details and finishes. Details and finishes shall be in accordance with  $\S510.122(d)(2)$  [\$134.122(d)(2)] of this <u>subchapter</u> [title]. Floors in laboratories shall comply with the requirements of \$510.122(d)(2)(B)(iii) [\$134.122(d)(2)(B)(iii)] of this <u>subchapter</u> [title] except that carpet flooring shall not be used.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with  $\S510.122(d)(3)$  [\$134.122(d)(3)] of this subchapter [title] and this paragraph.

(A) No air from the laboratory areas shall be recirculated to other parts of the facility. Recirculation of air within the laboratory suite is allowed.

(B) When laboratory hoods are provided, they shall meet the following general requirements.

*(i)* The average face velocity of each exhaust hood shall be at least 75 feet per minute.

*(ii)* The exhaust shall be connected to an exhaust system to the outside which is separate from the building exhaust system.

*(iii)* The exhaust fan shall be located at the discharge end of the system.

*(iv)* The exhaust duct system shall be of noncombustible and corrosion resistant material.

(C) Filtration requirements for air handling units serving the laboratory suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of  $\frac{510.131(d)}{\frac{131(d)}{510.131(d)}}$ 

(D) Duct linings exposed to air movement shall not be used in ducts serving any laboratory room and clean room unless terminal filters of at least 80% efficiency are installed downstream of linings. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with  $\frac{510.122(d)(4)}{\frac{134.122(d)(4)}{1}}$  of this subchapter [title] and this paragraph.

(A) General.

(*i*) Faucet spouts at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and the contents of beakers, test tubes, etc.

*(ii)* Drain lines from sinks used for acid waste disposal shall be made of acid-resistant material.

(*iii*) Drain lines serving some types of automatic blood-cell counters must be of carefully selected material that will eliminate potential for undesirable chemical reactions (or [and/or] explosions) between sodium azide wastes and copper, lead, brass, and solder, etc.

(B) Medical gas systems. When provided, medical gas systems shall comply with \$510.122(d)(4)(A)(iii) [\$134.122(d)(4)(A)(iii)] of this <u>subchapter</u> [title]. The number of outlets in the laboratory for vacuum, gases, and air shall be determined by the functional program requirements.

(l) Laundry suite. Laundry amenities may be provided on-site or off-site. On-site laundry services may be within the facility or in a separate building.

(1) Architectural requirements.

(A) General. The following amenities are required for both on-site or off-site commercial laundry services.

*(i)* The laundry room shall be equipped and ventilated so as to minimize the dissemination of contaminants.

*(ii)* Soiled and clean linen processing areas shall be physically separated.

*(iii)* An adequate amount of hand washing fixtures shall be provided in both the soiled and clean processing areas.

(B) On-site laundry processing. When linen is processed within the facility or in a separate building located on-site, the following minimum requirements shall be provided.

(*i*) A receiving, holding, and sorting room for control and distribution of soiled linen shall be provided. This area may be combined with the soiled linens processing room. Discharge from soiled linen chutes may be received within this room or in a separate dedicated room.

*(ii)* A laundry processing room shall be provided which shall contain commercial type equipment capable of processing at least a seven-day laundry supply within the regular scheduled work week.

*(iii)* A clean linen processing room shall be provided and shall include built-in dryers and folding counters or tables. This area shall have provisions for inspections, folding, packing, and mending of linen.

*(iv)* A holding room or area for storage and issuing of clean linen shall be provided but may be combined with clean linen processing room.

(C) Off-site laundry processing. When linen is processed off the facility site, the following minimum requirements shall be provided on-site:

*(i)* a service entrance which shall have protection from inclement weather, for loading and unloading of linen;

*(ii)* control station for pickup and receiving;

(iii) soiled linen holding room;

*(iv)* a central clean linen storage room and issuing room in addition to linen storage required at the individual patient suites. This central holding area shall include provisions for inspecting, sorting, and mending; and

(v) cart storage areas, which [- The areas] shall be located out of pedestrian traffic and shall be provided separately for clean and soiled linen.

(D) Service areas for on-site laundry processing. The laundry shall be separated from patient rooms, areas of food preparation and storage, and areas in which clean supplies and equipment are stored. An on-site laundry shall have the following services areas and facilities.  $[\div]$ 

(*i*) <u>Office space. Office [office]</u> space for director of laundry services.  $\begin{bmatrix} \frac{1}{2} \end{bmatrix}$ 

(*ii*) Equipment [equipment] layout for soiled and clean linen. The laundry equipment processing shall be arranged to permit an orderly work flow and minimize cross-traffic that might mix clean and soiled operations. [;]

*(iii)* Storage. [storage.] Storage space and cabinets for soaps, stain removers, and other laundry processing agents shall be located in the soiled and clean processing rooms. [;]

(*iv*) <u>Cart sanitizing. Cart [cart]</u> sanitizing shall comply with subsection (b) of this section.  $[\frac{1}{2}]$ 

(v) <u>Staff</u> [staff] toilets. Toilets may be outside the unit but shall be convenient for staff use and shall contain hand washing fixtures with hands-free operable controls. [;]

(vi) <u>Staff</u> [staff] lockers. Lockers may be in laundry suite or part of a central locker area when convenient to the laundry. [; and]

(vii) Housekeeping [housekeeping] room.

(2) Mechanical Requirements. Mechanical requirements shall be in accordance with \$510.122(d)(3) [\$134.122(d)(3)] of this <u>chapter</u> [title] and this paragraph.

(A) The ventilation system shall include adequate intake, filtration, exchange rate, and exhaust in accordance with Table 3 and Table 4 of  $\S510.131(c)$  [\$134.131(c)] and (d) of this <u>subchapter</u> [title].

(B) Filtration requirements for air handling units serving the laundry suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of  $\S510.131(d)$  [\$134.131(d)] of this subchapter [title].

(C) Direction of air flow of the HVAC systems shall be from clean to soiled areas.

(D) The ventilation system for soiled processing area shall have negative air pressure while the clean processing area shall have positive pressure.

(m) Medical records suite. The following rooms, areas, or offices shall be provided in the medical records suite:

(1) medical records administrator or technician office;

(2) review and dictating rooms or spaces;

(3) work area which includes provisions for sorting, recording, or microfilming records; and

(4) file storage room. Rooms containing open file systems or moveable filing storage systems shall be considered as hazardous.

The construction protection for the storage room or area shall comply with NFPA 101 [5] §18-3.2.

(n) Nursing suite. The nursing suite shall be designed to facilitate care of ambulatory and <u>non-ambulatory</u> [nonambulatory] inpatients.

(1) Physical environment. A nursing suite shall provide a safe environment for patients and staff.

(A) The environment of the unit shall be characterized by a feeling of openness with emphasis on natural light and exterior views and with the organization of various functions accessible to common spaces while not jeopardizing desirable levels of patient privacy.

(B) Interior finishes, lighting, and furnishings shall present an atmosphere which is as noninstitutional as possible, consistent with applicable fire safety requirements. Security and safety devices should not be present in a manner to attract or challenge tampering by patients.

(2) Architectural requirements. Architectural requirements shall be in accordance with  $\S510.122(d)(1)$  [\$134.122(d)(1)] of this subchapter [title] and this paragraph.

(A) Handicapped accessibility requirements. At least 10 percent [%]of patient room suites, bathing units and toilets, and all public and common use areas shall be designed and constructed to be handicapped accessible. These requirements shall apply in all new construction and when an existing nursing suite or a portion thereof is converted from one service to another.

(B) Patient room suites. A patient room suite shall consist of the patient room and a toilet room or bathroom. Patient room suites shall comply with the following requirements.

(*i*) Maximum patient room capacity. The maximum patient room capacity shall be two patients. In existing facilities where renovation work is undertaken and the present capacity is more than two patients, the maximum room capacity shall be no more than the present capacity with a maximum of four patients.

*(ii)* Single-bed patient room. In a single-bed patient room, the minimum clear floor area shall be 100 square feet. The minimum clear floor area in an accessible private patient room shall be 120 square feet. The minimum room dimension shall be not less than 10 feet.

*(iii)* Multi-bed patient room. In a multi-bed patient room, the minimum clear floor area shall be 80 square feet per bed. Minimum clear floor space in an accessible multi-bed room shall be 110 square feet per bed. Design of multi-bed patient rooms shall not restrict independent patient access to the corridor, lavatory, or bathroom.

(iv) Arrangement of patient rooms. Minor encroachments including columns and wall hung lavatories that do not interfere with functions may be ignored when determining space requirements for patient rooms.

(1) Required clear floor space in patient rooms shall be exclusive of toilet rooms, closets, lockers, built-in cabinets, wardrobes, alcoves, or vestibules.

(*II*) A clearance of 3 feet 8 inches shall be available at the foot of each bed in multi-bed patient rooms to permit the passage of equipment and beds. A minimum distance of three feet between a wall and the side of a bed and four feet between beds shall be provided. A minimum distance of five feet between a wall and the side of a bed and four feet between a wall and the side shall be provided in an accessible semi-private room or one intended for rehabilitation patients. Arrange-

ment of beds shall be such that sufficient space is provided for a bed and maneuvering space for a wheelchair.

*(III)* Sleeping areas shall have doors for privacy. Design for visual privacy in multi-bed rooms shall not restrict patient access to the room, toilet, or observation by staff.

(v) Patient bathroom. Each patient shall have access to a bathroom without having to enter the general corridor area. Each bathroom shall contain a toilet, hand washing fixtures, and storage shelf or cabinet and serve not more than four patient beds or two patient rooms. Hand washing fixtures may be located in the patient room.

(vi) Bathing rooms. One bathtub or shower shall be provided for each four patient beds or space which is not otherwise served by bathing rooms within patients' rooms. Each tub or shower shall be in an individual room or enclosure which provides space for the private use of the bathing fixture and for drying and dressing.

*(vii)* Patient storage. Each patient shall have a separate wardrobe, locker, or closet that is suitable for hanging full-length garments and for storing personal effects. A minimum of 12 lineal inches of hanging space shall be provided per patient.

(C) Security rooms. When security rooms are provided by the treatment program narrative, the security rooms shall be single patient suite rooms designed to minimize potential for escape, hiding, injury to self or others, or suicide. Access to toilets, showers, and wardrobes shall be restricted. The patient room suite shall be in accordance with subparagraph (B)(ii) of this paragraph. Security rooms may be centralized on one unit or decentralized among units.

(D) Seclusion suite. There shall be a seclusion suite in each nursing suite intended for short-term occupancy by a single person requiring security and protection from self or others. The seclusion suite shall consist of seclusion <u>rooms</u> [room(s)], an anteroom or a vestibule, a toilet, and hand washing fixtures.

(*i*) Each seclusion room shall be located and designed in a manner affording direct visual supervision by nursing staff and shall be constructed to prevent patient hiding, escape, injury, or suicide. There shall be a minimum of one seclusion room for each 24 beds or any portion thereof.

(I) The floor area of each seclusion room shall be not less than 60 square feet. The minimum room dimension shall be six feet.

(II) The seclusion room shall have a minimum ceiling height of nine feet.

*(III)* The door to each seclusion room shall have no hardware on the room side and shall open out. A vision panel shall be provided in each door to permit staff observation of the entire room while maintaining privacy from the public and other patients. The seclusion room door shall swing out.

*(IV)* Each seclusion room shall have natural light (skylight or window) in order to maintain a therapeutic environment. Skylight wells or windows shall be not less than 400 square inches in area.

*(ii)* Access to the seclusion room from any public space such as a corridor shall be through an anteroom. When the seclusion suite is directly accessible from the nurse station, a vestibule may be provided in place of an anteroom. A cased opening to the vestibule in lieu of a door may be provided as long as the arrangement assures privacy from the public and other patients.

(I) The minimum dimension of the anteroom or vestibule shall be eight feet.

(II) The door to the anteroom shall swing in.

*(iii)* There shall be at least one toilet room directly accessible from the anteroom or vestibule.

(I) The toilet room shall be large enough to safely manage the patient.

 $(I\!I)$  The toilet room door shall swing out into the anteroom or vestibule.

*(III)* A water closet and hand washing fixtures shall be provided in the toilet room. An unbreakable wall hung mirror may be provided.

(IV) Doors for the seclusion room and anteroom shall be not less than 3 feet 8 inches in width.

