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# TEXAS REGISTER

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# TEXAS REGISTER

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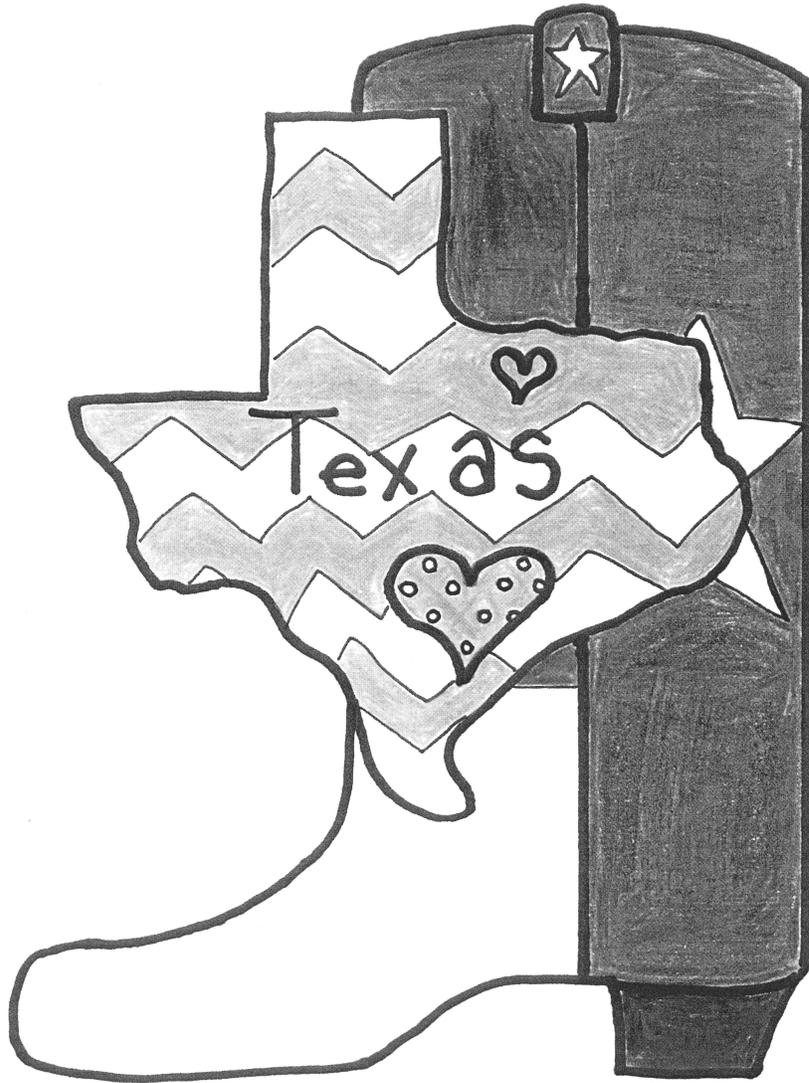
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# THE GOVERNOR

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

## Appointments

### Appointments for September 14, 2023

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2025, Adrian Guerra, D.M.A. of Roma, Texas (replacing Barbara E. "Barbie" Ezell of Portland, who resigned).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2027, Aaron W. Bangor, Ph.D. of Austin, Texas (Dr. Bangor is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2027, Tara Pittman Cevallos of Austin, Texas (replacing Teresa A. Bronsky of Plano, whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2027, Marissa Esquivel of Beeville, Texas (Ms. Esquivel is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2027, Kevin B. Markel of Crowley, Texas (replacing Laura M. Villarreal of University City, whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2027, Juana P. "Janie" Melendez of Hidalgo, Texas (replacing Shemica S. Allen of Allen, whose term expired).

Appointed to the OneStar Foundation for a term to expire March 15, 2026, Elexis Grimes of Cedar Park, Texas (Ms. Grimes is being reappointed).

Appointed to the OneStar Foundation for a term to expire March 15, 2026, Marlene S. McMichael of Georgetown, Texas (Ms. McMichael is being reappointed).

Appointed to the OneStar Foundation for a term to expire March 15, 2026, Adrianna Cuéllar Rojas of Austin, Texas (replacing George L. Green of New Braunfels, whose term expired).

### Appointments for September 15, 2023

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2025, Ellen M. Bauman of Joshua, Texas (Ms. Bauman is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2025, Neva M. Fairchild of Flower Mound, Texas (replacing Dylan M. Rafaty of Plano, whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2025, Elyse L. Lieberman, Ph.D. of Victoria, Texas (Dr. Lieberman is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2025, Eric N. Lindsay of San Antonio, Texas (Mr. Lindsay is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2025, Kristie L. Orr, Ph.D. of College Station, Texas (Dr. Orr is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2025, Lauren C. Taylor of Denton, Texas (replacing Kristopher "Kris" Workman of Austin, whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Angelique M. De Luca of Fort Worth, Texas (replacing Karen H. Harris of San Marcos, who resigned).

### Appointments for September 18, 2023

Appointed to the State Employee Charitable Campaign for a term to expire September 1, 2025, Brent D. Connett of Austin, Texas (Mr. Connett is being reappointed).

### Appointments for September 19, 2023

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2025, Rao K. Ali, M.D. of Southlake, Texas (replacing Steve S. Ahmed, M.D. of Big Spring, who is deceased).

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2029, Stephanie N. Corbett of Harker Heights, Texas (replacing Jennifer L. Clarner of Dripping Springs, whose term expired).

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2029, Cameron J. McElhany of Houston, Texas (Mr. McElhany is being reappointed).

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2029, Gregory S. "Greg" Rowin, D.O. of Harlingen, Texas (Dr. Rowin is being reappointed).

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2029, Richard M. Todd of Rockdale, Texas (replacing Janith K. Milles of Irving, whose term expired).

### Appointments for September 20, 2023

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2025, Jeffrey J. Barnard, M.D. of Dallas, Texas (Dr. Barnard is being reappointed).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2025, Mark G. Daniel of Fort Worth, Texas (Mr. Daniel is being reappointed).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2025, Sarah Kerrigan, Ph.D. of The Woodlands, Texas (Dr. Kerrigan is being reappointed).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2025, Jarvis J. Parsons of Bryan, Texas (Mr. Parsons is being reappointed).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2025, Erika Ziemak of Aledo, Texas (replacing Michael D. Coble, Ph.D. of Keller who has accepted and qualified for another position on the commission).



# THE ATTORNEY GENERAL

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

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

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

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## Opinions

Opinion No. AC-0005

The Honorable Dee Hobbs

Williamson County Attorney

405 M.L.K. Street, #7

Georgetown, Texas 78626

Re: Whether an executive order is enforceable as a "law" under subsection 1.07(a)(30) of the Penal Code (RQ-0432-KP)

## SUMMARY

Pursuant to section 418.012 of the Government Code, executive orders issued by the Governor pursuant to his emergency powers under chapter 418 have the force and effect of law. The Penal Code defines "law"

to include a rule authorized by and lawfully adopted under a statute. A court is therefore likely to conclude that executive orders authorized by and lawfully adopted pursuant to the Governor's statutory emergency powers constitute "laws" for purposes of subsection 1.07(a)(30) of the Penal Code.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202303507

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: September 20, 2023





# 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 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 106. REGISTRATION OF DATA BROKERS

The Office of the Secretary of State (Office) proposes new Chapter 106, §§106.1 - 106.5, concerning registration of data brokers. The Office proposes these rules to implement the new registration requirements for data brokers in Senate Bill 2105, enacted by the 88th Legislature, Regular Session, codified at Chapter 509 of the Texas Business and Commerce Code (SB 2105).

#### BACKGROUND INFORMATION AND JUSTIFICATION

SB 2105, adopted by the 88th Legislature, Regular Session, creates a comprehensive framework in Chapter 509 of the Texas Business and Commerce Code to regulate data brokers. The bill took effect on September 1, 2023.

As enacted by SB 2105, Chapter 509 of the Texas Business and Commerce Code requires a data broker (as defined in Texas Business and Commerce Code §509.001(4)) to register annually with the Office. Texas Business and Commerce Code §509.005 specifies the amount of the registration or renewal fee and identifies the information that must be included in a data broker's registration statement filed with the Office. Texas Business and Commerce Code §509.006 directs the Secretary of State to establish and maintain, on its Internet website, a searchable, central registry of data brokers registered under §509.005. Texas Business and Commerce Code §509.004 requires a data broker that maintains an Internet website or mobile application to post a conspicuous notice on the website or application that, in part, contains the language provided by rule of the Office for inclusion in the notice.

Section 2 of SB 2105 requires the Office, not later than December 1, 2023, to adopt rules necessary to facilitate registration by a data broker under Texas Business and Commerce Code §509.005. Section 2 also directs the Office to incorporate into the rules adequate time for a data broker to comply with Chapter 509 of the Texas Business and Commerce Code following the adoption of the rules.

The purpose of these new rules under Chapter 106 (Registration of Data Brokers) is to provide information regarding the procedures for data broker registration with the Office and the posting of a notice on the data broker's Internet website or mobile application, in accordance with SB 2105.

#### SECTION-BY-SECTION SUMMARY

Proposed §106.1 defines terms used within Chapter 106.

Proposed §106.2 specifies the procedures for a data broker to register with the Office, or to renew an existing registration certificate, as required by Texas Business and Commerce Code §509.005.

Proposed §106.3 provides that a registration of a data broker is valid for one year from the date of issuance and must be renewed annually. The section also designates the time period for a data broker to submit a renewal application. Consistent with Section 2 of Senate Bill 2105, this section requires a data broker subject to Chapter 509 of the Texas Business and Commerce Code to file an initial registration with the Office on or before March 1, 2024.

Proposed §106.4 establishes the procedures for a data broker to submit a statement of correction.

Proposed §106.5 sets forth the required notice language for posting by a data broker on its Internet website or mobile application pursuant to Texas Business and Commerce Code §509.004.

#### FISCAL NOTE

SB 2105 requires a data broker subject to Chapter 509 of the Texas Business and Commerce Code to register with the Office by filing a registration statement and paying a registration fee or renewal fee of \$300. The proposed new rules do not impose any additional costs on a data broker seeking to register with the Office.

Accordingly, Traci Cotton, Director of the Office's Business & Public Filings Division, has determined that for each year of the first five years that the proposed new sections will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed rules. In addition, the Office does not anticipate that enforcing or administering the proposed rules will result in any reductions in costs or in any additional costs to the Office, the state, or local governments. The Office also does not anticipate that there will be any loss or increase in revenue to the Office, the state, or local governments as a result of enforcing or administering the proposed rules.

#### PUBLIC BENEFIT

Ms. Cotton has determined that for each year of the first five years that the proposed new sections will be in effect, the public benefit expected as a result of adopting the proposed new rules will be clarity with respect to the Office's application of Texas Business and Commerce Code §509.005. The proposed new rules will benefit the public by providing information regarding the registration of data brokers with the Office in accordance with Chapter 509 of the Texas Business and Commerce Code. The rules also will provide guidance to data brokers regarding the

required notice language under Texas Business and Commerce Code §509.004.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons required to comply with the proposed new rules. There is a cost imposed on a data broker seeking to register with the Office, or submitting a renewal application related to an existing registration certificate, pursuant to Texas Business and Commerce Code §509.005. However, the Office's proposed new rules do not impose any additional costs on such entities. There is no effect on local economy for the first five years that the proposed new rules will be in effect; therefore, no local employment impact statement is required under Texas Government Code §§2001.022 and 2001.024(a)(6).

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

The proposed new rules will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the Office provides the following government growth impact statement for the proposed rules. For each year of the first five years that the proposed new rules will be in effect, the Office has determined the following:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules are new rules and therefore create new regulations;
- (6) the proposed rules will not expand, limit, or repeal an existing regulation;
- (7) the proposed rules will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the proposed rules will not positively or adversely affect the state's economy.

#### REQUEST FOR PUBLIC COMMENTS

Comments or questions on the proposed new rules may be submitted in writing and directed to Adam Bitter, General Counsel, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887, or by e-mail to [generalcounsel@sos.texas.gov](mailto:generalcounsel@sos.texas.gov). Comments will be accepted for thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed new rules.

#### SUBCHAPTER A. DEFINITIONS

### 1 TAC §106.1

#### STATUTORY AUTHORITY

The proposed new rule is authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

#### CROSS REFERENCE TO STATUTE

The proposed new rules implement Chapter 509 of the Texas Business and Commerce Code. No other statute, code, or article is affected by the proposed rules.

#### §106.1. Definitions.

Words and terms defined in Chapter 509 of the Business and Commerce Code shall have the same meaning in this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Primary physical address--The physical address at which the relevant individual or entity is available for contact.

(2) Registrant--A data broker who has registered with the secretary and has been issued a registration certificate.

(3) Secretary--The Texas Secretary of State.

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 September 18, 2023.

TRD-202303478

Adam Bitter

General Counsel

Office of the Secretary of State

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 463-5770



### SUBCHAPTER B. REGISTRATION AND RENEWAL OF DATA BROKERS

#### 1 TAC §106.2, §106.3

#### STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

#### CROSS REFERENCE TO STATUTE

The proposed new rules implement Chapter 509 of the Texas Business and Commerce Code. No other statute, code, or article is affected by the proposed rules.

§106.2. Registration and Renewal of Data Brokers.

(a) A complete registration statement or renewal application is comprised of:

(1) A completed registration statement or renewal application, signed and sworn to by or on behalf of the data broker, in the form promulgated by the secretary; and

(2) Payment of the registration fee or renewal fee stated in Business and Commerce Code §509.005(a) or §509.005(d), as applicable.

(b) A registration statement or renewal application must comply with Business and Commerce Code §509.005, and also provide:

(1) For the individual submitting the registration statement or renewal application:

- (A) The individual's legal name;
- (B) The individual's telephone number;
- (C) The individual's primary physical address;
- (D) The individual's mailing address; and
- (E) The individual's e-mail address.

(2) For all renewals, the renewal application must also:

(A) Specify that the submission is a renewal application related to an existing registration certificate; and

(B) Provide the registration number assigned to the data broker by the secretary.

§106.3. Timing of Registration.

(a) A registration certificate expires on the first anniversary of its date of issuance by the Office.

(b) A data broker seeking to renew an existing registration certificate shall file a renewal application within ninety (90) days before the expiration of the registration certificate.

(c) The initial registration of a data broker to which Chapter 509 of the Business and Commerce Code applies must be filed on or before March 1, 2024.

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

Filed with the Office of the Secretary of State on September 18, 2023.

TRD-202303479

Adam Bitter

General Counsel

Office of the Secretary of State

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 463-5770



**SUBCHAPTER C. STATEMENT OF CORRECTION**

**1 TAC §106.4**

**STATUTORY AUTHORITY**

The proposed new rule is authorized by Texas Business and Commerce Code §509.010 and Texas Government Code

§2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

**CROSS REFERENCE TO STATUTE**

The proposed new rules implement Chapter 509 of the Texas Business and Commerce Code. No other statute, code, or article is affected by the proposed rules.

§106.4. Corrections.

(a) A data broker must submit a statement of correction if, during the year, it becomes known to the registrant that any information given at the time of registration or renewal, as applicable, was inaccurate.

(b) A statement of correction must include the following information:

(1) The legal name of the data broker;

(2) The date of the last filed registration statement or renewal application;

(3) The registration number assigned to the data broker by the secretary; and

(4) A statement that identifies the inaccuracy and provides the corrected information.

(c) The statement of correction must be signed and sworn to by or on behalf of the data broker in the same manner as a registration statement or renewal application.

(d) There is no filing fee for a correction.

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 September 18, 2023.

TRD-202303481

Adam Bitter

General Counsel

Office of the Secretary of State

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 463-5770



**SUBCHAPTER D. NOTICE REQUIREMENTS**

**1 TAC §106.5**

**STATUTORY AUTHORITY**

The proposed new rule is authorized by Texas Business and Commerce Code §509.010 and Texas Government Code §2001.004(1). Texas Business and Commerce Code §509.010 authorizes the Office to adopt rules as necessary to implement Chapter 509 of the Texas Business and Commerce Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

**CROSS REFERENCE TO STATUTE**

The proposed new rules implement Chapter 509 of the Texas Business and Commerce Code. No other statute, code, or article is affected by the proposed rules.

§106.5. Notice Requirements.

A data broker that maintains an Internet website or mobile application shall post a conspicuous notice on the website or mobile application that states:

(1) For websites:

Figure: 1 TAC §106.5(1)

(2) For mobile applications:

Figure: 1 TAC §106.5(2)

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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Adam Bitter

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5770



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 1 TAC §351.3, §351.6

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.3, concerning Recognition of Out-of-State License of Military Spouse; and new §351.6, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The proposed amendment to §351.3 would allow military service members who are currently licensed in good standing with another jurisdiction to engage in a business or occupation in Texas if the other jurisdiction has licensing requirements substantially equivalent to the requirements for the license in Texas. Proposed new §351.6 would create an alternative licensing process for military service members, military spouses, and military veterans. This amendment establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §351.3 replaces "military spouse" in the title with "military service members and military spouses" and otherwise makes the rule applicable to military service members in addition to military spouses. The proposed amendment also adds a requirement that HHSC verify the licensure and issue a verification letter recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The proposed amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the verification letter.

New §351.6 establishes alternative licensing for military service members, military spouses, and military veterans. Alternative licensing is appropriate when the military service member, military spouse, or military veteran is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in Texas; or held the same license in Texas within the preceding five years. The new rule provides that HHSC has 30 days from the date a military service member, military spouse, or military veteran submits an application for alternative licensing to process the application and issue a license to a qualified applicant.

#### FISCAL NOTE

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

There are no fees imposed when a military service member or military spouse submits the request for recognition under §351.3 or during the alternative licensing process for military service members, military spouses, and military veterans under §351.6, and HHSC may review such requests and applications with current resources.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on

small businesses, micro-businesses, or rural communities that are required to comply with the rules.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and the rules are necessary to implement legislation that does not specifically state that Section 2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from additional licensed individuals being able to serve them. Members of the public who are military service members on active duty, military veterans, or military spouses will benefit from the ability to engage in their licensed profession in Texas.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules are not expected to have any economic costs for persons required to comply because there are no 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 HHSC Regulatory Rules by email to [Regulatory\\_Rules@hhs.texas.gov](mailto:Regulatory_Rules@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 23R069" in the subject line.

#### STATUTORY AUTHORITY

The proposed amendment and new rule are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by HHSC and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment and new rule affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 1001, and Texas Occupations Code Chapter 55.

#### §351.3. *Recognition of Out-of-State License of Military Service Members and Military Spouses [Spouse].*

(a) For the purposes of this section, the definitions found in Texas Occupations Code §55.001 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses to engage in a business or occupation which the Texas Health and Human Services Commission (HHSC) issues to an individual under authority granted by the laws of the State of Texas. A[, unless a] more specific rule concerning recognition of out-of-state licenses of military service members and military spouses may also apply but only to the extent the more specific rule does not conflict with this rule. Any conflicts between this rule and the more specific rule are resolved in favor of this rule. [applies to a license type issued by HHSC.]

(c) A military service member or military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas if the military service member or military spouse:

(1) is currently licensed in good standing with [by] another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies HHSC in writing of the military service member's or military spouse's intent to practice in this state;

(3) submits to HHSC proof of the military service member's or military spouse's residency in this state and a copy of the military service member's or military spouse's military identification card; and

(4) receives a verification letter from HHSC that:

(A) HHSC has verified the military service member's or military spouse's license in another [the other] jurisdiction; and

(B) the military service member or military spouse is authorized to engage in the business or occupation in accordance with Texas Occupations Code §55.0041 and rules for that business or occupation.

(d) HHSC will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another state's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state:

(1) whether the other state requires an applicant to pass an examination that demonstrates competence in the field [in order] to obtain the license;

(2) whether the other state requires an applicant to meet any experience qualifications [in order] to obtain the license;

(3) whether the other state requires an applicant to meet any education qualifications [in order] to obtain the license; and

(4) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(e) The military service member or military spouse must submit:

(1) a written request to HHSC for recognition of the military service member's or military spouse's license issued by the other state; no fee will be required;

(2) any form and additional information regarding the license issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(3) if required by the program, proof of residency in this state, which includes a copy of the permanent change of station order for the military service member or the military spouse;

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

(5) proof the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas.

(f) HHSC has 30 days from the date a military service member or military spouse submits the information required by subsection (e) of this section to: [Upon verification from the licensing jurisdiction of the military spouse's license and if the license is substantially equivalent to a Texas license, HHSC shall issue a verification letter recognizing the licensure as the equivalent license in this state.]

(1) verify that the member or spouse is licensed in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license under the statutes and regulations of this state; and

(2) issue a verification letter recognizing the licensure as the equivalent license in this state.

(g) The verification letter will expire three years from date of issuance or when the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

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

(i) [(h)] A replacement letter may be issued after receiving a request for a replacement letter in writing or on a form, if any, required by the rules of the specific program or division within HHSC that licenses the business or occupation; no fee will be required.

(j) [(i)] The military service member or military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code chapters and all relevant Texas Administrative Code provisions.

(k) [(j)] HHSC may withdraw or modify the verification letter for reasons including the following:

(1) the military service member or military spouse fails to comply with subsection (j)[(i)] of this section; or

(2) the military service member's or military spouse's licensure required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

§351.6. Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

(a) For the purposes of this section, the definitions found in Texas Occupations Code §55.001 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses to engage in a business or occupation which the Texas Health and Human Services Commission (HHSC) issues to an individual under authority granted by the laws of the State of Texas. A more specific rule concerning alternative licensing for military service members, military spouses, and military veterans may also apply but only to the extent the more specific rule does not conflict with this rule. Any conflicts between this rule and the more specific rule are resolved in favor of this rule.

(c) Notwithstanding any other rule, HHSC may issue a license to an applicant who is a military service member, military spouse, or military veteran if the military service member, military spouse, or military veteran:

(1) is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state; or

(2) held the same license in Texas within the preceding five years.

(d) HHSC may waive any requirement to obtaining a license for an applicant described by subsection (c) of this section after reviewing the applicant's credentials.

(e) If an applicant described by subsection (c) of this section must demonstrate competency to meet the requirements for obtaining the license, HHSC may accept alternate forms of competency including:

(1) proof of a passing score for any national exams required to obtain the occupational license;

(2) if specific professional experience is required, proof of duration or hours that meet the professional experience requirement; and

(3) if specific training hours are required for obtaining the license, proof of verified hours related to training experience.

(f) If required by the specific program or division within HHSC that licenses the business or occupation, a military service member or military spouse must provide proof of residency in this state, which includes a copy of the permanent change of station order for the military service member or the military spouse or any other documentation HHSC deems appropriate to verify residency.

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

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

Filed with the Office of the Secretary of State on September 15, 2023.

TRD-202303439

Karen Ray  
Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 574-2228

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**TITLE 16. ECONOMIC REGULATION**

## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

#### SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

##### 16 TAC §24.240

The Public Utility Commission of Texas (Commission Staff) proposes new 16 Texas Administrative Code (TAC) §24.240, relating to Water and Sewer Utility Rates After Acquisition. The proposed rule implements Texas Water Code (TWC) §13.3011, added by House Bill 1484 enacted by the 87th Texas Legislature (R.S.). It allows an acquiring water and sewer utility to apply an existing tariff to the customers of an acquired utility without initiating a new rate proceeding. To be eligible to apply, an existing tariff must be currently in force and filed with a regulatory authority for another water and sewer system owned by the acquiring utility.

##### Growth Impact Statement

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

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

##### Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

##### Takings Impact Analysis

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

##### Fiscal Impact on State and Local Government

Tammy Benter, Director, Division of Utility Outreach, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

##### Public Benefits

Ms. Benter has determined that for each year of the first five years the proposed rule is in effect the anticipated public benefit is that it will make it easier for smaller or underperforming water and sewer utilities to be purchased by utilities with more resources that can operate these utilities comparatively efficiently ensuring access to reliable and quality water, wastewater service for acquired utilities' customers. The rule will allow the acquiring utility to recover the costs of implementing system improvements quicker. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

##### Local Employment Impact Statement

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

##### Costs to Regulated Persons

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

##### Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 14, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

##### Public Comments

Commission Staff requests comments from market participants and other interested persons on the proposed rule. Interested persons may propose alternative language as a part of their filed comments. Interested persons may submit written comments on this proposal for publication draft by October 14, 2023. Comments should be organized in a manner consistent with the organization of the proposed draft rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 53924.

Each set of comments should include a standalone executive summary as the first page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required.

##### Statutory Authority

The new rule is proposed under TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The new rule is also proposed under TWC §13.301

which governs the Sale, Merger, etc.; Investigation; Disallowance of Transaction and TWC §13.3011 that relates to Initial Rates for Certain Water or Sewer Systems after Purchase or Acquisition.

Cross Reference to Statute: Texas Water Code §§13.041, 13.301, and 13.3011.

§24.240. Water and Sewer Utility Rates After Acquisition.

(a) Applicability. This section applies to a person who files an application with the commission under Texas Water Code (TWC) §13.301(a) and a request for authorized acquisition rates under TWC §13.3011.

(b) Definitions. In this section, the following definitions apply unless the context indicates otherwise.

(1) Authorized acquisition rates--Initial rates that are in force and shown in a tariff filed with a regulatory authority by the acquiring utility for another water or sewer system owned by the acquiring utility.

(2) Initial rates--Rates charged by an acquiring utility to the customers of an acquired utility upon acquisition.

(3) Existing rates--Rates an acquired utility charged its customers under a tariff filed with a regulatory authority prior to the utility being acquired.

(c) Rates.

(1) An acquiring utility must use existing rates as initial rates until the commission approves other rates. If the acquiring utility requests approval to charge authorized acquisition rates, the acquiring utility must continue to charge existing rates until the request to charge authorized acquisition rates is approved.

(2) An acquiring utility may request commission approval to charge authorized acquisition rates to the customers of the system for which the utility seeks approval to acquire as part of an application filed in accordance with §24.239 of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental).

(3) An authorized acquisition rate must be in force and shown in a tariff filed with a regulatory authority by the acquiring utility for another water and sewer system on the date an application is filed for the acquisition of the utility under §24.239 of this title.

(4) If the acquiring utility has multiple in-force tariffs filed with regulatory authorities, there is a rebuttable presumption that authorized acquisition rates should be based upon an in-force tariff that was approved by the regulatory authority that has original jurisdiction over the rates charged to the acquired customers.

(5) If the in-force tariff contains rates that are phased in over time, any step of the phase-in rates included in the tariff may be considered an authorized acquisition rate if it is in the public interest. If the authorized acquisition rate is a phased-in rate, the phases must proceed along a similar schedule as the phases in the in-force tariff.

(6) The acquiring utility is not required to initiate a rate proceeding under subchapter F of chapter 13 of the Texas Water Code to request authorized acquisition rates.

(d) Application. In addition to other applicable requirements, a request for authorized acquisition rates in a §24.239 of this title proceeding must include the following:

(1) financial projections including a comparison of expected revenues under the acquired utility's existing rates and the requested authorized acquisition rates;

(2) a capital improvements plan for the acquired system;

(3) an explanation for the tariff or rate schedule the acquiring utility proposes to use for authorized acquisition rates, if the acquiring utility has multiple eligible in force tariffs or rate schedules;

(4) a rate schedule showing the existing rates and the requested authorized acquisition rates;

(5) a disclosure of whether the acquired and acquiring systems are affiliates or have been affiliates in the five year period before the proposed transaction;

(6) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and the requested authorized acquisition rates;

(7) provide documentation from the most recent base rate case in which the tariff that the acquiring utility is requesting to be approved as Authorized Acquisition Rates was approved; and

(8) any other information necessary to demonstrate that the authorized acquisition rates are just and reasonable and that the request is in the public interest.

(e) Notice requirements. In addition to the notice requirements for applications filed under §24.239 of this title, the acquiring utility must include the following information in the application for authorized acquisition rates. Commission staff must incorporate this information into the notice provided to the acquiring utility for distribution after the application is determined to be administratively complete that contains:

(1) how intervention differs from protesting a rate increase;

(2) a rate schedule showing the existing rates and the authorized acquisition rates; and,

(3) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and authorized acquisition rates.

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 September 14, 2023.

TRD-202303411

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 29, 2023

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



## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

### SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

#### 16 TAC §25.62

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.62 relating to Transmission and Distribution System Resiliency Plans. The proposed rule will implement Public Utility Regulatory Act (PURA) §38.078 as enacted by House Bill 2555 during the Texas

88th legislative session (R.S). The proposed rule establishes the requirements and procedures for an electric utility to submit a resiliency plan to enhance the resiliency of its transmission and distribution systems.

#### *Growth Impact Statement*

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

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

#### *Fiscal Impact on Small and Micro-Businesses and Rural Communities*

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

#### *Takings Impact Analysis*

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

#### *Fiscal Impact on State and Local Government*

Chris Roelse, Director, Engineering, Infrastructure Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

#### *Public Benefits*

Mr. Roelse has determined that for each year of the first five years the proposed section is in effect the anticipated public benefit of enforcing the section will be more resilient electric transmission and distribution systems that can withstand weather related and other emergency events to improve overall electric service quality and reliability for customers. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

#### *Local Employment Impact Statement*

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

#### *Costs to Regulated Persons*

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

#### *Public Hearing*

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 6, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

#### *Public Comments*

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 6, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 55250.

Each set of comments should include a standalone executive summary as the first page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required.

#### *Statutory Authority*

The rule is proposed under PURA §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The new rule is also adopted under PURA §38.078 which allows electric utilities to submit to the commission, plans to enhance transmission and distribution system resiliency.

Cross Reference to Statute: Public Utility Regulatory Act §14.002 and §38.078

#### §25.62. Transmission and Distribution System Resiliency Plans.

(a) Applicability. This section applies to an electric utility that owns and operates a transmission and distribution system.

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

(1) Distribution invested capital -- The parts of the electric utility's invested capital that are categorized as distribution plant and, once they are placed into service, are properly recorded in Federal Energy Regulatory Commission (FERC) Uniform System of Accounts 352, 353, and 360 through 374. Distribution invested capital includes only costs: for plant that has been placed into service or will be placed into service prior to rates going into effect; that comply with Public Utility Regulatory Act (PURA), including §36.053 and §36.058; and that are prudent, reasonable, and necessary. Distribution invested capital does not include: generation-related costs; transmission-related costs, including costs recovered through rates set pursuant to §25.192 of this title (relating to Transmission Service Rates), §25.193 of this ti-

tle (relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)), or §25.239 of this title (relating to Transmission Cost Recovery Factor for Certain Electric Utilities); indirect corporate costs; capitalized operations and maintenance expenses; and distribution invested capital recovered through a separate rate, including a surcharge, tracker, rider, or other mechanism.

(2) Resiliency cost recovery rider (RCRR) billing determinant -- Each rate class's annual billing determinant (kilowatt-hour, kilowatt, or kilovolt-ampere) for the most recent 12 months ending no earlier than 90 days prior to an application for a Resiliency Cost Recovery Rider, weather-normalized and adjusted to reflect the number of customers at the end of the period.

(3) Resiliency event -- a low frequency, high impact event that, if not mitigated, poses a material risk to the safe and reliable operation of an electric utility's transmission and distribution systems. A resiliency event is not primarily associated with resource adequacy or an electric utility's ability to deliver power to load under normal operating conditions.

(4) Resiliency-related distribution invested capital -- Distribution invested capital associated with a resiliency plan approved under this section that will be placed into service before or at the time the associated rates become effective under this section, and that are not otherwise included in a utility's rates.

(5) Resiliency-related net distribution invested capital -- Resiliency-related invested capital that is adjusted for accumulated depreciation and any changes in accumulated deferred federal income taxes, including changes to excess accumulated deferred federal income taxes, associated with all resiliency-related distribution invested capital included in the electric utility's RCRR.

(6) Weather-normalized -- Adjusted for normal weather using weather data for the most recent ten-year period prior to the year from which the RCRR billing determinants are derived.

(c) Resiliency Plan. An electric utility may file a plan to mitigate the risks posed by resiliency events to its transmission and distributions systems. A resiliency plan may be updated, but the updated plan must not take effect earlier than three years from the date of approval of the electric utility's most recently approved resiliency plan.

(1) Resiliency measures. A resiliency plan is comprised of one or more measures designed to mitigate the risks posed to the electric utility's transmission and distribution systems by resiliency events, as described in subsection (d) of this section. Each measure must utilize one or more of the following methods:

- (A) hardening electric transmission and distribution facilities;
- (B) modernizing electric transmission and distribution facilities;
- (C) undergrounding certain electric distribution lines;
- (D) lightning mitigation measures;
- (E) flood mitigation measures;
- (F) information technology;
- (G) cybersecurity measures;
- (H) physical security measures;
- (I) vegetation management; or
- (J) wildfire mitigation and response.

(2) Contents of the resiliency plan. The resiliency plan must be organized by measure, including a description of the activities, actions, standards, services, procedures, practices, structures, and equipment associated with each measure.

(A) Chosen resiliency measures and programs. The resiliency plan must identify, for each measure, one or more resiliency events that the measure is intended to mitigate.

(i) The resiliency plan must explain the electric utility's prioritization of the identified resiliency event and, if applicable, the prioritization of the particular geographic area, system, or facilities where the measure will be implemented.

(ii) The resiliency plan must include evidence of the effectiveness of the measure in preventing, responding to, or recovering from the identified resiliency event. The commission will give greater weight to evidence that is quantitative, performance-based, or provided by an independent entity with relevant expertise.

(iii) A resiliency plan must explain the benefits of the resiliency measures including but not limited to reduced system restoration costs, reduction in the frequency or duration of outages for customers, and any improvement in the overall service reliability for customers, including the classes of customers served and any critical load designations.

(iv) The electric utility should identify if a resiliency measure is a coordinated effort with federal, state, or local government programs and funding opportunities.

(v) The resiliency plan must explain the selection of each measure over any reasonable and readily-identifiable alternatives. The resiliency plan must contain sufficient analysis and evidence, such as cost or performance comparisons, to support the selection of each measure. In selecting between measures, whether a measure would support the plan's systematic approach may be considered.

(B) Resiliency events.

(i) A resiliency plan must define each type of resiliency event the plan is designed to mitigate. A resiliency event may be defined using an established definition (e.g., a hurricane) or a plan- or measure-specific definition based on the risks posed by that type of event to the electric utility's systems (e.g., flooding of a specified depth). Each type of resiliency event must be defined with sufficient detail to allow the electric utility or commission to determine whether an actual set of circumstances qualifies as a resiliency event of that type.

(ii) If appropriate, one or more magnitude thresholds must be included in the definition of a resiliency event type based on the risks posed to the electric utility's systems by that type of event. A resiliency plan may establish multiple magnitude thresholds for a single type of resiliency event (e.g., categories of hurricanes) when necessary to conduct a more granular analysis of the risks posed by the event and the options available to address it.

(iii) The resiliency plan must include a description of the system characteristics that make the electric utility's transmission and distribution systems susceptible to each identified resiliency event type. The resiliency plan must explain the electric utility's experience with, if applicable, and forecasted risk of the identified event type, including whether the forecasted risk is specific to a particular system or geographic area.

(iv) A resiliency plan must provide sufficient evidence to support the presence of and risk posed by each identified resiliency event including historical evidence of the frequency and magnitude of each event type. In assessing the presence and risk posed by each resiliency event, the commission will give great weight to any

studies conducted by an independent system operator or independent entity with relevant expertise.

(C) Evaluation metric or criteria. Each measure in the resiliency plan must include a proposed metric, or criteria for evaluating the effectiveness of that measure in mitigating the associated resiliency event.

(i) The resiliency plan must include documentation necessary to support the use of the selected evaluation metric or criteria.

(ii) For an evaluation metric or criteria that is not quantitative, the resiliency plan must explain why quantitative evaluation of the effectiveness of that measure is not possible.

(iii) The resiliency plan must also include an estimate of the expected effectiveness of each measure using the selected evaluation metric or criteria.

(D) If a resiliency plan includes measures that are similar to other existing programs or measures otherwise required by law, such as a storm hardening plan under §25.95 of this title (relating to Electric Utility Infrastructure Storm Hardening) or a vegetation management plan under §25.96 of this title (relating to Vegetation Management) the electric utility must distinguish the measures in the resiliency plan from the other program's measures and, if appropriate, explain how the related items work in conjunction with one another.

(E) A resiliency plan must be implemented using a systematic approach over a period of at least three years. The resiliency plan must explain this systematic approach and provide implementation details for each of the plan's measures, including estimated capital costs, estimated operations and maintenance expenses, and an estimated timeline for completion. the resiliency plan should identify relevant cost drivers (e.g., line miles, frequency of inspections, frequency of trim cycles, etc.) that would affect the estimates.

(F) The resiliency plan must include an executive summary of the plan objectives, event to be mitigated, measures taken, and metrics used to evaluate effectiveness, cost and benefits, and how the overall plan is in the public interest.

(3) An electric utility may designate portions of the resiliency plan as critical energy infrastructure information, as defined by applicable law, and file such portions confidentially.

