PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 9. AMBULANCE SERVICES

1 TAC §§354.1111, 354.1113, 354.1115

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1111, concerning Definitions; §354.1113, concerning Additional Claim Information Requirements; and §354.1115, concerning Authorized Ambulance Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement legislation related to ambulance services as directed by Senate Bill 1, Article II, Rider 42, 87th Legislature, Regular Session, 2021. The proposed amendments implement emergency triage, treat, and transport (ET3) services to allow Medicaid-enrolled ambulance providers to address health care needs assessed as non-emergency, but medically necessary, by providing appropriate treatment in place at the scene; facilitating appropriate treatment in place via telemedicine or telehealth; and transporting a Medicaid recipient to an alternative non-hospital destination, such as a primary care physician office or an urgent care clinic. Rider 42 directs HHSC to implement an ET3 program for Texas Medicaid. The proposal allows ET3 services similar to those put in place with the Centers for Medicare & Medicaid Services' ET3 Pilot project. The proposed amendments also update and clarify language in the rules.

The proposed amendment to §354.1111 defines the term "emergency triage, treat, and transport (ET3) services" as emergency ground ambulance services that transport Medicaid recipients to alternative destination sites other than emergency departments (EDs), including primary care physician offices, urgent care clinics; providing appropriate treatment in place at the scene; or facilitating appropriate treatment in place via telemedicine or telehealth. The proposed amendment makes a change to the definition of "nonemergency transport" to clarify that it is appropriate when a Medicaid recipient's medical condition is such that the use of an ambulance is medically required and alternate means of transport are medically contraindicated. The proposed amendment also replaces the term "commission" with "HHSC." This is based on an HHSC initiative to consistently define HHSC throughout rules.

The proposed amendment to §354.1113 adds claim documentation requirements to be reimbursed for ET3 services for transport to an alternative destination site, treatment in place at the scene, or treatment in place via telemedicine or telehealth, if applicable. The proposed amendment establishes that a prior authorization number must be obtained for nonemergency ambulance transports. The proposed amendment to §354.1113 also removes the requirement that the prior authorization number must be obtained before an ambulance is used, to be consistent with the authorization requirements in §354.1115 that implemented Texas Human Resources Code §32.024(t) in a previous rule amendment.

The proposed amendment to §354.1115 adds criteria for reimbursement of ET3 services when a Medicaid-enrolled ambulance provider responds to a call initiated by an emergency response system and determines the recipient's needs are non-emergent, but medically necessary, to be reimbursed for transport to an alternative destination, providing treatment in place, or facilitating treatment in place via telemedicine or telehealth.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated reduction in cost to state government as a result of enforcing and administering the rules as proposed. There is an estimated reduction in costs due to fewer patients being transported to EDs.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated reduction in cost of $13,131,826 in fiscal year (FY) 2023, $11,545,501 in FY 2024, $11,423,118 in FY 2025, $11,302,034 in FY 2026, and $11,182,232 in FY 2027.

The proposed rule estimates a reduction in costs due to fewer patients being transported to EDs, based on an analysis by the United States Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response (ASPR), which indicates that approximately 15 percent of Medicare patients transported to EDs by ambulance can be safely cared for in other settings if available in a community. Out of that 15 percent, 50 percent of patients would be transported to an appropriately staffed clinic, 25 percent of patients would be evaluated and treated by EMS without transport, and 25 percent may not have a physician available and would go to urgent care.

There could be an estimated additional cost to local government as a result of enforcing and administering the rules as proposed to cover costs to provide appropriate treatment in place

at the scene and/or facilitate appropriate treatment in place via telemedicine or telehealth. Participating ambulance providers could incur costs to provide ET3 services if they are required to alter their business practices, hire additional staff, and/or require staff training related to allowing ground emergency ambulance providers to transport Medicaid recipients to alternative destination sites other than EDs. However, the total costs to local participating ambulance providers cannot be estimated because HHSC lacks data to estimate any increase or reduction in costs.

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 not create a new rule;

(6) the proposed rules will expand existing rules;

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

(8) the proposed rules will positively affect the state's economy.

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

Trey Wood has also determined that the proposed rule is not expected to have an adverse economic impact on small businesses, micro-businesses, and rural communities required to comply with the rules as proposed. There is no requirement for publicly owned ambulance services or rural communities to alter 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, the rule does not impose a cost on regulated persons, and the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, Medicaid recipients will have the option to receive cost effective emergency ambulance services with treatment in place by a qualified health care practitioner enrolled as an ambulance provider or transportation to an alternative non-emergency destination when a recipient has low acuity complaints and symptoms. Receiving treatment in place or transport to alternative destinations will also avert long waits in EDs and unnecessary hospitalizations.

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 rule because there are no additional fees or costs imposed on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R002" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

§354.1111. Definitions.

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

(1) Ambulance provider--A provider of ambulance services who:

(A) is enrolled as an ambulance provider in the Texas Medicaid Program to provide ambulance services for Medicaid recipients;

(B) is licensed with the Department of State Health Services, Emergency Medical Services Division;

(C) is enrolled in Medicare;

(D) agrees to accept assignment on all Medicare/Medicaid claims; and

(E) agrees to provide these services according to state and local laws, regulations, and guidelines governing ambulance services.

(2) Appropriate facility--The nearest medical facility that is equipped to provide medical care for the illness or injury of the Medicaid recipient involved. It is the institution, equipment, personnel, and capability to provide the services necessary to support the required medical care that determine whether a facility is appropriate.

[(3) Commission--Health and Human Services Commission.]

(3) [(4)] Designee--The contractor responsible for reimbursing Medicaid providers of ambulance transport services for Medicaid recipients.

(4) [(5)] Emergency medical condition--A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances, or symptoms of substance abuse) such that a prudent layperson with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

(A) placing the recipient's health (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; or

(C) serious dysfunction of any bodily organ or part.

(5) Emergency triage, treat and transport (ET3) services--ET3 services are emergency ground ambulance services and include:

(A) transporting Medicaid recipients to alternative destination sites other than an emergency department, including primary care physician offices and urgent care clinics;

(B) providing appropriate treatment in place at the scene; or

(C) facilitating appropriate treatment in place via telemedicine or telehealth.

(6) Emergency transport--Transport provided by an [a] ambulance provider for a Medicaid recipient whose condition meets the definition of an emergency medical condition. Facility-to-facility transports are appropriate as emergencies if the required treatment for the emergency medical condition is not available at the first facility.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) Medically necessary--When the condition of the Medicaid recipient meets the definition of emergency medical condition or meets the requirements for nonemergency [non-emergency] transport.

(9) [(7)] Nonemergency [Non-emergency] transport--Transport provided by an [a] ambulance provider for a Medicaid recipient to or from a scheduled medical appointment, to or from another licensed facility for treatment, or to the recipient's home after discharge from a hospital. Nonemergency [Non-emergency] transport is appropriate when the Medicaid recipient's medical condition is such that the use of an ambulance is medically required [the only appropriate means of transport], e.g., bed confinement, and alternate means of transport are medically contraindicated.

§354.1113. Additional Claim Information Requirements.

(a) In addition to the general requirements in §354.1001 of this subchapter [title] (relating to Claim Information Requirements), the following information is required on claims for ambulance services.[:]

(1) Documentation of medical necessity in accordance with codes representing medical conditions as designated by HHSC [the Commission]:

(A) the [The] transport documentation must substantiate the level of service and mode of transport provided;

(B) reimbursement [Reimbursement] is recouped when the documentation does not substantiate that the level of service and mode of transport provided accurately matches the level of service and mode of transport claimed; and

(C) the [The] level of service and mode of transport provided must be medically necessary based on the clinical situation and needs of the recipient.[;]

(2) Type of ambulance service provided (e.g, air, ground, or boat).[;]

(3) Origin and destination of each separate trip.[;]

(4) Charges for ambulance services, including base rates and mileage rates.[;and]

(5) Documentation to support emergency triage, treat and transport (ET3) services for transport to an alternative destination site, for treatment in place at the scene, or treatment in place via telemedicine or telehealth, if applicable.

(6) [(5)] A prior [Prior] authorization number (PAN) must be obtained for nonemergency transport[, if required].

(b) Prior authorization is required when transporting a recipient. A PAN must be obtained when an ambulance is used to transport a recipient for: [Obtaining a prior authorization number.]

(1) [A PAN for] nonemergency [non-emergency] transports; and [must be obtained before an ambulance is used to transport a recipient.]

(2) [A PAN for] out-of-state ambulance transports [must be obtained before an ambulance is used to transport a recipient].

(c) Supporting documentation is required to be maintained by both the ambulance provider and the requesting provider including a physician, nursing facility, health care provider or other responsible party. Supporting documentation is to be made available if requested by the Office of Inspector General (OIG) or HHSC [the Commission or its designee].

(1) An ambulance provider is required to maintain documentation that represents the recipient's medical conditions and other clinical information to substantiate medical necessity, [and] the level of service, and mode of transportation requested. This supporting documentation is limited to documents developed by the ambulance provider.

(2) Physicians, nursing facilities, health care providers or other responsible parties are required to maintain physician orders related to requests for prior authorization of nonemergency [non-emergency] and out-of-state ambulance services. These providers must also maintain documentation of medical necessity for the ambulance transport.

§354.1115. Authorized Ambulance Services.

In addition to the requirements stated in this section, a provider must comply with §354.1001 of this subchapter [title] (relating to Claim Information Requirements), and §354.1113 of this division [title] (relating to Additional Claim Information Requirements).

(1) Emergency ambulance transportation. [Ambulance Transportation.] HHSC [The Commission or its designee] will re-

imburse a Medicaid-enrolled ambulance provider for the emergency transport of a Medicaid recipient with an emergency medical condition in accordance with the following criteria.[:]

(A) Transport must be to an appropriate facility. If the transport is made to a facility other than an appropriate facility, payment is limited to the amount that would be payable to an appropriate facility.[; or]

(B) Transport by air or boat ambulance is reimbursable if the time and distance required to reach an appropriate facility make the transport by ground ambulance impractical or would endanger the life or safety of the recipient. If the recipient's medical condition does not meet the emergency air or boat criteria, but does meet the emergency ground transportation criteria, the payment to the provider is limited to the amount that would be payable at the emergency ground transportation rate.

(2) Emergency triage, treat and transport (ET3) services. HHSC may reimburse a Medicaid-enrolled ambulance provider responding to a call initiated by an emergency response system and upon arrival at the scene the ambulance provider determines the recipient's needs are nonemergent, but medically necessary. ET3 services may be reimbursed for:

(A) transporting Medicaid recipients to alternative destination sites other than an emergency department;

(B) providing treatment in place at the scene; and

(C) facilitating treatment in place via telemedicine or telehealth.

(3) [(2)] Nonemergency ambulance transportation. [Non-emergency Ambulance Transportation.] HHSC [The Commission or its designee] may reimburse a Medicaid-enrolled ambulance provider for nonemergency [non-emergency] transport when the following requirements are met:

(A) A physician, nursing facility, health care provider, or other responsible party, must obtain prior [shall obtain] authorization from HHSC [the Commission or its designee] when an ambulance is used to transport a recipient in circumstances not involving an emergency.

(i) Except as provided by clause (iii) of this subparagraph, a request for prior authorization must be evaluated by HHSC [the Commission or its designee] based on the recipient's medical needs and may be granted for a length of time appropriate to the recipient's medical condition;[.]

(ii) Except as provided by clause (iii) of this subparagraph, a response to a request for prior authorization must be made by HHSC [the Commission or its designee] not later than 48 hours after receipt of the request; and[.]

(iii) A request for prior authorization must be granted immediately by HHSC [the Commission or its designee] and must be effective for a period of not more than 180 days from the date of issuance if the request includes a written statement from a physician that:

(I) states [States] that alternative means of transporting the recipient are contraindicated; and

(II) is [Is] dated not earlier than the 60th day before the date on which the request for authorization is made.

(B) If the request is for authorization of ambulance transportation for only one day in circumstances not involving an emergency, a physician, nursing facility, health care provider, or other responsible party must [shall] obtain authorization from HHSC [the Commission or its designee] no later than the next business day following the day of transport;[.]

(C) If the request is for authorization of ambulance transportation for more than one day in circumstances not involving an emergency, a physician, nursing facility, health care provider, or other responsible party must obtain [shall obtain] a single authorization before an ambulance is used to transport a recipient;[.]

(D) A person denied payment for ambulance services rendered is entitled to payment from the nursing facility, healthcare provider, or other responsible party that requested the services if:

(i) payment [Payment] under the Medicaid program is denied because of lack of prior authorization; and

(ii) the [The] person provides the nursing facility, healthcare provider, or other responsible party with a copy of the bill for which payment was denied.

(E) [(3)] HHSC [The Commission or its designee authorized to act on behalf of the Commission] must be available to evaluate requests for authorization under this section [subsection] not less than 12 hours each day, excluding weekends and state holidays.

(4) Hearings. For information about recipient fair hearings, refer to HHSC's [the Commission's] fair hearing rules, Chapter 357 of this title (relating to Hearings).

(5) Provider appeal. [Appeal.] An ambulance provider denied payment for services rendered because of failure to obtain prior authorization, or because a request for prior authorization was denied, is entitled to appeal the denial of payment to HHSC [the Commission or its designee]. A denial of a claim may be appealed by a provider under HHSC's [the Commission's] appeals procedures contained in the Texas Medicaid Provider Procedures Manual and §354.1003 of this subchapter [title] (relating to Time Limits for Submitted Claims).

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 June 30, 2023.

TRD-202302400
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 20, 2023
For further information, please call: (512) 438-2934

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.105

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures.

BACKGROUND AND PURPOSE

Texas Human Resources Code §40.058 requires the Texas Department of Family and Protective Services (DFPS) and HHSC to "enter into contracts for the provision of shared administrative

services, including...rate setting." As part of these rate-setting activities, HHSC collects annual cost reports from program providers in the 24-Hour Residential Child Care (24RCC) program and uses the data to calculate and recommend payment rates to DFPS. DFPS currently reimburses providers through two payment models: the legacy system and Community-Based Care (CBC). Under the legacy system, DFPS pays 24RCC providers a payment rate for each day of care provided. Under CBC, DFPS contracts with a Single Source Continuum Contractor (SSCC) who is responsible for finding foster homes or other living arrangements for children in state care and providing them with a full continuum of services. SSCCs subcontract with residential childcare providers to provide residential foster care in their catchment areas.