(V) When the interior of the seclusion room is padded, the padding shall be a Class "A." The flame spread rating shall be 0-25 and the smoke development rating shall be 0-450 in accordance with NFPA 101 [<sub>7</sub>] Chapter 8.

(E) Airborne infection isolation suites. When an isolation suite is provided, the suite may be located within a nursing suite or in a separate isolation unit. Each airborne infection isolation suite shall consist of a work area, a patient room, and a patient bathroom.

(*i*) The work area may be a separately enclosed anteroom or a vestibule that is open to and is located immediately inside the door to the patient room. It shall have amenities for hand washing, gowning, and storage of clean and soiled materials. One enclosed anteroom may serve multiple isolation rooms.

*(ii)* Each patient room shall have a clear floor area of 120 square feet exclusive of the work area and shall contain only one bed.

*(iii)* Each bathroom shall be designed for the use of the handicapped and shall contain bathing fixtures, toilet fixtures and hand washing fixtures. Each bathroom shall be arranged to provide access from the patient room without entering or passing through the work area.

*(iv)* At least one airborne infection isolation suite with an enclosed anteroom shall be provided.

(v) Ventilation requirements for the isolation rooms shall be in accordance with Table 3 of \$510.131(c) [\$134.131(c)] of this subchapter [title].

(vi) Doors to airborne infection isolation rooms shall be provided with self-closing devices.

(F) Social spaces. A minimum of two separate social spaces, one appropriate for noisy activities and the other for quiet activities, shall be provided. The combined total area shall be not less than 40 square feet per bed space with not less than 160 square feet for each of the two spaces, whichever is greater. This space may be shared with the dining area or room.

(G) Group therapy room. A room for group therapy shall be included. The room shall not be less than 250 square feet. The group therapy room may be combined with the quiet space required in subparagraph (F) of this paragraph provided that a space of not less than 370 square feet is available for both the quiet activity room and group therapy activities.

(H) Activity service space. Space for activity services (e.g., music therapy, recreational therapy, art, dance, vocational therapy, educational therapy, etc.) shall be provided at the rate of 15 square feet per occupant of the room and a minimum area of not less than

375 square feet, whichever is greater. Space shall include provisions for hand washing, work <u>counters</u> [eounter(s)], storage and displays. Where facilities contain less than 25 beds, the activity services therapy functions may be provided within the noisy activities area as required in subparagraph (F) of this paragraph if a space of not less than 485 square feet is available for both the noisy activity area and activity services area.

(I) Service areas. Service areas shall be located in, or readily available to, each nursing suite. Each service area may be arranged and located to serve more than one nursing suite[ $_{7}$ ] but at least one service area shall be provided on each nursing floor. A service area is composed of the following. [ $\div$ ]

(*i*) <u>An</u> [an] administrative center or nurses station with an adjacent but separate dictation space.  $[\frac{1}{2}]$ 

(*ii*)  $\underline{A}$  [a] nurses office. [;]

(*iii*) <u>An</u> [an] area for charting. The charting area shall be provided with separation needed for acoustical privacy as well as space required for the function. A view window to permit observation of the patient area by the charting nurse or physician may be used provided that it is so located that patient files cannot be read from outside the charting space. [ $\vdots$ ]

(iv) <u>A</u> [a] medication room, medicine alcove area, or a self-contained medicine dispensing unit under visual control of nursing staff. The room shall have a minimum area of 30 square feet under direct control of the nursing or pharmacy staff. The room, area or unit shall contain a work counter, hand washing fixture with handsfree operable controls, and refrigerator. Provisions for security against unauthorized access shall be assured. Standard cup-sinks provided in many self-contained units are not adequate for hand washing. [;]

(v)  $\underline{A}$  [a] small kitchen for patient use. The room shall contain a sink, refrigerator, ice dispenser, microwave, and storage cabinets. This room is to provide nourishment for patients between scheduled meals. [i]

(vi) <u>A</u> [a] multipurpose room for staff and patient conferences, education and demonstrations. The room shall be conveniently accessible to each nursing suite and may serve several nursing suites or departments. The room may be located on another floor if convenient for regular use.[;]

(vii) <u>An</u> [an] examination or treatment room. The room shall have a minimum floor area of 120 square feet excluding space for vestibule, toilet, and closets. The minimum room dimension shall be 10 feet. The room shall contain a lavatory or sink equipped for hand washing, work counter, storage facilities, and a desk, counter, or shelf space for writing. The emergency treatment room may be used for this purpose if it is conveniently located on the same floor as the patient rooms. [i]

(viii) <u>Patient</u> [patient] laundry facilities. An automatic washer and an electric dryer shall be provided. This requirement may be omitted in nursing units intended only for adolescents and gero-psychiatric patients.  $[\frac{1}{2}]$ 

(ix) Staff [staff] lounge with separate female and male dressing areas containing lockers, showers, toilets<sub>2</sub> and hand washing facilities. These facilities may be on another floor. [i]

(x) Securable [securable] closets or cabinet compartments for personal articles of nursing unit staff. The closets or lockers shall be located at or near the nurse station. At a minimum, these shall be large enough for purses and billfolds. Coats may be stored in closets or cabinets on each floor or in a central staff locker area.  $[\frac{1}{2}]$  (xi) <u>Secured</u> [secured] storage area for patients' effects determined potentially harmful (razors, nail files, cigarette lighters, etc.). This area shall be controlled by staff. [;]

(xii) <u>Clean</u> [elean] workroom or clean supply room. When used for preparing patient care items, it shall contain a work counter, hand washing facilities, and storage facilities for clean and sterile supplies. When used only for storage and holding as part of a distribution system of clean and sterile supplies, the work counter and hand washing facilities may be omitted. [i]

(xiii) <u>Clean [elean]</u> linen storage for each nursing unit. The clean linen area shall contain a work counter and storage space for clean linen. The area shall be a part of the storage and distribution of clean linen. Minimum area for clean linen shall be three square feet of room area per patient bed space. The required area may be concentrated in one central room or divided in several rooms throughout the facility. [ $\frac{1}{2}$ ]

(xiv) <u>A</u> [a] soiled workroom or soiled holding room. The room shall contain a clinical sink or equivalent flushing rim fixture, hand washing facilities, both with hot and cold water. The room shall have a work counter and space for separate covered containers for soiled linen and waste. Minimum area for soiled linen shall be three square feet of room area per patient bed space. [ij]

(xv) <u>An</u> [an] equipment storage room and storage room for administrative supplies located on each floor which may serve multiple nursing suites. [5]

(xvi) <u>An [an]</u> emergency equipment storage room or alcove under direct visual control of the nursing staff and out of normal traffic. [;]

(xvii) <u>A</u> [a] housekeeping room which may also serve adjacent nursing suites. [;]

(*xviii*) <u>Stretcher</u> [stretcher] and wheelchair storage space which is located without restricting normal traffic. The space may be located outside the nursing suite.  $[\frac{1}{2}]$ 

(xix) <u>An</u> [an] accessible public toilet with hand washing fixtures. The toilets shall be located on each floor containing a nursing suite: [;]

(xx) <u>Staff</u> [staff] toilet conveniently located to each nursing suite. At least one staff toilet shall be located on each patient sleeping floor. Toilet may be unisex. [;]

(xxi) <u>An</u> [an] ice dispensing machine for each nursing suite which is located at the nourishment station or the clean work room. [ $\frac{1}{2}$ ]

(xxii) <u>Adequate</u> [adequate] number of drinking fountain fixtures. [;]

(xxiii) <u>Adequate</u> [adequate] number of telephones available for patients' private conversations. [;]

(xxiv) <u>A</u> [a] visitor room for patients to meet with friends or family with a minimum floor space of 100 square feet. [;]

(xxv) <u>A</u> [a] quiet room for a patient who needs to be alone for a short period of time but does not require a seclusion room. Each quite room shall be not less than 80 square feet. The visitor room may serve this purpose. [i]

(xxvi) Separate [separate] consultation room. The room shall have a minimum floor space of 100 square feet, and provided at a room-to-bed ratio of one consultation room for each 12 patient beds. The room(s) shall be designed for acoustical and visual privacy and constructed to achieve a level of voice privacy of 50 STC

(which in terms of vocal privacy means that some loud or raised speech is heard only by straining, but is not intelligible). [; and]

(xxvii) <u>A</u> [a] conference and treatment planning room for use for patient care planning. This room may be combined with the charting room or use of the multipurpose room.

(3) Details and finishes. Details and finishes shall be in accordance with  $\S510.122(d)(2)$  [\$134.122(d)(2)] of this chapter [title] and this paragraph.

(A) Details.

(*i*) Egress. Means of egress from each patient suite shall comply with the requirements of NFPA 101  $[_{5}]$  §18-2.

*(ii)* Patient bathroom and toilet room doors. Door leaves to all patient bathrooms and toilet rooms shall be at least 36 inches wide and shall swing outward or be double acting so that nursing staff may gain access to a patient. Doors lockable from the inside shall have hardware that allows staff to open the door from the outside.

*(iii)* Vision panels. Vision panels shall be provided in the door between an anteroom and an airborne infection isolation room.

(iv) Windows. Each patient sleeping room shall have an outside window. The windows shall be restricted. Where the operation of windows requires the use of tools or keys, the tools or keys shall be located at each nurses station, on the same floor, and easily accessible to staff. The bottom of the window opening shall not exceed 36 inches above the floor.

(v) Location of patient room windows. Windows shall be located on an outside wall. Windows may face an atrium, an inner court, or an outer court provided the following requirements are met.

(1) Atria windows. Atria onto which the required windows face shall comply with the requirements of NFPA 101  $[_{5}]$  §8-2.5.6.

(*II*) Outer courts. Outer court (not enclosed by building on one side) onto which the required windows face shall have a minimum width, at all levels, of not less than three inches for each foot, or fraction thereof, of the height (average height of enclosing walls) of such court, but in no case shall the width be less than five feet. An outer court shall have a horizontal cross sectional area not greater than four times the square of its width.

(*III*) Inner courts. Inner court (enclosed by building on all sides) onto which the required windows open shall have minimum width, at all levels, of not less than one foot for each foot, or fraction thereof, of the height (average height of enclosing walls) of such courts, but in no case shall the width be less than 10 feet. If operable windows are provided, a horizontal, unobstructed, and permanently open air intake or passage having a cross-sectional area of not less than 21 square feet shall be provided at or near the bottom of the court. Metal decorative grilles not effectively reducing the open area by more than five percent [5.0%] shall be permitted at the ends. Walls, partitions, floor, and floor-ceiling assemblies forming intakes or passages shall be noncombustible and shall be constructed in accordance with NFPA 101 [ $_{7}$ ] §18-3.1(b) and (c). An inner court shall have a horizontal cross sectional area of not less than one and one-half times the square of its width.

(vi) Visibility. All areas of the nursing suite, including entrances to patient rooms, shall be visible from the nurse <u>station</u> [station(s)]. Observation by video cameras of seclusion rooms, entrances, hallways, and activity areas shall be acceptable. *(vii)* Special fixtures, hardware, and tamper-proof screws. Special fixtures, hardware, and tamper-proof screws shall be used throughout the patient nursing suites.

(*I*) All exposed and accessible fasteners shall be tamper-resistant.

(*II*) Suitable hardware shall be provided on doors to toilet rooms so that access to these rooms can be controlled by staff. Hardware shall be utilized which is appropriate to prevent patient injury.

*(III)* Only break-away or collapsible clothes bars in wardrobes, lockers, towel bars, and closets and shower curtain rods shall be permitted. Wire coat hangers shall not be permitted in nursing suites.

(IV) When grab bars are provided, the space between the grab bar and the wall should be filled to prevent a cord being tied around it for hanging. Bars, including those which are part of such fixtures as soap dishes, shall be sufficiently anchored to sustain a concentrated load of 250 pounds.

(viii) Detention screens.

(1) When operable windows are provided in patient sleeping rooms, it may be necessary to provide detention screens on windows or limit the amount of window operation in order to inhibit possible tendency for suicide or elopement. The type and the degree of security required shall be determined by the facility administration.

(*II*) When detention screens are provided, windows shall be capable of opening with the screens in place. Where glass fragments may create a hazard, safety glazing or other appropriate security features shall be incorporated.

*(III)* In building housing for certain types of patients, detention rooms, or a security section, the facility shall provide detention screens to confine or protect building inhabitants, when necessary.