(d) Commission processing of resiliency plan

(1) Notice and intervention deadline. The electric utility must provide notice of its filed resiliency plan, including the docket number assigned to the resiliency plan and the deadline for intervention, in accordance with this paragraph. The notice must be provided by first class mail or, if the recipient has agreed to receive electronic notifications, electronic mail. The notice must be mailed the same day the application is filed. The intervention deadline is 20 days after the filing of the application. The notice must be delivered to:

(A) all municipalities in the electric utility's service area that have retained original jurisdiction;

(B) all parties in the electric utility's last base rate proceeding; and

(C) the Office of Public Utility Counsel. Notice delivered to the Office of Public Utility Counsel must include a complete copy of the resiliency plan.

(2) Sufficiency of resiliency plan. An application is sufficient if it includes the information required by subsection (c) of this section and the electric utility has filed proof that notice has been provided in accordance with this subsection. A motion to find a resiliency

plan materially deficient must be filed no later than 20 calendar days after the resiliency plan is filed. The motion must specify the nature of the deficiency and the relevant portions of the resiliency plan, and cite the particular requirement with which the resiliency plan is alleged not to comply. The electric utility's response to a motion to find a resiliency plan materially deficient must be filed no later than five working days after such motion is received. A motion to find an amended resiliency plan deficient, when the amendment is filed in response to an order concluding that material deficiencies exist in the resiliency plan, must be filed no later than five working days after the amended resiliency plan is filed. If the presiding officer has not issued a written order within 35 calendar days of the filing of the resiliency plan, or 25 calendar days of the filing of an amended resiliency plan, concluding that material deficiencies exist in the resiliency plan, the resiliency plan is deemed sufficient.

(3) The commission will approve, modify, or deny a resiliency plan not later than 180 days after a complete resiliency plan is filed. A resiliency plan is complete if it is deemed sufficient in accordance with this subsection. The presiding officer must establish a procedural schedule that will enable the commission to approve, modify, or deny the plan not later than 180 days after a complete plan is filed. If the resiliency plan is determined to be materially deficient, the presiding officer must toll the 180-day deadline until a complete application is filed.

(A) The commission's denial of a resiliency plan is not a finding on the prudence or imprudence of a measure or estimated cost in the resiliency plan. Upon denial of a resiliency plan, an electric utility may file a revised resiliency plan for review and approval by the commission.

(B) If the commission modifies a resiliency plan, the electric utility may withdraw the resiliency plan without prejudice or propose alternative modifications for the commission's consideration. The deadline for withdrawing a modified resiliency plan or proposing alternative modifications is the deadline for a motion for rehearing under §22.264 of this title (relating to Rehearing).

(4) Commission review of resiliency plan. The commission will approve or modify an electric utility's proposed resiliency plan if it determines that approving or modifying the plan is in the public interest. In determining the public interest, the commission may consider:

(A) the verifiability and severity of the resiliency risks posed by the resiliency events the resiliency plan is designed to address;

(B) the extent to which the plan will enhance resiliency of the electric utility's system, mitigate system restoration costs, reduce the frequency or duration of outages, and improve overall service reliability for customers;

(C) the extent to which the resiliency plan prioritizes areas of lower performance;

(D) the extent to which the resiliency plan prioritizes critical load as defined in §25.52 of this title (relating to Reliability and Continuity of Service);

(E) the estimated time and costs of implementing the measures proposed in the resiliency plan;

(F) whether there are more efficient or cost-effective means of addressing the resiliency events addressed by the resiliency plan; and

(G) other factors deemed relevant by the commission.

(e) Good cause exception. An electric utility must implement each measure in its most recently approved resiliency plan unless the commission grants a good cause exception to implementing one or more measure in the plan. The commission will grant a good cause exception if the electric utility demonstrates that operational needs, business needs, financial conditions, or supply chain or labor conditions dictate the exception. The commission may also grant a good cause exception allowing the electric utility to delay implementation of one or more measures in its resiliency plan if the electric utility has a pending application for a revised resiliency plan that addresses the same resiliency events.

(f) Resiliency Plan Cost Recovery. A utility may request cost recovery for costs associated with a resiliency plan approved under this section that are not otherwise included in the utility's rates.

(1) Resiliency Cost Recovery Rider. This paragraph provides a mechanism for an electric utility to request to recover certain resiliency-related costs through a resiliency cost recovery rider (RCRR) outside of a base-rate proceeding or a distribution cost recovery proceeding as part of a resiliency plan approved under this section, consistent with PURA §38.078(i).

(A) RCRR Requirements. The RCRR rate for each rate class, and any other terms or conditions related to those rates, will be specified in a rider to the utility's tariff.

(i) An electric utility must not have more than one RCRR.

(ii) An electric utility with an existing RCRR may apply to amend the RCRR to include additional costs associated with an updated resiliency plan under PURA §38.078(g).

(iii) Any RCRR established under this section may not take effect until all facilities with costs included in the RCRR begin providing service to the electric utility's customers.

(iv) As part of its next base-rate proceeding or distribution cost recovery factor proceeding for the electric utility, the electric utility may request to include its costs included in its RCRR in that proceeding and must request that RCRR rates be set to zero as of the effective date of rates resulting from that proceeding.

(B) Calculation of RCRR Rates. The RCRR rate for each rate class must be calculated according to the provisions of this subparagraph and subparagraphs (C) and (D) of this paragraph.

(i) The RCRR rate for each rate class will be calculated using the following formula:  $RCRR_{CLASS} = RR_{CLASS} / BD_{C-CLASS}$

(ii) The values of the terms used in this paragraph will be calculated as follows:

$$(I) \quad RR_{CLASS} = RR_{TOT} * ALLOC_{C-CLASS}$$

$$(II) \quad RR_{TOT} = ((RNDC * ROR_{RC}) + RDDEPR + RNDCFIT + RDOT) - IDCCR$$

$$(III) \quad ALLOC_{C-CLASS} = \frac{ALLOC_{RC-CLASS} * (BD_{C-CLASS} / BD_{RC-CLASS})}{\sum (ALLOC_{RC-CLASS} * (BD_{C-CLASS} / BD_{RC-CLASS}))}$$

$$(IV) \quad IDCCR = \sum (DISTREV_{RC-CLASS} * \%GROWTH_{CLASS}) - DCRFLGA$$

$$(V) \quad DISTREV_{RC-CLASS} = (DIC_{RC-CLASS} * ROR_{AT}) + DEPR_{RC-CLASS} + FIT_{RC-CLASS} + OT_{RC-CLASS}$$

with the variables in this formula as defined in §25.239 of this title.

$$(VI) \quad \%GROWTH_{CLASS} = (BD_{C-CLASS} - BD_{RC-CLASS}) / BD_{RC-CLASS}$$

(iii) The terms used in this paragraph represent or are defined as follows:

(I) Descriptions of calculated values.

(-a-)  $RCRR_{CLASS}$  -- RCRR rate for a rate class.

(-b-)  $RR_{CLASS}$  -- RCRR class revenue requirement.

(-c-)  $RR_{TOT}$  -- Total RCRR Texas retail revenue requirement.

(-d-)  $ALLOC_{C-CLASS}$  -- RCRR class allocation factor for a rate class.

(-e-) IDCCR -- Incremental distribution capital cost recovery.

(-f-)  $DISTREV_{RC-CLASS}$  -- Distribution Revenues by rate class based on Net Distribution Invested Capital from the last comprehensive base-rate proceeding.

(-g-)  $\%GROWTH_{CLASS}$  - Growth in billing determinants by class.

(II) RCRR billing determinants and distribution investment values.

(-a-)  $BD_{C-CLASS}$  -- RCRR billing determinants.

(-b-)  $RNDC$  -- Resiliency-related net distribution invested capital.

(-c-)  $RDDEPR$  -- Resiliency-related distribution invested capital depreciation expense.

(-d-)  $RNDCFIT$  -- Federal income tax expense associated with the return on the resiliency-related net distribution invested capital.

(-e-)  $RDOT$  -- Other tax expense associated with the resiliency-related distribution invested capital.

(III) Baseline values. The following values are based on those values used to establish rates in the electric utility's most recent base-rate proceeding or distribution cost recovery factor proceeding, or if an input to the RCRR calculation from the electric utility's last base-rate proceeding is not separately identified in that proceeding, it will be derived from information from that proceeding:

(-a-)  $BD_{RC-CLASS}$  -- Rate class billing determinants used to establish distribution base rates in the last base-rate proceeding. Energy-based billing determinants will be used for those rate classes that do not include any demand charges, and demand-based billing determinants will be used for those rate classes that include demand charges.

(-b-)  $ROR_{RC}$  -- After-tax rate of return approved by the commission in the electric utility's last base-rate proceeding.

(-c-)  $ALLOC_{RC-CLASS}$  -- Rate class allocation factor value determined under the provisions of subparagraph (C) of this paragraph.

(-d-)  $DCRFLGA$  -- The value of  $\sum (DISTREV_{RC-CLASS} * \%GROWTH_{CLASS})$  in the most recent distribution cost recovery factor proceeding for the utility since its late base rate proceeding, or zero if there are no distribution cost recovery factor proceedings since the utility's last base rate proceeding.

(C) Class allocation factors. For calculating RCRR rates, the baseline rate-class allocation factors used to allocate distribution invested capital in the last base-rate proceeding will be used.

(D) Customer classification. For the purposes of establishing RCRR rates, customers will be classified according to the rate classes established in the electric utility's most recently completed base-rate proceeding.

(2) Resiliency Cost Recovery Factor. This paragraph provides a mechanism for an electric utility to request to recover certain re-

siliency-related costs deferred as a regulatory asset through a resiliency cost recovery factor (RCRF) rate as part of a transmission cost recovery factor proceeding under §25.239 of this title, consistent with PURA §38.078(k).

(A) Notwithstanding the existing requirements of §25.239 of this title, a utility eligible to request a transmission cost recovery factor under §25.239 of this title may, as part of an application under §25.239 of this title request to include RCRF rates calculated consistent with this paragraph in addition to the TCRF rates allowed under §25.239 of this title.

(B) RCRF rates established as part of a TCRF application under §25.239 of this title must be calculated in a manner identical to the RCRF rates described in paragraph (1) of this subsection, with the exception that the value of RRTOT must be equal to a reasonable annual amortization amount of the resiliency-related regulatory asset, less the value of IDCRR.

(C) Upon the establishment of an RCRF rate, the resiliency-related regulatory asset balance will be reduced at an annual rate by the annual amortization amount used to establish the RCRF rates.

(3) Distribution Cost Recovery Factor. This paragraph provides a mechanism for an electric utility to request to recover certain resiliency-related costs deferred as a regulatory asset as part of a distribution cost recovery factor proceeding under §25.234 of this title (relating to Rate Design), consistent with PURA §38.078(k).

(A) Notwithstanding the existing requirements of §25.234 of this title, a utility eligible to request a distribution cost recovery factor under §25.234 of this title may, as part of an application under §25.234 of this title, request to include resiliency-related costs deferred as a regulatory asset in its DCRF rates.

(B) DCRF rates established consistent with this paragraph must be calculated in a manner identical to the DCRF rates described in §25.234 of this title, with the exception that the DCRF rate for each rate class must be calculated using the following formula: 
$$\frac{[(DIC_{c} - DIC_{rc}) * ROR_{rc}] + (DEPR_{c} - DEPR_{rc}) + (FIT_{c} - FIT_{rc}) + (OT_{c} - OT_{rc}) + RAMORT - \sum (DISTREV_{rc,CLASS} * \%GROWTH_{CLASS})}{BD_{CLASS}}$$
 Where the value of RAMORT must be equal to a reasonable annual amortization amount of the resiliency-related regulatory asset.

(C) Upon the establishment of an DCRF rate under this paragraph, the resiliency-related regulatory asset balance will be reduced at an annual rate by the value of RAMORT.

#### (4) Reconciliation.

(A) Resiliency-related amounts recovered through rates approved under this subsection are subject to reconciliation in the first base-rate proceeding for the electric utility that is filed after the effective date of the rates. As part of the reconciliation, the commission will determine if the resiliency-related costs are reasonable, necessary, and prudent.

(B) Any amounts recovered through rates approved under this subsection that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return and taxes, must be refunded with carrying costs. Carrying costs will be determined as follows:

(i) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the electric utility's base rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be

calculated using an effective monthly interest rate based on the same rate of return that was applied to the resiliency costs included in rates.

(ii) For the time period beginning with the effective date of the electric utility's rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the electric utility's rate of return authorized in that base-rate proceeding.

(g) Reporting requirements. An electric utility with a commission-approved resiliency plan must file an annual resiliency plan report by May 1 of each year. The annual resiliency plan report must include the following information:

(1) until the resiliency plan is fully implemented, an implementation status update consisting of:

(A) a list of each resiliency plan measure completed in the prior calendar year, and the actual capital costs and operations and maintenance expenses incurred in the prior year attributable to each measure;

(B) a list of each resiliency plan measure scheduled for completion in the upcoming year, and an estimate of capital costs and operations and maintenance expenses for each resiliency plan measure scheduled for completion in the upcoming calendar year; and

(C) an explanation for any material changes in the implementation timeline or costs associated with implementing the resiliency plan; and

(2) until the third anniversary of the plan being fully implemented, a resiliency benefit update consisting of:

(A) a report on the occurrence of any resiliency events the resiliency plan or a previously-implemented resiliency plan was intended to address, including a comparison of the frequency and magnitude of these events with any projections contained in the resiliency plan or previously-implemented resiliency plan;

(B) an evaluation of the effectiveness of each implemented resiliency plan measure in addressing any resiliency events that measure was implemented to address. This evaluation must include an analysis using the metric or criteria contained in the resiliency plan for that measure, and a comparison of the measure's actual effectiveness with its projected effectiveness.

(C) an update on the expected impact of implemented resiliency plan measures on system restoration costs, reduction in the frequency or duration of outages for customers at the location for which a resiliency plan was implemented, and any improvement in the overall service reliability for customers. An electric utility may report realized benefits and SAIDI, SAIFI, and CAIDI statistics at the feeder level when possible. The index statistics must include all interruption classifications and must display the number of critical and chronic customers on each feeder.

(3) An electric utility is required to maintain records associated with the information referred to in this subsection. Upon request by commission staff an electric utility must provide any additional information and updates on the status of the resiliency plan submitted.

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 September 14, 2023.

TRD-202303435



## SUBCHAPTER S. WHOLESALE MARKETS

### 16 TAC §25.509

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.509, relating to Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region. The proposed amendments will implement Senate Bill 3, Section 18, passed in the 87th Texas Legislative Session (R.S.), by establishing an emergency pricing program for the wholesale electric market as required by Public Utility Regulatory Act (PURA) §39.162.

#### Growth Impact Statement

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

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

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

#### Takings Impact Analysis

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

#### Fiscal Impact on State and Local Government

Werner Roth, Senior Market Economist, Market Analysis Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the

state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

#### Public Benefits

Mr. Roth has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be protecting electric consumers from excessive energy prices during prolonged scarcity events while ensuring generators are able to recover costs incurred during those events. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

#### Local Employment Impact Statement

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

#### Costs to Regulated Persons

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

#### Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 13, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

#### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 13, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 54585.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments. Comments should be limited to ten pages, excluding the executive summary, and any attached redlines.

#### Statutory Authority

The amendment is proposed under PURA §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.162, which directs the commission to establish an emergency pricing program for the wholesale electric market.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, and 39.162.

§25.509. *Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region.*

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

(1) Generation entity--an entity that owns or controls a generation resource.

(2) Generation resource--a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

(3) Load entity--an entity that owns or controls a load resource.

(4) Load resource--a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(5) Resource entity--an entity that is a generation entity or a load entity.

(b) Scarcity Pricing Mechanism [~~pricing mechanism~~] (SPM). ERCOT will administer the SPM. The SPM will operate as follows:

(1) The SPM will operate on a calendar year basis.

(2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.

(4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as:  $\sum((RTEP - POC) * (\text{number of minutes in a settlement interval} / 60 \text{ minutes per hour}))$  for each settlement interval when  $RTEP - POC > 0$ .

(5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).

(6) System-Wide Offer Caps.

(A) The low system-wide offer cap (LCAP) will be set at \$2,000 per MWh and \$2,000 per MW per hour.

(B) The high system-wide offer cap (HCAP) will be \$5,000 per MWh and \$5,000 per MW per hour.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus \$1 for the remainder of that calendar year.

(7) Reimbursement for Operating Losses when the LCAP is in Effect. When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in

excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

(c) Emergency Pricing Program (EPP). ERCOT will administer the EPP. The EPP will operate as follows.

(1) Activation of the EPP. The EPP must be activated if the average system-wide energy price, as determined by ERCOT, has been at the HCAP for 12 hours within a rolling 24-hour period.

(2) Emergency Offer Cap (ECAP). While the EPP is active, the system-wide offer cap will be set to the ECAP. The ECAP will be set equal to the value of the LCAP.

(3) Duration of the EPP. The EPP will remain in effect until the later of:

(A) 72 hours after the activation of the EPP; or

(B) 24 hours after ERCOT exits emergency operations.

(4) Market Notice. ERCOT will issue a market notice both when the EPP is activated and when the EPP is terminated.

(5) Reimbursement for Costs That Exceed the ECAP. While the EPP is active, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the ECAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent practicable to verify the resource entity's costs for reimbursement.

(6) Report. Within 60 calendar days from the date the EPP is terminated, ERCOT must file a report with the commission that contains the following information:

(A) A summary of the event that triggered the EPP;

(B) An analysis of the EPP's performance while the program was active;

(C) The number of generators that filed for cost recovery under paragraph (5) of this subsection and the total dollar amount of costs recovered with this mechanism; and

(D) Any recommendations to modify or improve the EPP.

(d) Review of System-Wide Offer Cap Programs. Beginning January 1, 2026, and every five years thereafter, the commission will review each of the system-wide offer cap programs to determine whether to update aspects of each program.

(e) [(e)] Development and Implementation [implementation]. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

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

Filed with the Office of the Secretary of State on September 14, 2023.

TRD-202303432

Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Earliest possible date of adoption: October 29, 2023  
For further information, please call: (512) 936-7322



## 16 TAC §25.515

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.515 relating to Texas Backup Power Package Advisory Committee. This proposed rule will implement Public Utility Regulatory Act (PURA) Chapter 34 §34.0203 as enacted by Senate Bill (SB) 2627 during the Texas 88th Regular Legislative Session. The proposed rule will establish the advisory committee specified by PURA §34.0203 to advise the commission on the administration of the Texas backup power package program in accordance with Texas Government Code Chapter 2110.

### Growth Impact Statement

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

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

### Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

### Takings Impact Analysis

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

### Fiscal Impact on State and Local Government

David Gordon, Executive Counsel, Executive Director Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state

or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

### Public Benefits

Mr. Gordon has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the establishment of the advisory committee to recommend criteria for the commission to employ in making a grant or loan for Texas backup power package projects. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

### Local Employment Impact Statement

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

### Costs to Regulated Persons

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

### Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 12, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 19, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 55407.

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

### Statutory Authority

The rule is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §34.0203, which requires the establishment of advisory committee to recommend criteria for the commission to employ in making a grant or loan for funding of Texas backup power packages. The amendment is also proposed under Texas Government Code Chapter 2110 which governs the establishment and oversight of state agency advisory committees.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, and 34.0203.

§25.515. Texas Backup Power Package Advisory Committee.

(a) Definitions.

(1) Advisory committee--the advisory committee convened under the authority described in PURA §34.0203.

(2) Texas backup power package--a stand-alone, behind-the-meter, multiday backup power source that can be used for islanding.

(b) Purpose and Duties. The advisory committee is established to recommend criteria for the commission to employ in making a grant or loan under PURA chapter 34, subchapter B. The advisory committee must:

(1) No later than October 1, 2024, submit, in writing, recommendations for the types of Texas backup power package projects that should be funded by loans and the types of Texas backup power package projects that should be funded by grants.

(2) No later than October 1, 2024, submit, in writing, a report to the commission with recommendations for procedures for the application for and award of a grant or loan in accordance with PURA chapter 34, subchapter B.

(3) Make any other recommendation to the commission regarding matters associated with PURA chapter 34, subchapter B that the advisory committee finds appropriate.

(4) Record minutes of each advisory committee meeting and provide a copy of those minutes to the commission.

(c) Composition and Membership. The advisory committee will consist of no fewer than three and no more than nine members. The executive director is authorized to solicit candidates, evaluate their qualifications, and make appointments to the advisory committee to fill any open position on the advisory committee. The executive director will select members of the advisory committee after reviewing qualifications of potential members. Persons interested in serving on the advisory committee may submit a resume and statement of interest to the executive director at TexasBackupPower@puc.texas.gov.

(d) Membership Term. An advisory committee member's term begins when the executive director files notice of the member's appointment on the commission's filing interchange. Each member will serve on the advisory committee until the member resigns or is removed. A member may resign by submitting written notice of resignation to the executive director. The commission or the executive director may remove an advisory committee member for any reason or for no reason.

(e) Reimbursement. Members of the advisory committee will not be reimbursed for expenses.

(f) Meetings. The first advisory committee meeting will be called by the executive director. At this first meeting, the advisory committee members must designate a presiding officer to preside over the advisory committee and report to the commission. The presiding officer must call all subsequent meetings of the advisory committee as frequently as necessary to carry out the advisory committee's purpose. A majority of seated members will constitute a quorum necessary for carrying out advisory committee business. The advisory committee may seek and incorporate the input of any person while carrying out its duties.

(g) Duration. The advisory committee will automatically be abolished on the earlier of 180 days after the date the advisory committee delivers the reports described in subsection (b) of this section or four years after the effective date of this rule.

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 29, 2023

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



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER K. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter K, §§60.500-60.504, 60.510, 60.512, 60.514, 60.516, and 60.519; proposes a new rule at Subchapter K, §60.518; and proposes the repeal of an existing rule at Subchapter K, §60.518, regarding the Procedural Rules of the Commission and the Department. These proposed changes are referred to as the "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, Subchapter K, implement Texas Occupations Code, Chapter 51, General Provisions Related to Licensing; Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses; and the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

The proposed rules are necessary to implement Senate Bill (SB) 422, 88th Legislature, Regular Session (2023), and the federal Servicemembers' Civil Relief Act by: (1) updating current definitions and terms in Chapter 55, Occupations Code to comport with federal and state standards; (2) extending the license portability of out-of-state occupational licenses for military service members stationed in Texas consistent with federal and state law; (3) extending residency status for non-resident license applicants to military service members; and (4) implementing a three-year recognition of out-of-state occupational licenses for military spouses whose status as a spouse changes due to a divorce or other occurrence. The proposed rules also repeal the issuance of a three-year temporary license - formerly available in conjunction with the recognition of an out-of-state license - for eligible military members, as it is redundant with other licensing options. The proposed rules also introduce new §60.518 to implement the provisions of SB 422 and the federal legislation. Current §60.518 is repealed by the proposed rules.

## SECTION-BY-SECTION SUMMARY

The proposed rules amend §60.500, Military Subchapter, to include a reference to the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

The proposed rules amend §60.501, Definitions, by: (1) expanding the definition of "active duty" to include an added portion of the federal definition for "military service" from 50 U.S.C. §3911(2)(C) which requires any period during which a person is absent from duty on account of sickness, wounds, leave, or other lawful cause to be classified as active duty; and (2) shortening the length of defined terms used throughout the rules.

The proposed rules amend §60.502, Determining the Amount of Military Experience, Service, Training, or Education, to remove redundant or unnecessary language.

The proposed rules amend §60.503, Exemption from Late Renewal Fees, to remove redundant or unnecessary language.

The proposed rules amend §60.504, Extension of Certain Deadlines, to remove redundant or unnecessary language.

The proposed rules amend §60.510, License Requirements for Applicants with Military Experience, Service, Training, or Education, to remove redundant or unnecessary language.

The proposed rules amend §60.512, Expedited Alternative Licensing Requirements--Substantially Equivalent License, to remove redundant or unnecessary language.

The proposed rules amend §60.514, Expedited Alternative Licensing Requirements--Previously Held Texas License, to remove redundant or unnecessary language.

The proposed rules amend §60.516, Expedited Alternative Licensing Requirements--Demonstration of Competency by Alternative Methods, to remove redundant or unnecessary language.

The proposed rules add new §60.518, Recognition of Out-of-State License of Military Service Members and Military Spouses, which describes the out-of-state license recognition process related to a regulated business or occupation for eligible service members and their spouses. The new rule will: (1) implement pertinent provisions of the federal Servicemembers' Civil Relief Act alongside SB 422 to provide for recognition of out-of-state occupational licenses for service members and spouses; (2) describe the specific prerequisites and procedure by which the department will grant recognition to out-of-state occupational licenses to eligible persons; (3) repeal the department's issuance of a three-year temporary license to an eligible person whose out-of-state occupational has been recognized; (4) authorize a military spouse who is recognized to engage in a business or occupation in Texas under a current out-of-state license to continue to engage in that business or occupation for three years after formal department recognition, in the event of divorce or similar event that affects the spouse's status as a military spouse; (5) acknowledge the applicability of interstate licensure compacts to state law; and (6) remove redundant or unnecessary language. This rule replaces existing §60.518.

The proposed rules amend §60.519, License Eligibility-Establishing License Residency Requirement for Out-of-State Military Service Members and Military Spouses, to: (1) acknowledge the applicability of interstate licensure compacts to state law; and (2) remove redundant or unnecessary language.

The proposed rules repeal existing §60.518.

## FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

## LOCAL EMPLOYMENT IMPACT STATEMENT

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

## PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that military service members and their spouses will be able to continue in their occupation with little interruption in their affairs upon being stationed in Texas. Moreover, department recognition of a military service member's out-of-state occupational license would authorize the member to work for the duration of their military orders, rather than a one- or two-year duration for a Texas license, depending on the program.

## PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. Military service members or spouses who meet the requirements for department recognition under Section 55.0041 of the Texas Occupations Code would obtain the work authorization letter at no cost, and these authorizations would impose no cost on any other persons.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

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

## GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand an existing regulation by: (a) extending department recognition of out-of-state occupational licenses for military service members in addition to their spouses under Section 55.0041 of the Texas Occupations Code, and (b) authorizing a military spouse who is authorized to engage in a business or occupation in Texas without obtaining the required license to continue to engage in that business or occupation for the remainder of the authorized three years following a divorce or similar event that affects the spouse's status as a military spouse.

The proposed rules repeal an existing regulation by removing the department's issuance of a three-year temporary license to a military spouse whose out-of-state license authorizes them to work in Texas.

7. The proposed rules increase the number of individuals subject to the rules' applicability. Once the proposed rules are adopted, military service members will be afforded department recognition for their out-of-state occupational licenses. Once department recognition for military service members takes place, each new eligible applicant will result in an increase in the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

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

**16 TAC §§60.500 - 60.504, 60.510, 60.512, 60.514, 60.516, 60.518, 60.519**

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 55, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 55, and the Federal Servicemembers Civil Relief Act at 50 U.S.C. §4025a, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 422, 88th Legislature, Regular Session (2023).

#### §60.500. *Military Subchapter.*

This subchapter implements the provisions related to military service members, military veterans, and military spouses under Texas Occupations Code, Chapters 51 and 55 and other statutes applicable to specific programs regulated by the commission and the department, and the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

#### §60.501. *Military Definitions.*

The following words and terms, when used in this subchapter, have the following meanings.

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state. The term does not include service performed exclusively for training, such as basic combat training, advanced individual training, annual training, inactive duty training, and special training periodically made available to service members. The term includes any period during which a person is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) Apprenticeship or apprenticeship program--This term has the same meaning as defined by statute or rule for a specific license.

(3) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(4) Military service member (service member)--A person who is on active duty.

(5) Military spouse (spouse)--A person who is married to a military service member.

(6) Military veteran (veteran)--A person who has served on active duty and who was discharged or released from active duty.

(7) Reserve unit of the armed forces of the United States--The Army National Guard of the United States, the Air National Guard of the United States, the Army Reserve, the Navy Reserve, the Air Force Reserve, the Coast Guard Reserve, and the Marine Corps Reserve.

(8) Similar military service of another state--The state Army National Guard, state Air National Guard, or state guard.

*§60.502. Determining the Amount of Military Experience, Service, Training, or Education.*

(a) The amount of military experience, service, training or education, which an applicant submits for purposes of meeting the licensing requirements of a specific license, will be determined in accordance with §60.35 [~~and based on the experience, service, training, and education requirements as required by a specific license~~].

(b) An applicant will receive credit for [~~the amount of~~] time incurred in training or in performing the specific work, duties, or functions that are applicable for a specific license. The amount of time credited may be limited to a maximum amount of time (hours, months or years) as specified by statute or rule for a specific license or may be less than the total amount of time (hours, months or years) the applicant has served in the military.

*§60.503. Exemption from Late Renewal Fees.*

Pursuant to Texas Occupations Code §55.002, an individual who provides the department with satisfactory documentation that the individual was serving as a [~~military~~] service member during a license renewal period may renew that license by paying the renewal fee and is exempt from paying a late renewal fee.

*§60.504. Extension of Certain Deadlines.*

Pursuant to Texas Occupations Code, §55.003, a [~~military~~] service member whose license expired while on active duty is entitled to two years of additional time from the date of discharge to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the [~~military~~] service member's license.

*§60.510. License Requirements for Applicants with Military Experience, Service, Training, or Education.*

(a) This section implements Texas Occupations Code §§51.4013, 55.007, 55.008, 55.009, and 1305.1645(a).

(b) This section applies to a [<sup>u</sup>] military service member [<sup>u</sup>] and a [<sup>u</sup>] military veteran [<sup>u</sup>] as defined under §60.501.

(c) An applicant under this section will be eligible to receive credit for verified military experience, service, training, or education in meeting the licensing requirements, other than an examination requirement, for a specific license issued by the department.

(d) If an apprenticeship is required for a license issued by the department, the department will credit verified military experience, service, training, or education that is relevant to the occupation toward the apprenticeship requirements for the license.

(e) An applicant who seeks to receive credit for verified military experience, service, training, or education must submit the following documentation:

(1) completed license application and any supporting documents associated with the specific department license; and

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders or documents showing proof of active duty status (for [~~military~~] service members);

(B) copy of the military orders or documents showing proof of veteran status (for [~~military~~] veterans); and

(C) copy of the military orders or documents showing the type and amount of related military experience, service, training, or education applicable to a specific license.

(f) The amount of military experience, service, training, or education, which an applicant submits for purposes of meeting the licensing requirements of a specific license, will be determined in accordance with §60.502.

(g) The applicant under this section must still take and pass any applicable examination required for obtaining a specific license.

(h) The initial license application fee and any examination fees paid to the department are waived for an applicant who meets the requirements under this section. The applicant is still responsible for paying any examination fees that are charged by a third-party examination vendor.

(i) The applicant under this section must [~~undergo and successfully~~] pass a criminal history background check.

(j) A [~~military~~] service member or military veteran who obtains a license under this section must comply with all [~~of the~~] license renewal requirements including fees for the specific license obtained.

*§60.512. Expedited Alternative Licensing Requirements--Substantially Equivalent License.*

(a) This section implements Texas Occupations Code §§55.004, 55.005, 55.006, and 55.009, as they relate to an applicant who holds a "substantially equivalent" license.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(c) An applicant under this section is eligible to obtain a license issued by the department if the applicant holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the Texas licensing requirements.

(d) The department will determine whether the licensing requirements of the other jurisdiction are substantially equivalent to the Texas requirements as prescribed under §60.34.

(e) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any supporting documents associated with the specific department license;

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders or documents showing proof of active duty status (for [~~military~~] service member and [~~military~~] spouse);

(B) copy of the military orders or documents showing proof of veteran status (for [~~military~~] veteran); and

(C) copy of document showing proof of status as a [military] spouse [(for military spouse)]; and

(3) copy of the applicant's current occupational license from another jurisdiction.

(f) The applicant who qualifies for a license under this section is not required to take and pass any applicable examination required for obtaining that specific license.

(g) The initial license application fees paid to the department are waived for an applicant under this section.

(h) The applicant under this section must [undergo and successfully] pass a criminal history background check.

(i) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(j) Pursuant to Texas Occupations Code §55.004(b), the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

(k) A [military] service member, [military] veteran, or [military] spouse who obtains a license under this section must comply with all [of] the license renewal requirements including fees for the specific license obtained.

*§60.514. Expedited Alternative Licensing Requirements--Previously Held Texas License.*

(a) This section implements Texas Occupations Code §§55.004, 55.005, and 55.006, as they relate to an applicant who held the same Texas license within the last five years.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(c) An applicant under this section is eligible to obtain a license issued by the department if the applicant within the five years preceding the application date held the same license in Texas.

(d) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any supporting documents associated with the specific department license; and

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders showing proof of active duty status (for [military] service member and [military] spouse);

(B) copy of the military orders or documents showing proof of veteran status (for [military] veteran); and

(C) copy of document showing proof of status as a [military] spouse [(for military spouse)].

(e) The applicant who qualifies for a license under this section is not required to take [and pass] any applicable examination required for obtaining that specific license.

(f) An applicant under this section must pay the license application fees associated with obtaining that specific license.

(g) The applicant under this section must [undergo and successfully] pass a criminal history background check.

(h) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(i) Pursuant to Texas Occupations Code §55.004(b), the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

(j) A [military] service member, [military] veteran, or [military] spouse[.] who obtains a license under this section[.] must comply with all [of the] license renewal requirements, including fees for the specific license obtained.

*§60.516. Expedited Alternative Licensing Requirements--Demonstration of Competency by Alternative Methods.*

(a) This section implements Texas Occupations Code §§55.004, 55.005, and 55.006, as they relate to an applicant that demonstrates competency by alternative methods.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(c) The department may allow an applicant under this section to demonstrate competency by alternative methods [in order] to meet the requirements for obtaining a specific license issued by the department. For purposes of this section, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a specific license.

(d) In lieu of the standard method(s) of demonstrating competency for a specific license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the department:

(1) education;

(2) continuing education;

(3) examinations (written and/or practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods approved or accepted by the executive director.

(e) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any supporting documents associated with the specific department license;

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders showing proof of active duty status (for [military] service member and [military] spouse);

(B) copy of the military orders or documents showing proof of veteran status (for [military] veteran); and

(C) copy of document showing proof of status as a [military] spouse [(for military spouse)]; and

(3) documents specified under subsection (d) that demonstrate the applicant's competency and that will be evaluated by the department.

(f) An applicant under this section must pay the license application fees associated with obtaining that specific license.

(g) The applicant under this section must [undergo and successfully] pass a criminal history background check.

(h) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(i) A [military] service member, [military] veteran, or [military] spouse, who obtains a license under this section, must comply with all [of the] license renewal requirements including fees for the specific license obtained.

§60.518. Recognition of Out-of-State License of Military Service Members and Military Spouses.

(a) This section implements Texas Occupations Code §55.0041 and the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

(b) This section applies to a military service member or military spouse, as defined under §60.501, and to a member or the spouse of a member of the commissioned corps of the National Oceanic and Atmospheric Administration or Public Health Service.

(c) A person described in subsection (b) may engage in a business or occupation for which a license is required without obtaining the applicable Texas license if the department recognizes the out-of-state license.

(d) In order for an out-of-state license to be recognized under this section, a person described in subsection (b) must provide, in a manner determined by the department:

(1) notice of the person's or spouse's intent to practice in this state;

(2) a copy of the person's military identification card;

(3) a copy of the person's or spouse's military orders showing relocation to Texas;

(4) a copy of the out-of-state license, or if unavailable, other identifying information required by the department;

(5) proof that the person remains in good standing with any licensing authority that issued to the service member or their spouse a license valid at a similar scope of practice and in the discipline applied in such jurisdiction of the licensing authority, and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license; and

(6) an acknowledgment that the person submits to the department's authority over the standards of practice regarding the license, discipline, and fulfillment of continuing education requirements.

(e) If the requirements of subsection (d) have been met, the department will provide written confirmation that the license is recognized by the department.

(f) A person who is issued the confirmation described in subsection (e):

(1) may engage in the authorized business or occupation for the duration of the person's military orders; and

(2) must immediately notify the department if the person is no longer in good standing with the licensing authority that issued the license recognized by the department.

(g) The department shall withdraw its recognition of a person's out-of-state license if it determines that the person is no longer in good standing with the licensing authority that issued the license.

(h) In the event of a divorce or similar event that affects a person's status as a spouse, a former spouse whose out-of-state license has been recognized pursuant to this section may continue to engage in the

business or occupation until the third anniversary of the date the former spouse received the confirmation described by subsection (e).

(i) An individual who engages in a business or occupation under the authority or license established by this section is subject to the enforcement authority granted under Texas Occupations Code, Chapter 51, this chapter, and the laws and regulations applicable to the business or occupation in Texas.

(j) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(k) If a service member or spouse of a service member is licensed by way of an interstate licensure compact with Texas, the service member or spouse shall be subject to the requirements of the compact and the applicable laws of this State, and not this section.

§60.519. License Eligibility--Establishing License Residency Requirement for Out-of-State Military Service Members and Military Spouses.

(a) This section implements Texas Occupations Code §55.004(d) as it relates to a non-resident service member or [military] spouse applicant to the department for a license with a residency requirement for license eligibility.