The Texas Legislature directed DFPS to implement foster care rate modernization within the Issue Docket Decisions of the 2024-2025 General Appropriations Bill, House Bill 1, 88th Legislature, Regular Session, 2023 (Article II - Health and Human Services). Cost Report modifications have been outlined in HHSC's legislative reports pertaining to the Foster Care Rate Modernization project. For example, HHSC's Pro Forma Modeled Rate and Fiscal Impact Report, as required by the 2022-2023 General Appropriations Act, Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II Special Provisions Relating to All Health and Human Services Agencies, Section 26), stated: "HHSC and DFPS must evaluate if calculating a statewide case management rate using actual SSCC cost data in lieu of resource transfer is appropriate. Using SSCC costs to calculate the CBC rate may improve the state's ability to align rates more closely to provider costs. HHSC and DFPS would have to evaluate if a cost-based approach is appropriate for CBC. A cost-based approach could result in DFPS paying provider-specific, per-catchment rates or a uniform statewide rate." The cost-based approach was also outlined in HHSC's Implementation Plan.

The purpose of the proposal is to update the cost report excusal criteria for DFPS' 24RCC program to ensure program providers have sufficient data to justify collecting an annual cost report. The proposed amendment updates the excusal criteria to account for providers who have subcontracted with an SSCC under CBC by adding SSCC referrals into the calculation of state-placed days.

The proposed amendment would also require all SSCCs to submit cost reports on the state fiscal year rather than the provider's current fiscal year. This amendment would allow additional time for claims adjudication before cost reports are submitted to improve data reliability and reduce adjustments during HHSC's financial examination processes. The amendments also make clarifying edits throughout the rule.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.105(b)(4)(D)(viii) removes the excusal criteria for providing only basic level services and adds SSCC-placed days to the definition of state-placed days for the purposes of 24RCC program cost report excusal criteria.

The proposed amendment to §355.105(b)(5) requires that the SSCC's cost reporting period coincides with the State of Texas's fiscal year.

The proposed amendment to §355.105 includes reference corrections and edits to improve readability and understanding.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will expand an existing rule;

(7) the proposed rule will increase the number of individuals subject to the rule; and

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

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

Trey Wood also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities. Approximately 50 24RCC providers, who are currently being excused under this rule, will need to complete cost reports as a result of this proposed rule amendment. HHSC cannot estimate the number of small businesses, micro-businesses, or rural communities who must comply with this amendment.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of the Provider Finance Department, has determined that for each year of the first five years the rule is in effect, the proposed amendment benefits the public because it improves the data used for rate setting and cost analyses used to inform fiscal estimates provided to the legislature. These changes will improve HHSC's ability to estimate methodological rates.

Trey Wood has also determined that for the first five years the proposed rule amendment is in effect, persons who are required to comply with the proposed rule may incur economic costs because changes to the excusal criteria will require more foster care providers to complete reports that currently are excused, which creates a cost to comply. Although HHSC cannot estimate the cost to comply, HHSC anticipates about 50 additional providers will have to complete cost reports under this amendment.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 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 23R039" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §40.058, which provides for HHSC to provide administrative, rate setting, and contracting services on behalf of DFPS.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 40.

§355.105. General Reporting and Documentation Requirements, Methods, and Procedures.

(a) (No change.)

(b) Cost report requirements. Unless specifically stated in program rules or excused as described in paragraph (4)(D) of this subsection, each provider must submit financial and statistical information on cost report forms provided by HHSC, [~~or~~] on facsimiles that are formatted according to HHSC specifications and are pre-approved by HHSC staff, or electronically in HHSC-prescribed format in programs where these systems are operational. The cost reports must be submitted to HHSC in a manner prescribed by HHSC. The cost reports must be prepared to reflect the activities of the provider while delivering contracted services during the fiscal year specified by the cost report. Cost reports or other special surveys or reports may be required for other periods at the discretion of HHSC. Each provider is responsible for accurately completing any cost report or other special survey or report submitted to HHSC.

(1) Accounting methods. All financial and statistical information submitted on cost reports must be based upon the accrual method of accounting, except where otherwise specified in §355.102 and §355.103 of this subchapter [~~title~~] (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs) and in the case of governmental entities operating on a cash or modified accrual basis. For cost-reporting purposes, accrued expenses must be incurred during the cost-reporting [~~cost reporting~~] period and must be paid within 180 days after the end of that cost-reporting [~~cost reporting~~] period. In situations where a contracted provider, any of its controlling entities, its parent company/sole member, or its related-party management company has filed for bankruptcy protection, the contracted provider may request an exception to the 180-day requirement for payment of accrued allowable expenses by submitting a written request to the HHSC Provider Finance Department. The written request must be submitted within 60 days of the date of the bankruptcy filing or at least 60 days prior to the due date of the cost report for which the exception is being requested, whichever is later. The contracted provider will then be requested by the HHSC Provider Finance Department to provide certain documentation, which must be provided by the specified due date. Such exceptions due to bankruptcy may be granted for reasonable, necessary, and documented accrued allowable expenses that were not paid within the 180-day requirement. Accrued revenues must be for services performed during the cost-reporting [~~cost reporting~~] period and do not have to be received within 180 days after the end of that cost reporting period in order to be reported as revenues for cost-reporting purposes. Except as otherwise specified by the cost determination process rules of this chapter, cost report instructions, or policy clarifications, cost reports should be prepared consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. In cases where cost-reporting [~~cost reporting~~] rules differ from GAAP, IRS, or other authorities, HHSC rules take precedence for provider cost-reporting purposes.

(2) Recordkeeping and adequate documentation. There is a distinction between noncompliance in recordkeeping, which equates with unauditability of a cost report and constitutes an administrative contract violation or, for the Nursing Facility program, may result in vendor hold, and a provider's inability to provide adequate documentation, which results in disallowance of relevant costs. Each is discussed in the following paragraphs.

(A) Recordkeeping. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Providers must maintain all work papers [~~workpapers~~] and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys, and schedules. HHSC may require supporting documentation other than that contained in the cost report to substantiate reported information.

(i) For contracted providers subject to 40 TAC Chapter 49, each provider must maintain records according to the requirements stated in 40 TAC §49.307 (relating to Record Retention and Disposition) and according to the HHSC's prescribed chart of accounts, when available.

(ii) If a contractor is terminating business operations, the contractor must ensure that:

(I) records are stored and accessible; and

(II) someone is responsible for adequately maintaining the records.

(iii) For nursing facilities, failure to maintain all work papers [~~workpapers~~] and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys, and schedules may result in vendor hold as specified in §355.403 of this chapter [~~title~~] (relating to Vendor Hold).

(iv) For all other programs, failure to maintain all work papers [~~workpapers~~] and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys, and schedules constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this subchapter [~~title~~] (relating to Administrative Contract Violations).

(B) Adequate documentation. The [~~To be allowable, the~~] relationship between reported costs and contracted services must be clearly and adequately documented to be allowable. Adequate documentation consists of all materials necessary to demonstrate the relationship of personnel, supplies, and services to the provision of contracted client care or the relationship of the central office to the individual service delivery entity level. These materials may include but are not limited to, accounting records, invoices, organizational charts, functional job descriptions, other written statements, and direct interviews with staff, as deemed necessary by HHSC auditors to perform required tests of reasonableness, necessity, and allowability.

(i) The minimum allowable statistical duration for a time study upon which to base salary allocations is four weeks per year, with one week being randomly selected from each quarter so as to assure that the time study is representative of the various cycles of business operations. One week is defined as only those days the contracted provider is in operation for [~~during~~] seven continuous days. The time study can be performed for one continuous week during a quarter, or it can be performed over five or seven individual days, whichever is applicable, throughout a quarter. The time study must be a 100% time study, accounting for 100% of the time paid to the employee, including vacation and sick leave.

(ii) To support the existence of a loan, the provider must have available a signed copy of the loan contract, which contains the pertinent terms of the loan, such as amount, rate of interest, method of payment, due date, and collateral. The documentation must include an explanation for the purpose of the loan, and an audit trail must be provided showing the use of the loan proceeds. Evidence of systematic interest and principal payments must be available and supported by the payback schedule in the note or amortization schedule supporting the note. Documentation must also include substantiation of any costs associated with the securing of the loan, such as broker's fees, due diligence fees, lender's fees, attorney's fees, etc. To document allowable interest costs associated with related party loans, the provider is required to maintain documentation verifying the prime interest rate in accordance with §355.103(b)(11)(C) of this subchapter [~~title~~] for a similar type of loan as of the effective date of the related party loan.

(iii) For ground transportation equipment, a mileage log is not required if the equipment is used solely (100%) for the provision of contracted client services in accordance with program requirements in delivering one type of contracted care. However, the contracted provider must have a written policy that states that the ground transportation equipment is restricted to that use, and that policy must be followed. For ground transportation equipment that is used for several purposes (including for personal use) or multiple programs or across various business components, mileage logs must be maintained. Personal use includes, among other things, driving to and from a personal residence. At a minimum, mileage logs must include for each individual trip the date, the time of day (beginning and ending), driver, persons in the vehicle, trip mileage (beginning, ending, and total), purpose of the trip, and the allocation centers (the departments, programs, and/or business entities to which the trip costs should be allocated). Flight logs must include dates, mileage, passenger lists, and destinations, along with any other information demonstrating the purpose of the trips so that a relationship to contracted client care in Texas can be determined. For the purpose of comparison to the cost of commercial alternatives, documentation of the cost of operating and maintaining a private aircraft includes allowable expenses relating to the lease or depreciation of the aircraft; aircraft fuel and maintenance expenses; aircraft insurance, taxes, and interest; pilot expenses; hangar and other related expenses; mileage, vehicle rental or other ground transportation expense; and airport parking fees. Documentation demonstrating the allowable cost of commercial alternatives includes commercial airfare ticket costs at the lowest fare offered (including all discounts) and associated expenses, including mileage, vehicle rental or other ground transportation expenses [~~expense~~]; airport parking fees; and any hotel or per diem due to necessary layovers (no scheduled flights at the time of return trip).

(iv) To substantiate the allowable cost of leasing a luxury vehicle as defined in §355.103(b)(10)(C)(i) of this subchapter [~~title~~], the provider must obtain at the time of the lease a separate quotation establishing the monthly lease costs for the base amount allowable for cost-reporting purposes as specified in §355.103(b)(10)(C)(i) of this subchapter [~~title~~]. Without adequate documentation to verify the allowable lease costs of the luxury vehicle, the reported costs shall be disallowed.

(v) For adequate documentation purposes, a written description of each cost allocation method must be maintained that includes, at a minimum, a clear and understandable explanation of the numerator and denominator of the allocation ratio described in words and in numbers, as well as a written explanation of how and to which specific business components the remaining percentage of costs were allocated.

(vi) To substantiate the allowable cost for staff training as defined in §355.103(b)(15)(A) of this subchapter [~~title~~], the provider must maintain a description of the training verifying that the training pertained to contracted client care-related services or quality assurance. At a minimum, a program brochure describing the seminar or a conference program with a description of the workshop must be maintained. The documentation must provide a description clearly demonstrating that the seminar or workshop provided training for [~~pertaining to~~] contracted client care-related services or quality assurance.

(vii) Documentation regarding the allocation of costs related to noncontracted services, as specified in §355.102(j)(2) of this subchapter [~~title~~], must be maintained by the provider. At a minimum, the provider must maintain written records verifying the number of units of noncontracted services provided during the provider's fiscal year, along with adequate documentation supporting the direct and allocated costs associated with those noncontracted services.

(viii) Adequate documentation to substantiate legal, accounting, and auditing fees must include, at a minimum, the amount of time spent on the activity, a written description of the activity performed which clearly explains to which business component the cost should be allocated, the person performing the activity, and the hourly billing amount of the person performing the activity. Other legal, accounting, and auditing costs, such as photocopy costs, telephone costs, court costs, mailing costs, expert witness costs, travel costs, and court reporter costs, must be itemized and clearly denote to which business component the cost should be allocated.

(ix) Providers who self-insure [~~self insure~~] for all or part of their employee-related insurance costs, such as health insurance and workers' compensation costs, must use one of the two following methods for determining and documenting the provider's allowable costs under the cost ceilings and any carry forward as described in §355.103(b)(13)(E) of this subchapter [~~title~~].

(I) Providers may obtain and maintain each fiscal year's documentation to establish what their premium costs would have been had they purchased commercial insurance for total coverage. The documentation should include, at a minimum, bids from two commercial carriers. Bids must be obtained no less frequently than every three years.

(II) If providers choose not to obtain and maintain commercial bids as described in subclause (I) of this clause, providers may claim as an allowable cost the health insurance actual paid claims incurred on behalf of the employees that do [does] not exceed 10% of the payroll for employees eligible for receipt of this benefit. In addition, providers may claim as an allowable cost the workers' compensation actual paid claims incurred on behalf of the employees, an amount each cost report period not to exceed 10% of the payroll for employees eligible for receipt of this benefit.

(III) Providers who self-insure [self insure] must also maintain documentation that supports the amount of claims paid each year and any allowable costs to be carried forward to future cost-reporting periods.

(x) Providers who self-insure [self insure] for all or part of their coverage for nonemployee-related insurance, such as malpractice insurance, comprehensive general liability, and property insurance, must maintain documentation for each cost-reporting period to establish what their premium costs would have been had they purchased commercial insurance for total coverage. The documentation should include, at a minimum, bids from two commercial carriers. Bids must be obtained no less frequently than every three years. Providers who self-insure [self insure] must also maintain documentation that supports the amount of claims paid each year and any allowable costs to be carried forward to future cost-reporting periods. Governmental providers must document the existence of their claims management and risk management programs.

(xi) Regarding compensation of owners and related parties, providers must maintain the following documentation, at a minimum, for each owner or related party: a detailed written description of actual duties, functions, and responsibilities; documentation substantiating that the services performed are not duplicative of services performed by other employees; time sheets or other documentation verifying the hours and days worked; the amount of total compensation paid for these duties, with a breakdown detailing regular salary, overtime, bonuses, benefits, and other payments; documentation of regular, periodic payments and/or accruals of the compensation, documentation that the compensation is subject to payroll or self-employment taxes; and a detailed allocation worksheet indicating how the total compensation was allocated across business components receiving the benefit of these duties.