*(ix)* Hand washing amenities. Hand washing amenities shall be conveniently located near the nurses station and in the medication area. One lavatory in an open medication area can meet this requirement.

(x) Elevator lobbies. Elevator lobbies shall be physically separated from the required means of egress with one hour fire rated construction which resist the passage of smoke on all floors containing patient rooms.

(B) Finishes.

*(i)* Seamless floors with coved wall bases described in <u>§510.122(d)(2)(B)(iii)(III)</u> [<del>§134.122(d)(2)(B)(iii)(III)</del>] of this <u>subchapter [title]</u> shall be provided in soiled workrooms.

*(ii)* Wall bases in the soiled workroom shall be made integral and coved with the floor, tightly sealed to the wall, constructed without voids that can harbor insects, retain dirt particles, and impervious to water.

(*iii*) Monolithic ceilings described in  $\S510.122(d)(2)(B)(vi)(III)$  [\$134.122(d)(2)(B)(vi)(III)] of this subchapter [title] shall be provided in airborne infection isolation rooms, seclusion rooms, and security rooms.

(iv) Ceilings of patient rooms may be acoustically treated; however, they shall be monolithic as described in <u>§510.122(d)(2)(B)(vi)(III)</u> [<del>§134.122(d)(2)(B)(vi)(III)</del>] of this subchapter [title].

(v) Acoustical ceilings shall be provided for corridors in patient areas, nurses' stations, dayrooms, recreation rooms, dining areas, and waiting areas.

(4) Mechanical requirements. Mechanical requirements shall be in accordance with  $\S510.122(d)(3)$  [\$134.122(d)(3)] of this subchapter [title] and this paragraph.

(A) Special consideration shall be given to the type of heating and cooling units, ventilations outlets, and appurtenances installed in patient-occupied areas of nursing suites. The following shall apply: [:]

(B) All air grilles and diffusers shall be of a type that prevents the insertion of foreign objects.

(C) All convector or HVAC enclosures exposed in the room shall be constructed with rounded corners and shall have enclosures fastened with tamper-resistant fasteners.

(D) HVAC equipment shall be of a type that minimizes the need for maintenance within the room.

(E) Outside air shall be supplied to each patient room by a central air handling unit to provide make-up air for air exhausted from the bathroom in accordance with Note 3 of Table 3 of  $\S510.131(c)$  [\$134.131(c)] of this subchapter [title].

(F) Each patient room bathroom shall be exhausted continuously to the exterior in accordance with Table 3 of  $\S510.131(c)$ [\$134.131(c)] of this subchapter [title].

(5) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with  $\frac{510.122(d)(4)}{\frac{134.122(d)(4)}{1}}$  of this subchapter [title] and this paragraph.

(A) Each patient bathroom shall contain a water closet and a lavatory. The lavatory may be located in a single bed patient room instead of in the bathroom.

(B) An additional lavatory shall be placed in each patient room proper where the bathroom serves more than two beds.

(C) Hand washing fixtures shall be located near the nurses' station and the drug distribution station. One lavatory may serve both areas.

(D) Faucet controls shall not be equipped with handles that may be easily broken off in the patient care areas.

(E) Bedpan washers are not required in patient bathrooms.

(F) Piped medical gas systems are not required unless otherwise noted.

(G) Only special, tamper proof sprinkler heads from which it is not possible to suspend any objects shall be installed.

(6) Electrical requirements. Electrical requirements shall be in accordance with  $\underline{\$510.122(d)(5)}$  [ $\underline{\$134.122(d)(5)}$ ] of this subchapter [title] and this paragraph.

(A) Electric receptacles in nursing units.

*(i)* Each receptacle shall be grounded to the reference grounding point by means of an insulated copper grounding conductor.

*(ii)* Each patient bed location shall be supplied by at least two branch circuits, one from the critical branch of the emergency system as required by NFPA 99, §3-4 and one from the normal system. All branch circuits from the normal system shall originate in the same panelboard.

*(iii)* One duplex receptacle connected to a normal branch circuit and one duplex outlet connected to the critical branch circuit shall be located on opposite sides of the head of each bed. In addition at least one duplex outlet shall be located on each wall. A dedicated outlet shall be provided at the television location.

(iv) Each examination table shall have access to two duplex receptacles.

(v) Each work table or counter shall have access to two duplex receptacles.

*(vi)* One duplex receptacle shall be installed in the bathroom to permit the use of electrical appliances in front of the mirror.

*(vii)* Receptacles shall be protected by GFCI breakers installed in distribution panel enclosures serving the nursing suite.

(*viii*) Duplex receptacles shall be installed not more than 50 feet apart in corridors and within 25 feet of corridor ends.

*(ix)* When mobile x-ray equipment is provided, special receptacles marked for X-ray use shall be installed in corridors so that mobile equipment may be used anywhere within a patient room using a cord length of 50 feet or less. Where capacitive discharge or battery powered X-ray units are used, special X-ray receptacles will not be required in corridors.

(x) Additional duplex receptacles shall be installed as required to satisfy operational needs of the nursing unit.

(B) Nurses calling systems. When a nurses calling system is provided in a nursing suite, a nurses regular calling system, nurses emergency calling system, and a staff emergency assistance calling system shall comply with  $\S510.122(d)(5)(K)$  [\$134.122(d)(5)(K)] of this subchapter [title]. Provisions shall be made for easy removal of all call buttons or for covering call buttons as required for security. Pull cords shall not exceed 18 inches in length.

(*i*) Each patient room shall be served by at least one nurses regular calling station for two-way voice communication. Each patient bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses calling systems shall be equipped with an indicating light at each calling station which remains lighted as long as the voice circuit is operating.

(*ii*) A nurses emergency calling system shall be provided at each inpatient water closet, bathtub and shower in accordance with \$510.122(d)(5)(K)(ii) [\$134.122(d)(5)(K)(ii)] of this subchapter [title]. When conveniently located one emergency call station may serve one bathroom.

(*iii*) A staff emergency assistance calling system for staff to summon additional assistance shall be provided in central bathing facility rooms and <u>exam or treatment [exam/treatment]</u> rooms in accordance with  $\S510.122(d)(5)(K)(iii)$  [\$134.122(d)(5)(K)(iii)] of this subchapter [title].

*(iv)* All nurse call hardware shall have tamper resistant fasteners.

(v) A call system shall be provided at all seclusion

(C) Illumination requirements.

anterooms.

*(i)* General illumination requirements. Nursing suite corridors shall have general illumination with provisions for reducing light levels at night. Illumination of corridors for egress purposes shall comply with NFPA 101 [<sub>7</sub>] §§18-2.8 and 18-2.9.

*(ii)* Illumination of the nurses station. Illumination of the nurses station and all nursing support areas shall be with fixtures powered from the critical branch of the emergency electrical system NFPA 99  $[_{7}]$  §3-4.2.2.2(c).

## (iii) Patient suite lighting.

(1) Each patient room shall be provided with general lighting and night lighting. General lighting and night lighting shall be controlled at the room entrance. All controls for lighting in patient areas shall be of the quiet operating type. Control of night lighting circuits may be achieved by automatic means and in such instances control of night lighting at the room entrance shall not be required. At least one general light fixture and night lighting shall be powered from the critical branch of the essential electrical system.

(*II*) A reading light shall be provided for each patient. Reading light control shall be readily accessible from each patient bed. High heat producing light sources such as incandescent and halogen shall be avoided to prevent burns to patients and/or bed linen. Light sources shall be covered by a diffuser or a lens.

*(III)* A wall or ceiling mounted lighting fixture shall be provided above each lavatory.

(IV) A ceiling mounted fixture shall be provided in patient bathrooms where the lighting fixture above the lavatory does not provide adequate illumination of the entire bathroom. Some form of fixed illumination shall be powered from the critical branch.

(o) Pharmacy suite.

(1) Architectural requirements.

(A) General. The pharmacy room or suite shall be located for convenient access, staff control, and security for drugs and personnel.

(B) Dispensing area. The pharmacy room or suite shall include the following functional spaces and facilities:

(i) area [area(s)] for pickup, receiving, reviewing and recording;

*(ii)* extemporaneous compounding area with sufficient counter space for drug preparation and sink with hands-free operable controls;

*(iii)* work counter space for automated and manual dispensing activities;

*(iv)* storage or areas for temporary storage, exchange, and restocking of carts; and

(v) security provisions for drugs and personnel in the dispensing counter area.

(C) Manufacturing. The pharmacy room or suite shall provide the following functional spaces and facilities.

(*i*) When bulk compounding area is required, work space and counters shall be provided.

*(ii)* When packaging, labeling and quality control is required, an area(s) shall be provided.

(D) Storage. The following spaces shall be provided in cabinets, shelves, and/or separate rooms or closets:

*(i)* space for bulk storage, active storage, and refrigerated storage;

*(ii)* storage in a fire safety cabinet or storage room that is constructed under the requirements for protection from haz-

ardous areas in accordance with NFPA 101 [5] Chapter 12, for alcohol or other volatile fluids, when used; and

(iii) storage space for general supplies and equipment not in use.

(E) Administrative <u>area</u> [area(s)]. An administrative area for the pharmacy is optional for crisis stabilization units. The following functional spaces and facilities shall be included for the administrative area. [area(s):]

(*i*) <u>Office</u> [office] area for the chief pharmacist and any other offices areas required for records, reports, accounting activities, and patients profiles.  $[\frac{1}{2}]$ 

*(ii)* <u>Poison</u> [poison] control center with storage facilities for reaction data and drug information centers. [; and]

(iii)  $\underline{A}$  [a] room or area for counseling and instruction when individual medication pick-up is available for inpatients or outpatients.

(F) Service areas. The following service areas and items shall be provided.

*(i)* Intravenous (IV) solutions area. When IV solutions are prepared in a pharmacy, a sterile work area with a laminar-flow workstation designed for product protection shall be provided.

*(ii)* Satellite pharmacy. When provided, the <u>room[room(s)]</u> shall include a work counter, a sink with hands-free operable controls, storage facilities, and refrigerator for medications.

*(iii)* Hand washing amenities. A hand washing fixture with hands-free operable controls shall be located in each room where open medication is handled.

(iv) Staff toilets. Toilets may be outside the suite but shall be convenient for staff use.

(2) Mechanical Requirements. Mechanical requirements shall be in accordance with  $\S510.122(d)(3)$  [\$134.122(d)(3)] of this subchapter [title] and this paragraph. When IV solutions are prepared, the required laminar-flow system shall include a non-hygroscopic filter rated at 99.97% (HEPA). A pressure gauge shall be installed for detection of filter leaks or defects.

(3) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with  $\frac{510.122(d)(4)}{\frac{134.122(d)(4)}{10}}$  of this subchapter [title] and this paragraph.

(A) Material used for plumbing fixtures shall be non-absorptive and acid-resistant.

(B) Water spouts used at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and the contents of carafes, etc.

(4) Electrical requirements. Electrical requirements shall be in accordance with  $\underline{\$510.122(d)(5)}$  [ $\underline{\$134.122(d)(5)}$ ] of this subchapter [title] and this paragraph.

(A) Under-counter receptacles and conduits shall be arranged (raised) to not interfere with cleaning of the floor below or of the equipment.

(B) Exhaust hoods shall have an indicator light indicating that the exhaust fan is in operation.

(C) Electrical <u>circuits</u> [eireuit(s)] to equipment in wet areas shall be provided with five milliampere GFCI.

(p) Rehabilitation therapy suite.

(1) Occupational therapy. When occupational therapy services are provided, the following shall be included:

(A) an activity room with work areas, counters and a hand washing fixture. Counters shall be wheel chair accessible;

(B) a storage room for supplies and equipment;

(C) secured storage for potential harmful supplies and equipment; and

(D) remote electrical switching for potentially harmful equipment.

(2) Physical therapy. When physical therapy services are provided, the following rooms shall be included.

(A) When services required by the narrative program for thermotherapy, diathermy, ultrasonics, and hydrotherapy, individual treatment areas shall be provided.

(B) An individual treatment <u>area</u> [area(s)] shall be a minimum of 70 square feet of clear floor area exclusive of four foot aisle space. Privacy screens or curtains shall be provided at each treatment station.

(C) A hand washing fixture with hands-free operable controls shall be provided in each treatment <u>room or space</u> [room/space]. A hand washing fixture may serve several patient stations when cubicles or open room concepts are used and when the fixture is conveniently located.