(b) This section applies to a service member or military spouse, as defined under §60.501, that is not a resident of the State of Texas at the time of the filing of an application with the department for a license that requires residency status.

(c) A non-resident service member or [military] spouse applicant under this section is eligible to obtain a license issued by the department if the applicant provides documentation sufficient to establish residency within the State of Texas.

(d) A non-resident service member or [military] spouse applicant seeking to establish in-state residency to demonstrate eligibility to apply for a specific license under this section must submit the following documentation:

(1) a completed license application and supporting documents associated with the specific department license;

(2) documents sufficient to establish residency, including but not limited to, a copy of the permanent change of station order for the [military] service member or the spouse applicant [to whom the spouse is married];

(3) documents showing proof of active duty status for the [military] service member; and

(4) if a spouse applicant, a copy of a document showing proof of status as a military spouse.

(e) An applicant under this section must comply with all [of the] license requirements for the specific license obtained.

(f) If a service member or spouse of a service member is licensed by way of an interstate licensure compact with Texas, the service member or spouse shall be subject to the requirements of the compact and the applicable laws of this State, and not this section.

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

Filed with the Office of the Secretary of State on September 18, 2023.

TRD-202303459

Doug Jennings  
General Counsel  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: October 29, 2023  
For further information, please call: (512) 475-4879



## 16 TAC §60.518

### STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapters 51 and 55, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal is those set forth in Texas Occupations Code, Chapters 51 and 55, and the Federal Servicemembers Civil Relief Act at 50 U.S.C. §4025a, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Boating); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the proposed repeal is proposed to be adopted is Senate Bill 422, 88th Legislature, Regular Session (2023).

*§60.518. Recognition of Out-of-State License of Military Spouse.*

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 September 14, 2023.

TRD-202303460

Doug Jennings  
General Counsel  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: October 29, 2023  
For further information, please call: (512) 475-4879



## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 102. FEES

##### 22 TAC §102.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §102.1, concerning fees. The proposed amendment increases the peer assistance fees for registered dental assistants to account for the increased peer assistance costs to the agency. Specifically, the proposed amendment increases the peer assistance fees by \$1 for initial and renewal registered dental assistant applications.

**FISCAL NOTE:** Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

**PUBLIC BENEFIT-COST NOTE:** Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

**LOCAL EMPLOYMENT IMPACT STATEMENT:** Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

**SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT:** Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

**GOVERNMENT GROWTH IMPACT STATEMENT:** The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does require an increase in peer assistance fees for initial and renewal applications pertaining to dental assistants; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

**COST TO REGULATED PERSONS:** The Board finds that the provisions of Texas Government Code Section 2001.0045(b) do not apply to the proposal because the estimated costs associated with the proposal implement statutory requirements and are necessary to protect the health, safety, and welfare of the people of Texas, as provided in Section 2001.045(c)(6) and (9).

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

No statutes are affected by this proposed rule.

#### §102.1. Fees.

(a) Effective November 3, 2023 [~~September 4, 2023~~], the Board has established the following reasonable and necessary fees for the administration of its function. Upon initial licensure or registration, and at each renewal, the fees provided in subsections (b) - (d) of this section shall be due and payable to the Board.

Figure: 22 TAC §102.1(a)

[Figure: 22 TAC §102.1(a)]

(b) - (f) (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 September 13, 2023.

TRD-202303401

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 305-8910



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 527. PEER REVIEW

#### 22 TAC §527.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.5 concerning Deficient Reviews.

#### Background, Justification and Summary

Upon on a finding of deficient peer reviews, current Board rules provide for a three-year suspension of attest work by a licensee. Upon the expiration of the three years, the suspension is automatically lifted without any demonstration by the licensee they are now competent to perform attest services. The proposed rule revision will eliminate the three-year suspension but require a licensee to have a third-party CPA review the licensee's work prior to being authorized to independently offer attest services

to the public. Only upon a recommendation to the Board by the CPA performing the third-party review will the Board consider reinstating their ability to offer attest services to the public.

#### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

#### Public Benefit

The adoption of the proposed rule amendment will better protect the public from improperly prepared attest services.

#### Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

#### Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

#### Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

#### Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

#### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on October 30, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the pro-

posed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

#### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, §901.655 and §901.307(b) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### §527.5. *Deficient Reviews.*

(a) The board at its sole discretion may require a firm which has received a rating of pass with deficiencies or fail to have an accelerated peer review or subject it to any other disciplinary or corrective action under the Act.

(b) A firm, including a successor firm, which receives two consecutive reviews on a system or engagement review with ratings of either pass with deficiencies or fail in any order, or two pass with deficiencies shall be required to have an accelerated review. If that accelerated review results in a rating of pass with deficiencies or fail:

(1) the firm may complete attest engagements for which field work has already begun only if:

(A) prior to issuance of any report, the engagement is reviewed and approved by a third-party reviewer acceptable to the chairman of the Technical Standards Review Committee or the Peer Review Committee; and

(B) the engagement is completed within 60 days of the acceptance of the peer review report and LOR by the sponsoring organization; and

(2) the firm shall not perform any other attest services [~~for a period of three years or~~] until given permission by the board and if approved by the Board may do so only under the supervision of a third-party reviewer approved by the chair of the Technical Standards Review Committee or Peer Review Committee; and [~~to resume this practice.~~]

(3) the firm may only perform an attest service not under the supervision of a third-party reviewer following the recommendation of the Technical Standards Review Committee or the Peer Review Committee with the board's approval.

(c) A firm, including a successor firm, which receives two consecutive reviews with a rating of fail on a system or engagement review shall not perform any other attest services for a period of three years or until given permission by the board to resume this practice. The firm may complete attest engagements for which field work has already begun only if:

(1) prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the chairman of the Technical Standards Review Committee or the Peer Review Committee; and

(2) the engagement is completed within 60 days of the acceptance of the peer review report and LOR by the sponsoring organization; and[.]

(3) if approved by the Board, the firm may perform attest services under the supervision of a third-party reviewer approved by the chair of the Technical Standards Review Committee or Peer Review Committee; and

(4) the firm may only perform an attest service not under the supervision of a third-party reviewer following the recommendation of the Technical Standards Review Committee or the Peer Review Committee with the board's approval.

(d) A firm may petition the board in writing for a waiver from the provisions of this rule.

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 September 14, 2023.

TRD-202303409

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 305-7842



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 1. MISCELLANEOUS PROVISIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §1.81, concerning Recognition of Out-of-State License of a Military Service Member and Military Spouse; and new §1.91, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. S.B. 422 allows military service members, military spouses, and military veterans who are currently licensed by another jurisdiction to engage in a business or occupation in Texas and grants the person a verification letter or alternative license after meeting certain conditions to operate for three years. This amendment establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §1.81 adds the term "military service member" to the title of the rule and throughout §1.81. The proposed amendment also adds a requirement that DSHS ver-

ify the applicant is licensed in good standing within 30 days of the date a military service member or military spouse submits the application. The proposed amendment authorizes a person who receives a verification letter to continue to engage in the business or occupation until the third anniversary of the date the military spouse received the letter, even if that person's status as a military spouse has changed. A list of criteria is added for DSHS to review and evaluate whether another state's license requirements are substantially equivalent to the requirements of this state.

New §1.91 establishes alternative licensing for military service members, military spouses, and military veterans. A list of criteria is added for DSHS to review and evaluate whether another state's license requirements are substantially equivalent to the requirements of this state.

#### FISCAL

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rules will be in effect: and

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of DSHS employee positions.
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to DSHS;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will expand an existing rule;
- (7) the proposed rules will increase the number of individuals subject to the rule; and
- (8) the proposed rules will not affect the state's economy.

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be im-

proved continuity of care and services by active military service members or military spouses currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state.

Donna Sheppard has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the military service members, military veterans, or military spouses would be able to engage in the business or occupation in accordance with the Texas statutes without obtaining a state license for three years.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Joseph Schmider, State EMS Director, Office of EMS Trauma Systems, Mail Code 1876, P.O. Box 149347, Austin, Texas 78714-9347 or street address 1100 West 49th Street, Mail Code 1876, Austin, Texas 78756; Fax number (512) 834-6736 or emailed to EM-SInfo@DSHS.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) faxed or 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 faxing or emailing comments, please indicate "Comments on Proposed Rule 23R054" in the subject line.

## SUBCHAPTER F. LICENSURE EXEMPTIONS

### 25 TAC §1.81

#### STATUTORY AUTHORITY

The proposed amendment is authorized by Texas Occupations Code §§55.004, 55.005, and 55.0041; and Texas Government Code §531.0055(j) and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment implements Texas Government Code Chapter 531, Texas Health and Safety Code Chapter 1001, and Texas Occupations Code Chapter 55.

*§1.81. Recognition of Out-of-State License of a Military Service Member and Military Spouse.*

(a) For the purposes of this section, the definitions in Texas Occupations Code Chapter 55 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses and verifications issued by the Department of State Health Services (department) under authority granted by the [applicable chapter of the] Texas Health and Safety Code or Texas Occupations Code.

(c) Notwithstanding any other rule, a military service member or military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas, if the military service member or military spouse:

(1) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies the department, in writing, of the military service member's or military spouse's intent to practice in this state;

(3) submits [to the department] proof of the military service member's or military spouse's residency in this state and a copy of the military service member or military spouse's military identification card; and

(4) receives from the department a verification letter that:

(A) the department has verified the military service member's or military spouse's license in another [the other] jurisdiction; and

(B) the military service member or military spouse is authorized to engage in the business or occupation in accordance with the Texas statutes [Statutes] and rules for that business or occupation.

(d) To receive a verification letter, the military service member or military spouse, must submit:

(1) a request to the department for recognition of the military service member's or military spouse's license issued by the other jurisdiction, on a form prescribed by the department;

(2) proof of residency in this state, and this requirement is satisfied by providing a copy of the permanent change-of-station order for the military service member;

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

(4) proof the military service member is stationed at a military installation in Texas.

(e) The department has 30 days from the date a military service member or military spouse submits an application complying with subsection (d) of this section to verify that the military service member or military spouse is licensed in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license under the statutes and regulations of this state. Upon verification [from the licensing jurisdiction of the spouses' license and if the license is substantially equivalent to a Texas license], the department shall issue a verification letter recognizing the licensure as the equivalent license in this state.

(f) The verification letter will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

(g) In the event of a divorce or similar event that affects a person's status as a military spouse, the former military spouse that received a verification under subsection (d) of this section, may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the verification letter described by subsection (e) of this section.

(h) [(g)] The military service member or military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code, [ø] Texas Occupations Code, [Chapters] and all relevant Texas Administrative Code provisions.

(i) [(h)] The department may revoke the verification letter at its discretion. Grounds [Basis] for revocation include:

(1) the military service member or military spouse fails to comply with subsection (h) [(g)] of this section; or

(2) the military service member's or military spouse's license required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

(j) The department will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state.

(1) Whether the other jurisdiction requires an applicant to pass an examination that demonstrates competence in the field.

(2) Whether the other jurisdiction requires an applicant to meet any experience qualifications.

(3) Whether the other jurisdiction requires an applicant to meet any education qualifications.

(4) The other jurisdiction's license requirements, including the scope of work authorized by the license.

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

Filed with the Office of the Secretary of State on September 15, 2023.

TRD-202303443

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 834-6737



## SUBCHAPTER G. ALTERNATIVE LICENSING FOR MILITARY

### 25 TAC §1.91

#### STATUTORY AUTHORITY

The proposed new rule is authorized by Texas Occupations Code §§55.004, 55.005, and 55.0041; and Texas Government Code §531.0055(j) and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The proposed new rule implements Texas Government Code Chapter 531, Texas Health and Safety Code Chapter 1001, and Texas Occupations Code Chapter 55.

*§1.91. Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.*

(a) For the purposes of this section, the definitions in Texas Occupations Code Chapter 55 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses issued by the Department of State Health Services (department) under authority granted by the Texas Health and Safety Code or Texas Occupations Code.

(c) Notwithstanding any other rule, a military service member, military spouse, or military veteran may apply for an occupational license offered by the department if the military service member, military spouse, or military veteran:

(1) is currently licensed by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state, and the license is in good standing; or

(2) held the same license in Texas within the preceding five years.

(d) A military service member or military spouse must provide proof of residency in this state. This requirement is satisfied by providing a copy of the permanent change-of-station order assigning the military service member to a military installation in Texas.

(e) An applicant requesting a license under this section must meet all requirements for obtaining the license, including receiving appropriate credit for training, education, and professional experience.

(f) The department will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state.

(1) Whether the other jurisdiction requires an applicant to pass an examination that demonstrates competence in the field.

(2) Whether the other jurisdiction requires an applicant to meet any experience qualifications.

(3) Whether the other jurisdiction requires an applicant to meet any education qualifications.

(4) The other jurisdiction's license requirements, including the scope of work authorized under the license.

(g) The department will not charge a fee for the issuance of the license. The applicant will be responsible for fees associated with a required background check.

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 September 15, 2023.

TRD-202303444

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 834-6737



## TITLE 28. INSURANCE

### PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

## CHAPTER 122. COMPENSATION PROCEDURE--CLAIMANTS

### SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED EMPLOYEES

#### 28 TAC §122.100

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §122.100, Claim for Death Benefits. Section 122.100 implements Labor Code §§408.182 and 409.007, as amended by House Bill (HB) 2314, 88th Legislature, Regular Session (2023).

**EXPLANATION.** Amending §122.100 is necessary to clarify how legal beneficiaries may file claims, consistent with the statute and other rules about notice to insurance carriers, and outline what happens after filing. HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims.

Section 122.100 provides requirements for legal beneficiaries to file claims for death benefits. The proposed amendments clarify that they may file a claim with DWC or an insurance carrier. The proposed amendments also cross-reference the associated rule for insurance carriers that receive notices of death or claims for death benefits (Chapter 124, §124.8 of this title, newly proposed to implement HB 2314), clarify that beneficiaries may provide additional evidence electronically, and include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity and readability. The proposed amendments are necessary to ease administrative barriers for legal beneficiaries to claim the benefits to which they are entitled, and to ensure that, regardless of the way the claim was initially filed, DWC receives the documentation necessary to process the claim effectively and efficiently.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner for Claims and Customer Services Erica De La Cruz has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. De La Cruz does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Ms. De La Cruz expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023); enhancing regulatory efficiency, consistency, and transparency; and enabling legal beneficiaries to file claims for death benefits with fewer opportunities for the process to go awry.

Ms. De La Cruz expects that the proposed amendments will not increase the cost to comply with Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), because they do not impose requirements be-

yond those in the statute or that exist in current rules. Instead, they cross-reference the associated rule for insurance carriers that receive notices of death or claims for death benefits (Chapter 124, §124.8 of this title); clarify how legal beneficiaries may file claims, consistent with the statute and other rules about notice to insurance carriers; and outline what happens after filing.

HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims. As a result, any cost associated with the rule does not result from the enforcement or administration of the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments implement legislation, clarify filing requirements, and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. In addition, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §122.100 are necessary to implement legislation. The proposed amendments implement Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

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

DWC made these determinations because the amendments to the rule are necessary to implement HB 2314. The amended rule does not affect additional persons or create duties beyond those the statute imposes.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or

require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on October 30, 2023. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, PO Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal in a public hearing at 11 a.m., Central time, on October 24, 2023. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at [www.tdi.texas.gov/alert/event/index.html](http://www.tdi.texas.gov/alert/event/index.html).

**STATUTORY AUTHORITY.** DWC proposes amended §122.100 under Labor Code §§408.182, 409.007, 402.00111, 402.00116, and 402.061.

Labor Code §408.182, as amended by HB 2314, 88th Legislature, Regular Session (2023), provides for the distribution of death benefits to eligible beneficiaries of a deceased employee, when a compensable injury to the employee results in death, and allows an eligible parent to file a claim with DWC or an insurance carrier.

Labor Code §409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), requires a person to file a claim for death benefits with DWC or an insurance carrier; and provides that, on receiving such a claim, the insurance carrier must, in the form and manner DWC prescribes, create and maintain a record documenting receipt of the claim and provide written notice to DWC that the person filed the claim.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

**CROSS-REFERENCE TO STATUTE.** The amendments to §122.100 implement Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

*§122.100. Claim for Death Benefits*

(a) Filing. For ~~[In order for]~~ a legal beneficiary, other than the subsequent injury fund, to receive the benefits available ~~because~~ [as a consequence] of the death of an employee ~~that~~ [which] results from a compensable injury, a person ~~must~~ [shall] file a written claim for ~~death benefits~~ [compensation with the Division] within one year after the date of the employee's death.

(b) An insurance carrier that receives a claim for death benefits under this section must comply with §124.8 of this title (relating to Receipt, Records, and Notice of Death or Claim for Death Benefits).

(c) ~~[(b)]~~ Form and information requirements. The claim should be submitted to the ~~division or insurance carrier~~ [Division] either on paper or via electronic transmission, in the form, format, and manner prescribed by the ~~division~~ [Division], and should include the following:

(1) the potential beneficiary's [claimant's] name, address, telephone number (if any), Social Security [social security] number, and relationship to the deceased employee;

(2) the deceased employee's name, last address, Social Security [social security] number (if known) and workers' compensation claim number (if any); and

(3) other information, as follows:

(A) a description of the circumstances and nature of the injury (if known);

(B) the name and location of the employer at the time of the injury;

(C) the date of the compensable injury, and date of death; and

(D) other known legal beneficiaries.

(d) [(e)] Required documents. A potential beneficiary must [claimant shall] file with the division or insurance carrier [Division] a copy of the deceased employee's death certificate and any additional documentation or other evidence that establishes that the potential beneficiary [claimant] is a legal beneficiary of the deceased employee.

(1) If the claim is filed [with the Division] in paper format, the additional evidence regarding legal beneficiary status must [shall] be filed at the same time as the claim.

(2) If the claim is filed via electronic transmission, the additional evidence regarding legal beneficiary status may be filed separately in paper or electronic format and sent either by mail, facsimile, [or] hand delivery, or secure upload.

(e) [(d)] One claim per person. Each person must file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person.

(f) [(e)] Deadline. Failure to file a claim for death benefits within one year after the date of the employee's death bars [shall bar] the claim of a legal beneficiary, other than the subsequent injury fund, unless:

(1) that legal beneficiary is a minor or otherwise legally incompetent;

(2) except as provided by paragraph (3) of this subsection, good cause exists for failure to file the claim on time [in a timely manner]; or

(3) for a legal beneficiary who is an eligible parent as defined by §132.6(e) of this title (relating to Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits), the parent submits proof satisfactory to the commissioner [Commissioner of Workers' Compensation] of a compelling reason for the delay in filing the claim for death benefits.

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 September 13, 2023.

TRD-202303406

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 804-4703



## CHAPTER 124. INSURANCE CARRIERS: NOTICES, PAYMENTS, AND REPORTING SUBCHAPTER A. INSURANCE CARRIERS: REQUIRED NOTICES AND MODES OF PAYMENT

### 28 TAC §124.8

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes new 28 TAC §124.8, Receipt, Records, and Notice of Death or Claim for Death Benefits. Section 124.8 implements Labor Code §§408.182 and 409.007, as amended by House Bill (HB) 2314, 88th Legislature, Regular Session (2023).

**EXPLANATION.** New §124.8 is necessary to implement HB 2314. HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims.

Section 124.8 cross-references the associated rule for beneficiaries filing claims for death benefits (Chapter 122, §122.100 of this title, with proposed amendments to implement HB 2314) for consistency and ease of use, and clarifies an insurance carrier's obligations, consistent with associated rules for electronic data transactions and other existing rules. It requires an insurance carrier that sends a plain-language notice of potential entitlement to workers' compensation death benefits to a potential beneficiary under existing rules to also send a copy of that notice to DWC.

New §124.8 is necessary to ensure that, if an insurance carrier receives a notice of death or a claim for death benefits, the insurance carrier knows what the requirements for recordkeeping and notice to DWC are. It is also necessary to ensure that procedures for receiving information from claimants, maintaining records, and transmitting information to DWC are as consistent as possible with procedures for other similar situations and with other rules to enhance compliance and reduce confusion. Finally, new §124.8 is necessary to ensure that DWC has the information needed to identify potential claims for death benefits and potential beneficiaries. Having that information is necessary for DWC to ensure that the potential beneficiaries have access to DWC's outreach services, and that insurance carriers have the information they need to process the claims efficiently.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner for Claims and Customer Services Erica De La Cruz has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not

involved in enforcing or complying with the proposed new section.

Ms. De La Cruz does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new section is in effect, Ms. De La Cruz expects that enforcing and administering the proposed new section will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023); enhancing regulatory efficiency, consistency, and transparency; and enabling legal beneficiaries to file claims for death benefits with fewer opportunities for the process to go awry.

Ms. De La Cruz expects that the proposed new section will not increase the cost to comply with Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), because it does not impose requirements beyond those in the statute or that exist in current rules. Instead, it cross-references the associated rule for beneficiaries filing claims for death benefits (Chapter 122, §122.100 of this title) for consistency and ease of use, and clarifies an insurance carrier's obligations, consistent with associated rules for electronic data transactions and other existing rules. In addition, the insurance carriers' ability to send documents to DWC electronically minimizes any possible cost from the requirement in the rule to send DWC a copy of the plain-language notice to potential beneficiaries.

HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims. As a result, any cost associated with the rule does not result from the enforcement or administration of the proposed new section.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed new section will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed new section implements legislation and clarifies insurance carriers' obligations on receiving a claim for death benefits. The proposed new section does not change the people the statute affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. In addition, no additional rule amendments are required under Government Code §2001.0045 because proposed new §124.8 is necessary to implement legislation. The proposed rule implements Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; or

- will not positively or adversely affect the Texas economy.

DWC made these determinations because the new rule is necessary to implement HB 2314. It does not affect additional persons or create duties beyond those the statute imposes.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on October 30, 2023. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal in a public hearing at 11 a.m., Central time, on October 24, 2023. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at [www.tdi.texas.gov/alert/event/index.html](http://www.tdi.texas.gov/alert/event/index.html).

**STATUTORY AUTHORITY.** DWC proposes new §124.8 under Labor Code §§408.182, 409.007, 402.00111, 402.00116, and 402.061.

Labor Code §408.182, as amended by HB 2314, 88th Legislature, Regular Session (2023), provides for the distribution of death benefits to eligible beneficiaries of a deceased employee, when a compensable injury to the employee results in death, and allows an eligible parent to file a claim with DWC or an insurance carrier.

Labor Code §409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), requires a person to file a claim for death benefits with DWC or an insurance carrier; and provides that, on receiving such a claim, the insurance carrier must, in the form and manner DWC prescribes, create and maintain a record documenting receipt of the claim and provide written notice to DWC that the person filed the claim.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. New §124.8 implements Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

§124.8. Receipt, Records, and Notice of Death or Claim for Death Benefits.

(a) Definition. In this section, "claim for death benefits" means a claim that is filed under Chapter 122, Subchapter B, §122.100 of this title.

(b) General requirements. An insurance carrier that receives a notice of death in accordance with §132.17 of this title, or a claim for death benefits must comply with all of the requirements in this chapter.

(c) Recordkeeping and notice. An insurance carrier in subsection (b) of this section must:

(1) send the division a copy of the plain-language notice that the insurance carrier must provide to the potential beneficiary under §132.17 of this title not later than the seventh day after receiving the claim for death benefits.

(2) on receiving a claim for death benefits, create and maintain a record documenting receipt of the claim for death benefits. The record must include all of the information in the claim for death benefits. The insurance carrier must maintain the record in accordance with Chapter 102, §102.4 of this title.

(3) send the division a copy of a claim for death benefits the insurance carrier receives from the potential beneficiary not later than the seventh day after receiving it and include any other documents and information the insurance carrier received.

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 September 13, 2023.

TRD-202303407

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 804-4703



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

##### SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

###### 31 TAC §58.21

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

The proposed amendment would temporarily prohibit the harvest of oysters for two years within the boundaries of restoration areas on two reefs: one site in Conditionally Approved Area TX-7 in Galveston Bay (East Redfish Reef, approximately 42.6 acres), and one site in Conditionally Approved Area TX-6 in Galveston Bay (North Dollar Reef, 21.8 acres). The proposed amendment would temporarily close a total of 64.4 acres of oyster reef for two years. The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS.

The temporary closures will allow for the planting of oyster cultch to repopulate in those areas and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. The department's oyster habitat restoration efforts to date have resulted in a total of approximately 1,709 acres of oyster habitat returned to productive habitat within these bays.

Over \$3.4 million from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, administered through the Gulf States Marine Fisheries Commission (GSMFC), was awarded to TPWD to restore oyster habitat to offset impacts to commercial oyster fisheries from decreased landings, workforce, and demand for oysters resulting from COVID-19. Funding was also generated as a result of the passage of House Bill 51 (85th Legislature, 2017), which included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. Additionally, Shell Oil and Gas has donated \$50,000 to the Galveston Bay oyster restoration project. These funds will be used to restore approximately 21 acres on East Redfish Reef and nine acres on North Dollar Reef. Oyster abundance on these reefs has severely declined over time, and the portion of the reefs selected for restoration is characterized by degraded substrates. These sites were selected in collaboration with the commercial oyster industry, which provided input on site prioritization through a series of workshops. Commercial oyster industry representatives also accompanied TPWD on site surveys to determine the suitability of the substrate for restoration. The restoration activities will focus on establishing stable substrate and providing suitable conditions for spat settlement and oyster bed development.

Dakus Geeslin, Deputy Director, Coastal Fisheries Division, 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 governments as a result of administering or enforcing the rule.

Mr. Geeslin 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 dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state; the duty

to equitably distribute opportunity for the enjoyment of those resources among the citizens; the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices; the potential for increased oyster production by repopulating damaged public oyster reefs and allowing these oysters to reach legal size and subsequent recreational and commercial harvest; and providing protection from harvest to a reef complex thus establishing a continual supply of oyster larvae to colonize oyster habitat within the bay system.

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 areas designated for closure have been degraded to the extent that they no longer support any commercial exploitation, the closures effected by the proposed rules will not result in direct adverse economic impacts to any small business, microbusiness, or rural community. The department does note, however, that numerous areas previously closed (South Redfish Reef, Texas City 1, Texas City 2, Hanna's Reef, and Middle Reef), are now home to healthy populations of oysters that have reached legal size and may be harvested by both recreational and commercial users.

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

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.

The department has determined that the proposed rule is in compliance with Government Code, §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

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 any fee; not create a new regulation; will expand an existing regulation (by creating new area closures); 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 Hanna Bauer, Texas Parks and Wildlife Department, 4200 Smith

School Road, Austin, Texas 78744; (512) 389-8255; email: cfish@tpwd.texas.gov, or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

*§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.*

(a) - (b) (No change.)

(c) Area Closures.

(1) (No change.)

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of subparagraphs (A)(i)-(ii) cease effect on November 1, 2025. The provisions of subparagraph (A)(iii) and (B) of this paragraph cease on November 1, 2024. ~~[The provisions of subparagraphs (A)(i)-(vi) and (B) of this paragraph cease effect on November 1, 2023. The provisions of subparagraph (A) (vii) and (B) cease on November 1, 2024.]~~

(A) Galveston Bay.

*(i) East Redfish Reef.* The area within the boundaries of a line beginning at 29° 30' 10.95"N, 94° 49' 29.21"W (29.503043, -94.824781, corner marker buoy A); thence to 29° 30' 16.31"N, 94° 49' 15.68"W (29.50453, -94.821024, corner marker buoy B); thence to 29° 30' 03.79"N, 94° 49' 08.97"W (29.501053, -94.819161, corner marker buoy C); thence to 29° 29' 58.12"N, 94° 49' 22.24"W (29.49948, -94.822844, corner marker buoy D); thence back to corner marker buoy A.

*(ii) North Dollar Reef.* The area within the boundaries of a line beginning at 29° 27' 36.09"N, 94° 54' 24.97"W (29.460025, -94.873606, corner marker buoy A); thence to 29° 27' 43.72"N, 94° 52' 09.05"W (29.462146, -94.86918, corner marker buoy B); thence to 29° 27' 38.66"N, 94° 52' 05.80"W (29.460738, -94.868278, corner marker buoy C); thence to 29° 27' 30.93"N, 94° 52' 21.71"W (29.458593, -94.872699, corner marker buoy D); and thence back to corner marker buoy A.

*(iii) Trinity Sanctuary Reef.* The area within the boundaries of a line beginning at 29° 38' 26.2"N, 94° 51' 53.1"W (29.640616°N, -94.864753°W; corner marker buoy A); thence, to 29° 38' 22.9"N, 94° 51' 48.7"W (29.639701°N, -94.863539°W; corner marker buoy B); thence to 29° 38' 17.9"N, 94° 51' 49.8"W (29.638304°N, -94.863857°W; corner marker buoy C); thence to 29° 38' 13.2"N, 94° 51' 50.1"W (29.636994°N, -94.863926°W; corner marker buoy D); thence to 29° 38' 10.1"N, 94° 51' 53.2"W (29.636131°N, -94.864777°W; corner marker buoy E); thence to 29° 38' 17.1"N, 94° 52' 01.3"W (29.638092°N, -94.867041°W; corner marker buoy F); and thence back to corner marker buoy A.]

*(iii) Trinity Harvestable Reef 1.* The area within the boundaries of a line beginning at 29° 38' 56.2"N, 94° 51' 34.4"W (29.648936°N, -94.859552°W; corner marker buoy A); thence, to 29° 38' 58.8"N, 94° 51' 29.5"W (29.649673°N, -94.858202°W; corner marker buoy B); thence to 29° 38' 55.4"N, 94° 51' 27.1"W (29.648733°N, -94.857531°W; corner marker buoy C); thence to 29° 38' 56.7"N, 94° 51' 24.8"W (29.649075°N, -94.856906°W; corner marker buoy D); thence to 29° 38' 50.5"N, 94° 51' 20.5"W (29.647369°N, -94.855690°W; corner marker buoy E); thence to 29°

38° 46.8"N, 94° 51' 27.7"W (29.646345°N, -94.857704°W; corner marker buoy F); and thence back to corner marker buoy A.]

*[(iii)]* Trinity Harvestable Reef 2. The area within the boundaries of a line beginning at 29° 36' 47.0"N, 94° 52' 23.7"W (29.613063°N, -94.873269°W; corner marker buoy A); thence, to 29° 36' 37.2"N, 94° 52' 22.9"W (29.610327°N, -94.873046°W; corner marker buoy B); thence to 29° 36' 36.7"N, 94° 52' 31.1"W (29.610187°N, -94.875306°W; corner marker buoy C); thence to 29° 36' 46.5"N, 94° 52' 31.9"W (29.612924°N, -94.875529°W; corner marker buoy D); and thence back to corner marker buoy A.]

*[(iv)]* Dollar Reef. The area within the boundaries of a line beginning at 29° 27' 30.44"N, 94° 52' 03.23"W (29.458456°N, -94.867565°W; corner marker buoy A); thence, to 29° 27' 32.83"N, 94° 51' 59.91"W (29.459121°N, -94.866643°W; corner marker buoy B); thence, to 29° 27' 29.13"N, 94° 51' 52.67"W (29.458094°N, -94.864632°W; corner marker buoy C); thence, to 29° 27' 15.67"N, 94° 51' 53.44"W (29.454535°N, -94.864846°W; corner marker buoy D); thence, to 29° 27' 04.04"N, 94° 52' 08.47"W (29.451124°N, -94.869021°W; corner marker buoy E); and thence back to corner marker buoy A.]

*[(v)]* North Todd's Dump Reef. The area within the boundaries of a line beginning at 29° 30' 33.76"N, 94° 53' 17.07"W (29.509379°N, -94.888077°W; corner marker buoy A); thence, to 29° 30' 27.89"N, 94° 53' 44.39"W (29.507749°N, -94.895666°W; corner marker buoy B); thence, to 29° 30' 17.10"N, 94° 53' 41.73"W (29.504752°N, -94.894926°W; corner marker buoy C); thence, to 29° 30' 23.60"N, 94° 53' 12.46"W (29.506556°N, -94.886797°W; corner marker buoy D); and thence back to corner marker buoy A.]

*[(vi)]* Pepper Grove Reef - Middle Site. The area within the boundaries of a line beginning at 29° 29' 15.83"N, 94° 40' 01.01"W (29.487733°N, -94.666948°W; corner marker buoy A); thence, to 29° 29' 15.93"N, 94° 39' 52.30"W (29.487760°N, -94.664537°W; corner marker buoy B); thence, to 29° 29' 14.81"N, 94° 39' 52.28"W (29.487450°N, -94.664525°W; corner marker buoy C); thence, to 29° 29' 14.71"N, 94° 40' 00.99"W (29.487422°N, -94.666944°W; corner marker buoy D); and thence back to corner marker buoy A.]

*[(iii)] [(vii)]* Dollar Reef HSE Mitigation Site. The area within the boundaries of a line beginning at 29° 27' 22.92"N, 94° 53' 46.44"W (29.456367°N, -94.896233°W; corner marker buoy A); thence to, 29° 27' 13.62"N, 94° 53' 23.80"W (29.453784°N, -94.889944°W; corner marker buoy B); thence to, 29° 26' 51.77"N, 94° 53' 40.51"W (29.447713°N, -94.894587°W; corner marker buoy C); thence to, 29° 27' 18.96"N, 94° 53' 49.96"W (29.455265°N, -94.897211°W; corner marker buoy D); and thence back to corner marker buoy A.

*[(B)]* Matagorda Bay System - Keller Bay Reefs. The area within the boundaries of a line beginning at 28° 36' 16.7"N, 96° 28' 29.042"W (28.604656°N, -96.474734°W; corner marker buoy A); thence, from 28° 26' 16.7"N, 96° 28' 40.933"W (28.604659°N, -96.478037°W; corner marker buoy B); thence, from 28° 36' 5.31"N, 96° 28' 48.95"W (28.601476°N, -96.480265°W; corner marker buoy C); thence, from 28° 35' 56.2"N, 96° 28', 39.94"W (28.598953°N, -96.477761°W; corner marker buoy D); thence, from 28° 35' 55.9"N, 96° 28' 21.9"W (28.598886°N, -96.47275°W; corner marker buoy E); and thence back to corner marker buoy A.]

*[(B)] [(C)]* Espiritu Santo Bay- Josephine's Reef. The area within the boundaries of a line beginning at 28° 18' 42.6"N, 96° 35' 48.9"W (28.311833°N, -96.596916°W; corner marker buoy A); thence, to 28° 18' 34.7"N, 96° 35' 42.0"W (28.309651°N, -96.594988°W; corner marker buoy B); thence to 28° 18' 22.1"N, 96° 36' 00.3"W

(28.306142°N, -96.600075°W; corner marker buoy C); thence to 28° 18' 30.0"N, 96° 36' 07.2"W (28.308324°N, -96.602004°W; corner marker buoy D); and thence back to corner marker buoy A.

*[(C)] [(D)]* Christmas Bay, Brazoria County.  
*[(D)] [(E)]* Carancahua Bay, Calhoun and Matagorda County.

*[(E)] [(F)]* Powderhorn Lake, Calhoun County.  
*[(F)] [(G)]* Hynes Bay, Refugio County.  
*[(G)] [(H)]* St. Charles Bay, Aransas County.  
*[(H)] [(I)]* South Bay, Cameron County.  
*[(I)] [(J)]* Mesquite Bay, Aransas and Calhoun counties.

*[(J)] [(K)]* Carlos Bay, Aransas County. The area within the boundaries of Carlos Bay from the border of Mesquite Bay to a line beginning at 28° 06' 52.19"N, 96° 55' 32.52"W (28.11450°N, -96.92570°W) and ending at 28° 06' 38.19"N, 96° 53' 17.41"W (28.11061°N, -96.88817°W).

*[(K)] [(L)]* Ayres Bay, Calhoun County. The area within the boundaries of Ayres Bay from the border of Mesquite Bay to a line beginning at 28° 12' 50.18"N, 96° 48' 44.53"W (28.21394°N, -96.81237°W) and ending at 28° 11' 17.05"N, 96° 47' 32.38"W (28.18807°N, -96.79233°W).

*[(L)] [(M)]* Areas along all shorelines extending 300 feet from the water's edge, including all oysters (whether submerged or not) landward of this 300-foot line.

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 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.88, 65.91, 65.92, 65.95, 65.97, and 65.98, concerning Disease Detection and Response, and 65.605, 65.608, and 65.611, concerning Deer Breeder Permits.

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

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, scientific evidence suggests 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. 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 critical to containing it on the landscape.

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 on multiple release sites associated with CWD-positive 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.

In the last six months the department has encountered an unprecedented increase in CWD detections, which is directly attributable to the regulatory actions taken in December 2021 to tighten the agency's CWD surveillance measures. Since that time, CWD has been detected in an additional 13 deer breeding facilities, two release sites associated with CWD-positive deer

breeding facilities, and one free-ranging deer in a new area where CWD had not been previously detected. Department records indicate that within the last five years those breeding facilities transferred over 9,700 deer to other breeding facilities, release sites, and Deer Management Permit (DMP) sites. All those locations are therefore directly connected to the CWD-positive facilities and are subsequently of epidemiological concern. Additionally, 583 deer breeding facilities received deer from one or more of the directly connected breeding facilities, which means those facilities (referred to as "Tier 1" facilities) are indirectly connected to the positive facilities and are also of epidemiological concern because they have received exposed deer that were in a trace-out breeding facility.