(I) Regarding bonuses paid to owners and related parties, the provider must maintain clearly defined bonus policies in its written agreements with employees or in its overall employment policy. At a minimum, the bonus policy must include the basis for distributing the bonuses, including qualifications for receiving the bonus[,] and how the amount of each bonus is calculated. Other documentation must specify who received bonuses, whether the persons receiving bonuses are owners, related parties, or arm's-length employees, and the bonus amount received by each individual.

(II) Regarding benefits provided to owners and related parties, the provider must maintain clearly defined benefit policies in its written agreements with employees or in its overall employment policy. At a minimum, the documentation must include the basis for eligibility for each type of benefit available, who is eligible to receive each type of benefit, who actually receives each type of benefit, whether the persons receiving each type of benefit are owners, related parties, or arm's-length employees, and the amount of each benefit received by each individual.

(xii) Regarding all forms of compensation, providers must maintain documentation for each employee which clearly identifies each compensation component, including regular pay, overtime pay, incentive pay, mileage reimbursements, bonuses, sick leave, vacation, other paid leave, deferred compensation, retirement contributions, provider-paid instructional courses, health insurance, disability insurance, life insurance, and any other form of compensation. Types of documentation would include insurance policies; provider benefit policies; records showing paid leave accrued and taken; documentation to support hours (regular and overtime) worked and wages paid; and mileage logs or other documentation to support mileage reimbursements and travel allowances. For accrued benefits, the documentation must clearly identify the period of the accrual. For example, if an employee accrues two weeks of vacation during 20x1 and receives the corresponding vacation pay during 20x3, that employee's compensation documentation for 20x3 should clearly indicate that the vacation pay received had been accrued during 20x1.

(I) For staff required to maintain continuous daily time sheets as per §355.102(j) of this subchapter [title] and subclause (II) of this clause, the daily timesheet must document, for each day, the staff member's start time, stop time, total hours worked, and the actual time worked (in increments of 30 minutes or less) providing direct services for the provider, the actual time worked performing other functions, and paid time off. The employee must sign each timesheet. The employee's supervisor must sign the timesheets each payroll period or at least monthly. Work schedules are unacceptable documentation for staff whose duties include multiple direct service types, both direct and indirect service component types, and both direct hands-on support and first-level supervision of direct care workers.

(II) For the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), Home and Community-based Services (HCS), and Texas Home Living (TxHmL) programs, staff required to maintain continuous daily timesheets include staff whose duties include multiple direct service types, both direct and indirect service component types and/or both direct hands-on support and first-level supervision of direct care workers.

(xiii) Management fees paid to related parties must be documented as to the actual costs of the related party for materials, supplies, and services provided to the individual provider[,] and upon which the management fees were based. If the cost to the related party includes owner compensation or compensation to related parties, documentation guidelines for those costs are specified in clause (xi) of this subparagraph. Documentation must be maintained that indicates stated objectives, periodic assessment of those objectives, and evaluation of the progress toward those objectives.

(xiv) For central office and/or home office costs, documentation must be maintained that indicates the organization of the business entity, including position, titles, functions, and compensation. For multi-state organizations, documentation must be maintained that clearly defines the relationship of costs associated with any level of management above the individual Texas contracted entity [which are] allocated to the individual Texas contracted entity.

(xv) Documentation regarding depreciable assets includes, at a minimum, historical cost, date of purchase, depreciable basis, estimated useful life, accumulated depreciation, and the calculation of gains and losses upon disposal.

(xvi) Providers must maintain documentation clearly itemizing their employee relations expenditures. For employee entertainment expenses, documentation must show the names of all persons participating, along with a classification of the person attending, such as employee, nonemployee, owner, family of employee, client, or vendor.

(xvii) Adequate documentation substantiating the offsetting of grants and contracts from federal, state, or local governments prior to reporting either the net expenses or net revenue must be maintained by the provider. As specified in §355.103(b)(18) of this subchapter [~~title~~], such offsetting is required prior to reporting on the cost report. The provider must maintain written documentation as to the purpose for which the restricted revenue was received and the offsetting of the restricted revenue against the allowable and unallowable costs for which the restricted revenue was used.

(xviii) During the course of an audit or an audit desk review, the provider must furnish any reasonable documentation requested by HHSC auditors within ten working days of the request or a later date as specified by the auditors. If the provider does not present the requested material within the specified time, the audit or audit desk review is closed, and HHSC automatically disallows the costs in question.

(xix) Any expense that cannot be adequately documented or substantiated is disallowed. HHSC is not responsible for the contracted provider's failure to adequately document and substantiate reported costs.

(xx) Any cost report that is determined to be unauditable through a field audit or that cannot have its costs verified through a desk review will not be used in the reimbursement determination process.

(3) Cost report and methodology certification. Providers must certify the accuracy of cost reports submitted to HHSC in the format specified by HHSC. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC requirements or is determined to contain misrepresented or falsified information. Cost report preparers must certify that they read the cost determination process rules, the reimbursement methodology rules, the cost report cover letter, and cost report instructions, and that they understand that the cost report must be prepared in accordance with the cost determination process rules, the reimbursement methodology rules and cost report instructions. Not all persons who contributed to the completion of the cost report must sign the certification page. However, the certification page must be signed by a responsible party with direct knowledge of the preparation of the cost report. A person with supervisory authority over the preparation of the cost report who reviewed the completed cost report may sign a certification page in addition to the actual preparer.

(4) Requirements for cost report completion.

(A) A completed cost report must:

(i) be completed according to the cost determination rules of this chapter, program-specific allowable and unallowable rules, cost report instructions, and policy clarifications;

(ii) contain a signed, notarized, original certification page or an electronic equivalent where such equivalents are specifically allowed under HHSC policies and procedures;

(iii) be legible with entries in sufficiently dark print to be photocopied;

(iv) contain all pages and schedules;

(v) be submitted on the proper cost report form;

(vi) be completed using the correct cost reporting period; and

(vii) contain a copy of the state-issued cost report training certificate except for cost reports submitted through the State of Texas Automated Information and Reporting System (STAIRS).

(B) Providers are required to report amounts on the appropriate line items of the cost report pursuant to guidelines established in the methodology rules, cost report instructions, or policy clarifications. Refer to program-specific reimbursement methodology rules, cost report instructions, or policy clarifications for guidelines used to determine the placement of amounts on cost report line items.

(i) For nursing facilities, placement on the cost report of an amount, which was determined to be inaccurately placed, may result in vendor hold as specified in §355.403 of this chapter [~~title~~] (relating to Vendor Hold).

(ii) For School Health and Related Services (SHARS), placement on the cost report of an amount, which was determined to be inaccurately placed, may result in an administrative contract violation as specified in §355.8443 of this chapter [~~title~~] (relating to Reimbursement Methodology for School Health and Related Services (SHARS)).

(iii) For all other programs, placement on the cost report of an amount, which was determined to be inaccurately placed, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this subchapter [~~title~~].

(C) A completed cost report must be filed by the cost report due date.

(i) For nursing facilities, failure to file a completed cost report by the cost report due date may result in vendor hold as specified in §355.403 of this chapter [~~title~~].

(ii) For SHARS, failure to file a completed cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.8443 of this chapter [~~title~~].

(iii) For all other programs, failure to file a completed cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this subchapter [~~title~~].

(D) HHSC may excuse providers from the requirement to submit a cost report. A provider that is not enrolled in Attendant Compensation Rate Enhancement as described in §355.112 of this subchapter [~~title~~] (relating to Attendant Compensation Rate Enhancement) for a specific program or the Nursing Facility Direct Care Staff Rate enhancement as described in §355.308 of this chapter [~~title~~] (relating to Direct Care Staff Rate Component) during the reporting period for the cost report in question, is excused from the requirement to submit a cost report for such program if the provider meets one or more of the following conditions:

(i) For all programs, if the provider performed no billable services during the provider's cost-reporting period.

(ii) For all programs, if the cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month.

(iii) For all programs, if circumstances beyond the provider's control, such as the loss of records due to natural disasters or removal of records from the provider's custody by a regulatory agency, make cost-report completion impossible.

(iv) For all programs, if all of the contracts that the provider is required to include in the cost report have been terminated before the cost-report due date.

(v) For the Nursing Facility, ICF/IID, Assisted Living/Residential Care (AL/RC), and Residential Care (RC) programs, if the total number of days that the provider performed service for recipients during the cost-reporting period is less than the total number of calendar days included in the cost-reporting period.

(vi) For the Day Activity and Health Services (DAHS) program, if the provider's total units of service provided to recipients during the cost-reporting period is less than the total number of calendar days included in the cost-reporting period times 1.5.

(vii) For the Home-Delivered Meals program, if a provider agency served an average of fewer than 500 meals a month for the designated cost report period.

(viii) On or after September 1, 2023, for [For] the Department of Family and Protective Services (DFPS) 24-Hour Residential Child-Care program, if:

(I) the provider has no current contract(s) within the state for 24-Hour Residential Child-Care program [the contract was not renewed];

[*(II)* only Basic Level services were provided;]

[*(III)* the total number of state-placed days (DFPS days and other state agency days) was 10 percent or less of the total days of service provided during the cost-reporting period;]

(II) [(IV)] the total number of DFPS-placed days and Single Source Continuum Contractor (SSCC)-placed days was 10 percent or less of the total days of service provided during the cost-reporting period;

(III) [(V)] for facilities that provide Emergency Care Services only, the occupancy rate was less than 30 percent during the cost-reporting period; or

(IV) [(VI)] for all other facility types except child-placing agencies and those providing Emergency Care Services, the occupancy rate was less than 50 percent during the cost-reporting period.

(5) Cost report year. A provider's cost report year must coincide with the provider's fiscal year as used by the provider for reports to the Internal Revenue Service (IRS) or with the state of Texas' fiscal year, which begins September 1 and ends August 31, except for SSCC providers in the DFPS 24-Hour Residential Child Care program whose cost report year must coincide with the state fiscal year.

(A) Providers whose cost report year coincides with their IRS fiscal year are responsible for reporting to HHSC Provider Finance Department any change in their IRS fiscal year and subsequent cost report year by submitting written notification of the change to HHSC Provider Finance Department along with supportive IRS documentation. HHSC Provider Finance Department must be notified of the provider's change in IRS fiscal year no later than 30 days following the provider's receipt of approval of the change from the IRS.

(B) Providers who chose to change their cost report year from their IRS fiscal year to the state fiscal year or from the state fiscal year to their IRS fiscal year must submit a written request to HHSC Provider Finance Department by August 1 of state fiscal year in question.

(6) Failure to report allowable costs. HHSC is not responsible for the contracted provider's failure to report allowable costs;[,] however, any omitted costs [which are] identified during the desk review or audit process will be included in the cost report or brought to the attention of the provider to correct by submitting an amended cost report.

(c) - (i) (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 July 7, 2023.

TRD-202302462
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 20, 2023
For further information, please call: (737) 867-7817

SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.727

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §355.727, concerning Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal §355.727, concerning Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services. The temporary add-ons expire on August 31, 2023. Funding associated with the add-ons will be incorporated into the base rates for supervised living and residential support services in the Home and Community-Based Services (HCS) waiver program.

FISCAL NOTE

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

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

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

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

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

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

(6) the proposed repeal will repeal an existing rule;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

There is no impact on small businesses, micro-businesses, or rural communities because the temporary add-on rates will be made a permanent part of the base rates for supervised living and residential support services.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this repeal because the repeal does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the repeal is in effect, the public benefit will be stabilizing the direct care workforce because the temporary add-on rates for supervised living and residential support services will be made permanent.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal because the temporary add-ons will be made a permanent part of the base rates for supervising living and residential support services.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 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 23R044" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The repeal affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.727. Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services.

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

Filed with the Office of the Secretary of State on July 7, 2023.

TRD-202302461
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 20, 2023
For further information, please call: (512) 867-7817

SUBCHAPTER M. MISCELLANEOUS PROGRAMS
DIVISION 6. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

1 TAC §355.9080

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.9080, concerning Reimbursement Methodology for Prescribed Pediatric Extended Care Centers.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove the requirement that the payment rate for Prescribed Pediatric Extended Care Centers (PPECC) cannot be more than 70 percent of the average hourly Private Duty Nursing rate under the Texas Health Steps (THSteps) Program. The proposed amendment would implement a rate methodology change for PPECC reimbursement approved through HHSC's biennial fee review process and would enable PPECC rate methodology to reflect allowable provider costs.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.9080(a) removes the requirement that the payment rate cannot be more than 70 percent of the average hourly Private Duty Nursing rate under the THSteps Program.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $118,308 in General Revenue (GR) ($340,258 All Funds (AF)) in fiscal year (FY) 2023, $567,953 GR ($1,424,512 AF) in FY 2024, $602,420 GR ($1,511,719 AF) in FY 2025, $638,686 GR ($1,602,726 AF) in FY 2026, $638,686 GR ($1,602,726 AF) in FY 2027.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand, limit, or repeal existing rule;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be the PPECC rate methodology and will reflect the cost of allowable PPECC services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose costs on regulated persons.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 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 23R047" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§355.9080. Reimbursement Methodology for Prescribed Pediatric Extended Care Centers.

(a) Payment rate determination. Payment rates for the Prescribed Pediatric Extended Care Centers program are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs providing [~~that provide~~] similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures). [~~The payment rate cannot be more than 70 percent of the average hourly Private Duty Nursing rate under the Texas Health Steps (THSteps) program.~~]

(b) Related information. The information in §355.101 of this chapter (relating to Introduction) and §355.105(g) of this chapter applies to this section.

(c) Reporting of cost. To gather adequate financial and statistical information upon which to base reimbursement, the Health and Human Services Commission (HHSC) may require a contracted provider to submit a cost report for any service provided through the Prescribed Pediatric Extended Care Centers program.

(1) If HHSC requires the provider to submit a cost report, the provider must follow the cost reporting guidelines in §355.105 of

this chapter and the guidelines for determining whether a cost is allowable or unallowable in §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs) and §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs).

(2) A provider is excused from the requirement to submit a cost report if the provider meets one or more of the conditions in §355.105(b)(4)(D) of this chapter.

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

Filed with the Office of the Secretary of State on July 6, 2023.