(D) An area shall be provided for exercise and may be combined with treatment areas in open plan concepts.

(E) Provisions for the collection and storage of wet and soiled linen shall be provided.

(F) A storage area or room for equipment, clean linen, and supplies shall be provided.

(G) When outpatient physical therapy services are provided, the suite shall have as a minimum patient dressing areas, showers, and lockers.

(3) Service areas. The following areas or items shall be provided in a rehabilitative therapy suite  $\begin{bmatrix} z \end{bmatrix}$  but may be shared when multiple rehabilitation services are offered:

(A) patient waiting  $\underline{\text{area}} [\underline{\text{area}(s)}]$  with space for wheelchairs;

(B) patient toilet facilities containing hand washing fixtures with hands-free operable controls;

(C) reception and control <u>stations</u> [station(s). The reception and control station] shall be located to provide supervision of activities areas <u>and the</u> [- The] control station may be combined with office and clerical spaces;

(D) office and clerical space;

(E) wheelchair and stretcher storage room or alcove which shall be in addition to other storage requirements;

(F) lockable closets, lockers or cabinets for securing staff personal effects;

(G) staff toilets[- The toilets] may be outside the suite but shall be convenient for staff use and contain hand washing fixtures with hands-free operable controls; and

(H) housekeeping room, conveniently accessible.

§510.125. Building with Multiple Occupancies.

(a) Multiple facilities located within one building.

(1) Identifiable location. Each facility shall be in one separately identifiable location and conform with all the requirements contained in Chapter 18 of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101) [, relating to New Health Care Occupancies. All doeuments published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Post Office Box 9101, Quincy, MA 02269-9101 or (800) 344-3555].

(2) Separate licensed facilities. Each facility shall provide the following separate services and amenities:

(A) a nursing suite in accordance with the requirements of  $\frac{510.123(n)}{134.123(n)}$  of this <u>subchapter</u> [title] (relating to Spatial Requirements for New Construction);

(B) an administration office with an adjacent waiting room or waiting area;

(C) a medical records room which conforms with the requirements of  $\S510.123(m)$  [\$134.123(m)] of this subchapter [title];

(D) a pharmacy suite in accordance with <u>§510.123(o)</u> [<del>§134.123(o)</del>] of this <u>subchapter</u> [title];

(E) employee locker facilities which comply with requirements of 510.123(f) [134.123(f)] of this subchapter [title];

(F) a housekeeping room in accordance with the requirements of  $\underline{\$510.122(d)(2)(A)(xxviii)}$  [ $\underline{\$134.122(d)(2)(A)(xxviii)}$ ] of this subchapter [title] (relating to New Construction Requirements);

(G) an emergency treatment room as required by \$510.123(e)(1)(A) [\$134.123(e)(1)(A)] of this subchapter [title];

(H) external signage at the building entrance which identifies each facility; and

(I) internal signage which provides directions to each facility.

(3) Means of egress. Means of egress from the facility shall not be through another facility or other areas subject to locking.

(4) Additional services and amenities. Additional services and amenities when required in each licensed facility may be provided by contractual agreement with the other facility when the services and amenities comply with the specific requirements of <u>§510.41</u> [§134.41] of this <u>chapter</u> [title] (relating to Facility Functions and Services) and <u>§510.123</u> [§134.123] of this <u>subchapter</u> [title]. Some services may be provided by contractual agreement with a commercial contractor; however, the following minimal services and amenities shall be provided on site:

(A) dietary services and dietary suite which comply with <u>§510.41(b)</u> [<del>§134.41(b)</del>] of this <u>chapter</u> [title] and <u>§510.123(d)</u> [<del>§134.123(d)</del>] of this <u>subchapter</u> [title] respectively;

(B) cart cleaning and sanitizing services and facilities which comply with \$510.123(b) [\$134.123(b)] of this subchapter [title];

(C) general stores services and facilities which comply with \$510.123(h) [\$134.123(h)] of this subchapter [title];

(D) laboratory services and a laboratory suite which comply with \$510.41(e) [\$134.41(e)] of this <u>chapter</u> [title], and \$510.123(k) [\$134.123(k)] of this subchapter, [title] respectively;

(E) housekeeping rooms as required in  $\frac{510.122(d)(2)(A)(xxviii)}{[\$134.122(d)(2)(xxviii)]}$  of this subchapter [title];

(F) parking, in accordance with  $\frac{510.122(c)(2)}{134.122(c)(2)}$  of this subchapter [title];

(G) physical <u>therapy services and amenities</u>, [and/or] occupational therapy services and amenities, <u>or both in accordance</u> with \$510.123(p) [\$134.123(p)] of this <u>subchapter</u> [title];

(H) imaging services in accordance with  $\underline{\$510.123(j)}$ [ $\underline{\$134.123(j)}$ ] of this <u>subchapter</u> [title];

(I) central sterile supply which complies with  $\frac{510.123(c)}{[\frac{134.123(c)}{5}]}$  of this subchapter [title]; and

(J) waste and waste disposal services, and waste processing and storage units shall comply with  $\underline{\$510.41(0)}$  [ $\underline{\$134.41(0)}$ ] of this chapter [title].

(5) Building systems and equipment.

(A) The following systems shall be provided separately in each facility.

(*i*) Nurses calling systems shall be provided separately in each facility in accordance with  $\S510.122(d)(5)(K)$  of this subchapter [\$134.122(d)(5)(K)].

*(ii)* When medical gas systems are provided, medical gas alarms shall be provided in each facility.

(*iii*) A fire alarm system in accordance with  $\frac{510.122(d)(5)(M)}{510.122(d)(5)(M)}$  shall be provided.

(B) Where applicable, the following systems may serve more than one facility provided the systems meet the new construction requirements of  $\S510.122$  [\$134.122] of this subchapter [title]:

(i) air-conditioning, heating and ventilating sys-

(ii) drainage systems;

tems;

- (iii) elevators;
- (iv) fire sprinkler systems;
- (v) medical piping systems;
- (vi) stand pipe systems;
- (vii) steam systems;

(viii) water supply systems, hot and cold (including emergency water storage); and

(ix) electrical service and equipment.

(1) Where applicable, the building electrical service, lighting, essential electrical system, and fire alarm system, may be a part of or extension of those in the existing host facility, provided the existing systems meet these requirements. Power and lighting distribution panels shall be within the facility served and comply with the requirements of  $\S510.122(d)(5)(E)$  of this subchapter [\$134.122(d)(5)(E)]. Electrical installation details shall conform with all requirements contained in  $\S510.122(d)(5)(A)$  of this subchapter [\$134.(d)(5)(A)].

*(II)* When the existing essential electrical system is non-conforming, the following options are available:

(-a-) a separate conforming essential electrical system shall be provided in the new facility; or

(-b-) separate transfer switches connected to the existing on-site generator(s) shall be provided when adequate capacity is available and the existing non-conforming system shall be corrected. Corrections shall be made in accordance with a plan of correction approved by <u>HHSC</u> [the department].

(b) Facilities located in buildings with hospitals licensed under <u>Texas</u> Health and Safety Code [ $_{3}$ ] Chapter 241. Before a facility is licensed in a building containing a hospital licensed under <u>Texas</u> Health and Safety Code [ $_{3}$ ] Chapter 241 (241 hospital), the following requirements shall be met.

(1) The facility shall be in one identifiable location and shall be separated (vertically and horizontally) with two-hour fire rated noncombustible construction from the 241 hospital and comply with the requirements of this chapter.

(A) Access to the facility shall be directly from a main lobby or an elevator lobby, if on an upper floor. The required means of egress from the facility shall not be through the 241 hospital.

*(i)* Each facility and 241 hospital shall be identified with external signage at the building entrance.

*(ii)* Internal signage shall provide direction to the facility and to the 241 hospital.

(B) Common use of services and amenities using timesharing concepts may be permitted on a case by case basis when the 241 hospital complies with the requirements contained in NFPA 101 [ $_{5}$ ] Chapter 18, and §510.123 [§134.123] of this subchapter [title], and provided this chapter and the 241 hospital licensing rules allow.

(2) The facility and the 241 hospital shall provide services and amenities in accordance with their respective licensing requirements.

(3) Additional services and amenities when required in the facility or 241 hospital may be provided by contractual agreement with either entity. Shared services and amenities shall meet the most stringent entity licensing standard or rule. Some services may be provided by contractual agreement with a commercial contractor; however, the following minimal services and amenities shall be provided on-site:

(A) dietary services and dietary suite, including staff dining amenities;

(B) cart cleaning and sanitizing services;

- (C) general stores services;
- (D) laboratory services and a laboratory suite;
- (E) housekeeping rooms;
- (F) parking;
- (G) physical or occupational therapy services and amenities;
  - (H) imaging and other diagnostic services and ameni-
  - (I) respiratory care services and respiratory therapy

ties;

suite;

- (J) body holding room;
- (K) central sterile supply; and

 $(L) \quad \mbox{waste}$  and waste disposal services, and waste processing and storage units.

(4) The equipment and systems required in the facility or 241 hospital may be provided exclusively for the facility or by contrac-

tual agreement with a 241 hospital. Equipment and systems provided shall be in accordance with the most stringent entity standard or rule.

(A) The following equipment and systems shall be provided for the exclusive use of the facility:

- (*i*) a fire alarm system; and
- (ii) nurses calling systems.

(B) Where applicable, the following systems may serve more than one facility or 241 hospital:

(i) air-conditioning, heating, and ventilating sys-

tems;

- (ii) drainage systems;
- (iii) elevators;
- (iv) fire sprinkler systems.
- (v) medical piping systems;
- (vi) stand pipe systems;
- (vii) steam systems;

(viii) water supply systems, hot and cold (including emergency water storage); and

*(ix)* electrical service and equipment.

(1) Where applicable, the building electrical service, lighting, essential electrical system, and fire alarm system, may be a part of or extension of those in the existing 241 hospital, provided the existing systems meet these requirements. Power and lighting distribution panels shall be within the facility served and comply with the requirements of  $\S510.122(d)(5)(E)$  of this subchapter [\$134.122(d)(5)(E)]. Electrical installation details shall conform with all requirements contained in  $\S510.122(d)(5)(A)$  of this subchapter [\$134.122(d)(5)(A)].

*(II)* When the existing essential electrical system is [in] nonconforming, the following options are available:

(-a-) a separate conforming essential electrical system shall be provided in the new facility; or

(-b-) separate transfer switches connected to the existing on-site <u>generator</u> [generator(s)] shall be provided when adequate capacity is available and the existing nonconforming system shall be corrected. Corrections shall be made in accordance with a plan of correction approved by the department.

(c) Facilities located in buildings with other licensed health care entities.

(1) Before a facility is licensed in a building containing other licensed health care entities, the following requirements shall be met.

(A) The facility shall be in one identifiable location and shall be separated (vertically and horizontally) with two-hour fire rated noncombustible construction from the other licensed health care entity and comply with the requirements of this chapter.

(*i*) Access to the facility shall be directly from a main lobby or an elevator lobby, if on an upper floor. The required means of egress from the facility shall not be through the other licensed health care entity.

(*I*) Each facility and licensed entity shall be identified with external signage at the building entrance.

*(II)* Internal signage shall provide direction to the facility and to the licensed entity.

*(ii)* The facility shall have services and amenities separate from the other health care entity. The required services and amenities shall be located within the proposed facility.

(*iii*) Common use of services and amenities using time-sharing concepts may be permitted on a <u>case-by-case</u> [ease by ease] basis when the other health care entities comply with the requirements contained in NFPA 101 [ $_3$ ] Chapter 18, and §510.123 [§134.123] of this <u>subchapter</u> [title], and provided this chapter and the other health care entity licensing rules allow.

(B) The equipment and systems required in each facility may be provided exclusively for the facility or by contractual agreement with a licensed health care entity. The equipment and systems provided shall be in accordance with  $\S510.122$  [\$134.122] of this subchapter [title].

(*i*) The following equipment and systems shall be provided for the exclusive use of the facility:

(*I*) electrical service for power and lighting and the essential electrical system;

(II) emergency water storage located with the fa-

cility;

systems;

- (III) a fire alarm system; [and]
- (IV) air-conditioning, heating and ventilating
- (V) medical piping systems with alarm; and
- (VI) nurses calling systems.