In response to the magnitude and potential severity of this situation, the department on July 24, 2023, filed emergency rules to require the ante-mortem testing of test-eligible deer prior to transfer from a breeding facility to another breeding facility and to prohibit the removal of required permanent identification for any reason other than provided by statute. Those measures are included in this proposed rulemaking.

The proposed amendment to §65.88, concerning Deer Carcass Movement Restrictions, would streamline and simplify regulations governing the post-harvest transportation of deer taken by hunters in CWD management zones. Because CWD prions (the infectious agents that causes CWD) are known to be present in tissues of infected animals, especially brain, spinal cord and viscera, the department believes that care should be taken with respect to the treatment of carcasses of animals taken within a CWD management zone. Under current rule, a deer taken in a CWD management zone cannot be transported from the zone unless it has been processed as required by the section. The department has determined that the current rules can be modified to allow the movement of unprocessed carcasses from management zones to a final destination (the possessor's permanent residence or cold storage/processing facility) or taxidermist, provided it has been first presented at a department check station for tissue sample removal, which will allow the department to conduct disease surveillance and provide a method for notifying hunters in the event that an animal tests positive for CWD. The proposed amendment would also impose statewide carcass disposal measures, to consist of disposal of all deer parts not retained for cooking, storage, or taxidermy purposes to be disposed of (directly or indirectly) at a landfill permitted by the Texas Commission on Environmental Quality to receive such wastes, by interment at a depth of no less than three feet below the natural surface of the ground and covered with at least three feet of earthen material, or by being returned to the property where the animal was harvested. The department has determined that in light of the recent spate of CWD detections in deer breeding facilities (which are extensively epidemiologically interconnected and the source of deer released at hundreds of locations across the state), a statewide carcass disposal rule will be beneficial by limiting and ideally eliminating the careless, haphazard, or inadequate disposal of potentially infectious tissues, thus mitigating the potential spread of CWD.

The proposed amendment to §65.91, concerning General Provisions, would eliminate an exception in that provision for nursery facilities. As noted in the discussion of the proposed amendment to §65.95, concerning Movement of Breeder Deer, the department is proposing to eliminate the practice of moving breeder deer from deer breeding facilities to external facilities for nursing purposes.

The proposed amendment to §65.92, concerning CWD Testing, would conform an internal citation in subsection (b) of that section to comport it with proposed changes to other sections effected by this rulemaking.

The proposed amendment to §65.95, concerning Movement of Breeder Deer, would alter the section to provide an internal reference, remove current provisions applicable to nursery facilities, implement new provisions regarding the testing of breeder deer being transferred between breeding facilities, impose a residency requirement on breeder deer as a condition of transfer to another breeding facility or to a release site, remove an internal three-year limitation on the effectiveness of provisions governing the release of breeder deer, strengthen provisions governing the obligations of release-site owners in the event that a release site is epidemiologically linked by trace-out to a positive breeding facility, prohibit the release of breeder deer prior to April 1 of the year following birth, and provide for the suspension of participation in Managed Lands Deer Program activities for landowners who fail to comply with provisions applicable to trace-out release sites.

Current rules require a breeder deer to be the subject of an ante-mortem test (a live-animal test) before it can be transferred elsewhere for purposes of release. The proposed amendment would expand this requirement to apply to transfers between deer breeding facilities. The department has determined that in light of the spate of recent detections of CWD in multiple deer breeding facilities, it is not only prudent, but imperative to test all breeder deer before they are moved between deer breeding facilities, which is intended to impose a testing protocol capable of providing an acceptable probability of detecting CWD if it exists in any given breeding facility.

For similar reasons, the proposed amendment would eliminate the practice of transferring fawn deer from deer breeding facilities to external facilities for nursing purposes. The practice was considered to be an acceptable risk prior to the emergence of CWD; however, given the steady and increasing discoveries of CWD in deer breeding facilities across the state, the department has determined that the practice should be stopped.

The proposed amendment would impose a residency requirement for deer within deer breeding facilities in order to provide a minimum period of exposure to other deer within the facility, which will facilitate the department's ability to more accurately assess whether CWD exists in a facility, as well as to reduce the probability of transmission of the disease to additional facilities by transfer of deer that have recently been infected but have yet to reach the stage of disease progression that allows the disease to be detectable through approved disease testing methodologies.

The proposed amendment would impose new requirements for release sites that are epidemiologically connected to deer breeding facilities where CWD has been detected. Under current rule, the landowner of a release site that is epidemiologically connected to a positive deer breeding facility is required to test either 100 percent of all hunter-harvested deer at the release site property or one hunter-harvested deer per released deer (if authorized by a herd plan), whichever value is greater. Release site owners are also required by rule to maintain a harvest log. The department has determined that regulatory compliance at release sites has been problematic, as some release site owners have failed to conduct the required testing or maintain harvest logs as required. Although the department prohibits additional releases of deer at such sites unless approved by a herd

plan, the epidemiological value of the animals at a trace-out release site is significant. The recent detections mark a dramatic increase in number and distribution of CWD-positive facilities across the state since 2020. Records indicate 367 trace release sites have received deer from these positive facilities and are of epidemiological concern. Although the owners of trace release sites are offered herd plans and placed under a hold order, herd plans do not require harvest on that property, only that if a deer is harvested a CWD sample must be collected and tested. The lack of harvest leaves the department in a precarious situation to mitigate potential spread of CWD to naïve areas. Timely removal of trace animals is critically important for CWD management. Therefore, the department has determined that it is necessary to require all trace deer at trace-out release sites to be removed and tested within 60 days of notification by the department that the site has been confirmed as a trace-out release site. In addition, the proposed amendment would eliminate the current provision allowing an alternative to 100 percent testing of hunter-harvested deer on trace-out release sites and require testing of all hunter-harvested deer until a sufficient number and distribution of samples has been achieved that would provide statistical confidence that if CWD were present at a certain prevalence on the release site, it would be detected. The proposed amendments would enhance the department's ability to more quickly assess whether exposed deer transferred from CWD-positive deer breeding facilities have spread CWD to trace-out release sites.

The proposed amendment also would eliminate current subsection (c)(6)(E), which imposed a three-year period of effectiveness for the provisions of paragraph (6). In a rulemaking in 2021 (46 TexReg 8724), the commission imposed a three-year period of effectiveness for ante-mortem testing of breeder deer prior to release, with the understanding that should continuation of the requirement be determined to be necessary, that decision would be made as needed in the future. As noted previously in this preamble, there has been an unprecedented significant increase in the detection of CWD within deer breeding facilities and some release sites associated with deer breeding facilities recently, which not only necessitates the continuation of the provisions of paragraph (6), but to do so indefinitely.

The proposed amendment also would provide that the owner of a release site that is not in compliance with the applicable provisions of Chapter 65, Subchapter B, Division 2 is ineligible for enrollment or continued participation in the Managed Lands Deer Program (MLDP) under Chapter 65, Subchapter A. The MLDP is a conservation program that offers special privileges to participants in exchange for conducting beneficial management actions. The department reasons that an owner of a trace-out release site who is unwilling to comply with CWD management provisions should not be afforded the privilege of participation in the program.

Finally, the proposed amendment would prohibit the release of breeder deer prior to April 1 of the year following the year in which the breeder deer is born, which is necessary to ensure that only breeder deer bearing permanent identification are released at release sites, which is necessary to facilitate expedited removal and testing in epidemiological investigations.

The proposed amendment to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, would require tissue samples collected for the issuance of a TTP (Trap, Transfer, and Process) permit to be submitted within seven days of collection. One of the recent detections of CWD occurred in a

deer that was trapped in Bexar County under the provisions of a TTP permit. The TTP permit is used to remove surplus deer in situations in which hunting is impractical or unfeasible, such as in urban areas where discharge of firearms is prohibited. Typically, a TTP permit allows trapping activities between October 1 and March 31, and current rules require CWD test results to be submitted by May 1 following completion of permitted activities.; however, there are no requirements on how quickly those CWD samples must be submitted to the lab for testing. The department has determined that in light of the detection of CWD in TTP deer, it is necessary to require tissue samples to be submitted within seven days of collection, which will provide for quicker department response in the event of detection.

[NOTE: The commission on August 24, 2023, adopted a proposed amendment to §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Breeding Facilities. The previous day, the Work Session of the commission authorized publication in the *Texas Register* of an additional proposed amendment to that section, to be deliberated for adoption at the November 2, 2023, meeting of the commission. The rules of the Secretary of State (which operates the *Texas Register* and maintains the Texas Administrative Code) require a proposed rule to either be withdrawn or adopted and have taken effect before the same rule can be proposed for subsequent amendment. Following the August 24, 2023, commission meeting, the department filed a notice of adoption for §65.99 (August 30, 2023). That adoption will take effect September 19, 2023, one day later than the submission deadline for publication in the September 29, 2023, issue of the *Texas Register*, which is the last issue of the *Texas Register* that the proposed amendment to §65.99 can appear in and still be considered for adoption at the November 2, 2023, commission meeting. Because of the seriousness of the threat posed by CWD, the department believes it is imperative not to defer this rulemaking; therefore, this proposal has repackaged the proposed amendment to §65.99 as an amendment to §65.98, concerning Transition Provisions (and retitling the section accordingly), in order to provide the statutorily required 30-day public comment period necessary to allow deliberation by the commission for adoption in November, 2023. If adopted by the commission, these provisions will be comported with §65.99 at a later time.]

The proposed amendment to §65.98, concerning Transition Provisions, would alter the timeframes for tissue sample collection at deer breeding facilities designated by the department as Category B facilities (facilities in which not all deer of epidemiological concern are available). Those rules are currently contained in §65.99(e), concerning. Effective epidemiological investigations depend on specificity of time and place. Trace herds need to be evaluated in a timely fashion, and, historically, whole-herd testing requirements have been inconsistent with the timeliness of testing. Furthermore, some breeding facilities in which the date of last known exposure occurred within the 18 months prior to epidemiological connection have either not conducted or not submitted tests. The proposed amendment would create a more efficacious timeline for compliance with collection and submission of required ante-mortem testing samples for Category B breeding facilities, which is necessary to clear epidemiologically linked herds in a timelier fashion. In addition, the proposed amendment would remove the provisions of §65.99(i), regarding nursing facilities, for reasons discussed elsewhere in this preamble.

The proposed amendments to §65.605, concerning Holding Facility Standards and Care of Deer, and §65.608, concerning Annual Reports and Records, would remove references to nursing facilities for reasons discussed elsewhere in this preamble.

The proposed amendment to §65.611, concerning Prohibited Acts, would prohibit the removal of identification tags on breeder deer except as specifically authorized by statute. Parks and Wildlife Code, §43.3561 stipulates that not later than March 31 of the year following the year in which a breeder deer is born, the breeder deer must be identified by placing a tag in one ear. Section 43.3561 also requires deer breeders to immediately replace an identification tag that has been dislodged, damaged, or removed by means other than human agency and allows the removal of a tag only for the purpose of immediately replacing the tag with a tag that meets the requirements of Parks and Wildlife Code, §43.3561. Faithfulness to the statute will increase the ability of the department and release site owners to quickly identify and remove specific deer from release sites for testing and therefore will expedite epidemiological investigations. In addition, the proposed amendments would remove provisions applicable to nursing facilities for reasons discussed elsewhere in this preamble and correct an error in citation style in current subsection (j).

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 will be adverse economic impact on persons required to comply with the rules as proposed.

The proposed amendment to §65.88 would impose carcass disposal restrictions on every person who harvests or possesses deer after harvest anywhere in the state; however, those costs should be minimal. For persons who process deer at the location where the harvest occurred, there is no cost of compliance, as the rules would allow parts of the deer not retained for cooking, storage, or taxidermy purposes to be left at the harvest location. Similarly, there would be no cost of compliance for persons who transport carcasses to a cold storage/processing facility or taxidermist, as disposal of remains following such activities is a normal process for such entities and the department assumes is reflected in the price charged to the consumer for services rendered. For persons who transport carcasses to the possessor's final residence, there will be no additional cost of compliance if the remains following processing are disposed of indirectly via a solid waste disposal service that transports the wastes to a permitted landfill. The remaining three options under the amendment as proposed (return of remains to the harvest location, interment at the cost of the possessor, and direct transport to a landfill) could result in an adverse economic impact as a result of compliance. The cost of returning unwanted deer parts to the location of harvest would consist of the cost of

fuel, which could vary, depending on the distance travelled but, in most cases would be less than \$200. The cost of interment could vary as well. For a person who manually excavates a site meeting the requirements of the proposed amendment or has access to mechanized excavation equipment, there would be no cost of compliance; thus, any costs associated with this option would be associated with rental or leasing fees for mechanized excavation equipment, which the department estimates at approximately \$50 per hour. For deer parts transported directly to a landfill, the cost of compliance would be the fee charged by the landfill for carcass disposal, which also varies from facility to facility; however, the department estimates the probable cost per animal carcass to be \$20 to \$100. The department notes that most if not all hunters will either process their deer at the harvest location or transport the deer to a final destination where the remains will be collected and transported to a landfill by a contracted waste disposal service or municipal utility; therefore, there are no-cost options available to virtually every person required to comply.

There will be a cost of compliance to persons affected by the proposed amendment to \$65.95, which would require the owner of a release site confirmed to be epidemiologically connected to a CWD-positive deer breeding facility to remove all trace deer and subject them to post-mortem CWD testing. Legally there can be no cost for removing deer from a release site (hunting for hire, i.e., paying hunters to remove deer, is unlawful under Parks and Wildlife Code, §62.006) other than for the ammunition used to dispatch the animal; thus, landowners must either rely upon hunters to remove released breeder deer or do it themselves; therefore, the cost of compliance with the amendment as proposed would be the cost of post-mortem CWD testing. The cost of CWD testing administered by the Texas A&M Veterinary Medicine Diagnostic Lab (TVMDL) is a minimum of \$27, to which is added an \$8 accession fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVMDL there is an additional \$20 sample collection fee, plus a \$20 disposal fee. Thus, the fee for testing would be \$35, plus any veterinary cost (which the department cannot quantify, because practice models vary widely across the state). The fee for submitting an entire head for testing would be \$75.

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.

Government Code, §2006.001(1), defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than \$6 million in annual gross receipts. Department data indicate that there are 769 permitted deer breeders in Texas as of the preparation of this analysis. Although the department does not require deer breeders to file financial information with the department, the department believes that most if not all deer breeders would qualify as a small or micro-business. Since the rules as proposed would require deer breeders to subject all deer to ante-mortem testing prior to transfer to another deer breeder, there will be an adverse impact on deer breeders. For all permittees, the adverse economic impact of the proposed rules would consist of testing costs. The number of transfers conducted between individual deer breeders can vary greatly. Some deer breeders do not engage in the practice. Other deer breeders transfer many hundreds of deer per year. Department data indicate that on average, most transfers involve 50 or fewer deer.

Under the Veterinary Practice Act, the samples necessary for ante-mortem testing can only be obtained by a licensed veterinarian. Because veterinary practice models vary significantly (flat rates, graduated rates, included travel costs, herd call rates, sedation costs, etc.) in addition to pricing structures determined by the presence or absence of economic competition in different parts of the state, the cost of ante-mortem testing is difficult to quantify; however, based on anecdotal information and an informal survey of knowledgeable veterinarians, the department estimates the cost of tonsillar or rectal biopsies at approximately \$70-200 to as much as \$350 per deer. It is important to note that ante-mortem procedures for CWD testing are relatively new, but the number of veterinarians with the training and expertise to perform them reliably is increasing; nevertheless, the fee structure for such procedures can best be described as still evolving.

Cold storage/processing facilities and taxidermists affected by the carcass disposal requirements of the proposed amendments may also qualify as small or micro-businesses. Because all such entities are not regulated (by the department) there is no way to accurately assess how many of them there might be, but the department assumes there are many hundreds if not thousands. The department has determined that the adverse economic impacts of compliance with the rules as proposed would be identical to the cost of compliance for individuals affected by the proposed rules, discussed in an analysis earlier in this preamble.

Nursing facilities not located within a deer breeding facility may also qualify as small or micro-businesses. The department has determined that the adverse economic impacts of compliance with the rules as proposed would be the loss in revenue of such nursing facilities that charge a fee to deer breeders for seasonal nursing of fawns. Because the department does not require nursing facilities to report the fees charged for providing seasonal nursing services it is impossible for the department to accurately quantify the adverse economic impact; however, based on anecdotal information, the department estimates nursing facilities charge deer breeders no more than a few hundred dollars per fawn per season for providing nursing services.

Several alternatives were considered to achieve the goals of the proposed rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to do nothing. This alternative was rejected because the presence of CWD in breeding facilities and

free-ranging populations presents an actual, direct threat to free-ranging and captive cervid populations and the economies that depend upon them. The repeated additional discoveries of CWD in captive and free-range populations indicates that additional measures are necessary to prevent the spread of CWD from locations where it may exist. Therefore, because the department has a statutory duty to protect and conserve the wildlife resources of the state and current rules do not achieve the necessary level of vigilance needed to detect the presence and/or spread of CWD between breeding facilities, this alternative was rejected.

Another alternative would be an absolute prohibition on the movement of deer within the state for any purpose. While this alternative would significantly reduce the potential spread of CWD, it would deprive deer breeders of the ability to engage in the business of buying and selling breeder deer. Therefore, this alternative was rejected because the department determined that it placed an avoidable burden on the regulated community.

Another alternative would be imposing less stringent testing requirements. This alternative was rejected because the testing requirements in the proposed rules reflect mathematical models aimed at higher confidence than is possible under current disease-testing requirements to determine that CWD is or is not present. Less stringent testing requirements would reduce confidence and therefore impair the ability of the department to respond in the event that CWD actually is present. Less stringent testing requirements also could result in the spread of CWD to additional breeding facilities, which would be prohibited from transferring deer, which would, in turn, result in the total loss of sales opportunity. The department also believes that enhanced testing measures are necessary to provide assurance to the hunting public, private landowners, and the regulated community that healthy wildlife resources are available for the use and enjoyment of present and future generations.

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 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 any fee; create a new regulation (by imposing statewide carcass disposal restrictions, prohibiting the release of breeder deer prior to the April 1 of the year following birth, and conditioning participation in the MLDP program on compliance with release-site testing and recordkeeping requirements); expand

an existing regulation (by requiring breeder to be tested prior to transfer to other breeding facilities and imposing minimum residency requirements for breeder deer), but will otherwise not limit or repeal an existing regulation; not increase the number of individuals subject to regulation, but will decrease the number of individuals subject to regulation by prohibiting the transfer of fawn deer from deer breeding facilities to external facilities for nursing purposes; and not positively or adversely affect the state's economy.

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

## SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

### DIVISION 1. CHRONIC WASTING DISEASE (CWD)

#### 31 TAC §65.88

The amendment is proposed under the authority of Parks and Wildlife Code, §42.0177, 42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; 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 42, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

#### §65.88. *Deer Carcass Movement and Disposal Restrictions.*

(a) Except as provided in this section, no person may transport into this state or possess any part of a susceptible species from a state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds. [;]

~~[(1) transport into this state or possess any part of a susceptible species from a state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds; or]~~

~~[(2) transport or cause the transport of any part of a susceptible species from a property within a CZ or SZ.]~~

(b) Subsection (a) of this section does not apply to susceptible species processed in accordance with this subsection, provided the ap-

plicable requirements of subsections (d) - (f) [(e) - (e)] of this section have been met:

(1) - (7) (No change.)

(c) Except as may be otherwise prohibited by this subchapter or a quarantine, hold order, or herd plan issued by TAHC, the carcass of a susceptible species or part of a susceptible species killed in this state may be transported from the location where the animal was killed to a final destination. Following final processing at a final destination, the parts of the animal not retained for cooking, storage or taxidermy purposes shall be disposed of only as follows:

(1) by transport, directly or indirectly, to a landfill permitted by the Texas Commission of Environmental Quality to receive such wastes;

(2) interment at a depth of no less than three feet below the natural surface of the ground and covered with at least three feet of earthen material; or

(3) returned to the property where the animal was harvested for disposal.

[(e) For susceptible species harvested in a CZ or SZ, the provisions of subsection (b) of this section are applicable only if the susceptible species is processed within the CZ or SZ where the susceptible species was harvested, except for the transport of an intact head to a designated check station. The head of a susceptible species transported to a designated check station under the provisions of this subsection that is not taken to a taxidermist under the provisions of subsection (f) of this section must be:]

[(1) returned to the property where it was harvested for disposal; or]

[(2) disposed of in a landfill permitted by Texas Commission on Environmental Quality (TCEQ).]

(d) No person may transport a susceptible species harvested in a CZ or SZ from the CZ or SZ to any destination unless it is first presented at the nearest department-designated check station. At the check station, a check-station receipt shall be obtained, which shall remain with the animal until it reaches a final destination.

[(d) A susceptible species harvested in a CZ or SZ and processed in accordance with the provisions of subsections (b) and (e) of this section may be transported from the CZ or SZ, provided it is accompanied by a department-issued check-station receipt, which shall remain with the susceptible species until it reaches a final destination.]

(e) It is an offense for any person to dispose of those parts of an animal that the possessor does not retain for cooking, storage, or taxidermy purposes except as follows:

(1) by transport, directly or indirectly, to a landfill permitted by the Texas Commission of Environmental Quality to receive such wastes; or

(2) interment at a depth of no less than three feet below the natural surface of ground and covered with at least three feet of earthen material; or

(3) returned to the property where the animal was harvested.

[(e) If a person takes a susceptible species in a SZ within which the department has not designated a mandatory check station, the person shall transport the head of the susceptible species from the SZ solely for the purpose of presentation at the nearest check station established by the department for the SZ in which the susceptible species was taken, provided such transport occurs immediately upon leaving

the SZ where the animal was taken and occurs via the most direct route available. The head of a susceptible species transported to a check station under the provisions of this subsection and not taken to a taxidermist under the provisions of subsection (f) of this section must be:]

[(1) returned to the property where it was harvested for disposal; or]

[(2) disposed of in a landfill permitted by TCEQ.]

(f) The skinned or unskinned head of a susceptible species from a CZ or SZ, [other] state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds may be transported to a taxidermist for taxidermy purposes, provided all brain material, soft tissue, spinal column and any unused portions of the head are disposed of prior to being transported to Texas, or disposed of in a landfill in Texas permitted by TCEQ to receive such wastes.

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

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◆ ◆ ◆  
DIVISION 2. CHRONIC WASTING DISEASE -  
COMPREHENSIVE RULES

31 TAC §§65.91, 65.92, 65.95, 65.97, 65.98

The amendments are proposed under the authority of Parks and Wildlife Code, §42.0177, 42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; 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 42, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.91. General Provisions.

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

(c) No ~~[Except as provided in §65.99(i) of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD); no]~~ person may transfer deer to or from a facility that has been designated NMQ by the department unless specifically authorized by the department for the holder of a scientific research permit when the proposed research is determined to be of use in advancing the etiology of CWD in susceptible species.

(f) - (i) (No change.)

§65.92. *CWD Testing.*

(a) (No change.)

(b) Except as provided in §65.95(c)(6) ~~[§65.95(b)(6)]~~ of this title (relating to Movement of Breeder Deer) or subsection (d) of this section, an ante-mortem CWD test is not valid unless it is performed by an accredited laboratory on retropharyngeal lymph node, rectal mucosa, or tonsillar tissue with at least six lymphoid follicles collected within eight months of submission by a licensed veterinarian authorized pursuant to statutes and regulations governing the practice of veterinary medicine in Texas and regulations of the TAHC from a live deer that:

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

(c) - (k) (No change.)

§65.95. *Movement of Breeder Deer.*

(a) General. Except as otherwise provided in this division, a breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department to:

(1) another breeding facility as provided in subsection (b) of this section;

(2) an approved release site as provided in subsection (c) ~~[(b)]~~ of this section; or

(3) a DMP facility (however, deer transferred to DMP facilities cannot be recaptured and must be released as provided in the deer management plan). ~~[; or]~~

~~[(4) a registered nursing facility, provided:]~~

~~[(A) the deer are less than 120 days of age;]~~

~~[(B) the facility from which the deer are transferred is MQ at the time of transfer; and]~~

~~[(C) no deer from any other breeding facility are or have been present in the nursing facility during the reporting year in which the transfer occurs.]~~

~~[(D) A registered nursing facility is prohibited from accepting deer from more than one breeding facility in one reporting year.]~~

~~[(E) No person may possess deer older than 120 days of age in a nursing facility.]~~

(b) Transfer From Breeding Facility to Breeding Facility.

(1) A breeder deer may be transferred from one breeding facility to another breeding facility only if:

(A) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the transfer has been returned with test results of "not detected";

(B) the deer is at least six months of age at the time the test sample required by this subsection is collected; and

(C) the deer has been in the facility for at least six continuous months prior to being tested under this subsection.

(2) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title (relating to CWD Testing) may be utilized a second time to satisfy the requirements of this subsection, provided the test sample was collected as provided in paragraph (1) of this subsection.

(3) A facility from which deer are transferred in violation of this subsection is automatically NMQ and any further transfers are prohibited until the permittee and the owner of the destination facility have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

~~(c) [(b)]~~ Release Sites; Release of Breeder Deer.

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

(6) No person may transfer a breeder deer to a release facility or cause or allow a breeder deer to be transferred to a release facility unless:

(A) (No change.)

(B) the deer is at least six months of age at the time the test sample required by this paragraph is collected; and

(C) the deer has been in the facility for at least six continuous months prior to being tested under subparagraph (A) of this paragraph.

~~(D) [(C)]~~ An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title may be utilized a second time to satisfy the requirements of this paragraph, provided the test sample was collected as provided in subparagraph (A) of this paragraph.

~~(E) [(D)]~~ A facility from which deer are transferred in violation of this paragraph becomes automatically NMQ and any further transfers are prohibited until the permittee and the owner of the release site have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

~~[(E) The provisions of this paragraph cease effect three years from the effective date of this section.]~~

~~(d) [(e)]~~ Trace-out Release Site.

(1) (No change.)

(2) The landowner of a trace-out release site must: ~~[submit post-mortem CWD test results for one of the following values, whichever represents the greatest number of deer tested:]~~

(A) within 60 days of notification by the department that trace-out release status has been confirmed, remove every trace deer at the release site, either by lawful hunting or as specifically authorized in writing by the department (or both), and submit post-mortem CWD samples for each deer within one day of mortality; and

~~[(A) 100 percent of all hunter-harvested deer; or]~~

(B) submit post-mortem CWD test results for 100 percent of all hunter-harvested deer until the department is confident that CWD is not present at the release site or as prescribed in a herd plan.

~~[(B) one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release site in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year; provided, however, this minimum harvest and testing provision may only be substituted as prescribed in a herd plan.]~~

(3) (No change.)

(f) The release of breeder deer prior to April 1 of the year following the year in which the breeder deer is born is prohibited.

(g) The owner of a release site that is not in compliance with applicable provisions of this division is ineligible for enrollment or continued participation in the Managed Lands Deer Program under Subchapter A of this chapter.

§65.97. Testing and Movement of Deer Pursuant to a Triple T or TTP Permit.

(a) - (b) (No change.)

(c) Testing Requirements for TTP Permit.

(1) (No change.)

(2) Sample tissues required by this subsection must be submitted within seven days of collection.

~~[(2) The landowner of a trace-out release site must submit CWD test results for 100% of the deer harvested pursuant to a TTP permit, which may include the samples required under paragraph (1) of this subsection.]~~

(3) (No change.)

§65.98. Transition Provisions; Provisions Necessary to Accommodate Problematic Rulemaking Timelines.

(a) A release site that was not in compliance with the applicable testing requirements of this division in effect between August 15, 2016 and the effective date of this section shall be:

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

(b) To the extent that any provision of this subsection conflicts with the provisions of §65.99(e) of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Breeding Facilities, this section controls.

(1) A Category B facility is a trace-out breeding facility in which less than 100% of the trace deer that department records indicate were received by the facility are for whatever reason (including but not limited to transfer, release, or escape) available for testing.

(2) Immediately upon notification by the department of Category B status; a facility is automatically NMQ and the permittee shall:

(A) within seven days euthanize all trace deer in the breeding facility and submit test samples for each of those deer for post-mortem testing within one business day;

(B) inspect the facility daily for mortalities;

(C) immediately report all test-eligible mortalities that occur within the facility;

(D) immediately collect test samples from all test-eligible mortalities that occur within the facility and submit the samples for post-mortem testing within one business day of collection; and

(E) conduct ante-mortem testing of all test-eligible deer in the facility as specified in the following:

(i) for a facility for which the date of last known exposure is within the immediately preceding 18 months, within 60 days of notification by the department of Category B status:

(I) submit rectal or tonsil biopsy samples; and

(II) submit tonsil biopsy samples collected no earlier than 24 months from the date of last known exposure;

(ii) for a facility for which the date of last known exposure is not within the immediately preceding 18 months and not at a time prior to the immediately preceding 36 months: within 60 days of notification by the department of Category B status, submit tonsil biopsy samples collected no earlier than 24 months from the date of last known exposure; and

(iii) for a facility for which the date of last known exposure occurred at a time after the immediately preceding 36 months: within 60 days of notification by the department of Category B status, submit rectal or tonsil biopsy samples collected no earlier than 36 months from the date of last known exposure.

(3) In lieu of the testing requirements prescribed by paragraph (2)(A) and (E) of this subsection, a permittee may request the development of a custom testing plan as provided in 65.99(h) of this title; provided, however, the permittee must comply with paragraph (2)(B) - (D) of this subsection.

(4) Samples required by paragraph (2)(E) of this subsection shall be submitted no later than 45 days after the applicable last known exposure period, or other date as determined by the department.

(5) The department in consultation with TAHC may decline to authorize a custom testing plan under §65.99(h) of this title if an epidemiological assessment determines that a custom testing plan is inappropriate.

(6) The department will not restore MQ status unless CWD "not detected" test results are obtained for all required sample submissions and the permittee has complied with all applicable requirements of this subsection and this division.

(c) As of the effective date of this subsection, the provisions of §65.99(i) of this title cease effect.

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

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## SUBCHAPTER T. DEER BREEDER PERMITS

### 31 TAC §§65.605, 65.608, 65.611

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, 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.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter L.

*§65.605. Holding Facility Standards and Care of Deer.*

(a) The entire perimeter fence of a facility containing breeder deer, including [nursing and] medical facilities, shall be no less than seven feet in height, and shall be constructed of department-approved net mesh, chain link or welded wire that will retain breeder deer. An

indoor facility is acceptable if it meets the standards described in this section and provides permanent access to an outdoor environment that is sufficient for keeping the breeder deer in captivity.

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

§65.608. *Annual Reports and Records.*

(a) (No change.)

(b) A person other than a deer breeder holding breeder deer for ~~[nursing,]~~ breeding, or health care purposes shall maintain and, upon request, provide copies of transfer permits indicating the source of all breeder deer in the possession of that person.

§65.611. *Prohibited Acts.*

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

~~[(d) Except as expressly authorized in writing by the department, no person may possess a breeder deer in a nursing facility beyond 120 days following the deer's birth.]~~

(d) ~~[(e)]~~ No person may hold more than one cervid species at any time in a deer breeding facility except as provided by §65.602(e) of this title (relating to Application and Permit Issuance), or cause or allow the interbreeding by any means of white-tailed deer and mule deer.

(e) ~~[(f)]~~ Possession of a deer breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(f) ~~[(g)]~~ No deer breeder shall exceed the number of breeder deer allowable for the permitted facility, as specified by the department on the deer breeder's permit.

(g) ~~[(h)]~~ This subsection does not apply to breeder deer lawfully obtained prior to June 21, 2005. Except as provided in this subsection, no person may:

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

(h) ~~[(i)]~~ It is an offense for any person the department has authorized as a facility inspector to submit the checklist or letter of endorsement required by §65.603(a)(2) of this title (relating to Application and Permit Issuance) if the person has not personally conducted an onsite inspection at the facility.

(i) ~~[(j)]~~ It is an offense for any person to violate or fail to comply with the provisions a disease-testing plan created under the provisions of §65.605(d) of this title (relating to Holding Facility Standards and Care of Deer) ~~[subsection].~~

(j) ~~[(k)]~~ No person may clone or authorize or participate in the cloning of a white-tailed deer or mule deer unless specifically authorized to do so by a permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C. For the purposes of this subsection, cloning is the creation or attempted creation of a white-tailed or mule deer from a single progenitor cell.

(k) ~~[(l)]~~ Except as provided under §65.602(e) of this title, no person may possess deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow deer, livestock, exotic livestock, or similar animals to access a deer breeding facility other than:

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

(l) Except as provided by subsection (m) of this section, it is an offense for any person at any time for any reason to remove an identification tag prescribed by Parks and Wildlife Code, §43.3561, from a breeder deer except to immediately replace it with an identification tag meeting the requirements of Parks and Wildlife Code, §43.3561(c) or (h).

(m) A breeder deer that has been released is no longer a breeder deer; however, it is an offense for any person to remove the identification tag required by Parks and Wildlife Code, §43.3561, from such deer except as a consequence of reducing the deer to possession following lawful take under a hunting license.

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

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## PART 10. TEXAS WATER DEVELOPMENT BOARD

### CHAPTER 358. STATE WATER PLANNING GUIDELINES

#### SUBCHAPTER B. DATA COLLECTION

##### 31 TAC §358.6

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §358.6 to provide technical assistance in water loss control for qualifying retail public utilities that submit water loss audits and related data to the TWDB.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

This proposed rulemaking is to implement Senate Bill Number 28 (S.B. 28), Section 8, passed by the 88th Texas Legislature, effective September 1, 2023. S.B. 28 directs the TWDB to establish a program providing technical assistance to retail public utilities conducting water loss audits required by Chapter 16 of the Texas Water Code. The TWDB is required to prioritize technical assistance to retail public utilities required to submit water loss audits to the TWDB based on submitted water loss audits, the population served by the utility, and the integrity of the utility's system. S.B. 28 also requires the TWDB to publish certain water loss data submitted to the TWDB on its official website in addition to information related to entities receiving technical assistance established by these proposed rules.

The TWDB proposes providing technical assistance by amending §358.6 and adding new Sections 358.6(g), (h), and (i).

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

In 31 TAC §358.6, new §358.6(g) is proposed to provide technical assistance in water loss control and outlining the circumstances of the technical assistance offered by the TWDB.

In 31 TAC §358.6, new §358.6(h) is proposed to describe how the agency will prioritize the technical assistance offered by the

TWDB to retail public utilities based on water loss audits submitted, the population served by the retail public utility, and the system integrity of the retail public utility.

In 31 TAC §358.6, new §358.6(i) is proposed to establish how the TWDB will publish on its official website certain information related to the retail public utilities receiving technical assistance in addition to other information and data related to water loss audits that the TWDB currently collects.

**FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS** (Texas Government Code §2001.024(a)(4))

Rebecca Trevino, Chief Financial Officer, has determined that there will be a fiscal impact to state government; however, there are no anticipated additional estimated costs or foreseeable implications (including administrative costs) relating to a local governments' costs or revenue resulting from these rules for local governments.

For the first five years these rules are in effect for state government, the TWDB anticipates implementation of these rules will be an increase in cost because the rules require an expansion of TWDB's current practices related to reviewing and compiling statewide water loss data to comply with the requirements of S.B. 28. To administer the proposed rules, the TWDB intends to increase its staff by three professional positions funded from existing operational funds. In addition, professional consultant services will be required to develop program materials and the information technology system used to track program information. Program costs are estimated to be paid from existing operational funds and to be \$690,000 in the first year and \$660,000 each year thereafter.

Though these proposed rules impose a cost on state government that will be provided for as previously described, these rules will not impose a cost on regulated persons, which includes another state agency, a special district, or a local government. Therefore, the requirement in Texas Government Code, §2001.0045 for the TWDB to repeal a rule does not apply. Notwithstanding the foregoing, an exception to the requirement in §2001.0045 to repeal a rule applies to these proposed rules because these rules are necessary to implement legislation enacted by S.B. 28 and to protect water resources of this state as authorized by the Texas Water Code with an effective program designed to aid the state in the collection and monitoring of statewide water loss data.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

**PUBLIC BENEFITS AND COSTS** (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking. This proposed rulemaking is expressly designed to establish a program to provide technical assistance to qualifying retail public utilities in that are otherwise required by law to conduct and submit water loss audits to the TWDB. In addition, the proposed rules will assist those qualifying retail public utilities to apply for financial assistance from the TWDB to mitigate the utility system's water loss. Ms. Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as

the TWDB will be providing the proposed technical assistance to the retail public utilities.

**ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT** (Texas Government Code §§2001.022, 2006.002); **REGULATORY FLEXIBILITY ANALYSIS** (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. There is also no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

**DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION** (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is establish a program to provide technical assistance to retail public water utilities in conducting required water loss audits and in applying for financial assistance from the TWDB to mitigate the utility system's water loss.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency. This rule is proposed under the authority of Texas Water Code §16.0121, as amended by S.B. 28, 88th Texas Legislative Session. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to

the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to establish a program to provide technical assistance to retail public water utilities in conducting required water loss audits and in applying for financial assistance from the board to mitigate the utility system's water loss as well as to prioritize the technical assistance based on three factors. The proposed rule also directs the TWDB to publish certain information related to its collection of water loss data and the use of this program on its official website. The proposed rule would substantially advance this stated purpose by codifying and expanding TWDB's water loss program to better assist retail public utilities in mitigating their water loss.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that requires retail public utilities to conduct and submit water loss audits.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, the specific purpose of this rule is to implement Section 8 of S.B. 28 and expand the TWDB's water loss program to better assist retail public utilities in mitigating their water loss. The creation of this program as proposed and collection of better water loss data by the TWDB is not a statutory or constitutional taking of private real property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule (1) creates a government program; and (2) requires the creation of new employee positions. The TWDB intends to use existing operational funds to increase its staff by three professional positions. In addition, professional consultant services will be required to develop program materials and the information technology system used to track program information. Program costs are estimated to be \$690,000 in the first year and \$660,000 each year thereafter.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Devel-

opment Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register*. Include "Chapter Number 358" and "Technical Assistance in Water Loss Control" in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and under the authority of Texas Water Code Section 16.0121(k) and Section 16.0121(l), as enacted by S.B. 28, passed during the 88th Texas Legislative Session, effective September 1, 2023.

This rulemaking affects Water Code, Chapter 16, Subchapter B. §358.6 Water Loss Audits.

#### §358.6. *Water Loss Audits.*

(a) Definitions. Unless otherwise indicated, in this section the following terms shall have the meanings assigned.

(1) Allowed apparent loss--A unique number for allowable apparent loss calculated for each utility.

(2) Annual real loss--A unique number calculated for each utility based on the utility's real loss on an annualized basis.

(3) Apparent loss--Unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

(4) Average system operating pressure--System operating pressure in pounds per square inch calculated using a weighted average approach as identified in the American Water Works Association M36 Manual.

(5) Validation - The process of examining water loss audit inputs to identify and correct inaccuracies in water loss audit data and the application of methodology to evaluate and communicate the uncertainty inherent in water loss audit data.

(6) Executive Administrator--The executive administrator of the Board.

(7) Mitigation--An action or actions taken by a retail public utility to reduce the amount of total water loss in a system. Mitigation may include a detailed water loss assessment, pipe or meter replacement, or addition or improvement of monitoring devices to detect water loss.

(8) Real loss--Loss from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks.

(9) Retail public utility or utility--A retail public utility as defined by Texas Water Code §13.002.

(10) Service connection density--The number of a retail public utility's connections on a per mile basis.

(11) Total water loss--The sum of a utility's real loss and apparent loss.

(b) A retail public utility that provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding calendar year, unless a different 12-month period is allowed by the executive administrator. The water loss audit may be submitted electronically.

(1) Audit required annually. The utility must file the water loss audit with the executive administrator annually by May 1st if the utility:

(A) has more than 3,300 connections; or

(B) is receiving financial assistance from the board, regardless of the number of connections. A retail public utility is receiving financial assistance from the board if it has an outstanding loan, loan forgiveness agreement, or grant agreement from the board.

(2) Audit required every five years. The utility must file the water loss audit with the executive administrator by May 1, 2016, and every five years thereafter by May 1st if the utility has 3,300 or fewer connections and is not receiving financial assistance from the board.

(3) The water loss audit must be performed in accordance with methodologies developed by the executive administrator based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator. The executive administrator will provide the necessary forms and methodologies to the retail public utility.

(4) A water loss audit must be performed by a person who has completed water loss audit training developed by the executive administrator. The executive administrator will make such training available without charge on the agency website and may also provide such training in person or by video.

(5) Effective January 1, 2025, a utility required to submit a water loss audit annually as described in paragraph (1)(B) of this subsection or that is applying for financial assistance will be required to have its most current water loss audit validated within three months of submittal or prior to consideration of a request for financial assistance from the board. The executive administrator will validate the submitted water loss audit in conference with the retail public utility. Alternatively, the utility may elect to have the water loss audit validated by a person other than the executive administrator. Should a water loss audit be validated by a person other than the executive administrator's staff, validation must follow TWDB's validation guidelines and be performed by a person other than the person submitting the water loss audit, who has completed water loss audit validation training and is certified to conduct such validation.

(c) The executive administrator shall determine if the water loss audit is administratively complete. A water loss audit is administratively complete if all required responses are provided, the audit is completed by a person who has been trained to conduct water loss auditing as described in subsection (b)(4) of this section, and the audit has been validated as described in subsection (b)(5) of this section. In the event the executive administrator determines that a retail public utility's water loss audit is incomplete, the executive administrator shall notify the utility.

(d) A retail public utility that provides potable water that fails to submit a water loss audit or that fails to correct a water loss audit that is not administratively complete within the timeframe provided by the executive administrator is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, G, H, J, O, Q, and R; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit has been filed with and accepted by the executive administrator.

(e) The following thresholds shall apply to certain retail public utilities:

(1) For a retail public utility with a service connection density more than or equal to 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than 30 gallons per connection per day.

(2) For a retail public utility with a service connection density less than 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than 57 gallons per connection per day.

(3) For a utility that has a volume of wholesale water sales that flow through the retail water distribution system:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss, expressed as gallons per connection per day and including a wholesale factor that takes into account the wholesale water volume, must be less than the applicable real loss threshold described in subsections (e)(1)(B) or (e)(2)(B) of this section.

(f) If a retail public utility's total water loss meets or exceeds the threshold for that utility, the retail public utility must use a portion of any financial assistance received from the board for a water supply project to mitigate the utility's water loss. Mitigation will be in a manner determined by the retail public utility and the executive administrator in conjunction with the project proposed by the utility and funded by the board. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily mitigating the utility's system water loss. The request for waiver should be addressed to the executive administrator and include information about the utility's current or planned activities to mitigate their water loss and their source of funding for that mitigation.

(g) The Board will provide technical assistance to retail public utilities to conduct water loss audits required to be submitted to the Board and to apply for financial assistance from the Board to mitigate a retail public utility's water loss.

(1) A retail public utility required to conduct and submit to the executive administrator a water loss audit in accordance with the provisions of this subchapter may request from the Board assistance to:

(A) conduct a water loss audit as required by this subchapter; or

(B) apply for financial assistance from the Board to mitigate a retail public utility system's total water loss, as determined by a recent water loss audit.

(2) In complying with the requirements in paragraph (1) of this subsection, the Board may contract with or partner with other entities as permitted by law to conduct the water loss audit of a retail public utility or contract with or partner with other entities to assist with an eligible retail public water utility's application to the Board for financial assistance to mitigate a system's total water loss, as determined by a recent water loss audit.

(h) The executive administrator shall prioritize technical assistance offered by the Board according to the criteria identified in Texas Water Code §16.0121(k) including:

(1) the water loss audits submitted to the Board;

- (2) the population served by the retail public utility;
- (3) the system integrity of the retail public utility as evidenced by the quality of data submitted in its water loss audit; and
- (4) other relevant factors as determined by the Executive Administrator.

(i) The executive administrator shall publicly post on the Board's official website a summary of:

(1) the information included in the water audits required by Texas Water Code §16.0121(b) and §16.0121(b-1) according to category of retail public utility and according to regional water planning area;

(2) the measures taken by retail public utilities to reduce water loss; and

(3) a list of those retail public utilities receiving technical assistance as established under subsection (g) of this section, including details related to use of the Board's financial assistance to mitigate a retail public utility's total water loss.

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 September 15, 2023.

TRD-202303442

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 463-7686



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER O. TEXAS JOBS, ENERGY, TECHNOLOGY AND INNOVATION PROGRAM

###### 34 TAC §§9.5000 - 9.5012

The Comptroller of Public Accounts proposes new §9.5000, concerning definitions, §9.5001, concerning applicant eligibility requirements, §9.5002, concerning application requirements, §9.5003, concerning economic benefit statement criteria, §9.5004, concerning application process, §9.5005, concerning agreement for limitation on taxable value of eligible property, §9.5006, concerning agreement process, §9.5007, concerning amendment process, §9.5008, concerning job and wage requirements; penalty for failure to comply with job or wage requirement, §9.5009, concerning biennial compliance report, §9.5010, concerning biennial report to legislature, §9.5011, concerning conflicts and §9.5012, concerning electronic submissions; notices. These new sections implement the Texas Jobs, Energy, Technology and Innovation Act to comply with Government Code, Subchapter T, Chapter 403, which was

enacted by House Bill 5, 88th Legislature, R.S., 2023. The new sections will be located in Chapter 9 (Property Tax Administration), new Subchapter O (Texas Jobs, Energy, Technology and Innovation Program).

Section 9.5000 provides definitions.

Section 9.5001 describes applicant eligibility requirements.

Section 9.5002 establishes the application requirements.

Section 9.5003 establishes the economic benefit statement criteria and methodology.

Section 9.5004 describes the application process including the comptroller review and recommendation.

Section 9.5005 describes the requirements for an agreement for limitation on taxable value of eligible property.

Section 9.5006 describes the agreement process.

Section 9.5007 describes the amendment process.

Section 9.5008 establishes the job and wage requirements as well as the penalty for failing to comply with the job or wage requirement.

Section 9.5009 describes the biennial compliance report submitted by a business entity subject to an agreement under Government Code, Chapter 403.

Section 9.5010 describes the biennial report to the legislature.

Section 9.5011 addresses compliance with conflict-of-interest laws.

Section 9.5012 provides that the comptroller may require electronic submission of documents under the Texas Jobs, Energy, Technology and Innovation Act.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by implementing the current statute. There would be no significant anticipated economic cost to the public. The proposed new rules would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to John Villarreal, Manager, Economic Development & Local Government at [John.Villarreal@cpa.texas.gov](mailto:John.Villarreal@cpa.texas.gov) or at P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under Government Code, §403.623, which permits the comptroller to adopt rules regarding the Texas Jobs, Energy, Technology and Innovation Act as necessary to implement that chapter.

The new sections implement Government Code, Subchapter T, Chapter 403.

§9.5000. Definitions.

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

(1) Agreement holder--A business entity that is subject to an executed agreement under Government Code, §403.612.

(2) Construction job--A job that is temporary in nature, typically performed on a full-time basis and takes place before the commencement of the eligible project's incentive period. The purpose of the job is to perform construction, maintenance, remodeling or repair work for an applicant's project.

(3) Eligible project--The construction of a project, or the expansion of an existing facility that is:

(A) a manufacturing facility, classified in NAICS 31-33;

(B) a facility related to the provision of utility services, including an electric generation facility that is considered to be dispatchable because the facility's output can be controlled primarily by forces under human control, classified in NAICS 2211;

(C) a facility related to the development of natural resources, defined as the following Goods-Producing Industries subsector groups as identified by the U.S. Bureau of Labor Statistics:

(i) Agriculture, Forestry, Fishing and Hunting, classified in NAICS 11; and

(ii) Mining, Quarrying, and Oil and Gas Extraction, classified in NAICS 21;

(D) a facility engaged in research and development, classified in NAICS 5417, or manufacture of high-tech equipment or technology; or

(E) related to critical infrastructure such as:

(i) a water intake structure, water treatment facility, wastewater treatment plant, or pump station, classified in NAICS 2213;

(ii) a liquid natural gas terminal or storage facility, classified in NAICS 424710;

(iii) pipelines and pipeline appurtenances or facilities, including pipes, valves, meters, pumps, compressors, treating and processing facilities, cathodic protection facilities, and any other equipment, facilities, devices, structures, and buildings used or intended for use in the gathering, transportation, treating, storage, or processing of CO<sub>2</sub>, oil, gas, or other minerals, and the liquefied or gaseous substances, constituents, products, or mixtures derived from those minerals through refining, processing, or other methods, classified in NAICS 486; and

(iv) utility-scale water or wastewater storage, treatment, or transmission facilities, classified in NAICS 2213.

(4) Eligible property--Property that is used in connection with an eligible project and is either wholly owned by an applicant or leased by an applicant through a capitalized lease. To be eligible, the property must be:

(A) a new building or expansion of an existing building, including a permanent and nonremovable part of a building that is:

(i) constructed after the execution of the agreement; and

(ii) located in an area that is, at the time the agreement is executed, designated as a contiguous reinvestment zone under

Tax Code, Chapter 311 or 312, or as an enterprise zone under Government Code, Chapter 2303; or

(B) tangible personal property, excluding inventory, that is initially placed in a zone described in subparagraph (A)(ii) of this paragraph after the agreement execution.

(5) Full-time job--A permanent position of employment, other than a construction job, requiring a minimum of 1,600 hours of work per year in connection with an eligible project.

(6) Investment--Capital that is expended on the construction or acquisition of eligible property for an eligible project with the exclusion of expenses related to land and inventory for the project.

(7) NAICS--North American Industry Classification System, developed by the U.S. Office of Management and Budget as the standard for use in classifying business establishments.

(8) Performance bond--A surety bond with an amount determined by the comptroller.

(9) Required job--A job, other than construction jobs, that an applicant commits to create or demonstrate for an eligible project that meets the following requirements:

(A) must be a new full-time job in this state;

(B) must be performed at the site of the project by an employee hired by the applicant (including a Texans Work Program trainee under Labor Code, Chapter 308), or by an independent contractor or independent contractor's employee;

(C) must require at least 1,600 hours of work a year;

(D) may not be transferred by the applicant from an existing facility or location in this state unless the applicant fills the vacancy caused by the transfer;

(E) may not create a job to replace an existing job, unless the applicant fills the vacancy caused by the replacement;

(F) must offer and contribute to a group health benefit plan for each full-time employee of the applicant; and

(G) must meet the wage requirement.

(10) Trainee--An individual enrolled in the Texans Work Program who fulfills the following eligibility criteria:

(A) receives a minimum monthly payment of \$300;

(B) is engaged for a duration of at least 6 months but not exceeding one year;

(C) contributes at least 30 hours weekly; and

(D) constitutes no more than 20% of the employer's total workforce.

(11) Wage Requirement--A wage that exceeds 110% of the statewide average annual wage for all jobs in the applicable industry sector as computed by the Texas Workforce Commission in the Quarterly Census of Employment and Wages publication and as described in the executed agreement under Government Code, §403.612. The term does not include the wages for trainees in the Texans Work Program.

§9.5001. Applicant Eligibility Requirements.

(a) An applicant that is listed as ineligible to receive a state contract or investment or is otherwise ineligible to contract with a state governmental entity under Government Code, Chapters 808, 809, 2270, 2271, or 2274, is ineligible to apply for an agreement for limitation on taxable value of eligible property under Government Code, Chapter 403.

(b) The comptroller may reject an application based on an applicant's ineligibility under subsection (a) of this section.

(c) The comptroller shall send notice of the rejection described in subsection (b) of this section to the applicant.

(d) An applicant may not submit an administrative appeal to the comptroller for reconsideration of an application that has been rejected under subsection (b) of this section.

§9.5002. Application Requirements.

(a) Each application shall include:

(1) a completed application form;

(2) proof of a \$30,000 payment as a nonrefundable application fee, payable to the applicable school district;

(3) a sworn affidavit by an agent authorized to bind an applicant attesting that the applicant is not ineligible under Government Code, §403.606;

(4) a map of the proposed project site;

(5) an economic benefit statement for the proposed project as described in Government Code, §403.608; and

(6) any additional information requested by the comptroller to complete its evaluation of the application.

(b) Applicants must segregate confidential information described by Government Code, §403.621, or information that is confidential as a matter of law from other information in their application, amended application or supplement to an application. A cover sheet marked "Confidential" with the legal justification for confidential treatment must accompany all information that is considered confidential.

(c) If an applicant proposes to place an eligible property in a qualified opportunity zone, the entire project including its boundaries must fall within that qualified opportunity zone in order to be subject to the taxable value prescribed in Government Code, §403.605(a)(2).

§9.5003. Economic Benefit Statement Criteria.

(a) The economic benefit statement must include the information described in Government Code, §403.608(b), including the sources relied upon.

(b) The comptroller may require an applicant to supplement or modify the economic benefit statement to provide further clarity or if there are changes to project-related information.

(c) Information provided as an estimate of the associated economic benefits that may be reasonably attributed to the project may be generated from standard economic estimation techniques and multipliers. This information shall be used to obtain a generalized estimation of the economic benefits to be associated with the proposed project. Any economic estimation modeling software used and all modifiers that were incorporated in the calculations must be disclosed.

(d) The economic benefit statement must include the project's associated economic benefits that, at minimum, consist of the following:

(1) the impact on the gross revenues and employment levels of local businesses that provide goods or services in connection with the project or to an applicant's employees;

(2) the amount of state and local taxes that will be generated as a result of the indirect economic impact of the project;

(3) the development of complementary businesses or industries that locate in this state as a direct consequence of the project;

(4) the total impact of the project on the gross domestic product of this state;

(5) the total impact of the project on personal income in this state; and

(6) the total impact of the project on state and local taxes.

(e) The comptroller may reject an economic benefit statement that is determined to be unreasonable or relies on unrealistic assumptions of economic conditions.

(f) If the economic benefit statement is rejected, then the comptroller may recommend not to approve the application.

§9.5004. Application Process.

(a) An applicant must submit an application for a limitation on taxable value of eligible property in the form and manner prescribed by the comptroller. The comptroller may require applications to be submitted electronically.

(b) After the eligibility of the applicant is assessed in §9.5001 of this chapter, the comptroller shall review an application to determine if it is administratively complete. An application is considered administratively complete when it includes all the information requested by the comptroller.

(c) The comptroller shall provide notice of an administratively complete application to the applicant, the governor and the applicable school district. The comptroller may provide notice electronically.

(d) If an application is not administratively complete, the comptroller may require an applicant to submit the necessary information by a deadline.

(e) The comptroller shall publish on its website information from each application including maps, economic benefit statement and any amendments within 10 business days of receiving an administratively complete application.

(f) To assess whether a project proposed in an application is an eligible project, the comptroller must find that:

(1) an applicant satisfies the application requirements;

(2) the proposed project meets the definition of eligible project in §9.5000 of this title and Government Code, §403.602(8); and

(3) The applicant is willing to agree and accept the terms described in Government Code, §403.604, and the agreement terms.

(g) To assess whether an agreement is a compelling factor and whether the applicant would make the proposed investment in the absence of the agreement under Government Code, §403.609(b)(3), the comptroller may consider:

(1) any public documents and statements relating to the applicant, the proposed project or the proposed eligible property that is subject to the application;

(2) official statements by the applicant, government officials or industry officials concerning the proposed project;

(3) alternative sites and prospects explored including any specific incentive information;

(4) any information concerning the proposed project's impact on the Texas economy;

(5) previous applications for and subsequent granting of economic development incentives;

(6) documents pertaining to the proposed project's financials, real estate transactions, utilities, infrastructure, transportation, regulatory environment, permits, workforce, marketing, existing facilities, nature of market conditions, and raw materials that demonstrate whether the incentive is a compelling factor in a competitive site selection process to locate the proposed project in Texas; and

(7) any other information that may aid the comptroller in its determination.

(h) Upon request, the comptroller may require that an applicant provides additional documents to demonstrate a compelling factor in a competitive site selection process to locate the proposed project in Texas. Failure to provide these documents may result in the comptroller being unable to make a recommendation under Government Code, §403.609.

(i) Within 60 days of an application being deemed complete, the comptroller shall examine and determine whether the application should be recommended or not recommended for approval based on the criteria in Government Code, §403.609(b).

(j) The comptroller shall provide written notice of action under Government Code, §403.609(a), to the applicant, the governor and the applicable school district.

(1) The notice shall indicate the comptroller's recommendation either for approval or non-approval of the application along with a copy of the application, and all documents or information relied upon to make the findings prescribed by Government Code, §403.609(b).

(2) A recommendation for approval shall specify a performance bond amount that is at minimum 20% of the required investment prescribed by Government Code, §403.604.

(k) An applicant may submit an amended or supplemental application to the comptroller at any time after the submission of the original application. If an applicant modifies an application recommended by the comptroller prior to the execution of the agreement, the applicant must submit said modifications to the comptroller to make a recommendation pursuant to Government Code, §403.609, before the agreement can be executed.

§9.5005. Agreement for Limitation on Taxable Value of Eligible Property.

(a) An applicant, the governor and the governing body of the applicable school district must mutually agree to enter into an agreement for limitation on taxable value of eligible property that includes the requisite terms in Government Code, §403.604 and §403.612.

(b) An applicant must satisfy the criteria required to enter in a contract with the state of Texas.

(c) The agreement must be based on information from an application that was recommended for approval by the comptroller.

(d) The agreement must comply with all applicable rules, regulations and statutes.

§9.5006. Agreement Process.

(a) Both the governor and the governing body of the applicable school district must decide under Government Code, §403.610(a) and §403.611(a), that they are agreeable to entering into an agreement with the applicant for a limitation on taxable value of eligible property.

(b) The governor and the governing body of the applicable school district must provide written notice of their determination in compliance with Government Code, §403.610(b) and §403.611(d).

(c) The agreement must be written in the manner and form prescribed by the governor.

§9.5007. Amendment Process.

(a) An agreement holder may propose to modify the beginning and ending dates of the incentive period. Notice of the proposed modification must be provided to the comptroller, the governor, and the applicable school district not later than the 90th day before the first day of the incentive period specified in Government Code, §403.612(b)(3), or not later than the 90th day before the first day of the proposed incentive period, whichever is earlier.

(b) Failure to provide notice of a proposed modification in a timely manner could lead to a denial of the modification request.

(c) To change the beginning and ending dates of the incentive period, the agreement holder must update the most recent schedules and economic benefit statement as necessary to reflect the proposed change to the incentive period. The agreement holder must include the revised schedules and economic benefit statement with the notice provided to the comptroller, the governor, and the applicable school district under this section.

(d) The comptroller shall make the finding required by Government Code, §403.609(b)(2), regarding the project as proposed to be modified or determine that the finding cannot be made.

(e) The comptroller shall notify the agreement holder, the governor and the applicable school district of the comptroller's finding not later than the 60th day after the date the comptroller receives the notice and revised economic benefit statement from the agreement holder of the proposed modification.

(f) The incentive period for the project may not be modified if the comptroller determines that the finding required by Government Code, §403.609(b)(2), regarding the project as proposed to be modified cannot be made or if the governor or the applicable school district objects to the proposed modification.

§9.5008. Job and Wage Requirements; Penalty for Failing to Comply with Job or Wage Requirement.

(a) Except as otherwise provided in Government Code, §403.604(a), the number of required jobs may not be waived.

(b) The wage requirement applies to required jobs and additional jobs, as the terms are defined in §9.5000 of this title and Government Code, §403.602. The wage requirement may not be waived.

(c) The comptroller shall conduct a biennial review of the periods covered by two consecutive reports submitted by an agreement holder to determine whether the agreement holder has created the number of required jobs and has met the wage requirement under Government Code, Chapter 403.

(d) To make the determination, the comptroller may:

(1) review the Biennial Compliance Report submitted by the agreement holder;

(2) request additional information from the agreement holder to substantiate the number of required jobs and the wage requirement and/or inspect the eligible property with a 3-day advance notice to the agreement holder in order to perform the inspection at a mutually agreeable time during regular business hours; or

(3) consider any other information that is available to the comptroller.

(e) The comptroller may issue a determination that a job created by the agreement holder is not a required job if the job as identified by the agreement holder:

(1) does not provide 1,600 hours or more of work for that year;

(2) is not a new job but rather a position that was transferred from a facility of the agreement holder from one area of the state to the project covered by the agreement, unless the agreement holder fills the vacancy caused by the transfer;

(3) is not a new job but rather a position that replaced an existing job of the agreement holder, unless the agreement holder filled the vacancy caused by the replacement;

(4) is not covered by a group health benefit plan for which the agreement holder contributes; or

(5) does not meet the wage requirement.

(f) If the comptroller makes a determination that the agreement holder did not create the required number of jobs or meet the wage requirement, the comptroller shall provide notice to the agreement holder, which shall include an explanation for the adverse determination.

(g) If the comptroller finds that an agreement holder received two consecutive adverse determinations for failing to meet the wage requirement prescribed by the agreement, the comptroller shall impose a penalty on the agreement holder in an amount equal to two times the difference between:

(1) the product of:

(A) the actual average annual wage paid to all persons employed by the agreement holder in connection with the project that is the subject of the agreement as computed under Government Code, §403.612(b)(6); and

(B) the number of required jobs prescribed by the agreement; and

(2) the product of:

(A) the average annual wage prescribed by the agreement; and

(B) the number of required jobs prescribed by the agreement.

(h) If the comptroller finds that an agreement holder received two consecutive adverse determinations for failing to maintain at least the number of required jobs prescribed by the agreement, the comptroller shall impose a penalty on the agreement holder in an amount equal to two times the difference between:

(1) the product of:

(A) the number of required jobs prescribed by the agreement; and

(B) the number of required jobs actually created as stated in the most recent report submitted by the agreement holder under Government Code, §403.616; and

(2) the average annual wage prescribed by the agreement during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission.

(i) A determination by the comptroller under subsection (f) of this section is a deficiency determination under Tax Code, §111.008. A penalty imposed under this section is an amount the comptroller is required to collect, receive, administer, or enforce and is subject to the payment and redetermination requirements of Tax Code, §111.0081 and §111.009. A redetermination under Tax Code, §111.009, of a determination under this section is a contested case as defined by Government Code, §2001.003.

(j) In no event shall a penalty imposed under this section exceed the amount of the ad valorem tax benefit received by the agreement holder under the agreement.

(k) The comptroller shall deposit a penalty collected under this section and any interest on the penalty to the credit of the foundation school fund.

#### §9.5009. Biennial Compliance Report.

(a) Each agreement holder must submit a biennial compliance report with the supportive documents required by Government Code, §403.616 in the manner and form prescribed by the comptroller. The comptroller may require the report to be submitted electronically.

(b) The report must be submitted by June 1 of every even numbered year from the start to the conclusion of the incentive period.

(c) The report must include the minimum number of required jobs described in Government Code, §403.604(b) for every tax year throughout the duration of the incentive period.

(d) The report must include the signature of agreement holder's authorized representative(s) by which the representative confirms and attests to the truth and accuracy of the information submitted in the form to the best knowledge and belief of the agreement holder and its representative(s).

(e) Agreement holders must segregate confidential information described by Government Code, §403.621(b) or information that is confidential as a matter of law from other information within the biennial report. A cover sheet marked "Confidential" with the legal justification for confidential treatment must accompany all information that is considered confidential.

(f) For trainees identified in the report, the agreement holder must also submit documentation confirming its approval to take part in the Texans Work Program as set forth in Labor Code, §308.003, along with proof of the trainee's participation in the program including the beginning and ending dates of the trainee's participation.

#### §9.5010. Biennial Report to Legislature.

(a) Each agreement holder must submit information for the report described in Government Code, §403.617(b), in the form and manner prescribed by the comptroller.

(b) Not later than December 1 of each even year, the comptroller may electronically submit the report under Government Code, §403.617(b), to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature.

#### §9.5011. Conflicts.

To comply with Government Code, §403.619, both applicant and applicable school district must disclose any potential conflicts of interest related to a submitted application or an agreement, as mandated by state and federal laws, before executing the same agreement.

#### §9.5012. Electronic Submission; Notices.

Unless otherwise required by law, the comptroller may require forms, notices and other documents to be submitted electronically (including via web form).

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

Filed with the Office of the Secretary of State on September 18, 2023.



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

#### CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

##### SUBCHAPTER B. INTERACTION WITH THE PUBLIC

###### 37 TAC §§385.8101, 385.8117, 385.8136, 385.8137, 385.8141, 385.8153, 385.8161, 385.8163, 385.8183

As a result of a rule review of Title 37, Texas Administrative Code, Chapter 385, Subchapter B, as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4137), the Texas Juvenile Justice Department (TJJD) proposes to repeal §§385.8101, Public Information Requests; 385.8117, Private Real Property Rights Affected by Governmental Action; 385.8136, Notices to Public and Private Schools; 385.8137, Media Access; 385.8141, Confidentiality; 385.8153, Research Projects; 385.8161, Notification of a Facility Opening or Relocating; 385.8163, Decentralization; and 385.8183, Advocacy, Support Group, and Social Services Provider Access.

During the review, TJJD found the reasons for adopting the above rules no longer exist. The repealed rules will be recodified in TJJD policies not contained in the Texas Administrative Code.

##### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals.

##### PUBLIC BENEFIT/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that TJJD will operate more efficiently as a result of maintaining codified rules that more closely align with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

##### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

- (1) The repealed sections do not create or eliminate a government program.
- (2) The repealed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The repealed sections do not impact fees paid to TJJD.
- (5) The repealed sections do not create a new regulation.
- (6) The repealed sections do not expand, limit, or repeal an existing regulation.
- (7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.
- (8) The repealed sections will not positively or adversely affect the state's economy.

##### PUBLIC COMMENTS

Comments on the proposed repeals may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or submitted via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

##### STATUTORY AUTHORITY

The repeals are proposed under §2001.039, Government Code, which requires TJJD to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

No other statute, code, or article is affected by these proposed repeals.

§385.8101. *Public Information Requests.*

§385.8117. *Private Real Property Rights Affected by Governmental Action.*

§385.8136. *Notices to Public and Private Schools.*

§385.8137. *Media Access.*

§385.8141. *Confidentiality.*

§385.8153. *Research Projects.*

§385.8161. *Notification of a Facility Opening or Relocating.*

§385.8163. *Decentralization.*

§385.8183. *Advocacy, Support Group, and Social Services Provider Access.*

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 September 14, 2023.

TRD-202303437

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 490-7278



### 37 TAC §§385.9959, 385.9967, 385.9993

As a result of a rule review of Title 37, Texas Administrative Code, Chapter 385, Subchapter C, as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4137), the Texas Juvenile Justice Department (TJJD) proposes to repeal §§385.9959, Transportation of Youth; 385.9967, Court-Ordered Child Support; and 385.9993, Canteen Operations.

During the review, TJJD found the reasons for adopting the above rules no longer exist. The repealed rules will be recodified in TJJD policies not contained in the Texas Administrative Code.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals.

#### PUBLIC BENEFIT/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that TJJD will operate more efficiently as a result of maintaining codified rules that more closely align with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

#### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

- (1) The repealed sections do not create or eliminate a government program.
- (2) The repealed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The repealed sections do not impact fees paid to TJJD.
- (5) The repealed sections do not create a new regulation.
- (6) The repealed sections do not expand, limit, or repeal an existing regulation.
- (7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.
- (8) The repealed sections will not positively or adversely affect the state's economy.

#### PUBLIC COMMENTS

Comments on the proposed repeals may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or submitted via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

#### STATUTORY AUTHORITY

The repeals are proposed under §2001.039, Government Code, which requires TJJD to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

No other statute, code, or article is affected by these proposed repeals.

§385.9959. *Transportation of Youth.*

§385.9967. *Court-Ordered Child Support.*

§385.9993. *Canteen Operations.*

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 September 14, 2023.

TRD-202303438

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 490-7278



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 20. TEXAS WORKFORCE COMMISSION

#### CHAPTER 810. LONE STAR WORKFORCE OF THE FUTURE FUND

The Texas Workforce Commission (TWC) proposes new Chapter 810, relating to Lone Star Workforce of the Future Fund, comprising the following subchapters:

Subchapter A. General Provisions Regarding the Lone Star Workforce of the Future Fund, §§810.1 - 810.4

Subchapter B. Advisory Board Composition, Meeting Guidelines, §§810.11 - 810.13

Subchapter C. Program Administration, §§810.21 - 810.28

##### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of implementing new Chapter 810 rules is to establish the Lone Star Workforce of the Future Fund and set forth TWC's procedures for administering the new grant program.

The 88th Texas Legislature, Regular Session (2023), passed House Bill (HB)1755, which amended Texas Education Code, Title 3, Subtitle G, by adding Chapter 134A relating to the creation of the Lone Star Workforce of the Future Fund. HB 1755 tasks TWC with the establishment and administration of the Lone Star Workforce of the Future Fund as a dedicated account in the general revenue fund. Furthermore, HB 1755 requires TWC to adopt rules as necessary to administer this chapter.

##### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

###### SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE LONE STAR WORKFORCE OF THE FUTURE FUND

TWC proposes new Subchapter A, General Provisions Regarding the Lone Star Workforce of the Future Fund, as follows:

#### §810.1. Purpose and Goal

New §810.1(a) states the Lone Star Workforce of the Future Fund's purpose.

New §810.1(b) states the Lone Star Workforce of the Future Fund's goal.

#### §810.2. Definitions

New §810.2 sets forth the definitions for the Lone Star Workforce of the Future Fund rules.

#### §810.3. Uses of the Fund

New §810.3 details what a grant recipient shall use the money for.

#### §810.4. Waivers

New §810.31 sets forth the Executive Director's waiver authority.

### SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

TWC proposes new Subchapter B, Advisory Board Composition, Meeting Guidelines, as follows:

#### §810.11. Advisory Board Purpose and Composition

New §810.11 provides the purpose of the advisory board and the appointing entities.

#### §810.12. Meeting Requirements

New §810.12 states the advisory board meeting requirements.

#### §810.13. Advisory Board Responsibilities

New §810.13 outlines the advisory board responsibilities.

### SUBCHAPTER C. PROGRAM ADMINISTRATION

TWC proposes new Subchapter C, Program Administration, as follows:

#### §810.21. Statement of Purpose

New §810.21 explains the Lone Star Workforce of the Future Fund's purpose.

#### §810.22. Procedure for Requesting Funding

New §810.22 outlines the procedure in which grant applicants may request funding.

#### §810.23. Procedure for Proposal Evaluation

New §810.23 outlines the evaluation procedure for proposed workforce training projects.

#### §810.24. Grant Agreement Administration

New §810.24 outlines the administration of the agreement between the grant recipient and TWC.

#### §810.25. Limitation on Awards

New §810.25 outlines limitations the Commission may impose on awards.

#### §810.26. Program Objectives

New §810.26 details the Lone Star Workforce of the Future Fund's program objectives.

#### §810.27. Performance Benchmarks

New §810.27 details performance benchmarks that must be met by grant recipients.

#### §810.28. Reporting Requirements

New §810.28 details reporting requirements for grant recipients.

### PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

#### Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to provide the establishment and operational procedures of the Lone Star Workforce of the Future Fund, administered by TWC.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

## Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will create a government program;
- will not require the creation of employee positions;
- will not require an increase in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will positively affect the state's economy.

## Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Mary York, Director, Outreach and Employer Initiatives, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to increase the skill level of the Texas workforce through Lone Star Workforce of the Future Fund grants to upskill and reskill employees and job seekers. Grants will benefit Texas employers by enhancing productivity, reducing the skills gap, increasing competitiveness, fostering growth, and improving talent retention.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

## PART IV. COORDINATION ACTIVITIES

HB 1755 requires TWC to establish and administer the Lone Star Workforce of the Future Fund and to adopt rules as necessary to administer the fund.

## PART V. PUBLIC COMMENTS

Comments on the proposed new rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov) and must be received no later than October 30, 2023.

## SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE LONE STAR WORKFORCE OF THE FUTURE FUND

### 40 TAC §§810.1 - 810.4

#### STATUTORY AUTHORITY

The new rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of House Bill 1755, 88th Texas Legislature, Regular Session (2023), which enacted Texas Education Code §134A.012, which requires TWC adopt rules necessary for the administration of Texas Education Code Chapter 134A.

#### §810.1. Purpose and Goal.

(a) Purpose. The purpose of the Lone Star Workforce of the Future Fund is to develop workforce training programs that are administered by public junior colleges, public technical institutes, and nonprofit organizations to increase the supply of qualified workers for entry-level to mid-level jobs in high demand occupations in this state.

(b) Goal. The goal of the Lone Star Workforce of the Future Fund is to ensure that the Texas workforce is capable of filling available and emerging jobs in this state that require less education than a bachelor's degree but more education than a high school diploma.

#### §810.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Advisory board--the advisory board of education and workforce stakeholders created pursuant to the applicable statute.

(2) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(3) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(4) Eligible applicant--an entity identified in Texas Education Code Chapter 134A as eligible to apply for funds:

(A) a public junior college;

(B) a public technical institute; or

(C) a nonprofit organization.

(5) Executive Director--the Executive Director of the Texas Workforce Commission.

(6) Grant recipient--a recipient of the Lone Star Workforce of the Future Fund.

(7) Statute--Texas Education Code, Chapter 134A, Lone Star Workforce of the Future Fund.

(8) Public junior college--any junior college certified by the Texas Higher Education Coordinating Board in accordance with Texas Education Code §61.003.

(9) Public technical institute--the Lamar Institute of Technology or the Texas State Technical College System, in accordance with Texas Education Code §61.003.

(10) Workforce training program--a program that provides performance-based workforce training that:

(A) leads to skill development and experiences required for employment in high demand occupations;

(B) are developed and provided based on consultation with and input from employers that are hiring in high demand occupations;

(C) create pathways to employment for program participants; and

(D) are delivered through classroom-based or online instruction, work-based experiences, internships or apprenticeships, or through a combination of those methods.

§810.3. Uses of the Fund.