TRD-202302435

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 20, 2023

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 24. TEXAS BOOTSTRAP LOAN PROGRAM RULE

10 TAC §§24.1, 24.2, 24.10

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC Chapter 24, §§24.1, 24.2 and 24.10. The rule amendments update the income limits for the Texas Bootstrap Loan Program to conform to updated statutory requirements arising from H.B. 1472 passed during the 88th regular legislative session and signed into law by Governor Abbott on June 6, 2023.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The proposed amendment to the rule will not create or eliminate a government program;

2. The proposed amendment to the rule will not require a change in the number of employees of the Department;

3. The proposed amendment to the rule will not require additional future legislative appropriations;

4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed amendment to the rule will not create a new regulation;

6. The proposed amendment to the rule will not repeal an existing regulation;

7. The proposed amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be conformance to statutory requirements. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from July 14, 2023, to August 18, 2023. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Single Family and Homeless Programs, P.O. Box 13941, Austin, Texas 78711-3941, or email htf@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Central Daylight Time, August 18, 2023.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amendment affects no other code, article, or statute.

§24.1. Purpose.

(a) This chapter clarifies the Texas Bootstrap Loan Program, administered by the Texas Department of Housing and Community Affairs (the Department), also known as the Owner-Builder Loan Program. The Texas Bootstrap Loan Program provides assistance to income-eligible individuals, families and households to purchase or refinance real property, on which to build new residential housing or improve existing residential housing. The Program is administered in accordance with Tex. Gov't Code, Chapter 2306, Subchapter FF, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Texas Housing Trust Fund Rule).

(b) The Texas Bootstrap Loan Program is a self-help housing construction Program designed to provide [~~Very~~] Low Income families an opportunity to help themselves attain homeownership or repair their existing homes under applicable building codes and housing standards.

§24.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions may be found in Tex. Gov't Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Texas Housing Trust Fund Rule).

(1) Capital Recovery Fee--A charge or assessment imposed by a political subdivision against new development in order

to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, contributions in aid of construction, and any other fee that functions as described by this definition.

(2) Loan Origination Agreement--A written agreement, including all amendments thereto between the Department and the Administrator that authorizes the Administrator to originate certain loans under the Texas Bootstrap Loan Program.

(3) Low Income--Household income does not exceed the greater of 80% of the Area Median Family Income or 80% of the State Median Family Income, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

(4) [~~(3)~~] New Construction--A Single Family Housing Unit that is newly built on a previously vacant lot that will be occupied by an Income Eligible Household.

(5) [~~(4)~~] Owner-Builder--A person, other than a person who owns or operates a construction business and who owns or purchases a piece of real property through a warranty deed and deed of trust; or is purchasing a piece of real property under a Contract for Deed entered into before January 1, 1999; and who undertakes to make improvements to that property.

(6) [~~(5)~~] Rehabilitation--The improvement, including reconstruction, or modification of an existing Single Family Housing Unit through an alteration, addition, or enhancement on the same lot.

(7) [~~(6)~~] Very Low Income--Household income does not exceed the greater of 60% of the Area Median Family Income or 60% of the State Median Family Income, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

§24.10. Owner-Builder Qualifications.

The Owner-Builder must:

(1) Own or be purchasing a piece of real property with the conveyance of said property evidenced by a warranty deed or Contract for Deed;

(2) Be qualified as [~~Very~~] Low Income. Eligibility Income calculated utilizing the total Household income including all income (salary, tips, bonus, overtime, alimony, child support, benefits, etc.) received by the Owner-Builder Applicant, co-Applicant and any other persons living in the home. No income is excluded in this calculation.

(3) Execute a self-help agreement committing to specify and satisfy one of the criteria provided for in subparagraphs (A) - (D) of this paragraph:

(A) Provide at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified Administrator;

(B) Provide an amount of labor equivalent to 65% in connection with building or rehabilitating housing for others through a state-certified Administrator;

(C) Provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified Administrator; or

(D) If due to a documented disability or other limiting circumstances the Owner-Builder cannot provide the amount of personal labor otherwise required, provide through the noncontract labor of friends, family or volunteers at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified Administrator;

(4) Successfully complete an Owner-Builder homeownership education class prior to loan funding;

(5) Not have any outstanding judgments or liens on the property; and

(6) Occupy the residence as a Principal Residence within 30 days of the end of the construction period or the closing of the loan, whichever is later. If the Owner-Builder fails to do so, the Department may declare the loan in default and accelerate the note. Any additional habitable structures must be removed from the property prior to closing; however, a portion of the structure may be utilized as storage upon the Department's written approval prior to closing.

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 July 6, 2023.

TRD-202302459
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 20, 2023
For further information, please call: (512) 475-3959

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §100.1

The State Board of Education (SBOE) proposes an amendment to §100.1, concerning the open-enrollment charter school selection process. The proposed amendment would modify the no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1 establishes the process for approval of an open-enrollment charter, including a no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf with the commissioner of education, the commissioner's designee, a member of the SBOE, or a member of an external application review panel.

A petition was received from the Texas Public Charter Schools Association requesting that the no-contact period established in §100.1(d) be eliminated. The SBOE considered the petition at its January-February 2023 meeting and directed Texas Education Agency (TEA) staff to present an amendment to §100.1 that would end the no-contact period for charter school applicants on the date the applicant passes the external review with a passing score.

The proposed amendment to §100.1(d) would remove the no-contact period for open-enrollment charter applicants or any

person or entity acting on their behalf with the commissioner, the commissioner's designee, or a member of an external application review panel. The no-contact period with a member of the SBOE would be modified to end on the date the applicant passes through an external review with a qualifying score.

The SBOE approved the proposed amendment for first reading and filing authorization at its June 23, 2023 meeting.

FISCAL IMPACT: Kelvey Oeser, deputy commissioner for educator support, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by moving the end of the no-contact period from 90 days after the commissioner's proposal to the date a charter applicant passes through an external review with a qualifying score.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Oeser has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing applicants for open-enrollment charter schools with a less restrictive timeline for when they can contact SBOE members. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins July 21, 2023, and ends at 5:00 p.m. on August 25, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in August-September 2023 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 21, 2023.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §12.101, which requires the commissioner of education to notify the State Board of Education of each charter the commissioner proposes to grant. It also establishes that unless, before the 90th day after the date on which the board receives the notice from the commissioner, a majority of the members of the board present and voting vote against the grant of that charter, the commissioner's proposal to grant each charter takes effect.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.101.

§100.1. Selection Process.

(a) In accordance with [~~the~~] Texas Education Code (TEC), §12.101, a State Board of Education (SBOE) member shall be designated by the SBOE chair to work in coordination with the commissioner of education on the review of TEC, Chapter 12, Subchapter D, open-enrollment charter school applicants.

(b) Following the commissioner's notification to the SBOE of the charters the commissioner proposes to grant, a majority of the SBOE members present and voting may vote to veto the commissioner's proposed charter(s) or may vote to take no action. The SBOE's consideration of the proposed charters will occur no later than 90 days following the commissioner's notification.

(c) The SBOE may not vote or deliberate on any charter application that has not been proposed by the commissioner. For purposes of this section, deliberation is defined in Texas Government Code, §551.001.

(d) An applicant for an open-enrollment charter, or any person or entity acting on behalf of an applicant for an open-enrollment charter, shall not communicate with [~~the commissioner or the commissioner's designee,~~] a member of the SBOE[~~, or a member of an external application review panel~~] concerning a charter school application beginning on the date the application is submitted and ending on the date the applicant passes through an external review with a qualifying score [~~90 days after the commissioner's proposal~~]. The SBOE may veto a proposed application for violation of this subsection.

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 July 10, 2023.

TRD-202302473
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: August 20, 2023
For further information, please call: (512) 475-1497

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER D. EDUCATION

31 TAC §51.81

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §51.81, concerning Mandatory Boater Education.

House Bill 2755, enacted by the most recent session of the Texas Legislature, amended Parks and Wildlife Code, §31.108 to require the commission to adopt rules to "approve boater education courses that meet or exceed the minimum instruction requirement established by the National Association of State Boating Law Administrators on or after January 1, 2016." Accordingly, the proposed amendment to §51.81 would alter current rules to require all boater education courses to satisfy the minimum national standards adopted by the National Association of State Boating Law Administrators in effect on June 1, 2022 in order to be approved by the department.

Assistant Commander Cody Jones, Boating Law Administrator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of administering the rule.

There will be no impact on persons required to comply with the rule as proposed.

Mr. Jones also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be compliance with the directives of the legislature.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule will not result in any direct economic costs to any small businesses, micro-businesses, or rural community; therefore, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Assistant Commander Cody Jones, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4624; email: cody.jones@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under the provisions of Parks and Wildlife Code, §31.108, as amended by House Bill 2755 enacted by 88th Texas Legislature (RS), which requires the commission to approve boater education courses that meet or exceed the minimum instruction requirement established by the National Association of State Boating Law Administrators on or after January 1, 2016.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§51.81. Mandatory Boater Education.

(a) All courses approved for certification and equivalency exam processes must be approved by the department and must satisfy the minimum national standards adopted by the National Association of State Boating Law Administrators in effect on June 1, 2022 [~~using minimum national standards as means of approval~~].

(b) - (i) (No change.)

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

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TRD-202302470
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 20, 2023
For further information, please call: (512) 389-4775

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SUBCHAPTER O. ADVISORY COMMITTEES

31 TAC §51.615

The Texas Parks and Wildlife Department proposes new §51.615, concerning the Boating and Waterways Advisory Committee (BWAC).

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Under Parks and Wildlife Code, Chapter 31, the legislature has designated TPWD as the primary regulatory agency for boating and boating safety. Government Code, Chapter 2110, requires each state agency to adopt rules regarding advisory committees. Unless otherwise specifically provided by statute, the rules must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Under this authority, the Commission has established a number of advisory committees to provide the department with informed opinion regarding various aspects and dimensions of the department's mission. These advisory committees perform a valuable service for the department and the people of Texas.

The department is the primary state agency responsible for water safety and boating regulation. Staff have determined that the creation of an advisory board for matters concerning boating and waterways would be helpful in assisting the department and the commission in determining and executing appropriate strategies to maximize public safety and public enjoyment with respect to boating in this state.

Assistant Commander Cody Jones, Boating Law Administrator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of administering the rule.

There will be no impact on persons required to comply with the rule as proposed.

Mr. Jones also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the enhancement of department and commission decision-making with respect to regulation of boating and water safety.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule will not result in any direct economic costs to any small businesses, micro-businesses, or rural communities; therefore, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; create a new regulation (creating an advisory committee); not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed new rule may be submitted to Assistant Commander Cody Jones, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4624; email: cody.jones@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The new rule is proposed under the provisions of Parks and Wildlife Code, §31.108 as amended by House Bill Government Code, Chapter 2110, which requires the adoption of rules regarding state agency advisory committee.

The proposed new rule affects Government Code, Chapter 2110.

§51.615. Boating and Waterways Advisory Committee (BWAC).

(a) The BWAC is created to advise the department on all matters pertaining to waterway and boating programs in Texas.

(b) The BWAC shall be composed of up to 24 members of the public who have an interest in boating, waterways, and water safety in Texas.

(c) The BWAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

(d) The BWAC shall expire on July 1, 2026.

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 July 10, 2023.

TRD-202302472
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 20, 2023
For further information, please call: (512) 389-4775

CHAPTER 57. FISHERIES

SUBCHAPTER J. FISH PASS PROCLAMATION

31 TAC §57.901

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §57.901, concerning Prohibited Acts.

The proposed amendment would retitle the section to more accurately reflect its content and clarify the delineation of restricted

areas within the Cedar Bayou Fish Pass. Cedar Bayou is a natural channel that connects Mesquite Bay to the Gulf of Mexico and functions as a migratory path for various aquatic species to and from the estuary. In 1939, the Texas Legislature prohibited the operation, possession, or mooring of vessels and the placement of pilings, wires, ropes, cables, nets, traps or other obstructions within 2,800 feet of the point where a fish pass connects with the Gulf of Mexico or connects with an inland bay, and further required this restricted area to be permanently marked. Cedar Bayou has been periodically dredged and maintained since that time and the department has erected signs indicating that Cedar Bayou is a fish pass.

The 75th Texas Legislature in 1997 amended Parks and Wildlife Code, §66.204, to specifically authorize the commission to "regulate the placement of obstructions, traps, and mooring in fish passes and the marking of restricted areas in any natural or artificial pass that is opened, reopened, dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay." Consequently, the commission promulgated the current rule in 1998. The department has determined that the current rule should be amended to make it clear that "fish pass" and "restricted area" are not synonymous terms; therefore, the proposed amendment would add new subsection (b) to make it clear that the restricted area within the fish pass where no vessels are allowed is distinct from the remainder of the fish pass where vessels may not be anchored or moored for a period exceeding two consecutive days.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule as proposed.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be clarity of department regulations.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has a determined that because the rule as proposed does not directly regulate any small business, microbusiness, or rural community, there will be no adverse economic impact on small businesses, microbusinesses, or rural communities as a result of the proposed rule.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Assistant Commander Les Casterline, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4853; email: le.fisheries@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §66.204, which authorizes the commission to make ruled governing the placement of obstructions, traps, and mooring in fish passes and the marking of restricted areas in any natural or artificial pass that is opened, reopened, dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay.

The proposed amendment affects Parks and Wildlife Code, Chapter 66.

§57.901. Cedar Bayou Fish Pass [~~Prohibited Acts~~].

(a) Within the distance inside [~~area in~~] Cedar Bayou between [a ~~Department sign erected~~] where Mesquite Bay flows into Cedar Bayou and a "No Vessels" marker or [~~the Department~~] sign erected by the department near the point where Cedar Bayou [~~the pass~~] empties into the Gulf of Mexico, it is an offense to [~~unlawful~~]:

(1) [~~to~~] place any type of trap; or

(2) anchor or moor a vessel, barge, or structure for a period exceeding two consecutive days.

(b) The distance inside Cedar Bayou from the mouth of the pass where it empties into the Gulf of Mexico to a "No Vessels" marker or sign erected by the department is designated as a restricted area subject to the provisions of Parks and Wildlife Code, §66.204(b).

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

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TRD-202302471
James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.979

The Texas Parks and Wildlife Department proposes new 31 TAC §57.979, concerning Unlawful Possession of Shark Fins.

The proposed new rule would prescribe the process to be followed at a restaurant or place of business for treating shark fins to render them inedible and thus unfit for illicit commercial purposes.