*(ii)* Where applicable, the following systems may be a part or extension of those in the existing licensed health care entity, provided the existing systems meet the requirements of this chapter for new construction:

- (1) drainage systems;
- (II) elevators;
- *(III)* fire sprinkler systems.
- (IV) stand pipe systems; [and]
- (V) steam systems; and
- (VI) water supply systems, hot and cold.

(2) When a facility and other licensed health care entities share one building, the building systems and equipment may be shared in accordance with subsection (a)(5)(B) of this section  $[_{3}]$  or be provided separately. The shared systems and equipment shall meet the requirements of this subchapter and be under the control of the licensed health care entity.

(d) Facilities in buildings with <u>non-health</u> [non health] care occupancies. Before a facility is licensed in a building also containing occupancies other than health care occupancies, all requirements of this chapter and the following requirements shall be met.

(1) Construction. Construction of the building shall conform to the requirements of NFPA 101 [ $_{5}$ ] Chapter 18 [ $_{5}$ ] and the facility shall be in one identifiable location.

(A) The facility shall be in one identifiable location and shall be separated (vertically and horizontally) with two-hour fire rated noncombustible construction from the other <u>non-health [non health]</u> care occupancies and comply with the requirements of this chapter.

(B) Access to the facility shall be through a dedicated facility lobby or from the building's main lobby. The building's main

lobby shall be part of the facility and shall comply with the requirements of  $\S{510.122}$  [\$134.122] of this subchapter [title].

(C) The required means of egress from the facility shall be independent of and shall not traverse through the other occupancies.

(2) Services and amenities. Services and amenities shall be provided exclusively for the facility in accordance with <u>Subchapters</u> [subchapters] C, F, and G of this <u>chapter</u> [title] (relating to Operational Requirements, Fire Prevention and Safety Requirements, and Physical Plant and Construction Requirements, respectively). Required services and amenities shall not be shared with the other occupancies.

(3) Building equipment and amenities. The equipment and amenities shall be provided for the exclusive use of a facility in accordance with this subchapter.

#### §510.127. Preparation, Submittal, Review and Approval of Plans.

(a) General.

(1) Facility owners or operators may not begin construction of a new building or additions to or renovations or conversions of existing buildings until final construction documents are reviewed and approved by the <u>Texas Health and Human Services Commission</u> (HHSC) [department].

(2) Plans and specifications describing the construction of new buildings and additions to or renovations and conversions of existing buildings shall be prepared by registered architects, [and/or] licensed professional engineers, or both.

(3) Preliminary plans shall be prepared and submitted in accordance with subsection (b) of this section.

(4) Final plans and specifications shall be prepared and submitted in accordance with subsection (c) of this section.

(b) Preliminary documents. Preliminary documents shall consist of a functional program narrative, preliminary plans, and outline specifications. These documents shall contain sufficient information to establish the project scope, description of functions to be performed, project location, required fire safety and exiting requirements, building construction type, compartmentation showing fire and smoke barriers, bed count and services, and the usage of all spaces, areas, and rooms on every floor level.

(1) Preparation of preliminary plans. Preliminary plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. Preliminary plans shall provide the following information.

(A) Floor area and bed distribution. The total floor area on each level involved in construction, together with the proposed bed distribution, shall be shown on the drawings.

(B) Floor plan. Each floor plan shall indicate and identify all individual spaces, doors, windows and means of egress.

(C) Existing floor plan. An overall floor plan showing existing spaces, smoke partitions, smoke compartments, and exits and their relationship to the new construction shall be submitted on all renovations or additions to an existing facility. Plans for remodeling of spaces above or below the level of discharge shall include the level of discharge floor plan, showing all exits at that level. When there are two different levels of discharge, plans for both levels shall be submitted.

(D) Construction type and fire rating. Building sections shall be provided to illustrate construction type and fire protection rating. <u>Sections</u> [Section(s)] shall be drawn at a scale sufficiently large to clearly present the proposed construction system.

(E) Area map. A map of the area within a <u>two-mile</u> [two-mile] radius of the facility site shall be provided and any hazardous and undesirable location noted in <u>\$510.122(a)</u> [\$134.122(a)] of this <u>subchapter</u> [title] (relating to New Construction Requirements) shall be identified.

(F) Site plan. A site plan shall be submitted and shall indicate the location of the proposed <u>buildings</u> [building(s)] in relation to property lines, existing buildings or structures, access and approach roads, and parking areas and drives. Any overhead or underground utilities or service lines shall also be indicated.

(G) Outline specifications. Outline specifications shall provide a general description of the construction, materials, and finishes that are not shown on the drawings.

(2) Functional program narrative. The facility shall provide a functional program narrative presented on facility letterhead and signed by facility administration. The narrative program shall be submitted to <u>HHSC</u> [the department] at the preliminary plan (stage 1) review[ $_5$ ] and be approved by <u>HHSC</u> [the department]. The narrative shall include the functional description of each space and the following:

(A) departmental relationships, number of patient beds in each category, and other basic information relating to the fulfillment of the facility's objectives;

(B) a description of each function to be performed, approximate space needed for these functions, occupants of the various spaces, types of equipment required, interrelationship of various functions and spaces;

(C) energy conservation measures, included in building, mechanical<sub>2</sub> and electrical designs; and

(D) the type of construction (existing or proposed) as stated in Table 18-1.6.2 of National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101), published by the National Fire Protection Association. [All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.]

(3) Submission of preliminary plans. One set of preliminary plans, outline specifications covering the construction of new buildings or alterations, additions, conversions, modernizations, or renovations to existing buildings, a functional program narrative, a completed and signed Application for Plan Review, and the applicable plan review fee in accordance with <u>§510.26(c)</u> [<u>§134.26(c)</u>] of this <u>chapter</u> [title] (relating to Fees) shall be submitted to <u>HHSC</u> [the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756] for review and approval. For convenience, preliminary plans may be reduced for preliminary submittal. The cost of submitting plans and specifications shall be borne by the sender.

(4) Preliminary plan review. All deficiencies noted in the preliminary plan review shall be satisfactorily resolved. Written <u>HHSC</u> [department] approval of preliminary plans must be obtained prior to proceeding with final plans and specifications. This requirement also applies to fast-track projects.

(c) Construction documents. Construction documents or final plans and specifications shall be submitted to  $\underline{\text{HHSC}}$  [the department] for review and approval prior to start of construction. All final plans and specifications shall be appropriately sealed and signed by a registered architect and a professional engineer licensed by the State of Texas.

(1) Preparation of construction documents. Construction documents shall be well prepared so that clear and distinct prints may be obtained, shall be accurately and adequately dimensioned, and shall include all necessary explanatory notes, schedules, and legends and shall be adequate for contract purposes. Compliance with model building codes and this chapter shall be indicated. The type of construction, as classified by National Fire Protection Association 220, Standard on Types of Building Construction, 1999 edition, shall be provided for existing and new facilities. Final plans shall be drawn to a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. All rooms shall be identified by usage on all plans (architectural, fire safety, mechanical, electrical, etc.) submitted. Separate drawings shall be prepared for each of the following branches of work.

(A) Architectural plans. Architectural drawings shall include the following:

(*i*) site plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new buildings and structures, roadways, walks, and the extent of the areas to be landscaped. All structures which are to be removed under the construction contract and improvements shall be shown. A general description of the immediate area surrounding the site shall be provided, which includes a:  $[\frac{1}{2}]$ 

*(ii)* plan of each floor and roof to include fire and smoke separation, means of egress, and identification of all spaces;

(iii) schedules of doors, windows, and finishes;

- (iv) elevations of each facade;
- (v) sections through building; and
- (vi) scaled details as necessary.

(B) Fire safety plans. These drawings shall be provided for all newly constructed buildings, conversions of existing buildings for facilities, additions to existing licensed facilities, and remodeled portions of existing buildings containing licensed facilities. Fire safety plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-sixteenth inch equals one foot and shall include the following information:

(*i*) separate fire safety plans (preferably one floor plan per sheet) shall indicate location of fire protection rated walls and partitions, location and fire resistance rating of each fire damper, and the required means of egress (corridors, stairs, exits, exit passageways); [and]

(*I*) when a new building is to contain a proposed facility, when an existing building is converted to a facility, or when an addition is made to an existing facility building, plans of each floor and roof shall be provided; and

*(II)* when a portion of a building is remodeled or when a new service is added, only the plan of the floor where the remodeling will take place or new service will be introduced and the plan of the floor of discharge shall be provided;

*(ii)* designated smoke compartments with floor areas of each compartment, location and fire resistance rating (one or two hour) of each smoke partition, location, type and fire resistance rating of each smoke damper;

*(iii)* location of all required fire alarm devices, including all fire alarm control panels, manual pull stations, audible and visual fire alarm signaling devices, smoke detectors (ceiling and duct mounted), fire alarm annunciators, fire alarm transmission devices, fire sprinkler flow switches and control valve supervisory switches on each of the floor plans; and

*(iv)* areas protected with fire sprinkler systems (pendant, sidewall or upright, normal or quick response, and temperature rating shall be indicated), stand pipe system risers and sizes with valves and inside and outside fire department connections, fire sprinkler risers and sizes, location and type of portable fire extinguishers.

(C) Equipment drawings. Equipment drawings shall include the following:

(*i*) all equipment necessary for the operation of the facility as planned, and the [- The] design shall indicate provisions for the installation of large and special items of equipment and for service accessibility;

*(ii)* fixed equipment (equipment which is permanently affixed to the building or which must be permanently connected to a service distribution system designed and installed during construction for the specific use of the equipment), which [-. The term "fixed equipment"] includes items such as laundry extractors, walk-in refrigerators, communication systems, and built-in casework (cabinets);

*(iii)* movable equipment (equipment not described in clause (ii) of this subparagraph as fixed), which [- The term "moveable equipment"] includes wheeled equipment, plug-in type monitoring equipment, and relocatable items; and

*(iv)* equipment which is not included in the construction contract but which requires mechanical or electrical service connections or construction modifications, and this [-. The equipment described in this elause] shall be identified on the drawings to ensure its coordination with the architectural, mechanical, and electrical phases of construction.

(D) Structural drawings. Structural drawings shall include:

(i) plans for foundations, floors, roofs, and all intermediate levels;

*(ii)* a complete design with sizes, sections, and the relative location of the various members;

(iii) a schedule of beams, girders, and columns;

(iv) dimensioned floor levels, column centers, and

offsets;

(v) details of all special connections, assemblies, and expansion joints; and

*(vi)* special openings and pipe sleeves dimensioned or otherwise noted for easy reference.

(E) Mechanical drawings. Documentation for selection of the type of heating and cooling system based on requirements contained in \$510.122(d)(3)(A) [\$134.122(d)(3)(A)] of this subchapter [title] shall be included with the mechanical plans. Mechanical drawings shall include:

*(i)* complete ventilation systems (supply, return, exhaust), all fire and smoke partitions, locations of all dampers, registers, and grilles, air volume flow at each device, and identification of all spaces (e.g. corridor, patient room, operating room);

*(ii)* boilers, chillers, heating and cooling piping systems (steam piping, hot water, chilled water), and associated pumps;

*(iii)* cold and warm water supply systems, water heaters, storage tanks, circulating pumps, plumbing fixtures, emer-

gency water storage tank(s) (if provided), and special piping systems such as for deionized water;

*(iv)* non-flammable medical gas piping (oxygen, compressed medical air, vacuum systems, nitrous oxide), emergency shut-off valves, pressure gages, alarm modules, gas outlets;

(v) drain piping systems (waste and soiled piping systems, laboratory drain systems, roof drain systems);

(vi) fire protection piping systems (sprinkler piping systems, fire standpipe systems, water or chemical extinguisher piping system for cooking equipment);

(vii) piping riser diagrams, equipment schedules, control diagrams or narrative description of controls, filters, and location of all duct mounted smoke detectors; and

(viii) laboratory exhaust and safety cabinets.