An entity may use grant money received under this chapter only for:

- (1) curriculum development;
- (2) instructor fees and certifications;
- (3) training materials;
- (4) work-related expenses;
- (5) work-based experience stipends;
- (6) support services, deemed reasonable and necessary by the Agency, to help ensure training program participants' success; and
- (7) administrative costs not to exceed 10 percent of the total amount of grant money received by the entity.

§810.4. Waivers.

The Executive Director, or designee, may suspend or waive a section of this chapter, not statutorily imposed, in whole or in part, upon a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

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 September 11, 2023.

TRD-202303372

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 850-8356

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## SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

### 40 TAC §§810.11 - 810.13

The new rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of House Bill 1755, 88th Texas Legislature, Regular Session (2023), which enacted Texas Education Code §134A.012, which requires TWC adopt rules necessary for the administration of Texas Education Code Chapter 134A.

### §810.11. Advisory Board Purpose and Composition.

(a) The advisory board is created to assist the Agency in administering the Lone Star Workforce of the Future Fund.

(b) The advisory board comprises six members who serve two-year terms, and are appointed as follows:

(1) one member appointed by the Governor;

(2) one member appointed by the Lieutenant Governor;

(3) one member appointed by the Speaker of the House of Representatives;

(4) one member appointed by the Texas Higher Education Coordinating Board;

(5) one member appointed by the Commission; and

(6) the Commission Chair, who serves as the presiding officer.

### §810.12. Meeting Requirements.

The advisory board is required to meet at least twice each calendar year, or as needed.

### §810.13. Advisory Board Responsibilities.

The advisory board shall provide advice and recommendations to the Commission on awarding grants under 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 September 11, 2023.

TRD-202303371

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 850-8356

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## SUBCHAPTER C. PROGRAM ADMINISTRATION

### 40 TAC §§810.21 - 810.28

The new rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of House Bill 1755, 88th Texas Legislature, Regular Session (2023), which enacted Texas Education Code §134A.012, which requires TWC adopt rules necessary for the administration of Texas Education Code Chapter 134A.

### §810.21. Statement of Purpose.

In accordance with the statute, the Commission established the Lone Star Workforce of the Future Fund Grant Program, which shall be administered pursuant to the statute and this subchapter to award grants for the development of workforce training programs to public junior colleges, public technical institutes, and nonprofit organizations that

meet the requirements of Texas Education Code, Chapter 134A, Lone Star Workforce of the Future Fund.

§810.22. Procedure for Requesting Funding.

An eligible applicant shall present to the Executive Director, or designee, an application for funding to acquire grant funds for the provision of workforce training as may be identified by the eligible applicant.

§810.23. Procedure for Proposal Evaluation.

(a) The Executive Director, or designee, shall evaluate each proposal considering the purposes listed in §810.3 of this chapter, the program objectives listed in §810.26 of this subchapter, and the reporting requirements listed in §810.28 of this subchapter, and any other unique factors that the Agency determines are appropriate.

(b) If the Agency determines that a proposal is appropriate for funding through the Lone Star Workforce of the Future Fund, the Executive Director, or designee, shall enter into a contract with the grant recipient on behalf of the Agency.

§810.24. Grant Agreement Administration.

(a) An eligible applicant, as defined by Texas Education Code §134A.007, may apply for the grant program outlined in this section.

(b) The Agency shall attach a list of high-growth career fields identified by the Agency, the Texas Workforce Investment Council, or the Tri-Agency Workforce Initiative established under Texas Government Code Chapter 2308A on the Agency's website and update the list annually.

(c) Grant recipients must enter into an agreement with the Agency to comply with contract requirements that include, but are not limited to:

(1) submitting all required reports, including financial and performance reports, in the format and time frame required by the Agency;

(2) maintaining fiscal data needed for independent verification of expenditures of funds received for the training project;

(3) cooperating and complying with Agency monitoring activities as required by Chapter 802, Subchapter D, of this title (relating to Agency Monitoring Activities); and

(4) submitting contract completion reports:

(A) The final payment of the contract is contingent upon the Executive Director's, or designee's, determination that a project has met the performance benchmarks outlined in §810.27 of this subchapter.

(B) The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.

§810.25. Limitations on Awards.

The Commission shall impose a limit per training program participant, not to exceed \$15,000 per participant, on the amount of funds awarded under any specific grant.

§810.26. Program Objectives.

The program objectives in administering the Lone Star Workforce of the Future Fund are:

(1) to create and sustain a utilization-driven supply of qualified workers for entry-level to mid-level jobs in high demand occupations in this state;

(2) to address skills needed by workers to obtain and retain employment;

(3) to increase the interest of current and future Texans to fill the available and emerging jobs in this state that require less education than a bachelor's degree but more than a high school diploma; and

(4) strengthen the state's economy by increasing competitiveness of businesses in this state and the recruitment of business of this state.

§810.27. Performance Benchmarks.

(a) A grant recipient under this chapter must facilitate the successful transition of at least 50 percent of the entity's training program participants from low-wage work or unemployment to full-time employment in jobs offering a self-sufficient wage, as determined under Texas Government Code §2308A.012, and the opportunity for career mobility, as determined by the Agency, within six months of training program completion.

(b) Should a grant recipient fail to meet the requirements of this section, the grant recipient shall reimburse the Agency on a pro rata basis based on the number of individuals successfully trained and placed.

(c) A grant recipient is not required to comply with a performance benchmark required by this section if the Executive Director determines that the entity's compliance is not possible because of an act of God, force majeure, or a similar cause not reasonably within the entity's control.

§810.28. Reporting Requirements.

(a) A grant recipient must comply with all of the contract's reporting requirements in the frequency and format determined by the Agency in order to maintain eligibility for grant payments. Failure to comply with the reporting requirements may result in termination of the grant award and the grant recipient's ineligibility for future grants under this chapter.

(b) A grant recipient must submit a progress report to the Agency at least twice annually that includes:

(1) the number of participants;

(2) an update on its progress toward reaching its performance benchmarks;

(3) a description of any key accomplishments achieved, lessons learned, or setbacks or risks incurred in administering the training program;

(4) an explanation of any material changes to the training program's work plan, team, or budget; and

(5) the amount of grant money spent during the reporting period.

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 September 11, 2023.

TRD-202303373

Les Trobman

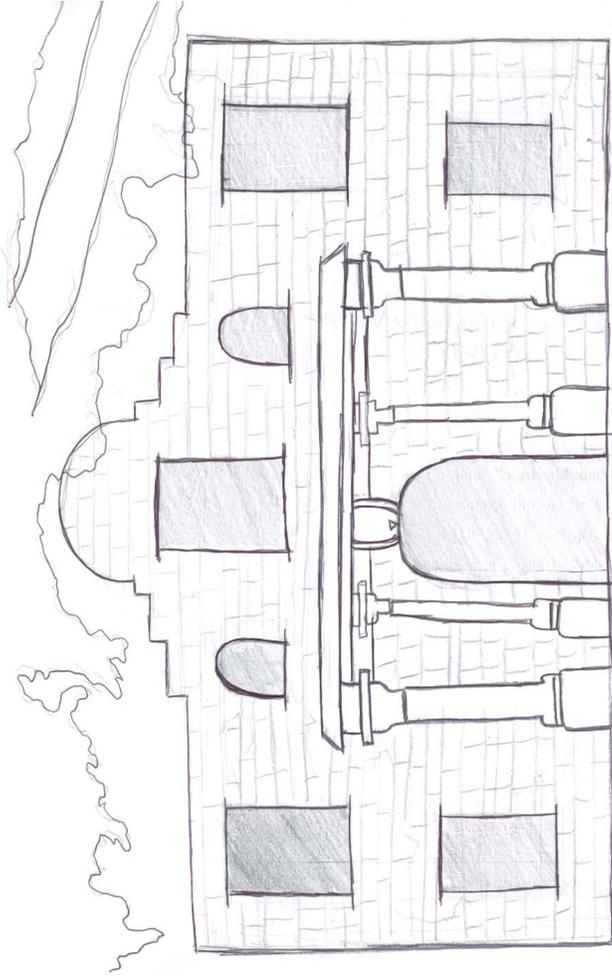
General Counsel

Texas Workforce Commission

Earliest possible date of adoption: October 29, 2023

For further information, please call: (512) 850-8356





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 600. LIMITED SERVICES RURAL HOSPITALS

##### 26 TAC §600.1

The Health and Human Services Commission withdraws emergency §600.1 which appeared in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3953).

Filed with the Office of the Secretary of State on September 15, 2023.

TRD-202303456

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Effective date: September 15, 2023

For further information, please call: (512) 221-9021



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

## CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

### SUBCHAPTER W. CONSUMER PROTECTION REQUIREMENTS CONSUMER BILL OF RIGHTS

#### 28 TAC §5.9970

The Texas Department of Insurance withdraws proposed amendment §5.9970 which appeared in the April 14, 2023, issue of the *Texas Register* (48 TexReg 1949).

Filed with the Office of the Secretary of State on September 13, 2023.

TRD-202303402

Jessica Barta

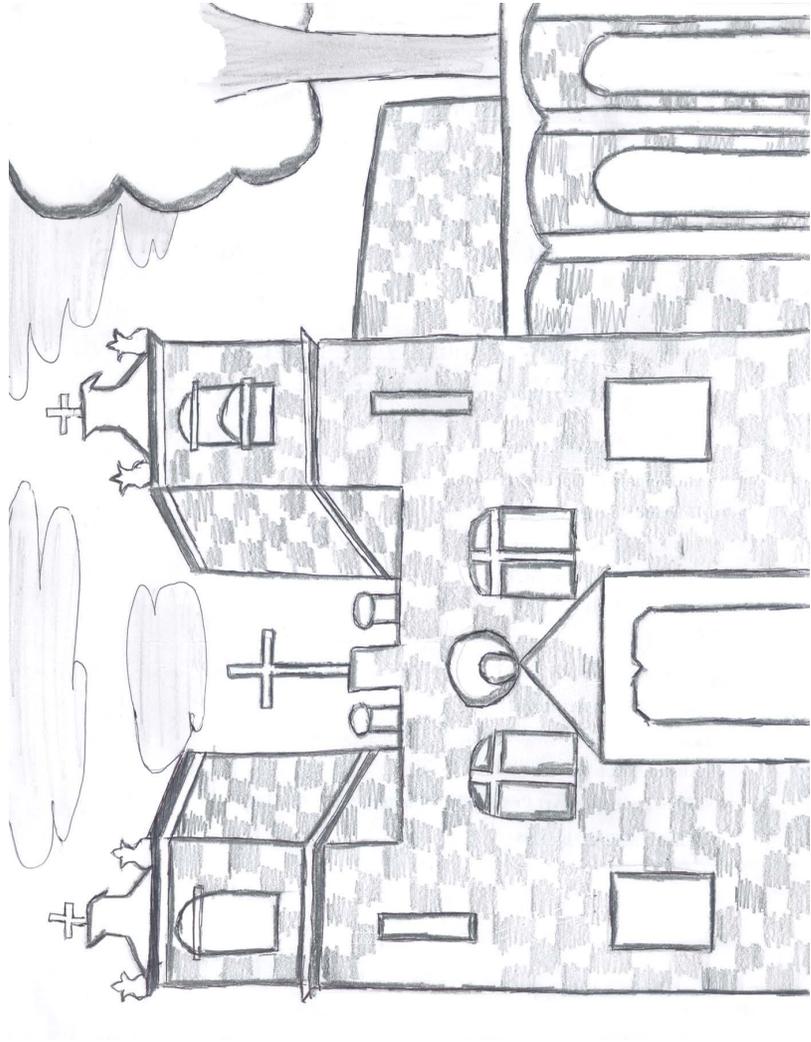
General Counsel

Texas Department of Insurance

Effective date: September 13, 2023

For further information, please call: (512) 676-6555





# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

##### SUBCHAPTER D. RATE-MAKING APPEALS

###### 16 TAC §24.101

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §24.101, relating to Appeal of Rate-making Decision. The commission adopts these amendments with changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2649) and will be republished. This rule implements Texas Water Code § 13.043 as revised by Senate Bill 387 and House Bill 3689 during the 87th Regular Legislative Session. The amended rule reflects the commission's appellate authority by allowing ratepayers to appeal an increase in municipally owned utility (MOU) water and sewer rates, including a rate increase resulting from a decision by the governing body of the municipality that takes over the provision of service to ratepayers previously served by another retail public utility. The amended rule also clarifies that in an appeal under this section, the commission will ensure that every appealed rate is just and reasonable.

The commission received comments on the proposed rule from the Office of Public Utility Counsel (OPUC).

###### General Comments

OPUC expressed general support for the proposed rule.

###### Section 24.101(c)

Proposed §24.101(c) delineates which retail ratepayers may appeal the decision of the governing body of an entity that regulates their water, sewer and drainage rates. Further, §24.101(c)(3) specifies which MOU ratepayers can appeal such rate decisions under §24.101(c).

OPUC commented that the proposed language may lead to misinterpretations over the commission's authority to consider certain appeals and recommended language. Specifically, OPUC argued that the rule language should be clarified to reflect that the commission can also consider appeals of rate increases that resulted from a municipality expanding its corporate limits to include the affected customers.

###### Commission Response

The commission declines to modify the proposed rule to clarify that the commission can consider an appeal of MOU rates that increase as a result of a municipality expanding its corporate limits. The proposed rule language mirrors the statutory language. If a ratepayer initially resides outside the corporate limits of a municipality, but the MOU then takes over the provision of service to that ratepayer as part of an expansion of the municipality's corporate limits, by definition, the ratepayer no longer "resides outside the corporate limits of the municipality." Accordingly, the statutory provision allowing a rate appeal before the commission no longer applies. Once a ratepayer is within the corporate limits of an MOU, it can appeal to the governing body of the municipality via the political process or through a locally established appeals process, if available.

###### Section 24.101(c)(3)(D)

Proposed §24.101(c)(3)(D) delineates the conditions under which a municipally owned utility's water, sewer and drainage rates cannot be appealed to the commission.

OPUC recommended clarifying the language in 16 TAC §24.101(c)(3)(D) to ensure the provision is consistent with Texas Water Code § 13.043(b-4).

###### Commission Response

The commission modifies the language for clarity as recommended by OPUC.

###### Section 24.101(e)

Proposed §24.101(e) states the commission will hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action that is being appealed. Paragraphs (1) and (2) of this subsection also states that the commission can include reasonable expenses incurred during the appeal proceeding in the final rates.

OPUC recommended that the standard for expenses incurred for appeal proceedings before the commission be revised from "reasonable" to "reasonable and necessary expenses."

###### Commission Response

The commission declines to amend the standard for appeal proceeding expenses as recommended by OPUC. Texas Water Code §13.043(a) and (e) only require that appeal expenses be reasonable. The proposed rule accurately reflects the statutory language.

OPUC also recommended clerical edits to subsection (e)(2) for consistency with other provisions in the rule.

###### Commission Response

The commission agrees with OPUC's recommendation and implements the proposed changes.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes other minor modifications for the purpose of clarifying its intent.

The amendment is adopted under TWC §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do all things specifically designated or implied by TWC necessary and convenient to the exercise of that power and jurisdiction; TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amendment is adopted under TWC §13.043, which relates to appellate jurisdiction of the commission.

Cross Reference to Statute: Texas Water Code §§13.041(a), 13.041(b), and 13.043.

§24.101. *Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.*

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and by serving a copy of the petition on all parties to the original proceeding. The petition should be filed in accordance with Chapter 22 of this title (relating to Procedural Rules). The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving a copy of the petition on all parties to the original rate proceeding.

(b) An appeal under Texas Water Code (TWC) §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under TWC §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water utility, sewer utility, or drainage rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under TWC, Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality, including a decision of a governing body that results in an increase in rates when the municipally owned utility takes over the provision of service to ratepayers previously served by another retail public utility;

(A) A municipally owned utility must:

(i) disclose to any person, on request, the number of ratepayer(s) who reside outside the corporate limits of the municipality; and

(ii) subject to subparagraph (B) of this paragraph, provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(B) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Tex. Util. Code §182.052, the municipally owned utility may not disclose the address of the ratepayer under subparagraph (A)(ii) of this paragraph to any person. A municipally owned utility must inform ratepayers of their right to request that their personal information be kept confidential under Tex. Util. Code §182.052 in any notice provided under the requirement of TWC §13.043(i).

(C) In complying with this subsection, the municipally owned utility:

(i) may not charge a fee for disclosing the information under subparagraph (A)(i) of this paragraph;

(ii) will provide information requested under subparagraph (A)(i) of this paragraph by telephone or in writing as preferred by the person making the request; and

(iii) may charge a reasonable fee for providing information under subparagraph (A)(ii) of this paragraph.

(D) Paragraph (3) of this subsection does not apply to a municipally owned utility that takes over the provision of service to ratepayers previously served by another retail public utility if the municipally owned utility:

(i) takes over the service at the request of the ratepayer;

(ii) takes over the service in the manner provided by TWC Chapter 13, Subchapter H; or

(iii) is required to take over the service by state law, an order of the Texas Commission on Environmental Quality, or an order of the commission.

(4) a district or authority created under Article III, §52, or Article XVI, §59 of the Texas Constitution, that provides water or sewer service to household users;

(5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority will be considered a separate class from ratepayers who reside inside those boundaries; and

(6) in an appeal under this subsection, the retail public utility must provide written notice of hearing to all affected customers in a form prescribed by the commission.

(d) In an appeal under TWC §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission will hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

(1) in an appeal under TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;

(2) in an appeal under TWC §13.043(b), include reasonable expenses incurred by the retail public utility in the appeal proceedings;

(3) establish the effective date;

(4) order refunds or allow surcharges to recover lost revenues;

(5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or

(6) establish interim rates to be in effect until a final decision is made.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.

(1) If the commission finds the amount charged to be clearly unreasonable, it will establish the fee to be paid and will establish conditions for the applicant to pay any amount(s) due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount(s) determined in the commission's order must be refunded to the applicant within 30 days of the date the commission issues the order, at an interest rate determined by the commission.

(2) In an appeal brought under this subsection, the commission will affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission will ensure that every appealed rate is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must

be sufficient, equitable, and consistent in application to each class of customers. The commission will use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.

(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer must initiate an appeal under TWC §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission will approve the water supply corporation's water conservation penalty if:

(1) the penalty is clearly stated in the tariff;

(2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and

(3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2023.

TRD-202303410

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: October 4, 2023

Proposal publication date: May 26, 2023

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

## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§231.77, 231.79, 231.173, 231.271, 231.301, 231.381, 231.421, 231.423, 231.463, 231.483, and 231.563; new §231.221 and 231.385; and the repeal of §231.175, concerning requirements for public school personnel assignments. The rule actions are adopted without changes since published as proposed in the June 2, 2023 issue of the *Texas Register* (48 TexReg 2804) and will not be republished. The adopted revisions incorporate courses approved by the State Board of Education (SBOE), add certificate areas to the list of credentials appropriate for placement into an assignment, and incorporate technical edits where needed to improve readability and align citations.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 231 establish the personnel assignments that correlate with appropriate certifications and are organized as follows: Subchapter A, Criteria for Assignment of Public School Personnel; Subchapter B, Prekindergarten-Grade 6 Assignments; Subchapter C, Grades 6-8 Assignments; Subchapter

D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments; Subchapter E, Grades 9-12 Assignments, Subchapter F, Special Education-Related Services Personnel Assignments, and Subchapter G, Paraprofessional Personnel, Administrators, and Other Instructional and Professional Support Assignments.

These subchapters offer guidance to school districts and educators by providing the list of courses by grade level and subject area and identifying the corresponding certificates and other requirements for placement of individuals into classroom and/or campus assignments.

Adopted revisions to 19 TAC Chapter 231, Subchapter C and Subchapter E, are described below.

#### *Subchapter C. Grades 6-8 Assignments*

##### *Titles, Assignments, and Technical Changes*

##### **§231.77. Technology Applications, Grades 6-8**

The adopted amendment adds Mathematics/Physical Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 to the list of certificates appropriate to teach Technology Applications, Grades 6-8.

##### **§231.79. Career Development, Grades 6-8**

The adopted amendment adds the new SBOE-approved course, Career and College Exploration, Grades 6-8, and deletes the two courses repealed by the SBOE: College and Career Readiness, Grades 6-8, and Investigating Careers, Grades 6-8. The adopted amendment also adds Mathematics/Physical Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 to the list of certificates appropriate to teach middle school courses for Career Development, Grades 6-8.

#### *Subchapter E. Grades 9-12 Assignments*

##### *Titles, Assignments, and Technical Changes*

##### *Division 3. Social Studies, Grades 9-12 Assignments.*

The adopted amendment to §231.173, Economics with Emphasis on the Free Enterprise System and Its Benefits, Grades 9-12, updates the title to "Economics and Personal Financial Literacy, Grades 9-12" to incorporate additional course listings from §231.175, Personal Financial Literacy, Grades 9-12, and adds the SBOE-approved course, Economics and Personal Financial Literacy, into rule. The list of certificates approved as appropriate to teach these courses and already presented in rule would remain unchanged.

The adoption repeals §231.175, Personal Financial Literacy, Grades 9-12, as the information from the section has been incorporated in the changes to §231.173, referenced above.

##### *Division 5. Science, Grades 9-12 Assignments.*

Adopted new §231.221, Specialized Topics in Science, Grades 9-12, adds this new SBOE-approved course into rule and identifies the list of certificates appropriate to teach the course.

##### *Division 9. Career Development, Grades 9-12 Assignments.*

The adopted amendment to §231.271, Career Development, Grades 9-12, subsection (a), adds Mathematics/Physical Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 to the list of certificates appropriate for the specified assignments.

##### *Division 11. Architecture and Construction, Grades 9-12 Assignments.*

The adopted amendment to §231.301, Principles of Architecture; Principles of Construction, Grades 9-12, adds "any vocational agriculture certificate" to the list of certificates appropriate for the specified assignments.

##### *Division 14. Education and Training, Grades 9-12 Assignments.*

The adopted amendment to §231.381, Education and Training, Grades 9-12, adds the new SBOE-approved course, Communication and Technology in Education, Grades 9-12, into rule. All remaining information remains the same as the certificates listed in rule are appropriate to teach the new course being added.

Adopted new §231.385, Child Development, Child Guidance, or Child Development Associates Foundation, Grades 9-12, adds three new SBOE-approved courses, Child Development, Grades 9-12; Child Guidance, Grades 9-12; and Child Development Associates Foundation, Grades 9-12, into rule and specifies the certificates appropriate to serve in these assignments.

##### *Division 17. Health Science, Grades 9-12 Assignments.*

The adopted amendment to §231.421, Health Science, Grades 9-12, updates subsection (a) to add the new SBOE-approved course, Pharmacy I, Grades 9-12, and the Medical Assistant, Grades 9-12, course already established in rule. The adoption deletes the Medical Assistant, Grades 9-12, course reference in subsection (b) and adds the new SBOE-approved course, Practicum in Nursing, Grades 9-12, to subsection (c). All remaining information remains the same as the certificates listed in rule are appropriate to teach the new courses being added.

The adopted amendment to §231.423, Anatomy and Physiology, Medical Microbiology, Pathophysiology, and Respiratory Therapy I, Grades 9-12, updates the title to include the Respiratory II course. All remaining information remains the same as the certificates listed in rule are appropriate to teach the new course being added.

##### *Division 19. Human Services, Grades 9-12 Assignments.*

The adopted amendment to §231.463, Lifetime Nutrition and Wellness, Grades 9-12, adds Health: Early Childhood-Grade 12 to the list of certificates appropriate for the specified assignment. All remaining information is renumbered to reflect this update.

##### *Division 20. Information Technology, Grades 9-12 Assignments.*

The adopted amendment to §231.483, Digital Media, Grades 9-12, adds "any marketing certificate" to the list of certificates appropriate for the specified assignments. All remaining information is renumbered to reflect this update.

##### *Division 24. Science, Technology, Engineering, and Mathematics, Grades 9-12 Assignments.*

The adopted amendment to §231.563, Principles of Biosciences, Grades 9-12, adds Life Science: Grades 7-12 and Life Science: Grades 8-12, Legacy Master Science Teacher (Grades 8-12), Science: Grades 7-12 and Science: Grades 8-12, Secondary Biology (Grades 6-12), Secondary Science (Grades 6-12), and Secondary Science, Composite (Grades 6-12), to the list of certificates appropriate to teach this course.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began June 2, 2023, and ended July 3, 2023. The SBEC also provided an opportunity for regis-

tered oral and written comments on the proposal during the July 21, 2023 meeting's public comment period in accordance with the SBEC board operating policies and procedures. The following public comment was received on the proposal.

Comment: An individual commented that the proposal is making it more difficult for public school teachers to gain certification and remain in the classroom.

Response: The SBEC neither agrees nor disagrees. This comment is outside the scope of Chapter 231 and this proposed rule-making.

The State Board of Education (SBOE) took no action on the review of the amendments to 19 TAC §§231.77, 231.79, 231.173, 231.271, 231.301, 231.381, 231.421, 231.423, 231.463, 231.483, and 231.563; new §231.221 and §231.385; and the repeal of §231.175 at the September 1, 2023 SBOE meeting.

## SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

### 19 TAC §231.77, §231.79

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez  
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## SUBCHAPTER E. GRADES 9-12 ASSIGNMENTS

### DIVISION 3. SOCIAL STUDIES, GRADES 9-12 ASSIGNMENTS

#### 19 TAC §231.173

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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#### 19 TAC §231.175

**STATUTORY AUTHORITY.** The repeal is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC,

Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 5. SCIENCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.221

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 9. CAREER DEVELOPMENT, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.271

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 11. ARCHITECTURE AND CONSTRUCTION, GRADES 9-12 ASSIGNMENTS

**19 TAC §231.301**

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

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**DIVISION 14. EDUCATION AND TRAINING, GRADES 9-12 ASSIGNMENTS**

**19 TAC §231.381, §231.385**

STATUTORY AUTHORITY. The amendment and new section are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, includ-

ing emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

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**DIVISION 17. HEALTH SCIENCE, GRADES 9-12 ASSIGNMENTS**

**19 TAC §231.421, §231.423**

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

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## DIVISION 19. HUMAN SERVICES, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.463

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 20. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.483

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator,

educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.563

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a

designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 511. ELIGIBILITY

##### SUBCHAPTER B. CERTIFICATION BY EXAMINATION

###### 22 TAC §511.22

The Texas State Board of Public Accountancy adopts an amendment to §511.22 concerning Initial Filing of the Application of Intent, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4053) and will not be republished.

The Public Accountancy Act has changed effective September 1, 2023. The Act, as amended, permits CPA candidates to take the CPA exam with 120 semester hours of college course work. The Act had required 150 semester hours. There are candidates with applications pending with the Board that have chosen to withdraw their applications so that they are now eligible to take the exam after September 1, 2023 with 120 hours. For those candidates that choose to do so, the \$20.00 application fee will be waived since they have already included the fee in their current application.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202303415

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

###### 22 TAC §511.52

The Texas State Board of Public Accountancy adopts an amendment to §511.52 concerning Recognized Institutions of Higher Education, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4054) and will not be republished.

Some semester hour course work may not be accepted by the Board to support an application to take the CPA exam. The Board is the authority in making that decision with advice from the University of Texas at Austin. The rule identifies four organizations and assessment methods that the Board will not accept as support to constitute the education necessary for a candidate to sit for the CPA exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



###### 22 TAC §511.53

The Texas State Board of Public Accountancy adopts an amendment to §511.53 concerning Evaluation of International Education Documents, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4056) and will not be republished.

The adopted rule addresses a revision to the Public Accountancy Act that lowers the number of college level courses needed to be eligible to take the CPA exam. The Board is adopting the rule in order for candidates to know the requirements to sit for the exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## 22 TAC §511.54

The Texas State Board of Public Accountancy adopts an amendment to §511.54 concerning Recognized Texas Community Colleges, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4057) and will not be republished.

The Public Accountancy is being revised to permit CPA candidates to take the CPA exam with 120 semesters hours of college course work. This rule is being revised to effect the statutory change so that the number of upper level accounting courses required to take the exam will be reduced from 30 semester hours to 21 semester hours effective September 1, 2023.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## 22 TAC §511.56

The Texas State Board of Public Accountancy adopts an amendment to §511.56 concerning Educational Qualifications under the Act, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4058) and will not be republished.

One major effect of this rule revision is to allow candidates to take the CPA exam with 21 upper level accounting semester hours. The three semester hour ethics course is being eliminated from eligibility to take the exam. This allows candidates to take the exam earlier than the current law allows. The three semester hour ethics course will be required prior to certification.

One commenter asked for clarification regarding the required ethics class. Commenter understood that the ethics class would not be used for satisfying the 120 hours needed to sit for the exam. Commenter posed the question as to whether the ethics class could be used toward the 24 hours of business classes needed for licensing.

Response: It was the committee's intent that the ethics class not be applied toward the number of hours needed for business classes.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## TAC 22 §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58 concerning Definitions of Related Business Subjects to take the UCPAE, with changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4062). The rule will be republished.

As a result of the proposed revisions to the Public Accountancy Act, an ethics course is no longer being required prior to tak-

ing the exam at 120 hours and is being relocated to Board Rule 511.161. The adopted revision also identifies certain organizations and assessment methods that will not be accepted by the Board to qualify a candidate to sit for the exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§511.58. *Definitions of Related Business Subjects to take the UCPAE.*

(a) Related business courses are those business courses that a board recognized institution of higher education accepts for a business baccalaureate or higher degree by that educational institution.

(b) An individual who holds a baccalaureate or higher degree from a recognized educational institution as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) may take related business courses from four-year degree granting institutions, or recognized community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54 of this chapter (relating to Recognized Texas Community Colleges). Related business courses taken at a recognized community college are only the courses that the board has reviewed and approved to meet this section.

(c) The board will accept no fewer than 24 semester credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas.

(1) No more than 6 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

- (A) business law, including study of the Uniform Commercial Code;
- (B) economics;
- (C) management;
- (D) marketing;
- (E) business communications;
- (F) statistics and quantitative methods;
- (G) information systems or technology; and
- (H) other areas related to accounting.

(2) No more than 9 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

- (A) finance and financial planning; and
- (B) data analytics, data interrogation techniques, cyber security and/or digital acumen in the accounting context, whether taken in the business school or in another college or university program, such as the engineering, computer science, information systems, or math programs (while data analytic tools may be used in the course, application of the tools should be the primary objective of the course).

(d) The board requires that a minimum of 2 upper level semester credit hours in accounting communications or business communications with an intensive writing curriculum be completed. The semester hours may be obtained through a standalone course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the accounting communications or business communications content. The course may be used toward the 24 semester credit hours of upper level business courses listed in subsection (c)(1) of this section.

(e) Credit for hours taken at recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(f) Related business courses completed through and offered by an extension school, correspondence school, or continuing education program of a board recognized educational institution may be accepted by the board, provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(g) The board may review the content of business courses and determine if they meet the requirements of this section.

(h) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

- (1) American College Education (ACE);
- (2) Prior Learning Assessment (PLA);
- (3) Defense Activity for Non-Traditional Education Support (DANTES); and
- (4) Defense Subject Standardized Test (DSST).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
General Counsel  
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## 22 TAC §511.59

The Texas State Board of Public Accountancy adopts an amendment to §511.59 concerning Definition of 150 Semester Hours, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4064) and will not be republished.

The rules implement the revisions to the Public Accountancy Act to permit the CPA candidate to sit for the exam with 120 semester hours of college course work. The number of upper level accounting courses is reduced to 21, the 3 hours of ethics is relocated to Board Rule 511.161, the credit hours of undergraduate or graduate independent study and/or internship courses is relocated to Board Rule 511.164, and the proposed revision

also identifies certain organizations and assessment methods that will not be accepted by the Board to qualify a candidate to sit for the exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## 22 TAC §511.60

The Texas State Board of Public Accountancy adopts an amendment to §511.60 concerning Qualified Accounting Courses Prior to January 1, 2024, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4065) and will not be republished.

The adopted rules implement the proposed revisions to the Public Accountancy Act to permit the CPA candidate to sit for the exam with 120 semester hours of college course work. The number of upper level accounting courses is reduced to 21, the 3 hours of ethics is relocated to Board Rule 511.161 and the proposed revision also identifies certain organizations and assessment methods that will not be accepted by the Board to qualify a candidate to sit for the exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. CPA EXAMINATION

### 22 TAC §511.73

The Texas State Board of Public Accountancy adopts an amendment to §511.73 concerning Notice to Applicant to Schedule Taking a CPA Exam Section, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4067) and will not be republished.

The AICPA, the entity administering the UCPAE (Uniform Certified Public Accountancy Act Exam), has substantially revised the exam and anticipates delays in fully implementing it. In anticipation of expected delays this agency is proposing to extend the eligibility time to take the UCPAE and pay the filing fees from 90 days to 180 days.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 22 TAC §511.80

The Texas State Board of Public Accountancy adopts an amendment to §511.80 concerning Granting of Credit, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4068) and will not be republished.

The AICPA, the entity administering the UCPAE (Uniform Certified Public Accounts Exam), has substantially revised the exam and anticipates delays in fully implementing it. In anticipation of expected delays this agency is proposing to extend the validity of a credit earned for passing a part of the exam from 18 months to 30 months.

In addition, the Public Accountancy Act has been amended to permit CPA candidates to take the UCPAE with 120 semester

hours of coursework. In order to avoid candidates unnecessarily delaying completion of their application for certification, the rule amendment proposes to set a time limit of 36 months from the time all sections of the exam have been passed. Also, one point of grammar and one word were replaced for clarity.

Commenter suggested that the rule be effective retroactively to April 21, 2023. This is the date the NASBA Board of Directors voted to adopt the proposed model rule extension. Commenter suggested the retroactive date to prevent students from losing credit before the effective date of the rule.

Response: The current rule, and the proposed rule, provides the Executive Director with the authority to extend the expiration of a test score to provide uniformity with other state regulatory authorities or for reasonably unforeseeable or uncontrollable events. His concern can be addressed with a request to the Executive Director for a waiver.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### **22 TAC §511.83**

The Texas State Board of Public Accountancy adopts an amendment to §511.83 concerning Granting of Credit by Transfer of Credit, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4070) and will not be republished.

An applicant receiving credit for having passed one of the parts of the exam will have 30 months to pass the remaining sections of the exam. This time frame is proposed to be extended from 18 months to 30 months in anticipation of likely delays in the recently revised exam.

Commenter suggested that the rule be effective retroactively to April 21, 2023. This is the date the NASBA Board of Directors voted to adopt the proposed model rule extension. The retroactive date is suggested to prevent students from losing credit before the effective date of the rule.

Response: The current rule, and the proposed rule, provides the Executive Director with the authority to extend the expiration of a test score to provide uniformity with other state regulatory authorities or for reasonably unforeseeable or uncontrollable events. His concern can be addressed with a request to the Executive Director for a waiver.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER F. EXPERIENCE REQUIREMENTS**

### **22 TAC §511.122**

The Texas State Board of Public Accountancy adopts an amendment to §511.122 concerning Acceptable Work Experience, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4071) and will not be republished.

The credit received for the internship programs will apply to satisfy the requirement for work experience.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER H. CERTIFICATION**

### **22 TAC §511.161**

The Texas State Board of Public Accountancy adopts an amendment to §511.161 concerning Qualifications for Issuance of a Certificate, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4073) and will not be republished.

The Board has removed the 3 semester hours of an ethics course in order to take the UCPAE with 120 hours. The proposed rule revision makes it clear that the 3 hours of ethics course work is required in order to become licensed and certified.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## 22 TAC §511.164

The Texas State Board of Public Accountancy adopts new rule §511.164 concerning Definition of 150 Semester Hours to Qualify for Issuance of a Certificate, with changes to the proposed text to correct punctuation, as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4074). The rule will be republished.

This adopted new rule establishes the criteria for obtaining a license and certificate to become a CPA in Texas. It establishes the number of upper level accounting courses required at 27 plus a three-hour ethics course, maintains the advanced business course hours at 24 semester hours, maintains the minimum number of semester hours at 150, maintains the 3 semester hours of accounting or business ethics course work and identifies course work that does not qualify a candidate to become licensed and certified.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§511.164. *Definition of 150 Semester Hours to Qualify for Issuance of a Certificate.*

(a) To qualify for the issuance of a CPA certificate, an applicant must hold at a minimum a baccalaureate degree, conferred by a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education), and have completed the board-recognized coursework identified in this section:

(1) no fewer than 27 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter (relating to Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE);

(2) no fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE);

(3) a three semester hour board-approved standalone course in accounting or business ethics. The course must be taken at a recognized educational institution and should provide students with a framework of ethical reasoning, professional values, and attitudes for exercising professional skepticism and other behavior in the best interest of the public and profession. The ethics course shall:

(A) include the ethics rules of the AICPA, the SEC, and the board;

(B) provide a foundation for ethical reasoning, including the core values of integrity, objectivity, and independence; and

(C) be taught by an instructor who has not been disciplined by the board for a violation of the board's rules of professional conduct, unless that violation has been waived by the board; and

(4) academic coursework at an institution of higher education as defined by §511.52 of this chapter, when combined with paragraphs (1) - (3) of this subsection meets or exceeds 150 semester hours, of which 120 semester hours meets the education requirements defined by §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE). An applicant who has met paragraphs (1) - (3) of this subsection may use a maximum of 9 total semester credit hours of undergraduate or graduate independent study and/or internships as defined in §511.51(b)(4) or §511.51(b)(5) of this chapter (relating to Educational Definitions) to meet this paragraph. The courses shall consist of:

(A) a maximum of three semester credit hours of independent study courses; and

(B) a maximum of six semester credit hours of accounting/business course internships.