The Texas Legislature during the most recent regular session enacted Senate Bill (S.B.) 1839, which addresses the unlawful sale and purchase of shark fins and products derived from shark fins. "Shark finning" is the act of removing a shark's fins and discarding the rest of the animal, often while it is still alive, leaving the animal to slowly die because it can no longer swim. The practice of shark finning is widely considered to be barbaric and wasteful, and it is illegal in Texas under current law (Texas Parks and Wildlife Code, §66.2161) and in many other states and countries as well. There is a significant commercial demand for shark fins and related products as foodstuffs, which, because the practice is illegal, has resulted in a lucrative opportunity for unscrupulous persons to engage in criminal activity at the expense of a public resource. In light of documented evidence that the practice continues to be common in Texas, the legislature determined that current statutory provisions regarding shark finning are problematic with respect to prosecution and insufficient in terms of deterrence. S.B. 1839 is intended to address the situation by, among other things, increasing penalties for violation and requiring persons in a place of business or restaurant to immediately destroy and discard shark fins while processing sharks for eventual sale. The bill delegates rulemaking authority to the commission to prescribe the particulars of the process by which shark fins are to be denatured (i.e., destroyed) and discarded.

The proposed new rule would stipulate that a shark fin must be destroyed by immersion in chlorine bleach, acid, or other such chemical or chemical solution for a period of time sufficient to render the shark fin inedible or otherwise unfit for human consumption. The proposed rule also would require destroyed shark fins and shark fin parts to be lawfully disposed of at a landfill or disposal site authorized by the Texas Commission of Environmental Quality to accept such materials, which would include waste removal services provided by third parties.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to the department as a result of administering or enforcing the rule.

There will be no effect on persons required to comply with the rule as proposed.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the protection of a public resource from exploitation by unscrupulous persons.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that because the rule directly regulates restaurants and places of business, there will be an adverse economic impact on any such business that qualifies as a small business or microbusiness under the provisions of Government Code, Chapter 2006; however, the cost of compliance is a result of legislative action and not the rulemaking. The department considers that the requirement for shark fins to be rendered inedible is imposed by statute and not by rule and that the proposed new rule merely specifies the process for such destruction. Nevertheless, the department has determined that such costs will be minimal, consisting of the cost of purchasing denaturing agents and the disposal of denatured shark fins, costs that all restaurants and similar places of business already incur in the course of normal operations in compliance with other regulatory requirements, such as public health and sanitation codes.

There will be no adverse economic impact on rural communities as a result of the proposed rule, as the rule will not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will, neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; create a new regulation (specifying the process for denaturing and disposing of shark fins); not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Assistant Commander Les Casterline, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4853; email: le.fisheries@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The new rule is proposed under the provisions of Senate Bill 1839 of the 88th Texas Legislature (Regular Session), which amended Parks and Wildlife Code, §66.2161 to authorize the commission to promulgate rules stipulating the method and circumstances for the destruction and disposal of shark fins at a restaurant or place of business.

The proposed new rule affects Parks and Wildlife Code, Chapter 66.

§57.979. Unlawful Possession of Shark Fins.

(a) It is unlawful for any person to, upon detaching a shark fin from a shark that is lawfully possessed and being processed in a restaurant or place of business, fail to immediately destroy the shark fin as prescribed in this section. Destroyed shark fins shall be lawfully disposed of, either by a contracted waste removal service or by direct transport to a landfill or waste facility permitted by the Texas Commission on Environmental Quality to receive such material.

(b) In this section, the following terms shall have the following meanings,

(1) Destroy--to treat a shark fin by immersion in chlorine bleach, acid, or other such chemical or chemical solution for a period of time sufficient to render the shark fin inedible or otherwise unfit for human consumption.

(2) Immediately--At once, without delay, promptly.

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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

CHAPTER 59. PARKS
SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §59.3

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §59.3, concerning Park Entry Passes. The proposed amendment would implement the provisions of House Bill (H.B.) 1740, enacted during the most recent regular session of the Texas Legislature. H.B. 1740 amended Texas Parks and Wildlife Code, §13.018, to require the department to issue a state parklands passport ("passport") at no charge to additional categories of persons.

Prior to the enactment of H.B. 1740, the department was required under Parks and Wildlife Code, §13.018, to issue a passport free of charge to qualified individuals, defined as Texas residents 65 years old or over; members of the United States armed forces on active duty who are 65 years old or over; veterans of the armed services of the United States who, as a result of military service, have a service-connected disability consisting of either the loss of the use of a lower extremity or a 60 percent disability rating and who are receiving compensation from the United States because of the disability; and individuals who have a physical or mental impairment that substantially limits one or more major life activities. H.B. 1740 amended Parks and Wildlife Code, §13.018 to include any person who is an honorably discharged veteran of the United States armed services, a member of the United States armed services on active duty, or the surviving spouse, parent, child, or sibling of a person who died while serving in the United States armed services. The proposed amendment would effect those changes in department rules, while making changes as necessary to remove conflicts with existing rule language.

Tim Bradle, Director of State Parks Business Management, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to the department as a result of administering the rule; however, because the rule recapitulates statutory provisions that the commission cannot alter or eliminate, any fiscal impacts are the therefore the result of legislative action and not an action of the commission. There will be no fiscal implications to other units of state or local government.

There will be no effect on persons required to comply with the rule as proposed, as the rule does not mandate compliance by any person.

Mr. Bradle also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be rules that are consistent with the directives of the Texas Legislature.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the proposed rule affects only certain categories of visitors to state parks, there will be no direct effect on small businesses, micro-businesses, or rural communities. On this basis, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation; will expand an existing regulation (by creating new classes of persons eligible to receive a parklands passport at no charge); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Tim Bradle, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560; email: timothy.bradle@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §13.018, which requires the commission to establish by rule the eligibility requirements and privileges available to the holder of a state parklands passport.

The proposed amendment affects Parks and Wildlife Code, Chapter 13.

§59.3. Park Entry Passes.

Parks entry passes authorize entry privileges to parks where entry fees apply but are not valid for activity or other applicable fees.

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

(3) State Parklands Passport. A state parklands passport shall be issued at no cost to any person meeting the criteria established by Parks and Wildlife Code, §13.018. For the purposes of this paragraph, "accompanying" means entering a park simultaneously with the passport holder.

(A) (No change.)

(B) A state parklands passport issued to a person in a category listed in this subparagraph authorizes the entry of the person to any state park without payment of an individual entrance fee but does not waive or reduce the entrance fee for any person accompanying the passport holder:

(i) an honorably discharged veteran of the United States armed services;

(ii) a member of the United States armed services on active duty;

(iii) the surviving spouse, parent, child, or sibling of a person who died while serving in the United States armed services;

(C) [~~(B)~~] To be eligible for issuance of a state parklands passport under the provisions of Parks and Wildlife Code, §13.018(a)(3), a person must submit government-issued personal identification and one of the following:

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

(D) [~~(C)~~] A state parklands passport issued to a person in a category listed in this subparagraph who does not otherwise qualify under subparagraph (A) or (B) of this paragraph authorizes the entry of the person to any state park upon payment of 50% of the posted entrance fee for the park, rounded to the nearest higher whole dollar, which shall also apply to one person accompanying and providing assistance to the passport holder.

(i) a Texas resident whose birth date is after August 31, 1930; or

[~~*(ii)* a member of the United States armed forces on active duty who is 65 years old or over; or~~]

(ii) [~~(iii)~~] an individual who has a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(E) [~~(D)~~] A parklands passport is nontransferable.

(F) [~~(E)~~] The department may collect a fee for a replacement state parklands passport.

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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.81, 65.82, and 65.99, concerning Disease Detection and Response.

The proposed amendments would function collectively to refine surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

Chronic wasting disease (CWD) is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, there is scientific evidence to suggest that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed or could reasonably be expected. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are absolutely critical to containing it on the landscape. Accordingly, the first step in the department's response to CWD detections is the timely establishment of management zones around locations where detection occurs. One type of management zone is the containment zone (CZ), defined by rule as "a department-defined geographic area in this state within which CWD has been detected or the department has determined, using the best available science and data, CWD detection is probable." Within a CZ, the movement of live deer is subject to restrictions and the presentation of harvested deer at a department check station is required. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply. In addition to CZs, current rules provide for surveillance zones (SZs), defined by rule as "a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected." Within a SZ, the movement of live deer is subject to restrictions and the presentation of harvested deer at a department check station is required. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply.

The Texas Parks and Wildlife Commission recently directed staff to develop guidelines or a standard operating procedure (SOP) with respect to the establishment and duration of the various management zones. In cases where CWD is discovered in a deer breeding facility but not on associated release sites, the department will not establish a SZ if the following can be verified: 1) the disease was detected early (i.e., it has not been in the facility long); 2) the transmission mechanism and pathway are known; 3) the facility was promptly depopulated following detection; and 4) there is no evidence that free-ranging deer populations have been compromised. If any of these criteria is not satisfied, a SZ will be established to consist of all properties that are wholly or partially located within two miles of the property where the positive breeding facility is located. However, in situations where CWD is detected in a free-ranging deer that is epidemiologically linked with a CWD-positive breeding facility, the department has little choice but to formally impose a CZ in response. The SOP dictates that a CZ consist of all properties wholly or partially located within five miles of the property (or properties) where CWD was detected.

As noted previously in this preamble, the department has been engaged in a long-term effort to stem the spread of CWD; however, by 2021 it was apparent that more robust measures were warranted because CWD was still being detected in additional deer breeding facilities, as well as release sites associated with deer breeding facilities. The commission adopted those rules, which require higher rates of testing, ante-mortem (live-animal) testing of breeder deer prior to release, and enhanced recordkeeping and reporting measures, in December of 2021 (46 TexReg 8724). This year is the first full year of the applicability of those measures. The department notes that other rulemakings have enhanced provisions regarding carcass movement restrictions.

The proposed amendment to §65.81, concerning Containment Zones; Restrictions, would establish a new CZ 7 in Hunt and Kaufmann counties in response to recent detections of CWD in deer on release sites associated with a CWD-positive deer breeding facility. That facility is already within Surveillance Zone 7, which was created in response to the initial detection of CWD on that premise. On March 17, 2023, the department received confirmation that CWD was present on a release site associated with the CWD-positive deer breeding facility for which SZ 7 was created. Two additional positives have been detected on an associated release site in Kaufman County (a 4.5-year-old male and a 5.5-year-old male) that is epidemiologically linked to the CWD-positive breeding facility in Hunt County. The proposed amendment would also establish that the geographic areas described by the rule represent a five-mile radius surrounding each property where CWD has been detected, and that the zone includes all properties wholly or partially within those areas. The proposed amendment is intended to replace an emergency rule adopted on May 26, 2023 (June 16, 2003 issue of the *Texas Register,* (48 TexReg 3009)), which took effect immediately.

In addition, the proposed amendment would establish a new CZ in Bexar County (CZ 8). On May 25, 2023, the department received confirmation that a free-ranging deer (a 6.5-year-old female) killed pursuant to a TTP (Trap, Transfer, and Process) permit in Bexar County had tested positive for CWD.

The proposed amendment to §65.82, concerning Surveillance Zones; Restrictions, would establish new Surveillance Zone (SZ) 18 in Bexar County, new SZ 19 in Sutton County, new SZ 20 in Zavala County, new SZ 21 in Frio County, and new SZ 22 in Brooks County, all in response to the continued detection of CWD in deer breeding facilities. On May 3, 2023, the department received confirmation that a 3.75-year-old buck deer in a deer breeding facility in Sutton County had tested positive for CWD. In accordance with the department's CWD Management Plan and SOP, the department is establishing a SZ in a two-mile radius around the property where the Sutton County positive was detected. The proposed SZ in Bexar County is in response to the confirmation of CWD in Bexar County described earlier in this preamble in the discussion of the establishment of a CZ in Bexar County. On March 10, 2023, CWD was confirmed in three 2-year-old males within a deer breeding facility in Zavala County, and on April 5, 2023, CWD was confirmed in a 3-year-old male within a deer breeding facility in Frio County. On June 28, 2023, CWD was detected in a 2-year old female deer in Frio County and on July 7, 2023, CWD was detected in a 5-year-old female deer in a deer breeding facility in Brooks County. In keeping with the department's CWD Management Plan and the SOP, a SZ with a two-mile radius around each of those locations would be established by the proposed amendment. The department notes that confirmation of CWD by the diagnostic lab is a two-test process, intended to eliminate the possibility of a false positive. At the time the proposed amendment was submitted for publication, the department had not received confirmation of the sus-

pect test results for the deer breeding facilities in Frio and Brooks counties; therefore, if CWD is not confirmed in those breeding facilities, the proposed creation of SZ 21 and 22 would be withdrawn.

The proposed amendment also clarifies that the geographic areas described by the rule represent the two-mile radius around the property where CWD was detected, and that the zone includes all properties wholly or partially within those areas.

Finally, the proposed amendment would correct typographical errors in the published delineations for SZ 11, which was established in a previous rulemaking (48 TexReg 2048). As published, some of the coordinate pairs describing the SZ lacked the negative sign indicating that the locations being described are in the western hemisphere.

The proposed amendment to §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD, would add new subsection (j) to require the euthanization of breeder deer within seven days of notification of confirmation of a positive ante-mortem CWD test result, the submission of post-mortem tissue samples (accompanied by both ears and required ear tags) of such deer within one day of euthanization, and daily facility inspections (with any mortalities to be immediately reported to the department, and the collection and submission of post-mortem tissue samples from test-eligible mortalities within one business day of collection). The proposed amendment also would retitle the section to reflect its applicability to deer breeding facilities in which CWD has been detected. From an epidemiological perspective, it is important to definitively assess the progress of disease in an individual animal as quickly as possible in order to determine the temporal parameters of disease transmission in the population. Immediate euthanization and post-mortem testing of all animals that test positive via ante-mortem testing gives the department and the regulated community the best chance of ensuring that disease transmission is mitigated as soon as possible in a breeding facility. Similarly, the proposed requirement for daily inspections and immediate reporting and testing of mortalities is necessary to gain additional understanding of disease status within the facility. The proposed rule also would require the submission of both ears and the required identification tags in order for the department to definitively establish the unique identity of the deer in question for future epidemiological investigation. Under current rule, a facility that returns a positive test result is automatically designated "not movement qualified" (NMQ) and is prohibited from transferring deer in or out of the facility; therefore, the proposed amendment would repeat that requirement simply for clarity and emphasis.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties and resources.

Mr. Macdonald also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from locations where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There could be adverse economic impact on persons required to comply with the rules as proposed. Such impacts would be identical to those described in the analysis of the rules' potential effect on small businesses, microbusinesses, and rural communities elsewhere in this preamble.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services.