(F) Electrical drawings. Electrical drawings shall include:

*(i)* electrical service entrance with service switches, service feeders to the public service feeders, and characteristics of the light and power current including transformers and their connections;

*(ii)* location of all normal electrical system and essential electrical system conduits, wiring, receptacles, light fixtures, switches and equipment which require permanent electrical connections, on plans of each building level:

(*I*) light fixtures marked distinctly to indicate connection to critical or life safety branch circuits or to normal lighting circuits; and

*(II)* outlets marked distinctly to indicate connection to critical, life safety or normal power circuits; [-]

*(iii)* telephone and communication, fixed computers, terminals, connections, outlets, and equipment;

*(iv)* nurses calling system showing all stations, signals, and annunciators on the plans;

(v) in addition to electrical plans, single line diagrams prepared for:

(1) complete electrical system consisting of the normal electrical system and the essential electrical system including the on-site generators [generator(s)], transfer switches [switch(es)], emergency system (life safety branch and critical branch), equipment system, panels, subpanels, transformers, conduit, wire sizes, main switchboard, power panels, light panels, and equipment for additions to existing buildings, proposed new facilities, and remodeled portions of existing facilities, and feeder [ $_{-}$  Feeder] and conduit sizes shall be shown with schedule of feeder breakers or switches;

*(II)* complete nurses calling system with all stations, signals, annunciators, etc. with room number noted by each device and indicating the type of system (nurses regular calling system, nurses emergency calling system, or staff emergency assistance calling system); and

*(III)* a single line diagram of the complete fire alarm system showing all control panels, signaling and detection devices and the room number where each device is located; and

*(vi)* schedules of all panels indicating connection to life safety branch, critical branch, equipment system or normal system, and connected load at each panel.

(2) Final plan review. All deficiencies noted in the final plan review shall be satisfactorily resolved before approval of project for construction will be granted.

(3) Construction approval. Construction shall not begin until written approval by  $\underline{\text{HHSC}}$  [the department] is received by the owner of the facility.

(4) Construction document changes. Any changes to construction documents which affect or change the function, design, or designated use of an area shall be submitted to <u>HHSC</u> [the department] for approval prior to authorization of the modifications.

(d) Special submittals.

(1) Designer certified construction documents. In an effort to shorten the plan review and approval process, design professionals may submit, at the discretion of <u>HHSC</u> [the department], a set of final construction documents, <u>HHSC's</u> [the department's] completed check-list of licensing requirements and a certification letter which states that the plans and specifications, based on <u>HHSC's</u> [the department's] checklist comply with the requirements of this chapter. Project certification forms shall be signed by the licensee or applicant and <u>all</u> [the] architects [architect(s)] and engineers [engineer(s)] of record.

(2) Fast-track projects. Submittal of fast-track projects shall be at the discretion of <u>HHSC</u> [the department] and shall be submitted in not more than three separate packages.

(A) First package. The first package shall include:

(*i*) a map showing the location of the proposed facility site and adjacent surrounding area at least two miles in radius identifying any hazardous and undesirable location noted in \$510.122(a) [\$134.122(a)] of this subchapter [title];

*(ii)* preliminary architectural plans and a detailed building site plan showing all adjacent streets, site work, underslab mechanical, electrical, and plumbing work, and related specifications; and

(iii) foundation and structural plans.

(B) Second package. The second package shall include complete architectural plans and details with specifications and fire safety plans as described in subsection (c) of this section.

(C) Third package. The third package shall include complete mechanical, electrical, equipment and furnishings, and plumbing plans and specifications, as described in subsection (c) of this section.

(3) Fire sprinkler systems. Fire sprinkler systems shall comply with the requirements of National Fire Protection Association 13, Standard for the Installation of Sprinkler systems, 1999 edition (NFPA 13). Fire sprinkler systems shall be designed or reviewed by an engineer who is registered by the Texas [State] Board of [Registration for] Professional Engineers in fire protection specialty or is experienced in hydraulic design and fire sprinkler system installation. A short resume shall be submitted if registration is not in fire protection specialty.

(A) Fire sprinkler working plans, complete hydraulic calculations and water supply information shall be prepared in accordance with NFPA 13  $[_{5}]$  §§8-1, 8-2 and 8-3, for new fire sprinkler systems, alterations of and additions to existing ones.

(B) Certification of changes in an existing system is not required when relocation of not more than twenty sprinkler heads is involved.

(C) One set of fire sprinkler working plans (sealed by the engineer), calculations and water supply information shall be forwarded to <u>HHSC</u> [the department] together with the engineer's certification letter stating that the sprinkler system design complies with the requirements of NFPA 13. Certification of the fire sprinkler system shall be submitted prior to system installation.

(D) Upon completion of the fire sprinkler system installation and any required corrections, written certification by the engineer, stating that the fire sprinkler system is installed in accordance with NFPA 13 requirements, shall be submitted prior to or with the written request for the final construction inspection of the project.

(e) Resubmittal of construction documents. When construction is delayed for longer than one year from the plan approval date, construction documents shall be resubmitted to <u>HHSC [the department]</u> for review and approval. The plans shall be accompanied by a new Application for Plan Review and a plan review fee.

(f) Project delay or cancellation. The licensee or owner shall provide written notification to <u>HHSC</u> [the department] when a project has been placed on hold, canceled or abandoned.

(g) On-hold projects. <u>HHSC</u> [The department] may close a project file after one year of its receipt of an Application for Plan Review for projects that have been placed on hold.

§510.128. Construction, Surveys, and Approval of Project.(a) Construction.

(1) Major construction. Construction, of other than minor alterations, shall not commence until the final plan review deficiencies have been satisfactorily resolved, the appropriate plan review fee according to the plan review schedule in <u>§510.26</u>[§134.26] of this <u>chapter</u> [title] (relating to Fees) has been paid, and the <u>Texas Health and Human</u> <u>Services Commission (HHSC)</u> [department] has issued a letter granting approval to begin construction. Such authorization does not constitute release from the requirements contained in this chapter. If the construction takes place in or near occupied areas, adequate provision shall be made for the safety and comfort of occupants.

(2) Construction commencement notification. The architect of record or the licensee or applicant shall provide written notification to  $\underline{HHSC}$  [the department] when construction will commence.  $\underline{HHSC}$  [The department] shall be notified in writing of any change in the completion schedules.

(3) Completion. Construction shall be completed in compliance with the construction documents including all addenda or modifications approved for the project.

(b) Construction surveys. All facilities including those which maintain certification under Title XVIII of the Social Security Act (42 United States Code  $[_7]$  §1395 et seq.),  $[seq]_7$ ] and those which maintain accreditation by the Joint Commission [on Accreditation of Healthcare Organizations (JCAHO)], or by the American Osteopathic Association (AOA) are subject to construction surveys.

(1) Number of construction surveys. A minimum of two construction surveys of the project is generally required for the purpose of verifying compliance with <u>Subchapters</u> [subchapters] F and G of this chapter and the approved plans and specifications. The final plan approval letter will inform the architect of record and the owner as to the minimum number of surveys required for the project.

(2) Requesting a survey. The architect of record or the licensee shall request a survey by submitting an Application for Survey and the construction survey fee in accordance with  $\frac{510.26(d)}{[\$134.26(d)]}$  of this chapter [title] for each intermediate survey, final

survey, and resurvey requested. Survey requests by contractors will not be honored.

(A) The architect of record or the licensee shall request an intermediate construction survey to occur at approximately 80% completion. All major work above the ceiling shall be completed at the time of the intermediate survey, however ceilings should not be installed.

(B) The architect of record or the licensee shall request a final construction survey at 100 percent [%]completion. One-hundred percent completion means that the project is completed to the extent that all equipment is operating in accordance with specifications, all necessary furnishings are in place, and patients could be admitted and treated in all areas of the project.

(3) Resurveys. Depending upon the number and nature of the deficiencies cited during the final inspection, the surveyor may require that a resurvey be conducted to confirm correction of all deficiencies cited. The request for resurvey shall be submitted in accordance with paragraph (2) of this subsection.

(c) Approval of project. Patients shall not occupy a new structure or remodeled or renovated space until approval has been received from the local building and fire authorities and <u>HHSC</u> [the department].

(1) Documentation requirements. The licensee shall submit the following documents to <u>HHSC</u> [the department] before the project will be approved:

(A) written approval of the project by the fire authority;

(B) a certificate of occupancy for the project issued by the local building authority;

(C) written certification by the engineer, stating that the fire sprinkler system is installed in accordance with the requirements of NFPA 13, Standard for the Installation of Sprinkler Systems, 1999 edition, if applicable;

(D) fire alarm system certification (form FML-009 040392 of the Office of the State Fire Marshal), if applicable;

(E) a copy of a letter from a qualified certification agency for the piped-in medical gas system installed in the project, if applicable; [:]

(F) a written plan of correction signed by the licensee for any deficiencies noted during the final inspection;

(G) a copy of a letter from a registered electrical engineer stating the electrical system was tested and complies with the standards of NFPA 99, Health Care Facilities, 1999 edition, §3-3.2.1.2(e) (Special Grounding) and §3-3.3.2.1 (Grounding System Testing), if applicable to the project;

(H) a copy of documentation indicating the flame spread rating and the smoke development rating of any wall covering installed in this project, including [- Provide] a signed letter or statement corroborating the installation of the product in the project;

(I) a copy of documentation indicating that draperies, curtains (including cubicle curtains), and other similar loosely hanging furnishings and decorations are flame resistant as demonstrated by passing both the small and large-scale tests of NFPA 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films, 1999 edition as required by NFPA 101 [ $_{7}$ ] §18-7.5, and provide a signed letter or statement corroborating the installation of the product in the project;

 $\left( J\right) \;$  a Final Construction Approval form signed by the licensee; and

(K) any other documentation or information required due to the type of the project.

(2) Verbal occupancy approval.

(A) If, during the final survey, the surveyor finds only a few minor deficiencies that do not jeopardize patient health, safety and welfare, the surveyor may grant verbal approval for occupancy contingent upon the documents listed in paragraph (1)(A)-(E) of this subsection being provided to and approved by the surveyor at the time of the final survey.

(B) Verbal occupancy approval allows the licensee to occupy the project. However, the licensee must submit the documents required in paragraph (1)(F)-(K) before the project receives final approval.

(3) Final approval. Upon its receipt and acceptance of the documents required in paragraph (1) of this subsection, <u>HHSC</u> [the department] will issue final approval of the project.

§510.129. Waiver Requests.

and

(a) Request for a waiver. A facility may submit a written request to the <u>Texas</u> [Hospital Licensing Director,] Health [Facility Licensing] and <u>Human Services Commission (HHSC)</u> [Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756] for a waiver or modification of a particular provision of §510.122 [§134.122] or §510.123 [§134.123] of this subchapter [title] (relating to New Construction Requirements and Spatial Requirements for New Construction). Waivers will not be granted for fire safety requirements required by the National Fire Protection Association (NFPA). The written request shall specify the specific provision for which a waiver is requested.

(b) Consideration. In considering the waiver or modification request,  $\underline{\text{HHSC}}$  [the Hospital Licensing Director (HL director)] shall consider whether the waiver or modification:

(1) will adversely affect the health and safety of the facility patients, employees, or the general public;

(2) will adversely impact the hospital's participation in the federal Medicare program or accreditation by the Joint Commission [on Accreditation of Healthcare Organizations] or the American Osteopathic Association;

(3) if not granted, would impose an unreasonable hardship on the facility in providing adequate care for patients;

(4) will facilitate the creation or operation of the facility;

(5) is appropriate when balanced against the best interests of the individuals served or to be served by the facility.

(c) Supporting documentation. <u>HHSC</u> [The HL director] may request written documentation from the facility to support the waiver or modification, including[, but not limited to]:

(1) a statement addressing each of the criteria in subsection (b) of this section;

(2) evidence of approval by the local building and fire authorities;

(3) evidence of provisions in <u>Texas Health and Safety Code</u> <u>Chapter 577</u> [the Act] or this chapter which will mitigate any adverse effect of the waiver or modification; and

(4) evidence of any mitigating act in excess of the Act or this chapter which will be used by the hospital to offset any adverse effect of the waiver or modification. (d) Written recommendation. <u>HHSC</u> [The HL director] shall submit <u>a</u> [his] written recommendation for granting or denying the waiver to the <u>executive</u> commissioner [of health (commissioner). The <u>HL director's</u>]. The recommendation shall address each of the criteria in subsection (b) of this section.

(c) Granting order. If <u>HHSC</u> [the HL director] recommends that the waiver or modification be granted, the <u>executive</u> commissioner may issue a written order granting the waiver or modification.

(f) Denial of order. If <u>HHSC</u> [the HL director] recommends that the waiver or modification be denied, the <u>executive</u> commissioner may issue a written order denying the waiver or modification.