(b) The following courses, courses of study, certificates, and programs may not be used to meet the 150 semester hour requirement:

(1) any CPA review course offered by an institution of higher education or a proprietary organization;

(2) remedial or developmental courses offered at an educational institution; and

(3) credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirement of this chapter:

(A) American College Education (ACE);

(B) Prior Learning Assessment (PLA);

(C) Defense Activity for Non-Traditional Education Support (DANTES); and

(D) Defense Subject Standardized Test (DSST).

(c) The hours from a course that has been repeated will be counted only once toward the required semester hours.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

### 22 TAC §520.1

The Texas State Board of Public Accountancy adopts an amendment to §520.1 concerning Authority and Purpose, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4075) and will not be republished.

H.B. 2217, 88th Legislative Session eliminated the restriction that the scholarship fund would only be available to fifth year accounting students. The rule is proposed to be amended to delete any reference to "fifth year" students.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 22 TAC §520.3

The Texas State Board of Public Accountancy adopts an amendment to §520.3 concerning Institutions, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4076) and will not be republished.

Recently adopted legislation revises the Fifth Year Accounting Student Scholarship Fund, as provided in the Public Accountancy Act, to open up the scholarship fund to accounting students with 15 hours of upper level accounting courses. Currently an accounting student must be in their fifth year of accounting.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 22 TAC §520.4

The Texas State Board of Public Accountancy adopts an amendment to §520.4 concerning Eligible Students, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4078) and will not be republished.

Recently adopted legislation increases the availability of the scholarship fund to more accounting students. To be eligible, the student may be an undergraduate student. The rule makes it clear that a student is not eligible if they already have sufficient hours to be certified.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## **22 TAC §520.5**

The Texas State Board of Public Accountancy adopts an amendment to §520.5 concerning Award Amounts and Uses, without changes to the proposed text as published in the July 28, 2023 issue of the *Texas Register* (48 TexReg 4079) and will not be republished.

The proposed rule establishes the period of a scholarship to be no more than three years.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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## **CHAPTER 521. FEE SCHEDULE**

### **22 TAC §521.14**

The Texas State Board of Public Accountancy adopts an amendment to §521.14 concerning Eligibility Fee, without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4080) and will not be republished.

The AICPA has substantially revised the UCPAE. This rule identifies the effective date of the revisions as January 1, 2024, and identifies the six disciplines that will be on the exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## **TITLE 26. HEALTH AND HUMAN SERVICES**

### **PART 1. HEALTH AND HUMAN SERVICES COMMISSION**

#### **CHAPTER 511. LIMITED SERVICES RURAL HOSPITALS**

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 511, concerning Limited Services Rural Hospitals, comprising of §§511.1 - 511.3, 511.11 - 511.17, 511.41 - 511.78, 511.111 - 511.116, 511.121, 511.141 - 511.143, and 511.161 - 511.169 in Texas Administrative Code Title 26.

New §§511.1, 511.2, 511.11 - 511.13, 511.42, 511.44 - 511.46, 511.49 - 511.52, 511.54 - 511.56, 511.60, 511.61, 511.63, 511.65, 511.67, 511.68, 511.76, 511.78, 511.111, 511.163, and 511.165 are adopted with changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3064). These rules will be republished.

New §§511.3, 511.14 - 511.17, 511.41, 511.43, 511.47, 511.48, 511.53, 511.57 - 511.59, 511.62, 511.64, 511.66, 511.69 - 511.75, 511.77, 511.112 - 511.116, 511.121, 511.141 - 511.143, 511.161, 511.162, 511.164, and 511.166 - 511.169 are adopted without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3064). These rules will not be republished.

#### **BACKGROUND AND JUSTIFICATION**

The new sections implement Senate Bill (S.B.) 1621, 86th Legislature, Regular Session, 2019, relating to certain rural medical facilities; requiring a license; authorizing fees and taxes, which amends Texas Health and Safety Code (HSC) Chapter 241 by adding Subchapter K, relating to Limited Services Rural Hospital.

HSC §241.302(b), as added by S.B. 1621, requires HHSC to adopt rules to establish the minimum standards for limited services rural hospitals (LSRHs) and to implement licensing standards for LSRHs under HSC §241.302 if the United States Congress enacts a bill creating a payment program for LSRHs or similarly designated hospitals that becomes law.

The federal Consolidated Appropriations Act, 2021, became law on December 27, 2020, and required the Centers for Medicare and Medicaid Services (CMS) to establish a federal rural emergency hospital (REH) designation. CMS adopted federal Conditions of Participation for REHs effective January 1, 2023,

and now HHSC must adopt rules as required by HSC Section 241.302(b).

#### COMMENTS

The 31-day comment period ended July 17, 2023.

During this period, HHSC received comments regarding the proposed rules from eight commenters, including Disability Rights Texas (DRTx), Texas Academy of Physician Assistants (TAPA), Texas Hospital Association (THA), Texas Medical Association (TMA), Texas Nurses Association (TNA), Texas Nurse Practitioners (TNP), Texas Organization of Rural and Community Hospitals (TORCH), and Texas Society of Anesthesiologists (TSA). A summary of comments relating to the rules and HHSC's responses follow.

Comment: TORCH expressed support and gratitude for the emergency rules related to the REH federal designation. TORCH urged HHSC to adopt the standard rules as proposed.

Response: HHSC acknowledges this comment.

Comment: TNA and TNP recommended updating the term "advanced practice nurse practitioner" throughout the chapter, specifically in §§511.51(b)(2)(B), 511.54(d)(3), 511.60(a), and 511.60(g)(3)(D), to "advanced practice registered nurse" for clarity.

Response: HHSC revises §§511.44(m), 511.51(b)(2)(B), 511.54(d)(3), 511.60(a) and 511.60(g)(3)(D) as suggested.

Comment: DRTx recommended defining the term "legally authorized representative" in §511.2 and using the term consistently in the chapter. DRTx noted other HHSC rules use the term "legally authorized representative" to include parents of minor children and individuals assigned by the court. DRTx also recommended adding the term in §511.63(b)(8), §511.63(b)(11), §511.63(b)(21), §511.67(e)(1), and §511.67(i).

Response: HHSC revises §511.2 in response to this comment by adding a definition for "legally authorized representative" at §511.2(25) and renumbering the subsequent definitions in this section. HHSC also revises §511.63(b)(11), renumbered to §511.63(b)(10); 511.63(b)(21), renumbered to 511.63(b)(20), §511.67(e)(1), and §511.67(i) to use the term consistently as suggested. HHSC removes §511.63(b)(8) in response to another comment.

Comment: DRTx recommended amending the definition for "restraint" at §511.2(54) to include separate definitions, using 25 TAC Chapter 415, Subchapter F, as a model for manual restraint, mechanical restraint, and chemical restraint. DRTx also suggested clarifying what is not considered a restraint in accordance with 25 TAC Chapter 415, Subchapter F.

Response: HHSC declines to revise §511.2(54), renumbered to §511.2(55), because the chapter does not use the terms "mechanical restraint" or "manual restraint." Therefore, separate definitions for the terms are unnecessary.

Comment: TMA recommended replacing the definition of "telemedicine" in §511.2(59) with the definition in Texas Occupations Code §111.001 to, as TMA stated, align with the most commonly used definition in Texas statutes and regulations and to avoid uncertainty among providers about services "initiated by a physician" because this language is not used in other definitions for the term.

Response: HHSC declines to revise §511.2(59), renumbered to §511.2(60), because the definition of telemedicine is consis-

tent with other HHSC-regulated facility rules and the definition in Texas Occupations Code §111.001 is subject to change.

Comment: THA expressed appreciation for the flexibility offered by the waiver process in §511.3 and urged HHSC to adopt the rule as proposed.

Response: HHSC acknowledges this comment.

Comment: THA expressed appreciation for §511.12(b)(1) allowing HHSC the flexibility to waive the architectural inspection for currently operating qualified rural hospitals, and recommended amending the paragraph to add a provision waiving the architectural inspection requirement for hospitals that closed for a short time (e.g., 90 days or fewer) before submitting an application for an LSRH license.

Response: HHSC revises §511.12(b)(1) in response to this comment by adding a provision allowing HHSC to waive an architectural inspection for a hospital applying for an LSRH license after being closed for 90 days or fewer if HHSC determines the hospital's documentation indicates an acceptable maintenance history and facility condition. HHSC also replaces "will" with "may" regarding waiving architectural inspections for currently operating qualifying rural hospitals to allow HHSC discretion. HHSC also replaces "If applicable" with "When HHSC requires an architectural inspection" at the beginning of §511.12(b)(1) for clarity.

Comment: DRTx recommended amending §511.13(f) to require HHSC to require an LSRH to cease operations if the LSRH fails to submit the application, documents, and fee by the license expiration date.

Response: HHSC revises §511.13(f) in response to this comment by replacing "may" with "shall."

Comment: DRTx recommended amending §511.14(a) to require HHSC to automatically close an LSRH facility that does not offer services for more than 60 days.

Response: HHSC declines to revise §511.14(a) as it is within HHSC authority to exercise discretion in determining whether to close a facility if the facility does not offer services for more than 60 days without a written inactive status request and because HHSC prefers to maintain flexibility when determining whether to close a facility.

Comment: TMA recommended amending §511.41(a) to reflect the governing body's responsibility relating to medical staff appointments as stated in the federal Conditions of Participation for REHs. TMA stated §511.41(a) should be consistent with §511.41(d)(4). TMA also recommended striking the word "control" as it could have negative implications about the medical staff's ability to exercise professional medical judgement relating to a patient's health care needs without financial or other outside pressures. TMA also suggested adding language to this subsection to require the governing body to appoint medical staff "after considering the recommendations of the existing members of the medical staff."

Response: HHSC declines to revise §511.41(a) because the language is consistent with the general and special hospital rule at §133.41(f)(1) and the definition of governing body at §511.2(20). Additionally, the governing body's responsibility relating to medical staff appointments does not prohibit taking existing staff's recommendations into account.

Comment: DRTx recommended citing all applicable regulations in §511.42(b)(1), §511.42(c)(10), and §511.47(e) instead of the general phrases "all applicable rules and standards," "applica-

ble state and federal laws," and "as defined by state law." DRTx stated facilities would be more likely to comply if the rule indicated all applicable regulations.

Response: HHSC declines to revise §511.42(b)(1), §511.42(c)(1), and §511.47(e) because these paragraphs provide sufficient notice of the regulations with which an LSRH must comply.

Comment: TMA recommended amending §511.42(c) to clarify the LSRH's written policies and procedures should comply with §511.51 and suggested HHSC add the following language to the end of the subsection's introductory sentence: "provides, with the policies for the LSRH's services being developed, reviewed, and updated in accordance with §511.51 of this subchapter (relating to Provision of Services)."

Response: HHSC revises §511.42(c) as suggested.

Comment: DRTx recommended revising §511.42(d)(6) to clarify to whom the selection criteria apply because the sentence is unclear.

Response: HHSC revises §511.42(d)(6) in response to this comment by clarifying the criteria applies to medical staff selection.

Comment: DRTx recommended revising §511.42(d)(22)(D) to expand the requirement from "evaluation of patient complaints" to "resolution and identification of any preventative steps to minimize these complaints moving forward."

Response: HHSC declines to revise §511.42(d)(22)(D) because an LSRH must measure, analyze, and track quality indicators, including patient complaints as required by §511.64(e)(4), through the quality assessment and performance improvement (QAPI) program.

Comment: DRTx expressed concern the governing body's role and oversight may not be meaningful because §511.42(i) requires the governing body to meet at least annually. DRTx stated it may be unrealistic for a governing body to research and address all issues the body is responsible for addressing in a timely manner if the body only meets annually. DRTx also stated the governing body's ability to fulfill the requirements under §511.64(k) is questionable because they are only required to meet annually under §511.42(i).

Response: HHSC declines to revise §511.42(i) because the governing body is required in §511.42(d)(12) to quarterly review and monitor QAPI activities.

Comment: TMA recommended amending §511.42(l) to require input from medical staff because the responsibilities under this subsection relate to medical staff appointments and privileges. TMA recommended language to recognize the role of medical staff and qualified medical personnel as set forth in the Conditions of Participation for REHs.

Response: HHSC declines to revise §511.42(l) because §511.42(d)(4) requires the governing body to consider existing medical staff member recommendations when appointing members of the medical staff, and it is within an LSRH's authority to determine how the governing body assigns or limits medical privileges.

Comment: DRTx expressed concern with §511.42(m) only requiring the governing body to encourage personnel to participate in relevant continuing education and recommended amending the subsection to require the governing body to require personnel to participate in continuing education.

Response: HHSC declines to revise §511.42(m) because licensing boards determine continuing education requirements, and HHSC does not have the statutory authority to mandate continuing education for individuals with licenses that HHSC does not regulate.

Comment: DRTx stated the use of the term "complaint" in §511.42, §511.44(g), §511.63(3), and §511.113 is confusing because the language refers to client dissatisfaction in some instances and the patient's medical issue in others. DRTx recommended differentiating between the two uses consistently throughout the rules.

Response: HHSC revises the rules in response to this comment to use the term "reason for the visit" when referring to the patient's medical issue in §511.44(g) and replaced the term "grievance" with "complaint" in §511.63(e)(1) - (3). HHSC declines to revise §511.42 and §511.113 because the context for the term is clear in those sections.

Comment: TMA stated ordering diagnostic testing is outside the scope of professional nursing and federal and Texas laws do not allow advanced practice registered nurses (APRNs) to order diagnostic testing, but physicians may delegate such acts to qualified individuals. Therefore, TMA recommended amending §511.45(l)(2) to clarify an APRN may only order laboratory work under a physician's delegation and supervision.

TAPA expressed concern with §511.45(l)(2) because this paragraph does not list physician assistants (PAs) among the providers who may order preoperative laboratory work. TAPA recommended adding PAs and other providers that may order laboratory services to the list of providers in this paragraph. TAPA stated the current rule allows APRNs to order laboratory services and recommended allowing PAs to do so as well because both advanced practice nurses and PAs practice under the delegation and supervision of a physician. TAPA also stated PAs regularly order laboratory services in other settings.

Response: HHSC revises §511.45(l)(2) in response to these comments to indicate laboratory work shall be performed only on the order of a physician, podiatrist, dentist, or other practitioner, practicing within the scope of their license and education.

Comment: TMA expressed concern with the language in §511.46(c) regarding an APRN's scope of practice, which does not include ordering radiology services, and stated it is not clear to whom "authorized practitioner" refers. TMA recommended amending §511.46(c) to remove the reference to "authorized practitioner" and clarify an APRN can only order radiology services under the delegation and supervision of a physician.

Response: HHSC revises §511.46(c) in response to this comment to require radiologic services to be performed only on the order of a physician, podiatrist, dentist, or other practitioner who is practicing within the scope of their license and education.

Comment: TAPA expressed concern with PAs not being listed as a provider allowed to order radiology services in §511.46(c)(1). TAPA noted PAs may be included in the term "other authorized practitioner," but recommended expressly including PAs under this paragraph to avoid confusion in the facilities.

Response: HHSC revises §511.46(c)(1) in response to this comment to require radiologic services to be performed only on the order of a physician, podiatrist, dentist, or other practitioner who is practicing within the scope of their license and education.

Comment: TNA and TNP expressed concern with §511.46(c)(2) limiting the use of radioactive sources to physicians. TNA and TNP stated Texas Occupations Code §601.252 expressly allows nurses to provide radiological services and the Texas Board of Nursing rules at 22 TAC §217.4 requires nurses to register before performing radiological services. TNA and TNP recommended either removing the restriction on nurses from §511.46(c)(2) or clarifying that physicians may delegate radiological services and assessments as necessary.

TAPA expressed similar concerns with §511.46(c)(2) limiting the use of radioactive sources to physicians. TAPA stated PAs are trained and qualified to use radioactive sources and provide radiology services. TAPA also noted there are no similar restrictions in existing general and special hospital rules.

Response: HHSC declines to revise §511.46(c)(2) because radioactive sources are specific to nuclear medicine and do not include all radiologic services.

Comment: TMA expressed concern with §511.46(h) and stated the language is too prescriptive and could prevent a radiologist's input where such input may be helpful, but not strictly necessary. TMA recommended removing the word "only" from this subsection to address this concern.

Response: HHSC revises §511.46(h) in response to this comment by removing the words "only those."

Comment: TNA and TNP expressed concern with §511.46(j) requiring a physician to read, date, sign, and authenticate all examination reports. TNA and TNP recommended either removing the restriction on nurses from §511.46(j) or clarifying physicians may delegate radiological services and assessments as necessary.

Response: HHSC revises §511.46(j) in response to this comment by clarifying that in addition to a physician, another practitioner within the scope of their license and education, may read, date, sign, and authenticate examination reports.

Comment: DRTx recommended adding language to §511.48 to identify who performs an investigation into abuse and neglect issues, clarify whether an LSRH must perform an internal investigation before HHSC's investigation, and clarify the facility's responsibility to identify and secure evidence. DRTx also recommended requiring an LSRH to separate the alleged victim from the alleged perpetrator pending the investigation's outcome to prevent evidence contamination and witness intimidation and to reduce the victim's fear or trauma. DRTx stated it is necessary to also address any trauma or fear the alleged victim experiences.

Response: HHSC declines to revise §511.48 because the rule aligns with existing rules at 25 TAC Chapter 1, Subchapter Q, relating to Investigations of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons.

Comment: DRTx recommended adding "training" to §511.48(b)(2)(B)(i) to clarify the proper use of restraints or seclusion must be in accordance with state and federal laws and training on how to correctly perform a restraint.

Response: HHSC declines to revise §511.48(b)(2)(B)(i) because §511.48(b)(2)(B)(i) is part of the "abuse of an elderly or disabled person" definition, which aligns with 25 TAC §1.204(a)(2) and is consistent with Texas Human Resources Code §48.002(2).

Comment: DRTx recommended adding language to §511.48(e) requiring staff to intervene when appropriate if they witness a

patient being abused or neglected. DRTx also recommended adding language to §511.48(e) clarifying staff who fail to intervene are subject to disciplinary action.

Response: HHSC declines to revise §511.48(e) because failure to intervene in such a situation meets the abuse and neglect definitions in this section. A health care professional's licensing body has the authority to address instances of abuse or neglect, including failure to intervene.

Comment: TMA recommended adding language to §511.49 requiring the medical director to be a physician licensed to practice medicine in Texas because it is a universal requirement in laws and regulations regarding medical director qualifications.

Response: HHSC revises §511.49 in response to this comment by adding new subsection (e), which requires a medical director to be a physician licensed to practice medicine in Texas.

Comment: TMA expressed concern with §511.50(d) allowing a podiatrist to be responsible for the organization and conduct of medical staff and stated a podiatrist's limited scope of practice may limit their ability to effectively oversee the LSRH's medical staff. TMA recommended removing "or podiatrist" in the subsection to address their concern.

Response: HHSC revises §511.50(d) in response to this comment by removing "or podiatrist" to require the medical staff to be assigned only to a physician.

Comment: TMA expressed concern with §511.50(k) using the term "emergency room practitioner," which falls under the "practitioner" definition at §511.2(41), renumbered to §511.2(42), because the definition excludes a physician. TMA recommended replacing the word "practitioner" in §511.50(k) with the word "physician."

Response: HHSC revises §511.50(k) as suggested.

Comment: TMA also recommended amending §511.50(k) to allow emergency room privileges for physicians who are board-eligible in emergency medicine because they have graduated from an accredited emergency medicine program. TMA recommended restructuring this subsection to include two paragraphs and suggested specific language.

Response: HHSC revises §511.50(k) in response to this comment to structure the subsection to include two paragraphs as suggested to increase clarity and readability. HHSC declines to revise the language in §511.50(k)(1) because §511.50(k)(1) is consistent with the freestanding emergency medical care facility rule at §131.44(d)(5). Additionally, §511.50(k)(2) allows for physicians without board certification to be privileged as an emergency room physician, provided they meet the requirements under §511.50(k)(2).

Comment: TMA recommended replacing the term "practitioner" in §511.52(c) with "dentist or podiatrist" because the Texas Occupations Code only refers to a physician, podiatrist, or dentist performing surgery to the extent within their scope of practice. TMA noted it was unclear who "practitioner" would include because the chapter definition excludes physicians, podiatrists, and dentists.

Response: HHSC revises §511.52(c)(1), (2), and (4) in response to this comment by adding the terms "dentist" and "podiatrist" and clarifying a practitioner is someone other than a physician, podiatrist, or dentist that is practicing within the scope of their license and education.

Comment: TMA expressed concern with §511.55(k) because the subsection would limit the performance of surgical procedures to a physician or practitioner. TMA recommended replacing the term "practitioner" in §511.55(k) with the specific health care professions authorized to perform surgery under the Texas Occupations Code, which include a physician, podiatrist, or dentist.

Response: HHSC revises §511.55(k) in response to this comment by adding the terms "dentist" and "podiatrist" and clarifying the practitioner is someone other than a physician, podiatrist, or dentist that is practicing within the scope of their license and education. HHSC also revises §511.55(k)(2) by adding the terms "dentist" and "podiatrist."

Comment: TAPA expressed concern with §511.55(n)(2) because this paragraph does not list PAs among the providers who may order preoperative laboratory work. TAPA recommended adding PAs and other providers that may order laboratory services to the list of providers in this paragraph. TAPA stated the current rule allows APRNs to order laboratory services and recommended allowing PAs to do so as well because both advanced practice nurses and PAs practice under the delegation and supervision of a physician. TAPA also stated PAs regularly order laboratory services in other settings.

TMA expressed similar concerns with §511.55(n)(2) and recommended amending the paragraph to clarify an APRN may only order preoperative lab work under a physician's delegation and supervision.

Response: HHSC revises §511.55(n)(2) in response to these comments to clarify preoperative laboratory work shall be performed only on the order of a physician, podiatrist, dentist, or other practitioner, practicing within the scope of their license and education.

Comment: TSA expressed concern with §511.56(d) allowing a certified registered nurse anesthetist (CRNA) to order anesthesia and sedation for delivery by a registered nurse. TSA cited Texas Occupations Code §157.001, which allows a physician to delegate certain medical acts, and stated there are no provisions in Texas Occupations Code Chapter 301, the Texas Medical Board rules, and the Texas Board of Nursing rules allowing an APRN, including a CRNA, to delegate performing a medical act to a registered nurse (RN). TSA recommended removing the language in §511.56(d) allowing a CRNA to order a registered nurse to administer topical anesthesia, local anesthesia, minimal sedation, and moderate sedation.

TMA expressed similar concerns with §511.56(d), stating the subsection is inconsistent with scope of practice limitations and requirements in Texas law because a CRNA may not delegate anesthesia administration to an RN. TMA also suggested removing language in §511.56(d) allowing an RN to administer anesthesia.

Response: HHSC revises §511.56(d) in response to these comments by clarifying that a qualified RN who is not a CRNA may administer certain anesthesia or sedation on the order of a physician, podiatrist, dentist, or other authorized practitioner practicing within the scope of their license and education and removing language allowing a CRNA to order an RN to administer anesthesia. HHSC declines to remove the language allowing a registered nurse to administer anesthesia because the language requires the registered nurse to perform the acts in accordance with all applicable Texas Board of Nursing rules, policies, directives, and guidelines.

Comment: TSA recommended amending §511.56(e) to replace "operating surgeon" with "physician" to account for an anesthesiologist or operating physician providing the anesthesia care.

Response: HHSC revises §511.56(e) as suggested.

Comment: TSA recommended amending §511.56(f) to add the American Academy of Anesthesiologist Assistants to the list of association guidelines a facility must consider when the facility develops the written anesthesia service policies and standards under this subsection.

Response: HHSC declines to revise §511.56(f) because the requested association guidelines fall under the standards applicable to licensed professionals qualified to administer anesthesia, which LSRH medical staff are required to consider when developing the written anesthesia service policies and practice guidelines.

Comment: TSA recommended amending §511.56(g)(4) to remove "RN" from the list of practitioners who can perform a post-anesthesia evaluation. TSA stated the Conditions of Participation for REHs does not include a registered nurse as a qualified anesthesia practitioner who must evaluate a patient for proper anesthesia recovery.

Response: HHSC declines to revise the rule in response to this comment. §511.56(g) requires two post-anesthesia evaluations, a post-anesthesia follow-up in (3), which aligns with the requirements of the federal Conditions of Participation for REHs, and a post-anesthesia evaluation before discharge in (4), which is not covered in the federal Conditions of Participation for REHs. The language in §511.56(g) is consistent with the general and special hospital rule at §133.41(a)(2), and HHSC has the authority under HSC §241.302(c) to adopt rules that are more stringent than the federal Conditions of Participation for REHs.

Comment: TSA recommended amending §511.56(n) to update "operating surgeon or person administering the anesthesia" to "anesthesiologist, non-anesthesiologist physician, certified registered nurse anesthetist, or certified anesthesiologist assistant" to properly reflect the titles of individuals providing the care and provide clarity to facilities.

Response: HHSC revises §511.56(n) in response to this comment by clarifying the evaluation for proper anesthesia recovery must be conducted in accordance with subsection (g) of the section.

Comment: TNA and TNP recommended replacing the term "clinical nurse specialist" in §511.60(f) with "advanced practice registered nurse" to avoid confusion as a clinical nurse specialist is one of the four APRN roles.

Response: HHSC revises §511.60(f) in response to this comment by removing the specific roles and titles of "registered nurse, clinical nurse specialist, or licensed vocational nurse" and retained the more general term, "nurse," to require a nurse to be on duty whenever the LSRH has one or more patients receiving emergency care or observation care.

Comment: DRTx recommended clarifying the responsibilities associated with §511.60(g)(1), which requires an LSRH to assign an individual to be responsible for outpatient services.

Response: HHSC declines to revise §511.60(g)(1) because it is within an LSRH's authority to determine the specific responsibilities of the individual overseeing outpatient services.

Comment: DRTx stated the term "appropriate" in §511.60(g)(2), which requires the LSRH to have appropriate physicians on staff and other professional and nonprofessional personnel available, is vague, subjective, and does not provide measurable information. DRTx recommended adding language to clarify what is meant by "appropriate" and how the term would be measured.

Response: HHSC declines to revise §511.60(g)(2) because it is within an LSRH's authority to determine what is appropriate as it applies to physicians and other personnel.

Comment: TMA recommended amending §511.60(l) to remove the requirement for a physician to evaluate a diagnosis by a nurse practitioner, clarify a physician must evaluate the assessment and treatment furnished by a nurse practitioner or a clinical nurse specialist, and clarify a physician must evaluate the working diagnosis and treatment furnished by a PA. TMA stated only a physician may make a medical diagnosis and cannot delegate the act to a nurse, diagnosis is excluded from the definition of professional nursing in the Nursing Practice Act, and a PA may formulate a working diagnosis, but only under the delegation and supervision of a physician.

Response: HHSC declines to revise §511.60(l) because the language is consistent with the federal Conditions of Participation for REHs, and nurse practitioners may diagnose and treat patients under the supervision of a physician.

Comment: TNA and TNP stated §511.60(l) seems to go beyond requirements in law and §511.60(g)(3)(D) in requiring a physician on staff or contracted by an LSRH to evaluate the quality and appropriateness of diagnosis and treatment by nurse practitioners, clinical nurse specialists, and PAs at an LSRH. TNA and TNP recommended removing §511.60(l) as APRNs are educated to diagnose and treat autonomously with delegated authority in Texas. TNA and TNP expressed concern about how this subsection could be interpreted, which may lead to delays in care.

Response: HHSC revises §511.60(l) in response to this comment to clarify a physician evaluation of the diagnosis and treatment by certain practitioners is necessary when required by law.

Comment: DRTx stated the language in §511.62(e)(3) requiring the discharge planning evaluation to include a determination of a patient's access to appropriate services the patient may need is insufficient. DRTx recommended amending the language to "determination and resolution of any identified barriers."

Response: HHSC declines to revise §511.62(e)(3) because the language is consistent with the federal Conditions of Participation for REHs.

Comment: DRTx expressed concern with §511.62(g) requiring an LSRH to develop and initially implement a discharge plan at a physician's request and stated discharge planning should begin at the time of admission.

Response: HHSC declines to revise §511.62(g) because this subsection is consistent with the federal Conditions of Participation for REHs.

Comment: DRTx recommended amending language in §511.63(b), which requires a policy to "ensure patients' rights," to clarify the policy must "ensure patient rights are respected and upheld."

Response: HHSC revises §511.63(b) in response to this comment by adding language requiring an LSRH to ensure patient's rights are upheld.

Comment: TMA recommended amending the beginning of §511.63(b)(4), (7), and (8) to read "the right to, within the limits of the law" to align with the general and special hospital rules in 25 TAC Chapter 133 and to recognize a patient's rights may be limited by the law. TMA noted the federal Conditions for Participation for hospitals and REHs relating to these rights are the same.

Response: HHSC revises §511.63(b) in response to this comment to clarify an LSRH must adopt, implement, and enforce a policy to ensure patients' rights are upheld within the limits of law. HHSC also removes "within the limits of the law" from §511.63(20), renumbered to §511.63(19), because HHSC added the phrase in §511.63(b), which applies to all paragraphs under subsection (b).

Comment: DRTx recommended amending §511.63(b)(4), which provides the right to have personal privacy, to add a patient's right to their personal possessions and a requirement that any restrictions to personal possessions should require a physician's order with a clinical justification documented in the patient's record.

Response: HHSC declines to revise §511.63(b)(4) because the language is consistent with the freestanding emergency medical care rules at 25 TAC Chapter 131 and the general and special hospital rules at 25 TAC Chapter 133. Additionally, HHSC notes an LSRH is restricted to admitting a patient for only 24 hours on average.

Comment: DRTx recommended adding "including the right to be free of inappropriate or unnecessary use of restraints, seclusion, or emergency medication" to the end of §511.63(b)(6), which states, "the right to be free from all forms of abuse, neglect, exploitation, and harassment."

Response: HHSC declines to revise §511.63(b)(6) because inappropriate or unnecessary use of restraints, seclusion, or emergency medication meets the definition of abuse or neglect in §511.48.

Comment: DRTx stated the term "reasonable" in §511.63(b)(9), which states, "the right to the LSRH's reasonable response to the patient's requests and needs for treatment or service, within the LSRH's capacity, stated mission, and applicable law and regulation," is subjective and recommended adding parameters and a timeframe for what is meant by a "reasonable response."

Response: HHSC declines to revise §511.63(b)(9), renumbered to §511.63(b)(8), because use of the term "reasonable" is consistent with its usage across other HHSC rules.

Comment: DRTx stated the patient right to considerate and respectful care in §511.63(b)(10) is subjective. DRTx recommended updating the language to "the right to be treated with respect and dignity at all times."

Response: HHSC declines to revise §511.63(b)(10), renumbered to §511.63(b)(9), because the language is consistent with the general and special hospital rules at 25 TAC Chapter 133.

Comment: DRTx recommended amending §511.63(b)(10)(B)(ii), regarding a patient's "right to considerate and respectful care, which includes the care of a dying patient optimizes the comfort and dignity of the patient through effectively managing pain," to add that a patient has the right to a timely response to their pain or discomfort complaints.

Response: HHSC declines to revise §511.63(b)(10)(B)(ii), renumbered to §511.63(b)(9)(B)(ii), because the requirement

to effectively manage pain includes responding to patient complaints about pain in a timely manner.

Comment: DRTx stated it is unclear why §511.63(b)(16) says "whenever possible," and stated the patient and LAR should routinely receive information about rights in advance of a change and particularly prior to a discontinuation of the care.

Response: HHSC declines to revise §511.63(b)(16), renumbered to §511.63(b)(15), because the language aligns with the federal Conditions of Participation for REHs.

Comment: DRTx stated the language in §511.63(b)(19), regarding the patient's right to be informed about experimentation or research affecting their care to treatment, is insufficient and recommended adding language about the patient's right to consent to such experimentation or research.

Response: HHSC revises §511.63(b)(19), renumbered to §511.63(b)(18), in response to this comment by adding language about the patient's right to consent to any human experimentation or other research or educational projects affecting their care or treatment.

Comment: DRTx stated §511.63(b)(20) is a duplication of §511.63(b)(8) and recommended deleting §511.63(b)(8) and adding the language about oral and written requests to §511.63(b)(20).

Response: HHSC revises the rules in response to this comment by removing §511.63(b)(8), renumbering the subsequent paragraphs, and adding "on oral or written request" to §511.63(b)(20), renumbered to §511.63(b)(19).

Comment: DRTx stated training on informed consent should be mandatory in §511.63(d), which requires an LSRH's medical staff and governing body to adopt, implement, and enforce a policy on informed decision making that is consistent with any legal requirements.

Response: HHSC declines to revise §511.63(d) because an LSRH has the authority to determine training requirements for its policies.

Comment: DRTx recommended amending §511.63(e)(1) to require the LSRH's procedure for submitting verbal or written complaints to also require the LSRH to document receipt of a patient's grievance in the patient's record.

Response: HHSC declines to revise §511.63(e)(1) because §511.63(e) is about requiring an LSRH to inform the patient on who to contact to file a complaint and an LSRH has the authority to determine how to document received complaints.

Comment: DRTx recommended amending §511.63(e)(3) to require an LSRH to include information about appealing an LSRH's determination in its grievance resolution notice.

Response: HHSC declines to revise §511.63(e)(1) because an LSRH has the authority to determine its appeals process.

Comment: DRTx recommended clarifying which facilities in §511.65(b) are exempted from licensure and why they are allowed to operate without a license. DRTx requested HHSC clarify the language in §511.65(b) if the subsection is meant to reference state-run facilities.

Response: HHSC declines to revise because general, special, and private psychiatric hospitals that are federally operated or state owned and operated are not required to have a hospital license.

Comment: DRTx recommended amending §511.65(h)(2) to require an LSRH to document the reason a patient refused a transfer, transfer-related exam, or transfer-related treatment in the patient's medical record in addition to a signature.

Response: HHSC declines to revise §511.65(h)(2) because it is within a patient's right to refuse a transfer or transfer-related exam or transfer-related treatment and up to the medical professional's judgement whether they want to elaborate on the reason for refusal in the patient's medical record.

Comment: DRTx recommended clarifying the term "unreasonable discrimination" in §511.65(j), which requires the "LSRH's transfer policy shall prohibit a patient transfer from being predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, economic status, insurance status, or ability to pay" and asked whether discrimination is allowed as long as it is reasonable.

Response: HHSC declines to revise §511.65(j) because the Legislature indicated its intent by using the term "unreasonable discrimination" in the statute governing hospital patient transfer rules at HSC §241.027(b)(5).

Comment: TNA and TNP noted both §511.65 and the general and special hospital rule at 25 TAC §133.44 require a physician evaluation after a patient arrives at the hospital and before a transfer, but §511.65 excludes the provisions at 25 TAC §133.44(c)(4) allowing a registered nurse, PA, or other qualified medical personnel to assess and report the patient's condition to the physician for an initial evaluation or in place of an evaluation if the physician determines the evaluation would unnecessarily delay the transfer to the patient's detriment. TNA and TNP recommended amending §511.65 to include the provisions in 25 TAC §133.44(c)(4).

Response: HHSC revises §511.65(l) as suggested.

Comment: DRTx recommended amending §511.65(n) and §511.65(q)(4) to clarify evaluation and treatment are steps towards the ultimate goal of ensuring the patient is stabilized before transfer.

Response: HHSC declines to revise §511.65(n) and §511.65(q)(4) because §511.65(n) and §511.65(q)(4) address situations when stabilization is not possible.

Comment: DRTx stated the phrase "as soon as possible" in §511.65(r)(1) is not definitive and could be interpreted as months later, possibly delaying care. DRTx recommended providing a timeframe for the transfer of records to occur, at a minimum of 24-48 hours after receipt.

Response: HHSC declines to revise §511.65(r)(1) because an LSRH has the authority to make the business decision regarding record transfers and must operate in a manner that protects patient health and safety.

Comment: DRTx recommended clarifying whether the responsibility of designated staff in §511.67(b) includes sending records to the transfer facilities and responding to requests for records from the patient, the patient's legally authorized representative, or other entities.

Response: HHSC declines to revise §511.67(b) because an LSRH has the authority to determine staff responsibilities beyond this chapter's requirements.

Comment: TAPA expressed concern with §511.67(c)(18) because the language does not include PAs in the list of providers who may evaluate a patient before dismissal. TAPA stated PAs may also evaluate patients prior to dismissal in a hospital setting and recommended adding PAs to §511.67(c)(18).

Response: HHSC revises §511.67(c)(18) in response to this comment to indicate a patient's medical record should include evidence of the patient's evaluation before dismissal by physician, podiatrist, dentist, or other practitioner, practicing within the scope of their license and education.