For the purposes of this analysis, the department considers all deer breeders to be small or microbusinesses, which ensures that the analysis captures all deer breeders possibly affected by the proposed rulemaking. The department has determined that there is one deer breeding facility (other than the breeding facilities where CWD has been detected, which are prohibited from transferring deer under other rules) within proposed CZ 7. That deer breeding facility is currently designated MQ. Under the rule as proposed, that facility would be prohibited from transferring breeder deer outside the CZ; therefore, the economic impact to the breeder in question could be significant. Because the nature of the market for breeder deer is fluid and the department does not require sale prices of breeder deer to be reported, the department has no way to determine the exact value of lost sales to the deer breeder in question. Department records indicated the breeder in question has transferred an average of 53 deer per year, with an average of 17 of those deer being released to adjoining acreage (which would still be permitted). Therefore, the adverse economic impact to the breeder in question, based on the transfer history of the last five years, would be the value of 35 deer per year. There are three deer breeding facilities located within proposed new SZ 20 and one deer breeding facility located within proposed new SZ 21. All four facilities are currently designated NMQ and are prohibited from transferring deer. Thus, the zone designations will not result in adverse economic impacts to those facilities, as they cannot transfer deer under rules currently in effect. There are no deer breeding facilities within proposed CZ 8 or SZ 22.

The proposed amendment to §65.99 will result in adverse economic impacts to small businesses and microbusinesses affected by the rule. The amendment would require deer breeders who receive confirmation of a "suspect" test result from an ante-mortem test to euthanize the subject of the test within seven days of confirmation of CWD, submit post-mortem tissue samples within one business day of euthanasia, conduct daily

inspections for additional mortalities, immediately report such mortalities, and collect and submit post-mortem tissue samples within one day of each mortality discovery. Deer breeders are already required under current rules to report all mortalities and to have them tested; therefore, the adverse economic impacts are the cost to euthanize a breeder deer and the cost of daily inspections. The cost of euthanizing a deer can range from very little (if the breeder dispatches a deer by firearm) to the costs associated with veterinary services, which the department estimates should not exceed $300. The costs associated with daily inspections is difficult to quantify, as breeder facilities vary in size and complexity; however, the department assumes that most breeding facilities require some sort of daily presence as a matter of routine operations. The department also notes that if the breeding facility is epidemiologically connected to another breeding facility, daily inspections are required under rules already in effect.

The department has determined that the proposed rules will not affect rural communities because the rules do not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not result in direct impacts to local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; expand an existing regulation (by creating new areas subject to the rules governing CZs and SZs) and imposing new inspection and reporting requirements for deer breeding facilities where CWD is detected), but will otherwise not limit or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Dr. J. Hunter Reed, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (830) 890-1230 (e-mail: jhunter.reed@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.81. Containment Zones; Restrictions.

The areas described in paragraph (1) of this section are CZs and the provisions of this subchapter applicable to CZs apply on all properties lying wholly or partially within the described areas.

(1) Containment Zones.

(A) - (F) (No change.)

(G) Containment Zone 7 is that portion of Hunt and Kaufman counties -96.21356759520, 32.93034177510; -96.20861492790, 32.93062271340; -96.20769578840, 32.93067232720; -96.20732503750, 32.93068140220; -96.20710298860, 32.93068643390; -96.20688260170, 32.93070985230; -96.20442195490, 32.93094106890; -96.19879387970, 32.93124448120; -96.19315431390, 32.93123658430; -96.18752746450, 32.93091741310; -96.18193748280, 32.93028833640; -96.17640835920, 32.92935205410; -96.17096382300, 32.92811258320; -96.16562723700, 32.92657524440; -96.16042149880, 32.92474663220; -96.15536893750, 32.92263459410; -96.15049122610, 32.92024819270; -96.14580927730, 32.91759766400; -96.14134316220, 32.91469438080; -96.13711201920, 32.91155079520; -96.13622641360, 32.91083798810; -96.12494000920, 32.90162215750; -96.12184819660, 32.89896427870; -96.11814108320, 32.89538116920; -96.11471996870, 32.89160108390; -96.11159948660, 32.88764023130; -96.10879297770, 32.88351559240; -96.10631243170, 32.87924484870; -96.10416843710, 32.87484630590; -96.10237013300, 32.87033881570; -96.10092517700, 32.86574169180; -96.09983970690, 32.86107463220; -96.09911831850, 32.85635762960; -96.09876404670, 32.85161088910; -96.09877835310, 32.84685473910; -96.09916111900, 32.84210954720; -96.09991065180, 32.83739562930; -96.10102368600, 32.83273316520; -96.10249540400, 32.82814211180; -96.10431945490, 32.82364211740; -96.10648798380, 32.81925243920; -96.10899166580, 32.81499185700; -96.11181974410, 32.81087859810; -96.11496008310, 32.80693025770; -96.11746988050, 32.80418152580; -96.11755375850, 32.80313866560; -96.11830205020, 32.79842452110; -96.11941370220, 32.79376178180; -96.12088390310, 32.78917040460; -96.12270630810, 32.78467004060; -96.12487306900, 32.78027994610; -96.12737486880, 32.77601890420; -96.13020095860, 32.77190514530; -96.13333921120, 32.76795626360; -96.13677616560, 32.76418915010; -96.14049708990, 32.76061991450; -96.14361588300, 32.75795916770; -96.15030201320, 32.75254081800; -96.15117207400, 32.75184542080; -96.15541150690, 32.74871658500; -96.15988374280, 32.74582860110;

-96.16456964780, 32.74319381590; -96.16944917580, 32.74082348990; -96.17450146100, 32.73872775390; -96.17970490330, 32.73691556600; -96.18503725980, 32.73539466850; -96.19047574170, 32.73417156270; -96.19599710870, 32.73325147350; -96.20157776980, 32.73263833370; -96.20719388130, 32.73233476210; -96.21282145100, 32.73234205650; -96.21843643660, 32.73266018450; -96.22401484850, 32.73328778900; -96.22953285300, 32.73422218640; -96.23496687420, 32.73545938460; -96.24029369090, 32.73699409660; -96.24549053580, 32.73881976530; -96.25053519730, 32.74092858740; -96.25540610540, 32.74331155160; -96.26008243080, 32.74595847130; -96.26454416980, 32.74885803400; -96.26877223170, 32.75199784510; -96.27208130510, 32.75476813650; -96.27799411370, 32.75999311670; -96.27866140080, 32.76058942750; -96.28236931730, 32.76416831370; -96.28579254530, 32.76794433860; -96.28891640880, 32.77190135380; -96.29172751230, 32.77602243590; -96.29421378790, 32.78028995730; -96.29636455620, 32.78468566000; -96.29817056660, 32.78919073740; -96.29875523030, 32.79103915710; -96.30070745700, 32.79319136250; -96.30383279710, 32.79714795770; -96.30664531710, 32.80126865130; -96.30913294620, 32.80553581930; -96.31128499780, 32.80993120460; -96.31309221600, 32.81443600310; -96.31454681730, 32.81903093620; -96.31564252520, 32.82369633930; -96.31637459490, 32.82841224380; -96.31673983750, 32.83315846000; -96.31673663320, 32.83791466760; -96.31636493980, 32.84266049980; -96.31562629240, 32.84737563000; -96.31452380180, 32.85203986300; -96.31306213460, 32.85663321610; -96.31124750240, 32.86113600910; -96.30908763030, 32.86552894730; -96.30659172920, 32.86979320330; -96.30377045070, 32.87391049840; -96.30063584940, 32.87786318330; -96.29720132590, 32.88163431140; -96.29348157340, 32.88520771270; -96.29102813830, 32.88732618450; -96.29072578630, 32.88757682010; -96.29043695640, 32.88783856420; -96.29021473660, 32.88803918230; -96.28898762250, 32.88912027080; -96.28892071110, 32.88917801630; -96.28887164860, 32.88924735580; -96.28802188640, 32.89042285420; -96.28488606370, 32.89437511830; -96.28145029560, 32.89814579130; -96.27772928230, 32.90171870520; -96.27373894810, 32.90507853810; -96.27180336870, 32.90655908120; -96.27029016770, 32.90768169600; -96.26798312600, 32.90933346730; -96.26474342810, 32.91146467440; -96.26351249540, 32.91223529260; -96.26129110250, 32.91365865860; -96.25928416460, 32.91490633490; -96.25509793200, 32.91727764030; -96.25374718090, 32.91799526420; -96.25163781920, 32.91914104360; -96.25040063630, 32.91980056680; -96.24551380660, 32.92217362860; -96.24045318480, 32.92427184950; -96.23524047500, 32.92608622810; -96.22989803890, 32.92760897730; -96.22444879930, 32.92883356430; -96.21891613860, 32.92975473360; and -96.21356759520, 32.93034177510.

(H) Containment Zone 8. Containment Zone 8 is that portion of Bexar County within the boundaries of a line beginning at the intersection of Bitters Road and U.S. Highway 281 in Bexar County; thence north along U.S. 281 to State Highway (SH) North Loop 1604 ; thence west along SH North Loop 1604 to Blanco Road; thence south along Blanco Road to Bitters Road; thence east to U.S. Highway 281.

(I) [~~(G)~~] Existing CZs may be modified and additional CZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs and the provisions of this subchapter applicable to SZs apply on all properties lying wholly or partially within the described areas.

(1) Surveillance Zones.

(A) - (J) (No change.)

(K) Surveillance Zone 11. SZ 11 is that portion of Uvalde County lying within the area described by the following latitude-longitude coordinate pairs: -99.65125892840, 29.37997244440; -99.64901351840, 29.37941401480; -99.64845146960, 29.37926298170; -99.64642007180, 29.37858685430; -99.64444354350, 29.37779577780; -99.64253035400, 29.37689314240; -99.64068870050, 29.37588281650; -99.63892647290, 29.37476913010; -99.63725121990, 29.37355685560; -99.63567011690, 29.37225118790; -99.63418993490, 29.37085772200; -99.63281701150, 29.36938242860; -99.63155722420, 29.36783162880; -99.63041596490, 29.36621196710; -99.62939811680, 29.36453038250; -99.62890579820, 29.36359183460; -99.62806121330, 29.36305789800; -99.62638629870, 29.36184548510; -99.62480553320, 29.36053968750; -99.62429303370, 29.36007754550; -99.62405653320, 29.35985950010; -99.62381874180, 29.35964253520; -99.62273207700, 29.35860163960; -99.62135950160, 29.35712622890; -99.62010005700, 29.35557532250; -99.61895913350, 29.35395556520; -99.61873659380, 29.35360972870; -99.61862150420, 29.35342798500; -99.61782652640, 29.35209215220; -99.61693676500, 29.35035577580; -99.61617856340, 29.34857213070; -99.61555516190, 29.34674885720; -99.61506922320, 29.34489376500; -99.61503820540, 29.34475276260; -99.61494624750, 29.34432910810; -99.61463086570, 29.34259114510; -99.61442547730, 29.34069635380; -99.61436197100, 29.33879385100; -99.61444061050, 29.33689178380; -99.61466105070, 29.33499829680; -99.61487321080 [~~99.61487321080~~], 29.33380912050; -99.61491150300, 29.33362019190; -99.61506063110, 29.33293256890; -99.61556121170, 29.33108049280; -99.61619893460, 29.32926106910; -99.61697106210 [~~99.61697106210~~], 29.32748208660; -99.61732421150, 29.32676913270; -99.61746690720, 29.32649127370; -99.61801697400, 29.32547330120; -99.61904740670, 29.32379784010; -99.61962570840 [~~99.61962570840~~], 29.32295977640; -99.61999500570, 29.32244439010; -99.62056993200, 29.32166962830; -99.62184101280, 29.32012634080; -99.62322450720, 29.31865919800; -99.62471448910 [~~99.62471448910~~], 29.31727447850; -99.62532991110, 29.31675242370; -99.62534908130, 29.31673657650; -99.62536140450, 29.31671616190; -99.62601184830, 29.31568933250; -99.62716487010 [~~99.62716487010~~], 29.31407645020; -99.62843574650, 29.31253310120; -99.62981903270, 29.31106589070; -99.63130880370, 29.30968109780; -99.63289867970, 29.30838464850; -99.63458185310 [~~99.63458185310~~], 29.30718209080; -99.63635111800, 29.30607857030; -99.63819890080, 29.30507880900; -99.64011729290, 29.30418708460; -99.64209808410, 29.30340721240;

-99.64413279780 [~~99.64413279780~~], 29.30274252910; -99.64621272750, 29.30219587850; -99.64832897350, 29.30176959930; -99.65047248120, 29.30146551530; -99.65263407970, 29.30128492740; -99.65480452090 [~~99.65480452090~~], 29.30122860820; -99.65487587710, 29.30122887060; -99.65900846590, 29.30124789310; -99.66110711120, 29.30131575240; -99.66326739090, 29.30150809000; -99.66540870640 [~~99.66540870640~~], 29.30182382290; -99.66752189610, 29.30226160050; -99.66959791860, 29.30281954970; -99.67162789070, 29.30349528360; -99.67360312630, 29.30428591090; -99.67551517240, 29.30518804900; -99.67735584590, 29.30619783800; -99.67911726860, 29.30731095730; -99.67954559440, 29.30760570470; -99.67956313490, 29.30761798010; -99.67958463450 [~~99.67958463450~~], 29.30762363200; -99.68080891950, 29.30796826400; -99.68283907760, 29.30864381890; -99.68481450940, 29.30943427250; -99.68672676130, 29.31033624270; -99.68856764940 [~~99.68856764940~~], 29.31134587030; -99.69032929430, 29.31245883550; -99.69200415500, 29.31367037590; -99.69358506110, 29.31497530720; -99.69506524350, 29.31636804540; -99.69643836310 [~~99.69643836310~~], 29.31784263020; -99.69769853840, 29.31939275110; -99.69884037040, 29.32101177380; -99.69985896580, 29.32269276880; -99.70074995830, 29.32442854090; -99.70150952680 [~~99.70150952680~~], 29.32621166020; -99.70213441260, 29.32803449350; -99.70262193270, 29.32988923730; -99.70296999200, 29.33176795100; -99.70316258900, 29.33347053880; -99.70358951980, 29.33885327800; -99.70360402460, 29.33904533040; -99.70366928260, 29.34094778790; -99.70359239080, 29.34284991320; -99.70337367010, 29.34474356080; -99.70306776070, 29.34634027440; -99.70321386810, 29.35078287580; -99.70322752220, 29.35169864370; -99.70315061320, 29.35360077700; -99.70293185960, 29.35549443210; -99.70257218990, 29.35737149930; -99.70207313650, 29.35922393950; -99.70143682890, 29.36104381850; -99.70066598480, 29.36282334130; -99.69976389890, 29.36455488500; -99.69873442870, 29.36623103210; -99.69758197780, 29.36784460200; -99.69631147760, 29.36938868150; -99.69492836580, 29.37085665520; -99.69343856370, 29.37224223310; -99.69184845020, 29.37353947830; -99.69016483510, 29.37474283200; -99.68839492950, 29.37584713740; -99.68654631520, 29.37684766210; -99.68462691200, 29.37774011850; -99.68264494370, 29.37852068160; -99.68060890300, 29.37918600620; -99.67852751480, 29.37973324070; -99.67640969900, 29.38016003970; -99.67426453180, 29.38046457390; -99.67210120720, 29.38064553800; -99.66992899700, 29.38070215650; -99.66982079290, 29.38070171930; -99.66706723200, 29.38068663350; -99.65998003010, 29.38082841100; -99.65912069230, 29.38083583350; -99.65694891120, 29.38076767780; -99.65478687690, 29.38057522580; -99.65264385560, 29.38025930250; and -99.65125892840, 29.37997244440.