(g) File documentation. The licensing file for the facility maintained by  $\underline{\text{HHSC}}$  [the Texas Department of Health] shall contain a copy of the request, the documents requested in subsection (c) of this section (if applicable),  $\underline{\text{HHSC's}}$  [the] written recommendation [of the HL director], and the order.

§510.131. Tables.

(a) Table 1. Sound transmission limitations in facilities. Figure: 26 TAC §510.131(a)

[Figure: 25 TAC §134.131(a)]

(b) Table 2. Flame spread and smoke production limitations for interior finishes.

Figure: 26 TAC §510.131(b)

[Figure: 25 TAC §134.131(b)]

(c) Table 3. Ventilation requirements for facilities.
Figure: 26 TAC §510.131(c)
[Figure: 25 TAC §134.131(c)]

(d) Table 4. Filter efficiencies for central ventilation and air conditioning systems.

Figure: 26 TAC §510.131(d) [Figure: 25 TAC §134.131(d)]

(e) Table 5. Hot water use. Figure: 26 TAC §510.131(e) [Figure: 25 TAC §134.131(e)]

(f) Table 6. Station outlets for oxygen, vacuum, and medical air systems.

Figure: 26 TAC §510.131(f) [Figure: 25 TAC §134.131(f)]

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 29, 2024.

TRD-202401856 Karen Ray Chief Counsel Health and Human Services Commission Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591

## SUBCHAPTER E. ENFORCEMENT

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §§510.81, concerning Survey and Investigation Procedures; 510.82, concerning Complaint Against a Texas Department of Health Representative; and 510.83, concerning Enforcement; and new §§510.81, concerning Integrity of Inspections and Investigations; 510.82, concerning Inspections; 510.83, concerning Complaint Investigations; 510.84, concerning Notice; 510.85, concerning Professional Conduct; 510.86, concerning Complaint Against an HHSC Representative; and 510.87, concerning Enforcement.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 49, 88th Legislature, Regular Session, 2023. H.B. 49 amended Texas Health and Safety Code (HSC) §577.013 to make certain information related to facility investigations subject to disclosure and create a requirement for HHSC to post certain information related to hospital investigations on the HHSC website.

The proposal is also necessary to update the inspection, complaint investigation, and enforcement procedures for private psychiatric hospitals and crisis stabilization units (PPHCSUs). These updates are necessary to hold PPHCSUs accountable during the inspection and investigation processes and ensure PPHCSUs provide necessary documentation in a timely manner to HHSC representatives. The proposal revises enforcement procedures to ensure accuracy with current practices and conform to statute. These updates also ensure consistent practices across HHSC Health Care Regulation rulesets and correct outdated language and contact information, and reflect the transition of regulatory authority for PPHCSUs from the Department of State Health Services to HHSC.

A previous version of these repeals and new sections was proposed by HHSC in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4122) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous informal and public comment periods.

## SECTION-BY-SECTION SUMMARY

The proposed repeal of \$510.81, Survey and Investigation Procedures, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new \$\$510.82 - 510.84.

Proposed new §510.81, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

The proposed repeal of §510.82, Complaint Against a Texas Department of Health Representative, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §510.86.

Proposed new §510.82, Inspections, implements HSC §577.013 and makes necessary updates to PPHCSU inspection requirements.

The proposed repeal of §510.83, Enforcement, deletes the rule as it is as no longer necessary. The content of the rule has been added to proposed new §510.87.

Proposed new §510.83, Complaint Investigations, implements HSC §577.013 and makes necessary updates to PPHCSU complaint investigation requirements.

Proposed new §510.84, Notice, informs facilities of the required timeframes regarding responding to a written Statement of Deficiencies by returning a written Plan of Correction, together with any additional evidence of compliance.

Proposed new §510.85, Professional Conduct, informs providers that HHSC reports to the appropriate licensing author-

ities any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

Proposed new §510.86, Complaint Against an HHSC Representative, informs a facility about registering a complaint against an HHSC inspector or investigator.

Proposed new §510.87, Enforcement, creates consistency between this ruleset for PPHCSUs and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to this section to reflect current practices and conform with statute.

#### 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.

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create a new regulation;

(6) the proposed rules will expand and repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COM-MUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

## LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and because they 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 benefit will be greater clarity, consistency, and accountability in the inspection and investigation of PPHCSUs. The public and the patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

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 impose any additional costs or fees on persons required 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 COMMENT

Written comments on the proposal may be submitted to the 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 22R101" in the subject line.

## 26 TAC §§510.81 - 510.83

## STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 571 through 578.

§510.81. Survey and Investigation Procedures.

*§510.82.* Complaint Against a Texas Department of Health Representative.

§510.83. Enforcement.

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

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

TRD-202401867

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 9, 2024

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

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## 26 TAC §§510.81 - 510.87

## STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 571 through 578.

#### §510.81. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, a facility:

(1) may not record, listen to, or eavesdrop on any HHSC interview with facility staff or patients that the facility staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; and

(2) may not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of facility staff when HHSC has requested a private room or office or distanced themselves from facility staff and the facility obtains HHSC's written approval before beginning to record or listen to the discussion.

(b) A facility shall inform HHSC when security cameras or other existing recording devices in the facility are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits facility staff to be present, an interview or conversation for which facility staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

§510.82. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an inspection of a facility prior to the issuance or renewal of a license.

(1) A hospital is not subject to additional annual licensing inspections subsequent to the issuance of the initial license while the hospital maintains:

(A) certification under Title XVIII of the Social Security Act, 42 United States Code (USC) §1395 et seq.; or

(B) accreditation from The Joint Commission, the American Osteopathic Association, or other national accreditation organization for the offered services.

(2) HHSC may conduct an inspection of a hospital exempt from an annual licensing inspection under paragraph (1) of this subsection before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and HHSC determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days of the license expiration date.

(b) HHSC may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of: (1) any applicable statute or rule;

(2) a facility's plan of correction;

(3) an order or special order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(c) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(d) HHSC inspections to evaluate a facility's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(e) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility, unless prohibited by law.

(f) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(g) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(h) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the facility representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection, including any possible health and safety concerns. The facility may provide any final documentation regarding compliance during the exit conference.

(k) HHSC shall maintain the confidentiality of facility records as applicable under state or federal law. Except as provided by subsection (l) of this section, all information and materials in the possession of or obtained or compiled by HHSC in connection with an inspection are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with HHSC in the enforcement action against the facility;

(2) the facility that is the subject of the enforcement action, or the facility's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental health facility services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the facility has been deleted.

(1) The following information is subject to disclosure in accordance with Texas Government Code Chapter 552, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the facility's alleged violation, which must include the provisions of law the facility is alleged to have violated, and a general statement of the nature of the alleged violation;

(2) the number of investigations HHSC conducted of the facility;

(3) the pleadings in any administrative proceeding to impose a penalty against the facility for the alleged violation;

 $\underbrace{(4) \quad \text{the outcome of each investigation HHSC conducted of}}_{\text{the facility, including:}}$ 

(A) reprimand issuance;

(B) license denial or revocation;

(C) corrective action plan adoption; or

(D) administrative penalty imposition and the penalty amount;

 $\frac{(5) \quad a \text{ final decision, investigative report, or order issued by}}{\text{HHSC to } \text{ address the alleged violation; and}}$ 

(6) any other information required by law to be disclosed under public information request laws.

(m) Within 90 days after the date HHSC issues a final decision, investigative report, or order to address a facility's alleged violation, HHSC posts certain information on the HHSC website in accordance with Texas Health and Safety Code §577.013.

§510.83. Complaint Investigations.

(a) A facility shall provide each patient and applicable legally authorized representative at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this statement in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served. (b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints directed to HHSC CII based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC conducts investigations to evaluate a facility's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients. Complaint investigations may be coordinated with the federal Centers for Medicare & Medicaid Services and its agents responsible for the inspection of hospitals to determine compliance with the Conditions of Participation under Title XVIII of the Social Security Act, (42 USC, §1395 et seq.), so as to avoid duplicate investigations.

(c) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect or investigate:

 $\underbrace{(1) \quad a \ facility's \ compliance \ with \ any \ applicable \ statute \ or \ \underline{rule;}}$ 

(2) a facility's plan of correction;

(3) a facility's compliance with an order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a facility's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility, unless prohibited by law.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(i) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, the HHSC representative holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) The HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the investigation. The facility may provide any final documentation regarding compliance during the exit conference. (1) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

(m) HHSC shall maintain the confidentiality of facility records as applicable under state or federal law. Except as provided by (n) of this subsection, all information and materials in the possession of or obtained or compiled by HHSC in connection with an investigation are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with HHSC in the enforcement action against the facility;

(2) the facility that is the subject of the enforcement action, or the facility's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental health facility services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the facility has been deleted.

(n) The following information is subject to disclosure in accordance with Texas Government Code Chapter 552, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the facility's alleged violation, which must include the provisions of law the facility is alleged to have violated, and a general statement of the nature of the alleged violation;

(2) the number of investigations HHSC has conducted of the facility;

(3) the pleadings in any administrative proceeding to impose a penalty against the facility for the alleged violation;

(4) the outcome of each investigation HHSC conducted of the facility, including:

(A) reprimand issuance;

(B) license denial or revocation;

(C) corrective action plan adoption; or

(D) administrative penalty imposition and the penalty amount;

(5) a final decision investigative report, or order issued by HHSC to address the alleged violation; and

(6) any other information required by law to be disclosed under public information request laws.

(o) Within 90 days after the date HHSC issues a final decision, investigative report, or order to address a facility's alleged violation, HHSC posts certain information on the HHSC website in accordance with Texas Health and Safety Code §577.013.

#### §510.84. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the facility's receipt of the SOD, the facility shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If HHSC does not accept the POC, HHSC notifies the facility in writing and requests the facility submit a modified POC and any additional evidence of compliance no later than 10 business days after HHSC notifies the facility in writing.

(C) The facility shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of a facility's compliance with this subsection or HHSC's acceptance of a facility's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

#### §510.85. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

*§510.86. Complaint Against an HHSC Representative.* 

A facility may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

#### §510.87. Enforcement.

Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, and orders.

(1) Denial, suspension or revocation of a license or imposition of an administrative penalty. HHSC has jurisdiction to enforce violations of Texas Health and Safety Code (HSC) Chapters 571 through 578 or the rules adopted under these chapters. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(A) failure to comply with any applicable provision of the HSC, including Chapters 571 through 578;

(B) failure to comply with any provision of this chapter or any other applicable laws;

(C) the facility, or any of its employees, committing an act which causes actual harm or risk of harm to the health or safety of a patient;

(D) the facility, or any of its employees, materially altering any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide a complete license application;

(G) failure to comply with an order of the executive commissioner or another enforcement procedure under HSC Chapters 571 through 578;

(H) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(I) the facility aiding, committing, abetting, or permitting the commission of an illegal act;

(J) the facility, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapters 571 through 578 and the provisions of this chapter;

(K) failure to timely pay an assessed administrative penalty as required by HHSC;

(L) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(M) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction;

 $\underline{(N)}$  failure to comply with applicable requirements within a designated probation period; or

(O) the hospital terminating the facility's Medicare provider agreement if the facility is certified under Title XVIII of the Social Security Act, 42 United States Code (USC), §1395 et seq.

(2) Denial of a license. HHSC has jurisdiction to enforce violations of HSC Chapters 571 through 578 or the rules adopted under this chapter. HHSC may deny a license if the applicant:

(A) fails to provide timely and sufficient information required by HHSC that is directly related to the license application; or

(B) has had the following actions taken against the applicant within the two-year period preceding the license application:

(*i*) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

*(ii)* federal Medicare or state Medicaid sanctions or penalties;

(iii) unsatisfied federal or state tax liens;

*(iv)* unsatisfied final judgments;

(v) eviction involving any property or space used as <u>a hospital in any state;</u>

<u>(vi)</u> unresolved federal Medicare or state Medicaid audit exceptions;

(vii) denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(viii) a court injunction prohibiting ownership or operation of a facility.

(3) Order for immediate license suspension. HHSC may suspend a license for 10 days pending a hearing if after an investigation HHSC finds that there is an immediate threat to the health or safety of the patients or employees of a licensed facility. HHSC may issue necessary orders for the patients' welfare.