(L) - (Q) (No change.)

(R) Surveillance Zone 18. Surveillance Zone 18 is that portion of Bexar County within the boundaries of a line beginning at the intersection of Northwest Military Highway (FM 1535) and Interstate Highway (IH) Loop 410 in Bexar County; thence east along IH-Loop 410 to Wetmore Road; thence north along Wetmore Road to Bulverde Road; thence north along Bulverde Road to Evans Road; thence west along Evans Road to Stone Oak Parkway; thence west and south along Stone Oak Parkway to Huebner Road; thence west along Huebner Road to Northwest Military Highway; thence south along Northwest Military Highway (FM 1535) to IH-Loop 410.

(S) Surveillance Zone 19. Surveillance Zone 19 is that portion of Sutton County lying within the area described by the following latitude/longitude pairs: -100.38319766000, 30.44241372940; -100.38330542300, 30.44241355570; -100.42117692500, 30.44239956000; -100.42326548900, 30.44245479520; -100.42545296700, 30.44263413320; -100.42762223700, 30.44293701230; -100.42976401700, 30.44336213680; -100.43186914400, 30.44390768770; -100.43392861100, 30.44457133100; -100.43593360500, 30.44535022730; -100.43787554600, 30.44624104410; -100.43974612300, 30.44723996980; -100.44153733100, 30.44834273020; -100.44324150100, 30.44954460660; -100.44485133800, 30.45084045600; -100.44635994800, 30.45222473320; -100.44776087200, 30.45369151420; -100.44904810900, 30.45523452170; -100.45021614400, 30.45684715180; -100.45125997100, 30.45852250230; -100.45217511600, 30.46025340220; -100.45295765400, 30.46203244240; -100.45360422900, 30.46385200730; -100.45411206400, 30.46570430720; -100.45447897800, 30.46758141210; -100.45470339000, 30.46947528510; -100.45478433200, 30.47137781700; -100.45472144800, 30.47328086130; -100.45452752600, 30.47509012860; -100.45391299100, 30.47936729020; -100.45390046300, 30.47945343010; -100.45383755000, 30.47985820110; -100.45350524000, 30.48188828820; -100.45321897700, 30.48336316860; -100.45309954100, 30.48387046470; -100.45255326700, 30.48608960620; -100.45218229600, 30.48743815460; -100.45155276100, 30.48926224410; -100.45078679300, 30.49104676600; -100.45024507000, 30.49209451190; -100.45054879400, 30.49222514900; -100.45092965400, 30.49239158080; -100.45533277600, 30.49434604980; -100.45664103400, 30.49495875510; -100.46097526200, 30.49709718790; -100.46102130400, 30.49711994450; -100.46104970100, 30.49713402160; -100.46429912600, 30.49874659450; -100.46433065100, 30.49876225840; -100.46740035400, 30.50028933730; -100.47058121400, 30.50183564040; -100.47080956300, 30.50194766020; -100.47091030500, 30.50199773150; -100.47301193500, 30.50304645410; -100.47478324300, 30.50399480050; -100.47657591500, 30.50509707320; -100.47828153400, 30.50629848620; -100.47989279800, 30.50759389830; -100.48020479900, 30.50786526470; -100.48113280600, 30.50868308970; -100.48233083700, 30.50979558270; -100.48373315400, 30.51126197420; -100.48502174400, 30.51280462430; -100.48619108600, 30.51441693080; -100.48627724200, 30.51454558530; -100.48669784200, 30.51517736790; -100.48812543000, 30.51648543510; -100.48952793300, 30.51795176350; -100.49081670600, 30.51949435570; -100.49198622700, 30.52110660970; -100.49303148500, 30.52278162490; -100.49394799900, 30.52451223180; -100.49473183900, 30.52629102250; -100.49537964100, 30.52811038240; -100.49588862500, 30.52996252280; -100.49625660300, 30.53183951430; -100.49633886400, 30.53240339680; -100.49634171900, 30.53242463760; -100.49635288800, 30.53244371130; -100.49645111000, 30.53261281470; -100.49736778000, 30.53434339780; -100.49815176300, 30.53612216840; -100.49879969700, 30.53794151170; -100.49930879900, 30.53979363930; -100.49967688300, 30.54167062170; -100.49989414400, 30.54346534740; -100.49989542400,

30.54348042090; -100.49990473300, 30.54349320810; -100.50049997100, 30.54434266150; -100.50154563100, 30.54601760880; -100.50246252100, 30.54774815650; -100.50324670900, 30.54952689680; -100.50389483000, 30.55134621530; -100.50440410300, 30.55319832370; -100.50477233700, 30.55507529240; -100.50499794900, 30.55696908540; -100.50507923900, 30.55877167030; -100.50510179400, 30.56121144760; -100.50564283800, 30.56223237970; -100.50642720400, 30.56401110150; -100.50707548400, 30.56583040490; -100.50758489400, 30.56768250160; -100.50795324700, 30.56955946220; -100.50817895600, 30.57145325050; -100.50826104700, 30.57335575780; -100.50826117100, 30.57338156720; -100.50828404600, 30.57872056140; -100.50828266100, 30.57911369590; -100.50822253200, 30.58441891900; -100.50824688900, 30.59493311160; -100.50818470000, 30.59676084350; -100.50797904400, 30.59865634740; -100.50763050500, 30.60053615670; -100.50714057000, 30.60239222050; -100.50651132600, 30.60421658940; -100.50574546300, 30.60600144900; -100.50484625200, 30.60773915390; -100.50381753900, 30.60942226020; -100.50266372500, 30.61104355740; -100.50138974500, 30.61259609970; -100.50000105200, 30.61407323520; -100.49850359200, 30.61546863510; -100.49690377700, 30.61677632020; -100.49520845600, 30.61799068730; -100.49342489200, 30.61910653240; -100.49156072400, 30.62011907390; -100.48962393900, 30.62102397260; -100.48762283600, 30.62181735040; -100.48556598800, 30.62249580710; -100.48346221100, 30.62305643500; -100.48132052000, 30.62349683140; -100.47915009300, 30.62381510870; -100.47696023300, 30.62400990270; -100.47476032500, 30.62408037860; -100.47472254900, 30.62408050040; -100.44498450900, 30.62415852420; -100.44282177400, 30.62410375530; -100.44063011400, 30.62392471330; -100.43845670000, 30.62362205270; -100.43631084600, 30.62319707060; -100.43420174800, 30.62265158850; -100.43213844700, 30.62198794420; -100.43012978200, 30.62120898200; -100.42818436200, 30.62031804030; -100.42631052100, 30.61931893740; -100.42451628800, 30.61821595490; -100.42280934900, 30.61701381930; -100.42119701500, 30.61571768220; -100.41968619100, 30.61433309750; -100.41828334600, 30.61286599790; -100.41699448400, 30.61132266930; -100.41582512400, 30.60970972410; -100.41478026800, 30.60803407260; -100.41386438700, 30.60630289320; -100.41308139500, 30.60452360190; -100.41243464000, 30.60270382040; -100.41192688500, 30.60085134330; -100.41156029500, 30.59897410500; -100.41133643300, 30.59708014530; -100.41125624900, 30.59517757510; -100.41125613600, 30.59499196440; -100.41125854200, 30.59420991440; -100.41110919100, 30.59408980140; -100.40959885400, 30.59270509820; -100.40819648000, 30.59123788870; -100.40690807300, 30.58969445940; -100.40573914700, 30.58808142290; -100.40469470400, 30.58640568990; -100.40377921200, 30.58467443920; -100.40299658500, 30.58289508720; -100.40235016800, 30.58107525580; -100.40214445600, 30.58038747370; -100.40214118900, 30.58037597300; -100.40213092100, 30.58036814140; -100.40067662700, 30.57919085870; -100.39916667600, 30.57780603290; -100.39776468000, 30.57633870970; -100.39647664200, 30.57479517590; -100.39530807400, 30.57318204480; -100.39490813600, 30.57254771140; -100.39343371700, 30.57234174320; -100.39128921200, 30.57191600640; -100.38918150200, 30.57136978270; -100.38711961700, 30.57070541320; -100.38511239500, 30.56992574530; -100.38316843600, 30.56903412020; -100.38250341300, 30.56869570240; -100.38187530900, 30.56836761670; -100.38066797400, 30.56770626780; -100.37887523500, 30.56660264670; -100.37716978900, 30.56539990390; -100.37555894300, 30.56410319350; -100.37404959300, 30.56271807190; -100.37264820300, 30.56125047400; -100.37136077300, 30.55970668810; -100.37019281200, 30.55809332830; -100.36914931800, 30.55641730670; -100.36900755400, 30.55616761220; -100.36900235600, 30.55615834480; -100.36899156300, 30.55615400070; -100.36839999400, 30.55590980050; -100.36645647500, 30.55501792180; -100.36458455700, 30.55401791670; -100.36279226000, 30.55291407060; -100.36108726000, 30.55171111400; -100.35947686100, 30.55041420160; -100.35796796000, 30.54902889080; -100.35656701700, 30.54756111750; -100.35528003000, 30.54601717040; -100.35411250700, 30.54440366460; -100.35306944400, 30.54272751270; -100.35215530300, 30.54099589540; -100.35137399200, 30.53921623050; -100.35072885100, 30.53739614120; -100.35022263600, 30.53554342360; -100.34985750600, 30.53366601300; -100.34963501600, 30.53177195000; -100.34956251500, 30.53035267880; -100.34950933200, 30.52802466460; -100.34950292900, 30.52754133180; -100.34951779300, 30.52657937390; -100.34955057300, 30.52563084750; -100.34958794400, 30.52191021560; -100.34949165600, 30.51758389540; -100.34948675000, 30.51728228350; -100.34946547600, 30.51521227780; -100.34946431400, 30.51504532100; -100.34952931600, 30.51314232480; -100.34973719200, 30.51125373430; -100.34968365200, 30.50474357910; -100.34968296800, 30.50462837800; -100.34968286100, 30.50448127570; -100.34970783100, 30.49307201500; -100.34972638900, 30.47148975220; -100.34979151500, 30.46970039620; -100.35000002300, 30.46780515970; -100.35035117000, 30.46592579320; -100.35084344400, 30.46407034340; -100.35147473000, 30.46224675380; -100.35224231700, 30.46046283130; -100.35314291200, 30.45872621260; -100.35417265300, 30.45704433130; -100.35532712400, 30.45542438630; -100.35660138000, 30.45387331130; -100.35798996000, 30.45239774460; -100.35948691700, 30.45100400120; -100.36108583900, 30.44969804550; -100.36277988100, 30.44848546630; -100.36456179000, 30.44737145220; -100.36642393900, 30.44636077010; -100.36835835600, 30.44545774450; -100.37035676400, 30.44466623930; -100.37241061000, 30.44398964090; -100.37451110500, 30.44343084410; -100.37664926300, 30.44299223980; -100.37881593500, 30.44267570450; -100.38100185200, 30.44248259220; and -100.38319766000, 30.44241372940.

(T) Surveillance Zone 20. Surveillance Zone 20 is that portion of Zavala County lying within the area described by the following latitude/longitude pairs: -99.52095361740, 28.97441019490; -99.52311623060, 28.97448067590; -99.52526897870, 28.97467534550; -99.52740265120, 28.97499337100; -99.52950811930, 28.97543339180; -99.53157637450, 28.97599352540; -99.53359856710, 28.97667137530; -99.53556604390, 28.97746404140; -99.53747038530, 28.97836813240; -99.53930344110, 28.97937977980; -99.54079805130, 28.98031997940; -99.54725023520, 28.98462158470; -99.54750957250, 28.98479624760; -99.54785821340, 28.98503676640; -99.54985879760, 28.98643601770; -99.55117763500, 28.98740872890;

-99.55275134850, 28.98871522560; -99.55422454890, 28.99010940370; -99.55559092700, 28.99158529700; -99.55684463020, 28.99313658910; -99.55798028710, 28.99475664080; -99.55899303100, 28.99643851830; -99.55987852050, 28.99817502260; -99.56063295830, 28.99995872050; -99.56125310750, 29.00178197670; -99.56133033930, 29.00204439980; -99.56133273200, 29.00205268890; -99.56134113470, 29.00205699800; -99.56316032010, 29.00306084540; -99.56491494500, 29.00417540170; -99.56658293370, 29.00538843320; -99.56815714520, 29.00669474920; -99.56963083870, 29.00808875970; -99.57099770330, 29.00956449910; -99.57225188400, 29.01111565180; -99.57338800760, 29.01273557930; -99.57440120520, 29.01441734800; -99.57528713360, 29.01615375970; -99.57604199350, 29.01793738150; -99.57666254630, 29.01976057820; -99.57714612760, 29.02161554480; -99.57749065930, 29.02349433950; -99.57769465810, 29.02538891840; -99.57775724230, 29.02729116930; -99.57772470190, 29.02847435840; -99.57699091100, 29.04294971910; -99.57694433240, 29.04366831230; -99.57672381830, 29.04556148440; -99.57636285890, 29.04743793060; -99.57586299210, 29.04928961410; -99.57522635090, 29.05110860430; -99.57445565480, 29.05288710960; -99.57355419770, 29.05461751170; -99.57252583440, 29.05629239790; -99.57137496390, 29.05790459290; -99.57010651080, 29.05944718950; -99.56872590420, 29.06091357850; -99.56723905460, 29.06229747690; -99.56565232830, 29.06359295460; -99.56397252060, 29.06479446060; -99.56220682630, 29.06589684590; -99.56036280920, 29.06689538650; -99.55844836940, 29.06778580290; -99.55647170940, 29.06856427920; -99.55444129910, 29.06922747890; -99.55236583940, 29.06977255960; -99.55025422470, 29.07019718500; -99.54811550470, 29.07049953530; -99.54595884550, 29.07067831450; -99.54379349060, 29.07073275620; -99.54368347780, 29.07073219700; -99.54367904450, 29.07073216800; -99.54367063640, 29.07073211210; -99.54160516640, 29.07071811880; -99.54160514960, 29.07071811870; -99.52332601820, 29.07059281150; -99.52135033460, 29.07057910890; -99.52004080320, 29.07057000940; -99.51799445770, 29.07050011140; -99.51583960170, 29.07030530790; -99.51370387460, 29.06998707100; -99.51159642960, 29.06954676480; -99.50952629870, 29.06898627650; -99.50750235340, 29.06830800830; -99.50553326650, 29.06751486720; -99.50362747560, 29.06661025240; -99.50179314610, 29.06559804090; -99.50003813640, 29.06448257060; -99.49836996440, 29.06326862160; -99.49679577500, 29.06196139610; -99.49532230960, 29.06056649560; -99.49395587710, 29.05908989710; -99.49270232710, 29.05753792740; -99.49156702490, 29.05591723590; -99.49055482810, 29.05423476600; -99.48967006650, 29.05249772550; -99.48891652330, 29.05071355550; -99.48829741880, 29.04888989860; -99.48781539740, 29.04703456610; -99.48747251550, 29.04515550450; -99.48727023360, 29.04326076130; -99.48720908600, 29.04153365310; -99.48714960630, 29.00389591390; -99.48714992990, 29.00372071510; -99.48723078590, 29.00181901970; -99.48745294280, 28.99992604640; -99.48781544110, 28.99804990050; -99.48831672060, 28.99619861470; -99.48895462750, 28.99438011460; -99.48972642320, 28.99260218540; -99.49062879650, 28.99087243770; -99.49165787810, 28.98919827580; -99.49280925660, 28.98758686540; -99.49407799810, 28.98604510340; -99.49545866710, 28.98457958820; -99.49694534970, 28.98319659170; -99.49853167920, 28.98190203210; -99.50021086350, 28.98070144930; -99.50114533140, 28.98009924160; -99.50172517340, 28.97973911690; -99.50255554970, 28.97923985210; -99.50439849840, 28.97824220210; -99.50631167050, 28.97735264740; -99.50828687840, 28.97657499420; -99.51031566940, 28.97591256950; -99.51238936210, 28.97536820760; -99.51449908360, 28.97494423730; -99.51663580730, 28.97464247240; -99.51879039130, 28.97446420410; and -99.52095361740, 28.97441019490.

(U) Surveillance Zone 21. Surveillance Zone 21 is that portion of Frio County lying within the area described by the following latitude/longitude pairs: -99.52095361740, 28.97441019490; -99.52311623060, 28.97448067590; -99.52526897870, 28.97467534550; -99.52740265120, 28.97499337100; -99.52950811930, 28.97543339180; -99.53157637450, 28.97599352540; -99.53359856710, 28.97667137530; -99.53556604390, 28.97746404140; -99.53747038530, 28.97836813240; -99.53930344110, 28.97937977980; -99.54079805130, 28.98031997940; -99.54725023520, 28.98462158470; -99.54750957250, 28.98479624760; -99.54785821340, 28.98503676640; -99.54985879760, 28.98643601770; -99.55117763500, 28.98740872890; -99.55275134850, 28.98871522560; -99.55422454890, 28.99010940370; -99.55559092700, 28.99158529700; -99.55684463020, 28.99313658910; -99.55798028710, 28.99475664080; -99.55899303100, 28.99643851830; -99.55987852050, 28.99817502260; -99.56063295830, 28.99995872050; -99.56125310750, 29.00178197670; -99.56133033930, 29.00204439980; -99.56133273200, 29.00205268890; -99.56134113470, 29.00205699800; -99.56316032010, 29.00306084540; -99.56491494500, 29.00417540170; -99.56658293370, 29.00538843320; -99.56815714520, 29.00669474920; -99.56963083870, 29.00808875970; -99.57099770330, 29.00956449910; -99.57225188400, 29.01111565180; -99.57338800760, 29.01273557930; -99.57440120520, 29.01441734800; -99.57528713360, 29.01615375970; -99.57604199350, 29.01793738150; -99.57666254630, 29.01976057820; -99.57714612760, 29.02161554480; -99.57749065930, 29.02349433950; -99.57769465810, 29.02538891840; -99.57775724230, 29.02729116930; -99.57772470190, 29.02847435840; -99.57699091100, 29.04294971910; -99.57694433240, 29.04366831230; -99.57672381830, 29.04556148440; -99.57636285890, 29.04743793060; -99.57586299210, 29.04928961410; -99.57522635090, 29.05110860430; -99.57445565480, 29.05288710960; -99.57355419770, 29.05461751170; -99.57252583440, 29.05629239790; -99.57137496390, 29.05790459290; -99.57010651080, 29.05944718950; -99.56872590420, 29.06091357850; -99.56723905460, 29.06229747690; -99.56565232830, 29.06359295460; -99.56397252060, 29.06479446060; -99.56220682630, 29.06589684590; -99.56036280920, 29.06689538650; -99.55844836940, 29.06778580290; -99.55647170940, 29.06856427920; -99.55444129910, 29.06922747890; -99.55236583940, 29.06977255960; -99.55025422470, 29.07019718500; -99.54811550470, 29.07049953530; -99.54595884550, 29.07067831450; -99.54379349060, 29.07073275620; -99.54368347780, 29.07073219700; -99.54367904450, 29.07073216800; -99.54367063640, 29.07073211210; -99.54160516640, 29.07071811880; -99.54160514960,

29.07071811870; -99.52332601820, 29.07059281150; -99.52135033460, 29.07057910890; -99.52004080320, 29.07057000940; -99.51799445770, 29.07050011140; -99.51583960170, 29.07030530790; -99.51370387460, 29.06998707100; -99.51159642960, 29.06954676480; -99.50952629870, 29.06898627650; -99.50750235340, 29.06830800830; -99.50553326650, 29.06751486720; -99.50362747560, 29.06661025240; -99.50179314610, 29.06559804090; -99.50003813640, 29.06448257060; -99.49836996440, 29.06326862160; -99.49679577500, 29.06196139610; -99.49532230960, 29.06056649560; -99.49395587710, 29.05908989710; -99.49270232710, 29.05753792740; -99.49156702490, 29.05591723590; -99.49055482810, 29.05423476600; -99.48967006650, 29.05249772550; -99.48891652330, 29.05071355550; -99.48829741880, 29.04888989860; -99.48781539740, 29.04703456610; -99.48747251550, 29.04515550450; -99.48727023360, 29.04326076130; -99.48720908600, 29.04153365310; -99.48714960630, 29.00389591390; -99.48714992990, 29.00372071510; -99.48723078590, 29.00181901970; -99.48745294280, 28.99992604640; -99.48781544110, 28.99804990050; -99.48831672060, 28.99619861470; -99.48895462750, 28.99438011460; -99.48972642320, 28.99260218540; -99.49062879650, 28.99087243770; -99.49165787810, 28.98919827580; -99.49280925660, 28.98758686540; -99.49407799810, 28.98604510340; -99.49545866710, 28.98457958820; -99.49694534970, 28.98319659170; -99.49853167920, 28.98190203210; -99.50021086350, 28.98070144930; -99.50114533140, 28.98009924160; -99.50172517340, 28.97973911690; -99.50255554970, 28.97923985210; -99.50439849840, 28.97824220210; -99.50631167050, 28.97735264740; -99.50828687840, 28.97657499420; -99.51031566940, 28.97591256950; -99.51238936210, 28.97536820760; -99.51449908360, 28.97494423730; -99.51663580730, 28.97464247240; -99.51879039130, 28.97446420410; and -99.52095361740, 28.97441019490.

(V) Surveillance Zone 22. Surveillance Zone 22 is that portion of Brooks County lying within the area described by the following latitude/longitude pairs: -98.29086210400, 27.13309526320; -98.29298351340, 27.13318675140; -98.29509370080, 27.13340214440; -98.29718363780, 27.13374052060; -98.29924438240, 27.13420043260; -98.30126711720, 27.13477991270; -98.30324318710, 27.13547648180; -98.30516413610, 27.13628715970; -98.30702174350, 27.13720847820; -98.30880805890, 27.13823649530; -98.31051543630, 27.13936681250; -98.31213656700, 27.14059459330; -98.31366451020, 27.14191458410; -98.31509272330, 27.14332113650; -98.31641508980, 27.14480823130; -98.31762594530, 27.14636950440; -98.31872010190, 27.14799827390; -98.31969287050, 27.14968756850; -98.32054008090, 27.15143015780; -98.32125809990, 27.15321858260; -98.32184384650, 27.15504518700; -98.32229480580, 27.15690215130; -98.32260903940, 27.15878152550; -98.32278519400, 27.16067526280; -98.32282607750, 27.16222641940; -98.32281627820, 27.16501134840; -98.32281627820, 27.16501136240; -98.32281357260, 27.16578038920; -98.32281357250, 27.16578040250; -98.32280037230, 27.16953161050; -98.32280037230, 27.16953161680; -98.32279424650, 27.17127223070; -98.32279424650, 27.17127224060; -98.32278834300, 27.17294980850; -98.32278477250, 27.17329865210; -98.32268306530, 27.17519678400; -98.32244276160, 27.17708490600; -98.32206488280, 27.17895493190; -98.32155103950, 27.18079885270; -98.32090342480, 27.18260877060; -98.32012480560, 27.18437693280; -98.31921851020, 27.18609576520; -98.31818841420, 27.18775790440; -98.31703892460, 27.18935622950; -98.31577496030, 27.19088389270; -98.31440193150, 27.19233434840; -98.31292571630, 27.19370138180; -98.31135263580, 27.19497913510; -98.30968942710, 27.19616213270; -98.30794321390, 27.19724530500; -98.30612147660, 27.19822401010; -98.30423202010, 27.19909405350; -98.30228293980, 27.19985170630; -98.30028258750, 27.20049372120; -98.29823953510, 27.20101734650; -98.29616253810, 27.20142033800; -98.29406049790, 27.20170096820; -98.29194242330, 27.20185803440; -98.29045520520, 27.20189407770; -98.28090559250, 27.20192944920; -98.28026777950, 27.20192618550; -98.27814490760, 27.20183447240; -98.27603329720, 27.20161877470; -98.27394199850, 27.20128001670; -98.27187997410, 27.20081965050; -98.26985606110, 27.20023964940; -98.26787893260, 27.19954249910; -98.26595706090, 27.19873118790; -98.26409868090, 27.19780919280; -98.26231175450, 27.19678046530; -98.26060393700, 27.19564941430; -98.25898254400, 27.19442088670; -98.25745451960, 27.19310014730; -98.25602640760, 27.19169285560; -98.25470432240, 27.19020504180; -98.25349392360, 27.18864308070; -98.25240039160, 27.18701366460; -98.25142840520, 27.18532377450; -98.25058212200, 27.18358064980; -98.24986516040, 27.18179175790; -98.24928058450, 27.17996476140; -98.24883089060, 27.17810748610; -98.24851799720, 27.17622788660; -98.24834323640, 27.17433401290; -98.24830351420, 27.17300440700; -98.24827071300, 27.16530377910; -98.24827454730, 27.16473335220; -98.24837767100, 27.16283530280; -98.24861935320, 27.16094735350; -98.24899855110, 27.15907758780; -98.24951363340, 27.15723401090; -98.25016238740, 27.15542451560; -98.25094202870, 27.15365684800; -98.25184921270, 27.15193857480; -98.25288004980, 27.15027705100; -98.25403012140, 27.14867938800; -98.25529449960, 27.14715242380; -98.25666776770, 27.14570269330; -98.25814404380, 27.14433640040; -98.25971700610, 27.14305939200; -98.26137991960, 27.14187713240; -98.26312566530, 27.14079468050; -98.26494677060, 27.13981666780; -98.26627186270, 27.13919216490; -98.26715049100, 27.13880096040; -98.26771406470, 27.13855607030; -98.26783677100, 27.13850433430; -98.26809786590, 27.13839484540; -98.26859139800, 27.13819236990; -98.26885450170, 27.13808680220; -98.26935182210, 27.13789170920; -98.26961686170, 27.13779009250; -98.27045143240, 27.13748232940; -98.27057696050, 27.13743812460; -98.27086650950, 27.13733678020; -98.27132970040, 27.13717829740; -98.27162094450, 27.13708092100; -98.27208657360, 27.13692885280; -98.27237944390, 27.13683546540; -98.27309571530, 27.13661545590; -98.27412316130, 27.13631179840; -98.27427026360, 27.13626866980; -98.27529930980, 27.13596939010; -98.27534656750, 27.13595568160; -98.28028733250, 27.13452608020; -98.28040390160, 27.13449150950; -98.28244567520, 27.13396821540; -98.28452131260, 27.13356548290; -98.28662193290, 27.13328503490; -98.28873854870, 27.13312807110; and -98.29086210400, 27.13309526320.

(W) [(R)] Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (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 July 10, 2023.

TRD-202302465
Todd S. George
Assistant General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 20, 2023
For further information, please call: (512) 389-4775

DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §65.99

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.99. Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities.

(a) - (i) (No change.)

(j) Upon notification by the department that CWD is suspected in a deer as a result of ante-mortem testing in a facility, the facility is automatically NMQ and the permittee shall:

(1) euthanize the positive deer within seven days of confirmation of the positive test result;

(2) submit post-mortem test samples from breeder deer euthanized under this subsection within one business day of euthanasia, to include both ears and the identification tag required under Parks and Wildlife Code, Chapter 43, Subchapter L; and

(3) inspect the facility daily for mortalities; and

(A) immediately report each mortality to the department;

(B) immediately collect test samples from all test-eligible mortalities that occur within the facility; and

(C) submit samples collected under this subsection for post-mortem testing within one business day of the discovery of the mortality.

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

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TRD-202302466
Todd S. George
Assistant General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 20, 2023
For further information, please call: (512) 389-4775