(4) Probation. In lieu of denying, suspending, or revoking a license, HHSC may place a facility on probation for a period of not less than 30 days, if HHSC finds that the facility is in repeated noncompliance with this chapter or HSC Chapters 571 through 578 and the facility's noncompliance does not endanger the public's health and safety. (A) HHSC shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins.

(B) During the probation period, the facility shall correct the items of noncompliance and report the corrections to HHSC for approval.

(5) Administrative penalty. HHSC has jurisdiction to impose an administrative penalty against a person licensed or regulated under this chapter for violations of applicable chapters of the HSC or this chapter. The imposition of an administrative penalty shall be in accordance with the provisions of HSC §571.025.

(6) Licensure of persons or entities with criminal backgrounds. HHSC may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility. HHSC shall apply the requirements of Texas Occupations Code Chapter 53.

(A) HHSC is entitled under Texas Government Code Chapter 411 to obtain criminal history information maintained by the Texas Department of Public Safety, the Federal Bureau of Investigation, or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(B) In determining whether a criminal conviction directly relates, HHSC shall apply the requirements and consider the provisions of Texas Occupations Code Chapter 53 (relating to Consequences of Criminal Conviction).

(C) The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of a health care facility because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a facility:

(i) a misdemeanor violation of HSC Chapter 571;

(ii) a misdemeanor or felony involving moral turpi-

tude;

*(iii)* a misdemeanor or felony relating to deceptive business practices;

*(iv)* a misdemeanor or felony of practicing any health-related profession without a required license;

(v) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(vi) a misdemeanor or felony under Texas Penal Code (TPC), Title 5, involving a patient or a client of any health care facility, a home and community support services agency, or a health care professional; or

(vii) a misdemeanor or felony under TPC:

<u>(1)</u> Title 4;
(II) Title 5;
(III) Title 7;
(IV) Title 8;
<u>(V)</u> Title 9;
(VI) Title 10; or
(VII) Title 11.

(7) Offenses listed in paragraph (6)(C) of this section are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions that indicate an inability or tendency for the person or entity to be unable to own or operate a facility.

(8) HHSC shall revoke a license on the license's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(9) Notice. If HHSC proposes to deny, suspend, or revoke a license, or impose an administrative penalty, HHSC shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before taking the action.

(10) Acceptance. Within 20 calendar days after receipt of the notice described in paragraph (9) of this section, the applicant or licensee shall notify HHSC, in writing, of acceptance of HHSC's determination or request a hearing.

#### (11) Hearing request.

(A) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC within 20 calendar days after receipt of the notice described in paragraph (9) of this section. Receipt of the notice is presumed to occur on the third day after the date HHSC mails the notice to the last known address of the applicant or licensee.

(B) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001, and Texas Administrative Code Title 1 Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(12) No response to notice. If an applicant or licensee does not request a hearing in writing within 20 calendar days after receiving notice of the proposed action, the applicant or licensee is deemed to have waived the opportunity for a hearing and HHSC takes the proposed action.

(13) Notification of HHSC's final decision. HHSC shall send the licensee or applicant a copy of HHSC's decision for denial, suspension or revocation of license or imposition of an administrative penalty by certified mail, which shall include the findings of fact and conclusions of law on which HHSC based its decision.

(14) Admission of new patients upon suspension or revocation. Upon HHSC's determination to suspend or revoke a license, the license holder may not admit new patients until the license is reissued.

(15) Decision to suspend or revoke. When HHSC's decision to suspend or revoke a license is final, the licensee must immediately cease operation, unless a stay of such action is issued by the district court.

(16) Return of original license. Upon suspension, revocation or non-renewal of the license, the original license shall be returned to HHSC within 30 calendar days of HHSC's notification.

(17) Reapplication following denial or revocation.

(A) One year after HHSC's decision to deny or revoke, or the voluntary surrender of a license by a facility while enforcement action is pending, a facility may petition HHSC, in writing, for a license. Expiration of a license prior to HHSC's decision becoming final shall not affect the one-year waiting period required before a petition can be submitted.

(B) HHSC may allow a reapplication for licensure if there is proof that the reasons for the original action no longer exist.

(C) HHSC may deny reapplication for licensure if HHSC determines that:

(i) the reasons for the original action continues;

(*ii*) the petitioner has failed to offer sufficient proof that conditions have changed; or

*(iii)* the petitioner has demonstrated a repeated history of failure to provide patients a safe environment or has violated patient rights.

(D) If HHSC allows a reapplication for licensure, the petitioner shall be required to meet the requirements as described in §510.22 of this chapter (relating to Application and Issuance of Initial License).

(18) Expiration of a license during suspension. A facility whose license expires during a suspension period may not reapply for license renewal until the end of the suspension period.

(19) Surrender of a license. In the event that enforcement, as defined in this subsection, is pending or reasonably imminent, the surrender of a facility license shall not deprive HHSC of jurisdiction in regard to enforcement against the facility.

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

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

TRD-202401882 Karen Ray Chief Counsel Health and Human Services Commission Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 834-4591

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

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# PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 155. REPORTS AND INFORMATION GATHERING SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

## 37 TAC §155.23

The Texas Board of Criminal Justice (board) proposes amendments to §155.23, concerning Site Selection Process for the Location of Additional Facilities. The proposed amendments revise offender to inmate throughout; remove references to transfer facilities and the Prison Management Act; and reorganize language for clarity.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to reflect current practices and enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *ogccomments@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §496.007, which requires the board to evaluate the advantages and disadvantages of a proposed location before determination.

#### Cross Reference to Statutes: None.

*§155.23.* Site Selection Process for the Location of Additional Facilities.

(a) Purpose. This rule establishes procedures for determining the location of new Texas Department of Criminal Justice (TDCJ) facilities in a manner that is fair and open, cost-effective for construction and operations, and sensitive to the ultimate mission of the facilities sited. Determining the location of a new facility designed to house inmates [offenders] is a multi-factor process that assesses cost-effectiveness, logistical support requirements, operational concerns, and legal mandates.

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

(1) Facility is a substantially self-contained, permanently constructed correctional facility for housing <u>inmates</u> [offenders]. This includes prison units, state jails, [transfer facilities,] and substance abuse felony punishment (SAFP) facilities, but does not include community corrections facilities, as defined by Texas Government Code §509.001, or parole facilities defined in Texas Government Code §508.118, 508.119, or 508.320.

(2) Prison unit includes a private prison under Texas Government Code Chapter 495, Subchapter A (Contracts with Private Vendors and Commissioners Courts), a psychiatric unit, and a unit whose capacity is determined by Texas Government Code Chapter 499, <u>Subchapter</u> [Subchapters B (Population Management) and] E (Unit and System Capacity).

(3) SAFP facility is a substance abuse felony punishment facility authorized by Texas Government Code §493.009.

(4) State jail is a state jail felony facility authorized by Texas Government Code Chapter 507.

[(5) Transfer facility is a facility authorized by Texas Government Code Chapter 499, Subchapter G (Transfer Facilities).]

(c) Procedures.

(1) The Legislative Budget Board is responsible for projecting the demand for prison unit, state jail, and SAFP facility[ $_{5}$  and transfer facility] beds. Based on these projections, a plan shall be developed by TDCJ staff and adopted by the Texas Board of Criminal Justice (TBCJ) that details how any additional bed needs shall be met. This plan shall be presented to the legislature with a request for appropriations. The plan shall include any recommendations for re-designation and renovation of existing facilities. With respect to new facilities requiring the selection of a site, the plan adopted by the TBCJ shall include:

(A) Recommendations for specific types of facilities needed by the TDCJ, the approximate size of each facility, and <u>any</u> [the] regional distribution <u>planned</u> by facility type;

(B) A description of each facility's mission; and

(C) A description of the type of <u>inmates</u> [offenders] to be housed in each facility and the programming requirements for that population. [ $\frac{1}{2}$  and]

[(D) Any recommendations for re-designation and renovation of existing facilities.]

(2) Site selections shall be made in accordance with and through a Request for Proposals (RFP) process, unless the TBCJ determines that land currently owned by the state shall be used as the site for the location of additional facilities, in which case an [a] RFP process shall not be required. The RFP shall be based on the array of facilities authorized by the legislature. For each round of site selections, the RFP shall specify:

(A) Types of facilities needed;

(B) Minimum acreage and site characteristics required for each facility type;

(C) Requirements for geotechnical information based on drilling matrix and site preparation requirements;

(D) Requirements for verified documentation of the absence of any environmental problems and historical preservation conditions;

(E) Requirements for supporting information such as easement, utility, and topographical maps;

(F) Requirements for description of land values, transferability of mineral rights, surface leases, easements, title report, warranty deed, aerial photographs, and other issues affecting the timely transferability of a site;

(G) Transportation and utility requirements; and

(H) Requirements for soliciting citizen input and state and local elected official input regarding a specific site.

(3) Under the direction of the TDCJ executive director, the Facilities Division shall coordinate the site selection process. In accordance with the TBCJ approved criteria and process, TDCJ staff shall

be responsible for the development of the RFP, devising and completing scoring instruments, as well as cost analysis for TBCJ review and action. Information presented to the TBCJ shall:

(A) Be structured in a uniform format as illustrated in the Facilities Division policies and procedures;

(B) Include data from a weighted scoring evaluation system that objectively assesses each site based on the proposal requirements, the site visit, and supporting information developed before any review, based on the Facilities Division policies and procedures and on the requirements outlined in the RFP;

(C) Include life-cycle cost calculations for a specific time period for each responsive proposal;

(D) Include information relating to the workforce available in the area surrounding each proposed site from which the TDCJ would recruit correctional staff; and

(E) Identify and explain any deviations from the TBCJ approved process.

(4) Any selection process shall take into consideration the intent of the legislature to locate each facility:

(A) In close proximity to a county with 100,000 or more inhabitants to provide services and other resources provided in such a county;

(B) Cost-effectively with respect to its proximity to other TDCJ facilities;

(C) In close proximity to an area that would facilitate release of <u>inmates</u> [offenders] or persons to their area of residence; and

(D) In close proximity to an area that provides adequate educational opportunities and medical care.

(5) The TBCJ shall be responsible for site selection, but may request that TDCJ staff provide a short list of recommended sites or a preference ranking of sites with an explanation for the recommendation or ranking. Staff recommendations shall be determined through the scoring of information contained in each submitted proposal based on RFP requirements, actual site assessment, and information obtained from external and internal sources for each site. Staff recommendations may include, and the TBCJ may select, a site other than one contained in the submitted proposals if the site is on state-owned land.

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 29, 2024.

TRD-202401871 Jennifer Childress Chief Deputy General Counsel Texas Department of Criminal Justice Earliest possible date of adoption: June 9, 2024 For further information, please call: (512) 463-9899

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# CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

## 37 TAC §163.42

The Texas Board of Criminal Justice (board) proposes a mendments to \$163.42, concerning Substantial Noncompliance. The proposed amendments reflect the Office of Internal Audit as independent of the TDCJ.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *ogccomments@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §509.003, which authorizes the board to adopt reasonable rules establishing standards and procedures for the TDCJ Community Justice Assistance Division.

Cross Reference to Statutes: None.

§163.42. Substantial Noncompliance.

(a) Definition. Substantial noncompliance with the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) standards, for purposes of Texas Government Code §509.012, is defined as:

(1) intentional diversion, theft, or misapplication of TDCJ CJAD funding or grants for purposes other than the state funding award or allocation;

(2) violations of laws, regulations, or official manuals specific to the operations of the community supervision and corrections departments (CSCDs);

(3) intentional refusal to implement a TDCJ CJAD approved action plan that is a result of audits, reviews, or inspections;

(4) for purposes of qualifying for state aid under 37 Texas Administrative Code \$163.43(a)(1)(F), relating to Funding and Financial Management, failure to hold the meeting to finalize the CSCD budget as required by Texas Local Government Code \$140.004; and

(5) interference, obstruction, or hindrance with any efforts by the Texas Comptroller of Public Accounts, county auditor of the county that manages the CSCD's funds, TDCJ CJAD, <u>Texas Board of</u> <u>Criminal Justice Office of</u> [TDCJ] Internal Audit [Division], Legislative Budget Board, Texas State Auditor's Office, or Texas Sunset Advisory Commission to examine or audit the records, transactions, and performance of the CSCD or facilities.

(b) Imposing Sanctions. Sanctions imposed for substantial noncompliance shall be in accordance with the provisions outlined in 37 Texas Administrative Code §163.47, relating to Contested Matters.

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 29, 2024.

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