Comment: DRTx stated the term "reasonable" in §511.67(j) is subjective and the requester has the right to know within what timeframe to expect their medical records request to be fulfilled. DRTx recommended adding a specific timeframe and stated the typical timeframe is 10 days.

Response: HHSC declines to revise §511.67(j) because an LSRH has the authority to determine a reasonable timeframe.

Comment: DRTx stated, "knowing the correct temperature is not the same as requiring maintenance of the temperatures during an emergency." DRTx recommended amending §511.68(e)(3)(b)(i) to require an LSRH to maintain temperatures during an emergency.

Response: HHSC declines to revise §511.68(e)(3)(b)(i) because an LSRH has the authority to determine the details of their emergency preparedness policies and procedures beyond the requirements in §511.68. Additionally, HHSC expects an LSRH to comply with its policies and procedures.

Comment: TNA and TNP recommended amending the language requiring the patient's most recent physician's assessment in §511.68(e)(4)(F)(i) to allow the patient to be transferred with the most recent assessment, regardless of the provider who conducted the assessment. TNA and TNP further stated this flexibility would prevent unnecessary delays and ensure patient safety in an emergency situation.

Response: HHSC revises §511.68(e)(4)(F) in response to this comment to require a patient's most recent physician assessment if the patient was last seen by a physician and the patient's most recent assessment if the patient was last assessed by a practitioner within the scope of their license and education. HHSC also revises the organization of the rest of this subparagraph for clarity and rennumbers the subsequent subparagraphs in paragraph (e)(4).

Comment: DRTx recommended amending §511.68(h)(1)(A) to require initial training in emergency preparedness policies and procedures to be competency-based to demonstrate and provide evidence of the staff's mastery of the material.

Response: HHSC declines to revise §511.68(h)(1)(A) because §511.68(h)(1)(D) requires an LSRH to demonstrate staff knowledge of emergency procedures.

Comment: DRTx recommended amending §511.76(b)(1) to require an LSRH to inform each patient about the hospital's visitation policy and document the clinical justification for any deviation from the policy in the patient's record.

Response: HHSC revises §511.76(b) in response to this comment by adding language in (b)(2) requiring an LSRH to inform each patient of the LSRH's visitation policy, and a new requirement in (b)(6) for documentation of the clinical justification for any deviation from the LSRH visitation policy in the patient's record. HHSC also rennumbers the paragraphs accordingly and revises

§511.76(b)(1) to clarify an LSRH must inform a patient of their rights under the section at the same time as other rights under §511.63.

Comment: DRTx also recommended amending §511.76(b)(1) to require an LSRH to post visitation information and potential restrictions on the hospital website.

Response: HHSC declines to revise §511.76(b)(1) because an LSRH has the authority to update its policies and it may not be feasible to keep a website up to date to match policy changes.

Comment: DRTx recommended clarifying the term "health screening" in §511.76(g)(2)(A) by specifying who can perform the screening as well as the timeframe. DRTx also recommended requiring this information to be on the LSRH's website.

Response: HHSC declines to revise §511.76(g)(2)(A) because the health screening is statutorily required and only applicable in a qualifying period of disaster, and an LSRH has the authority to set the details of the visitor health screening during a qualifying period of disaster beyond what is required by section 511.76.

HHSC declines to add a requirement for this information to be on the LSRH website because an LSRH has the authority to update its policies and it may not be feasible to keep a website up to date to match policy changes.

Comment: THA stated the cumulative penalty structure for pricing transparency violations in §511.77(g)(2) is not supported by statutory language in HSC §327.008.

Response: HHSC declines to revise §511.77(g)(2) because the language implements HSC §327.008 and is consistent with the general and special hospital rule at 25 TAC §133.53(h)(2).

Comment: DRTx recommended amending §511.78(a) to clarify an LSRH may only impose restraint or seclusion "when it is immediately necessary to prevent imminent probable bodily harm to the individual or others."

Response: HHSC declines to revise §511.78(a) because the current language, which clarifies a "restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time," conveys the same information as the recommended amended language.

Comment: DRTx commented on §511.78(e) and stated it is contraindicated to place a person who is self-destructive in seclusion as seclusion does not prevent self-injury.

Response: HHSC declines to revise §511.78(e) because §511.78(d) requires an LSRH to have policies and procedures regarding the use of seclusion that are consistent with current standards of practice. Additionally, the language in §511.78(e) is consistent with the federal Conditions of Participation for REHs.

Comment: DRTx recommended amending §511.78(f) to add language regarding a patient's right to monitoring by trained staff. DRTx also recommended requiring the implementation of restraint or seclusion to be consistent with the mandated training.

Response: HHSC declines to revise §511.78(f) because safe implementation includes monitoring and the language specifies requirements for the required training. Additionally, the language in §511.78(f) is consistent with the federal Conditions of Participation for REHs.

Comment: DRTx recommended amending §511.78(f)(2) to add language requiring the restraint or seclusion training to include

de-escalation techniques in addition to requiring the training to include alternatives to restraint or seclusion.

Response: HHSC revises §511.78(f)(2) in response to this comment by adding language requiring the restraint or seclusion training to include de-escalation techniques and other alternatives to restraint or seclusion.

Comment: THA expressed concern with the language in §511.111(a)(1) and (2) and stated the language could result in confusion about when facility staff are allowed to accompany HHSC staff and undue penalties in situations where facility staff may happen to overhear HHSC staff conversations in public areas of the facility where conversations and interviews are not meant to be private. THA recommended amending the language to indicate the restriction applies to intentional actions by facility staff to record, listen to, or eavesdrop on conversations HHSC staff meant to be private. THA also recommended adding language requiring HHSC staff to take measures to prevent being overheard and to expressly exempt from the restriction conversations for which HHSC staff allows facility staff to be present.

Response: HHSC revises §511.111(a)(2) in response to this comment to state an LSRH shall not intentionally record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of LSRH staff when HHSC has requested a private room or office or distanced themselves from LSRH staff. HHSC also revises the language to require the LSRH to obtain HHSC staff's written approval before beginning to record or listen to the discussion. HHSC also adds 511.111(c) to state an interview or conversation for which facility staff are permitted either by words or actions to be present does not constitute a violation of this rule.

Comment: THA expressed concern about the language in §511.113(h) requiring an LSRH to allow HHSC to interview certain individuals, including the governing body. THA stated members of the governing body are likely not involved in an LSRH's daily operations and being subject to interview may dissuade community members from serving on the governing body. THA suggested HSHC remove the reference to the governing body.

Response: HHSC declines to revise §511.113(h) because HHSC may need to interview a governing body member for information regarding meetings. Additionally, governing body members should have awareness and information on the issues for which the governing body is responsible.

Comment: THA expressed concern with the language in §511.113(h) requiring an LSRH to allow HHSC to request a written statement from certain individuals, including the governing body. THA stated the requirement sets up the potential for secondary enforcement action if a written statement cannot be provided or if HHSC is unsatisfied with the content of the statement. THA also stated the provision could create an adversarial situation if an individual or facility declines to provide the requested written statement. THA suggested HSHC remove the language related to requesting a written statement.

Response: HHSC declines to revise §511.113(h) because obtaining written statements are necessary in certain situations, such as abuse or neglect allegations.

Comment: THA expressed concern with the language in §511.121(c)(2) including certain reasons for license denial that appear overly broad. THA stated these reasons may include

situations of minor infractions or instances that are not an indication of the LSRH's fitness to operate the facility. THA was specifically concerned with federal Medicare or state Medicaid sanction or penalties, unsatisfied federal or state tax liens, unsatisfied final judgments, and unresolved federal Medicare or state Medicaid audit exceptions, and requested HHSC review the list of categories and suggested revised language for HHSC's consideration.

Response: HHSC declines to revise §511.121(c)(2) because HHSC has the authority to deny a license, and the language in §511.121(c) allows HHSC discretion to consider the facility's specific circumstances in each situation. Additionally, §511.121(c)(2) is consistent with the language in 25 TAC §133.121(2)(B).

HHSC made the following edits to correct grammar and capitalization, provide clarity, improve readability, and ensure consistency with HHSC rulemaking guidelines.

HHSC moved the phrase "during the licensing period" to the beginning of the sentence in §511.11(d) for clarity.

HHSC amended §511.12(a)(5) to require the fire inspection to be dated no earlier than one year before the "application submission date" instead of "LSRH's opening date" for clarity.

HHSC replaced "radiological" with "radiologic" in the title of §511.46 and where §511.46 is referenced in §511.61(p) and §511.165(a)(2)(H). HHSC replaced "radiology services" with "radiologic services" in §511.46(b), (c), (c)(1), (d), (g), (h), and (i) to reduce confusion and to ensure consistency with the federal Conditions of Participation for REHs.

HHSC removed "as well as" in §511.50(e)(3)(B) for clarity.

HHSC removed an extraneous "have" from §511.50(k), renumbered to §511.50(k)(2), for clarity and readability.

HHSC added "within the scope of their license and education" in §511.56(g)(4) and §511.67(c)(14) to clarify which practitioners can perform certain tasks.

HHSC replaced "their" with "the patient's" in §511.63(b)(11), renumbered to §511.63(b)(10), for clarity.

HHSC reorganized §511.76(g)(2)(C)(i) - (ii) to §511.76(g)(3)(A) - (B) for clarity.

HHSC added "and during a qualifying period of disaster" to §511.76(h) and §511.76(i)(2) to clarify the health screening only applies during a qualified disaster period.

HHSC clarified the internal reference in §511.76(k) for clarity.

HHSC added a parenthesis at the end of the first sentence in §511.1(c).

HHSC corrected a capitalization error in §511.2(3).

HHSC corrected a grammatical error by removing an extraneous "the" in §511.12(b)(3).

HHSC added "registered nurse" and parentheses around "RN" in §511.55(m)(1) to spell out an abbreviation on first use.

HHSC replaced the term "postanesthesia" with "post-anesthesia" in §511.56(m), (n), and (o), §511.60(r)(2)(B), and §511.60(s)(2) for readability.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §§511.1 - 511.3

## STATUTORY AUTHORITY

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

### §511.1. Definitions.

(a) The purpose of this chapter is to implement Texas Health and Safety Code Chapter 241, Subchapter K for Limited Services Rural Hospitals licensed by the Texas Health and Human Services Commission.

(b) This chapter provides:

- (1) procedures for obtaining a limited services rural hospital (LSRH) license;
- (2) standards for LSRH functions and services;
- (3) patient rights;
- (4) discrimination or retaliation prohibitions;
- (5) patient transfer and other policy and protocol requirements;
- (6) reporting, posting, and training requirements relating to abuse and neglect;
- (7) standards for voluntary agreements;
- (8) inspection and investigation procedures;
- (9) enforcement standards;
- (10) fire prevention and protection requirements;
- (11) general safety standards;
- (12) physical plant and construction requirements; and
- (13) standards for the preparation, submittal, review, and approval of construction documents.

(c) An LSRH shall comply with the Conditions of Participation for Rural Emergency Hospitals at Code of Federal Regulations Title 42 Part 485, Subpart E (relating to Conditions of Participation: Rural Emergency Hospitals (REHs)). To the extent the conditions of participation conflict with Texas law and this chapter, Texas law and this chapter shall prevail.

(d) Compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local laws, codes, rules, regulations, and ordinances. This chapter must be followed where it exceeds other requirements.

### §511.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings.

- (1) Act--The Texas Hospital Licensing Law, Texas Health and Safety Code (HSC), Chapter 241.
- (2) Actual harm--A negative outcome that compromises a patient's physical, mental, or emotional well-being.
- (3) Advance directive--A directive, as that term is defined by HSC §166.031 (relating to Definitions), an out-of-hospital do not resuscitate (DNR) order as that term is defined by HSC §166.081 (relating to Definitions), or a medical power of attorney under HSC Chapter 166, Subchapter D (relating to Medical Power of Attorney).

(4) Advanced practice registered nurse (APRN)--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse in Texas. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(5) Adverse event--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(6) Applicant--A person who seeks a limited services rural hospital (LSRH) license from the Texas Health and Human Services Commission (HHSC) and is legally responsible for the operation of the LSRH, whether by lease or ownership.

(7) Attending physician--A physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.

(8) Available--When referring to on-site personnel, on the premises and able to rapidly perform hands-on care in an emergency situation.

(9) Biological indicators--Commercially available microorganisms (e.g., United States Food and Drug Administration approved strips or vials of *Bacillus* species endospores).

(10) Cardiopulmonary resuscitation--Any medical intervention used to restore circulatory or respiratory function that has ceased.

(11) Chemical dependency services--A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(12) Competent--Possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(13) Comprehensive medical rehabilitation--The provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share responsibility to achieve team treatment goals for the person.

(14) Contaminated linen--Linen that has been soiled with blood or other potentially infectious materials or may contain sharps.

(15) Dentist--A person licensed to practice dentistry by the Texas State Board of Dental Examiners. This includes a doctor of dental surgery or a doctor of dental medicine.

(16) Dietitian--A person who is currently licensed by the Texas Department of Licensing and Regulation as a licensed dietitian or provisional licensed dietitian, or who is a registered dietitian with the Academy of Nutrition and Dietetics.

(17) Do not resuscitate (DNR) order--An order issued under HSC Chapter 166, Subchapter E (relating to Health Care Facility Do-Not-Resuscitate Orders), instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.

(18) Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in one or all of the following:

(A) placing the health of the individual (or with respect to a pregnant individual, the health of the pregnant individual or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

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

(D) with respect to a pregnant individual who is having contractions:

(i) that there is inadequate time to safely transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the pregnant individual or the unborn child.

(19) General hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities, including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(20) Governing body--The governing authority of an LSRH that is responsible for the LSRH's organization, management, control, and operation, including appointment of medical staff. This term includes the owner or partners for an LSRH owned or operated by an individual or partners.

(21) Governmental unit--A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(22) Incompetent--Lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(23) Inpatient--An individual admitted to a facility for an intended length of stay of 24 hours or greater.

(24) Inpatient services--Services provided to an individual admitted to an LSRH for an intended length of stay of 24 hours or greater.

(25) Legally authorized representative (LAR)--A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including:

(A) a parent, guardian, or managing conservator of a minor;

(B) the guardian of an adult;

(C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or

(D) the representative of a deceased person.

(26) Licensed vocational nurse (LVN)--A person who is currently licensed by the Texas Board of Nursing as a licensed vo-

national nurse or who holds a valid vocational nursing license with multi-state licensure privilege from another compact state.

(27) Licensee--The person or governmental unit named in the application for issuance of an LSRH license.

(28) Limited services rural hospital (LSRH)--A general or special hospital that is or was licensed under HSC Chapter 241 and that:

(A) is:

(i) located in a rural area, as defined by:

(I) Texas Health and Human Services Commission rule; or

(II) 42 U.S.C. Section 1395ww(d)(2)(D); or

(ii) designated by the Centers for Medicare & Medicaid Services as a critical access hospital, rural referral center, or sole community hospital; and

(B) otherwise meets the requirements to be designated as to be designated as a rural emergency hospital under Code of Federal Regulations Title 42 (42 CFR) Part 485, Subpart E.

(29) Limited services rural hospital (LSRH) administration--Administrative body of an LSRH headed by an individual who has the authority to represent the LSRH and who is responsible for the operation of the LSRH according to the policies and procedures of the LSRH's governing body.

(30) Medical staff--A physician or group of physicians and a podiatrist or group of podiatrists who by action of the governing body of an LSRH are privileged to work in and use the facilities of an LSRH for or in connection with the observation, care, diagnosis, or treatment of an individual who is, or may be, suffering from a mental or physical disease or disorder or a physical deformity or injury.

(31) Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental illness.

(32) Nurse--A registered, vocational, or advanced practice registered nurse licensed by the Texas Board of Nursing or entitled to practice in this state under Texas Occupations Code Title 3, Subtitle E.

(33) Other potentially infectious materials--Any of the following materials.

(A) The following human body fluids:

(i) semen;

(ii) vaginal secretions;

(iii) cerebrospinal fluid;

(iv) synovial fluid;

(v) pleural fluid;

(vi) pericardial fluid;

(vii) peritoneal fluid;

(viii) amniotic fluid;

(ix) saliva in dental procedures;

(x) any body fluid that is visibly contaminated with blood; and

(xi) all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); or

(C) human immunodeficiency virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or hepatitis B virus (HBV)-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(34) Outpatient--An individual who presents for diagnostic or treatment services for an intended length of stay of less than 24 hours. An individual who requires continued observation may be considered as an outpatient for up to 48 hours.

(35) Outpatient services--Services provided to patients whose medical needs can be met in less than 24 hours and are provided within the LSRH. Services that require continued observation may be considered as outpatient services for up to 48 hours.

(36) Owner--One of the following persons or governmental unit which will hold or does hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(37) Patient--An individual who presents for diagnosis or treatment.

(38) Person--An individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(39) Physician--An individual licensed by the Texas Medical Board and authorized to practice medicine in the state of Texas.

(40) Physician assistant--A person licensed as a physician assistant by the Texas Physician Assistant Board.

(41) Podiatrist--A podiatrist licensed by the Texas Department of Licensing and Regulation.

(42) Practitioner--A health care professional licensed in the state of Texas, other than a physician, podiatrist, or dentist.

(43) Prelicensure conference--A conference held with HHSC staff and the applicant or the applicant's representative to review licensure rules and survey documents and provide consultation prior to the on-site licensure inspection.

(44) Premises--A building where patients receive LSRH services.

(45) Prominent location--A size and font at least as large as that of surrounding text, links, or buttons, distinct from the background of the website, immediately viewable upon accessing the home page of the hospital's publicly accessible website without having to scroll.

(46) Prominently displayed--Refer to "prominent location."

(47) Public health emergency--A state of disaster or local disaster declared under Texas Government Code Chapter 418 or a public health disaster as defined by HSC §81.003.

(48) Qualified rural hospital--A general or special hospital licensed under HSC Chapter 241 (relating to Hospitals) on December 27, 2020, that meets the requirements to be designated as a rural emergency hospital under 42 CFR §485.502 (relating to Definitions), and §485.506 (relating to Designation and Certification of REHs) and is:

(A) located in a rural area, as defined by 42 United States Code §1395ww(d)(2)(D); or

(B) designated by the Centers for Medicare & Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(49) Qualifying official disaster order--An order, proclamation, or other instrument issued by the Governor, another official of this state, or the governing body or an official of a political subdivision of this state declaring a disaster that has infectious disease as the basis for the declared disaster.

(50) Qualifying period of disaster--The period of time the area in which a LSRH is located is declared to be a disaster area by a qualifying official disaster order.

(51) Quality improvement--A method of evaluating and improving processes of patient care that emphasizes a multidisciplinary approach to problem solving, and focuses not on individuals, but systems of patient care which might be the cause of variations.

(52) Quality improvement organization--An organization that has a contract with the Centers for Medicare & Medicaid Services, under Title XI Part B of the Social Security Act, to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare beneficiaries.

(53) Religious counselor--An individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

(54) Registered nurse (RN)--A person who is currently licensed by the Texas Board of Nursing as a registered nurse or who holds a valid registered nursing license with multi-state licensure privilege from another compact state.

(55) Restraint--A restraint is:

(A) any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move their arms, legs, body, or head freely; or

(B) a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition and does not include:

(i) devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests; or

(ii) devices to protect the patient from falling out of bed, off of a stretcher, or out of a chair, or to permit the patient to participate in activities without the risk of physical harm (this does not include a physical escort).

(56) Seclusion--The involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving.

(57) Special hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

(58) Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.

(59) Surgical technologist--A person who practices surgical technology as defined in HSC Chapter 259.

(60) Telemedicine--A health care service that is initiated by a physician or provided by a licensed health professional acting under appropriate physician delegation and supervision that is provided for purposes of client assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(61) Transfer--The movement (including the discharge) of an individual outside an LSRH's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the LSRH, but does not include such a movement of an individual who has been declared dead, or leaves the facility without the permission of any such person.

(62) Universal precautions--Procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control and Prevention (CDC) of the United States Department of Health and Human Services. This term includes standard precautions as defined by the CDC that are designed to reduce the risk of transmission of blood borne and other pathogens in hospitals.

(63) Violation--Failure to comply with the licensing statute, a rule or standard, special license provision, or an order issued by the HHSC executive commissioner (executive commissioner) or the executive commissioner's designee, adopted or enforced under the licensing statute. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 15, 2023.

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Health and Human Services Commission

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



## SUBCHAPTER B. LICENSING REQUIREMENTS

### 26 TAC §§511.11 - 511.17

#### STATUTORY AUTHORITY

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

#### §511.11. General.

(a) A limited services rural hospital (LSRH) shall obtain a license before admitting patients.

(b) An applicant for an LSRH license shall submit a license application to the Texas Health and Human Services Commission (HHSC) in a form and manner prescribed by HHSC.

(c) An applicant shall submit a license application in accordance with §511.12 of this subchapter (relating to Application and Issuance of Initial License). The applicant shall retain copies of all application documents submitted to HHSC.

(d) During the licensing period, an LSRH shall comply with the other provisions of Texas Health and Safety Code Chapter 241 (relating to Hospitals), to the extent they do not conflict with Subchapter K (relating to Limited Services Rural Hospitals), and Code of Federal Regulations Title 42 Part 485 Subpart E (relating to Conditions of Participation: Rural Emergency Hospitals (REHs)) and this chapter.

(e) HHSC issues an LSRH license for the premises and person named in the application.

(1) An LSRH license shall not include off-site outpatient facilities.

(2) An LSRH may share a building with other licensed facilities.

(A) The LSRH must be licensed separately from the other licensed facilities.

(B) No identifiable part of the building may be dually licensed by more than one facility.

(C) Each licensed facility in the building shall comply with the requirements of §511.165 of this chapter (relating to Building with Multiple Occupancies).

(3) A licensed LSRH shall not hold or pursue dual licensure as any other facility type.

(f) An LSRH shall prominently and conspicuously display the LSRH license in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(g) An LSRH shall not alter the LSRH license.

(h) An LSRH license is nontransferable. The LSRH shall comply with the provisions of §511.15 of this subchapter (relating to Change of Ownership) in the event of a change in the ownership of an LSRH.

(i) An LSRH shall notify HHSC in writing and in accordance with HHSC instructions, of any changes affecting the LSRH's license before the change occurs. Changes may include:

(1) addition or deletion of services indicated on the license application; or

(2) any construction, renovation, or modification of the hospital buildings.

(j) An LSRH shall notify HHSC, in writing and in accordance with HHSC instructions, at the time of the occurrence of any of the following:

(1) cessation of operation of the LSRH, whether temporary or permanent;

(2) change in certification or accreditation status;

(3) change in the LSRH name, telephone number, or administrator; or

(4) change in the emergency contact name or emergency contact phone number.

(k) A written notice of cessation of operation under subsection (j)(1) of this section shall include the location where the LSRH will store medical records and the identity and telephone number of the custodian of the medical records.

#### *§511.12. Application and Issuance of Initial License.*

(a) An applicant who meets the definition of a qualified rural hospital under §511.2(47) of this chapter (relating to Definitions) and is seeking a limited services rural hospital (LSRH) license shall submit the following documents to the Texas Health and Human Services Commission (HHSC) within 60 calendar days before the projected opening date of the LSRH:

(1) an accurate and complete application form;

(2) a copy of the LSRH's patient transfer policy, developed in accordance with §511.65 of this chapter (relating to Patient Transfer Policy) and signed by both the chairman and secretary of the LSRH's governing body attesting to the date the governing body adopted the policy and the policy's effective date;

(3) a copy of the LSRH's memorandum of transfer form that contains at least the information described in §511.65 of this chapter;

(4) a copy of a patient transfer agreement entered into between the LSRH and at least one hospital certified by the Centers for Medicare & Medicaid Services that is designated as a level I or level II trauma center in accordance with §511.66 of this chapter (relating to Patient Transfer Agreements);

(5) a copy of a fire inspection approved by an individual certified by the Texas Commission on Fire Protection that is dated no earlier than one year before the application submission date; and

(6) the appropriate license fee as required in §511.17 of this subchapter (relating to Fees).

(b) In addition to the document submittal requirements in subsection (a) of this section, the applicant must complete the following before HHSC will issue an LSRH license.

(1) When HHSC requires an architectural inspection, per HHSC instructions, submit written approval from HHSC confirming compliance with Subchapters F and G of this chapter (relating to Fire Prevention and Safety and Physical Plant and Construction Requirements, respectively).

(A) HHSC requires an architectural inspection when a qualifying rural hospital that has closed subsequently applies for an LSRH license.

(B) A hospital applying for an LSRH license after being closed for 90 days or fewer shall inform HHSC of the entity maintaining the facility during the closure period, if any, and provide maintenance and facility condition documentation, such as logbooks and photographs. HHSC may waive the architectural inspection if HHSC determines the documentation indicates an acceptable maintenance history and facility condition.

(C) HHSC may waive the architectural inspection for a currently operating qualifying rural hospital that applies for an LSRH license.

(2) If the applicant intends to add on any new services as an LSRH that the applicant did not offer while licensed as a general or special hospital, the applicant must comply with Subchapter G of this chapter as applicable.

(3) The applicant or the applicant's representative shall attend a preclosure conference conducted by HHSC. HHSC may waive the preclosure conference requirement at its discretion.

(c) Subject to subsection (g) of this section, when HHSC determines the applicant has complied with subsections (a) and (b) of this section, HHSC shall issue the LSRH license to the applicant.

(1) The license is effective on the issue date.

(2) The license expires on the last day of the month two years after the issue date.

(d) If an applicant decides not to continue the application process for a license, the applicant may withdraw the application. The applicant shall submit a written withdrawal request to HHSC. HHSC shall acknowledge receipt of the application withdrawal request.

(e) If the applicant does not complete all requirements of subsections (a) and (b) of this section within six months after the date HHSC receives the application and payment, HHSC may deny the application.

(f) Any fee paid for a withdrawn application under subsection (d) or (e) of this section is nonrefundable, as indicated by §511.17(a) of this subchapter.

(g) Denial of a license shall be governed by §511.121 of this chapter (relating to Enforcement).

(h) Once the LSRH is operational and providing services, HHSC shall conduct an inspection of the LSRH to ascertain compliance with the provisions of Texas Health and Safety Code Chapter 241 to the extent it does not conflict with Subchapter K and this chapter. This inspection may be conducted at the same time as the inspection to determine compliance with Code of Federal Regulations Title 42, Part 482 (relating to Conditions of Participation for Hospitals).

(i) An LSRH seeking relocation shall comply with all requirements of this section, except the preclosure conference required under

subsection (b)(3) of this section. An initial license for the relocated facility is effective on the issue date. The previous license is void on the date the previous location closes. The facility must notify HHSC once the previous location has closed.

§511.13. *Application and Issuance of Renewal License.*

(a) The Texas Health and Human Services Commission (HHSC) shall send written notice of license expiration to a limited services rural hospital (LSRH) at least 60 calendar days before the expiration date of the license. If the LSRH has not received notice, it is the LSRH's duty to notify HHSC and request a renewal notice.

(b) The LSRH shall submit the following to HHSC before the license expiration date:

(1) a complete and accurate application;

(2) a copy of two fire inspections that are conducted and approved by an individual certified by the Texas Commission on Fire Protection to conduct fire inspections and meet the requirements of §511.141 of this chapter (relating to Fire Prevention and Protection), one from within the last 12 months and one from the year before, as the LSRH must obtain an approved fire inspection annually;

(3) the renewal license fee; and

(4) if the applicant is accredited by a Centers for Medicare & Medicaid Services-approved organization, a copy of documentation from the accrediting body showing the current accreditation status of the hospital.

(c) HHSC may conduct an inspection before issuing a renewal license in accordance with §511.112 of this chapter (relating to Inspections).

(d) Subject to subsection (g) of this section, HHSC shall issue a renewal license to an LSRH that meets the requirements for a license.

(e) Renewal licenses will be valid for two years from the previous expiration date.

(f) If an LSRH fails to submit the application, documents, and fee by the expiration date of the LSRH's license, HHSC shall notify the LSRH that it must cease operation and immediately return the license to HHSC. If the LSRH intends to provide services after the expiration date of the license, HHSC may require the LSRH to apply for a license under §511.12 of this subchapter (relating to Application and Issuance of Initial License).

(g) Denial of a renewal license shall be governed by §511.121 of this chapter (relating to Enforcement).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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



## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 26 TAC §§511.41 - 511.78

#### STATUTORY AUTHORITY

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

§511.42. *Governing Body Responsibilities.*

(a) A limited services rural hospital's (LSRH's) governing body shall address and is fully responsible, either directly or by appropriate professional delegation, for the operation and performance of the LSRH.

(b) The governing body is responsible for all services furnished in the LSRH, whether furnished directly or under contract. The governing body shall ensure:

(1) services, including any contracted services, are provided in a safe and effective manner that permits the LSRH to comply with all applicable rules and standards, including the federal conditions of participation at Code of Federal Regulations Title 42 (42 CFR) Part 485, Subchapter E and this chapter;

(2) the LSRH maintains a list of all contracted services, including the scope and nature of the services provided;

(3) the medical staff is accountable to the governing body for the quality of care provided to patients as required by 42 CFR §485.510; and

(4) the provision of education to students and postgraduate trainees if the LSRH participates in such programs.

(c) An LSRH's governing body shall adopt, implement, and enforce written policies and procedures for the total operation and all services the LSRH provides, with the policies for the LSRH's services being developed, reviewed, and updated in accordance with §511.51 of this subchapter (relating to Provision of Services). The policies and procedures shall include at least the following:

(1) bylaws or similar rules and regulations for the orderly development and management of the LSRH;

(2) policies or procedures necessary for the orderly conduct of the LSRH;

(3) policies or procedures related to emergency planning and disaster preparedness that shall require the governing body to review the LSRH's disaster preparedness plan at least annually;

(4) policies for the provision of the following services:

(A) emergency services;

(B) radiological services;

(C) laboratory services;

(D) pharmacy services; and

(E) any outpatient services the LSRH provides;

(5) policies for the collection, processing, maintenance, storage, retrieval, authentication, and distribution of patient medical records and reports;

(6) policy on the rights of patients and complying with all state and federal patient rights requirements;

(7) policies for the provision of an effective procedure for the immediate transfer to a licensed hospital of patients requiring emergency care beyond the capabilities of the LSRH, including a transfer agreement with a hospital licensed in this state as defined in §511.66 of this subchapter (relating to Patient Transfer Agreements);

(8) policies for all individuals that arrive at the LSRH to ensure they are provided an appropriate medical screening examination within the capability of the LSRH, including:

(A) ancillary services routinely available to determine whether or not the individual needs emergency care as defined in §511.2 of this chapter (relating to Definitions); and

(B) if emergency care is determined to be needed, the LSRH shall provide any necessary stabilizing treatment or arrange an appropriate transfer for the individual as defined in §511.65 of this subchapter (relating to Patient Transfer Policy);

(9) a policy that complies with the requirements under Texas Health and Safety Code §241.009 to require employees, physicians, contracted employees, and individuals in training who provide direct patient care at the LSRH to wear a photo identification badge during all patient encounters, unless precluded by adopted isolation or sterilization protocols; and

(10) policies to ensure compliance with applicable state and federal laws.

(d) The governing body's responsibilities shall include:

(1) determining the LSRH's mission, goals, and objectives;

(2) ensuring that facilities and personnel are sufficient and appropriate to carry out the LSRH's mission;

(3) determining, in accordance with state law, which categories of practitioners are eligible candidates for appointment to the medical staff;

(4) appointing members of the medical staff after considering the recommendations of the existing members of the medical staff;

(5) ensuring that the medical staff is accountable to the governing body for the quality of care provided to patients;

(6) ensuring the criteria for medical staff selection are individual character, competence, training, experience, and judgment;

(7) ensuring a physical environment that protects the health and safety of patients, personnel, and the public;

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

(9) reviewing and approving the LSRH's training program for staff;

(10) ensuring all equipment utilized by LSRH staff or by patients is properly used and maintained per manufacturer recommendations;

(11) ensuring there is a quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care;

(12) reviewing and monitoring QAPI activities quarterly;

(13) consulting directly at least periodically throughout the fiscal or calendar with medical director or their designee, and include

discussion of matters related to the quality of medical care provided to patients of the LSRH;

(14) consulting directly with the individual responsible for the organized medical staff (or their designee) of each hospital or LSRH within its system as applicable for a multi-facility system, including a multi-hospital or multi-LSRH system, using a single governing body;

(15) reviewing legal and ethical matters concerning the LSRH and its staff when necessary and responding appropriately;

(16) ensuring that under no circumstances is the accordance of staff membership or professional privileges in the LSRH dependent solely upon certification, fellowship, or membership in a specialty body or society;

(17) maintaining effective communication throughout the LSRH;

(18) establishing a system of financial management and accountability that includes an audit or financial review appropriate to the LSRH;

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

(20) operating the LSRH without limitation because of color, race, age, sex, religion, national origin, or disability;

(21) ensuring that all marketing and advertising concerning the LSRH does not imply that it provides care or services that the LSRH is not capable of providing;

(22) developing a system of risk management appropriate to the LSRH, including:

(A) periodic review of all litigation involving the LSRH, its staff, physicians, and practitioners regarding activities in the LSRH;

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

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

(D) evaluation of patient complaints;

(23) ensuring that when telemedicine services are furnished to the LSRH's patients through an agreement with a distant-site hospital, the agreement meets the requirements of 42 CFR §485.510; and

(24) ensuring that when telemedicine services are furnished the services meet all federal and state laws, rules, and regulations.

(e) The governing body shall ensure the medical staff has current written bylaws, rules, and regulations that are adopted, implemented, and enforced by the LSRH on file.

(f) The governing body shall approve medical staff bylaws and other medical staff rules and regulations.

(g) The governing body, with input from the medical staff, shall periodically review the scope of procedures performed in the LSRH and amend as appropriate.

(h) The governing body shall provide for full disclosure of ownership to the Texas Health and Human Services Commission.

(i) The governing body shall meet at least annually and maintain minutes or other records necessary for the orderly conduct of the LSRH. Meetings the LSRH's governing body holds shall be separate

meetings with separate minutes from any other governing body meeting.

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

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

(l) The governing body shall develop a process for appointing or reappointing medical staff, and for assigning or curtailing medical privileges and shall periodically reappraise medical staff privileges.

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

(n) The governing body shall review patient satisfaction with services and environment at least annually.

#### §511.44. *Emergency Services.*

(a) A limited services rural hospital (LSRH) shall provide the emergency care necessary to meet the needs of its patients in accordance with acceptable standards of practice.

(b) An LSRH shall provide to each patient, without regard to the individual's ability to pay, an appropriate medical screening, examination, and stabilization within the facility's capability, including ancillary services routinely available to the hospital, to determine whether an emergency medical condition exists and shall provide any necessary stabilizing treatment.

(c) An LSRH shall have an emergency suite that complies with §511.163(e) of this chapter (relating to Spatial Requirements).

(d) The organization of the LSRH's emergency services must be appropriate to the scope of the services offered.

(e) Emergency services must be organized under the direction of a qualified physician member of the LSRH's medical staff who is the medical director or clinical director.

(f) Emergency services must be integrated with other LSRH departments.

(g) The LSRH must maintain patient medical records for all emergency patients. The medical records shall contain patient identification, the reason for the visit, name of physician, name of nurse, time admitted to the emergency suite, treatment, time discharged, and disposition.

(h) The policies and procedures governing medical care provided in the emergency suite must be established by and must be a continued responsibility of the medical staff.

(i) There must be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the LSRH.

(j) There must be on-duty and on-site 24 hours a day, seven days a week at least one person qualified, as determined by the medical staff, to initiate immediate appropriate lifesaving measures and at least one nurse with current advanced cardiac life support and pediatric advanced life support certification. This individual or individuals must be able to receive patients and activate the appropriate medical resources to meet the care needed by the patient.

(k) Qualified personnel must be physically present in the emergency treatment area at all times.

(l) An LSRH must maintain schedules, names, and phone numbers of all physicians and others on emergency call duty, including alternates. The LSRH must maintain the schedules for at least one year.

(m) In accordance with Code of Federal Regulations Title 42 (42 CFR) §485.516(c)(4), there must be a physician, a physician assistant, or an advanced practice registered nurse, with training or experience in emergency care, on call and immediately available by telephone or radio contact, and available on-site at the LSRH within 30 minutes, on a 24-hour a day basis, if the LSRH is located in an area other than an area described in 42 CFR §485.618(d)(1)(ii).

(n) Emergency services must be available 24-hours per day.

(o) An LSRH shall keep adequate age-appropriate equipment, supplies, and medication used in treating emergency cases and make this equipment, supplies, and medication readily available for treating emergency cases.

(p) The age-appropriate emergency equipment and supplies available at the LSRH shall include at least the following:

- (1) emergency call system;
- (2) oxygen;
- (3) mechanical ventilatory assistance equipment, including airways, manual breathing bag, endotracheal tubes, ambu bag/valve/mask;
- (4) cardiac defibrillator;
- (5) cardiac monitoring equipment;
- (6) laryngoscopes and endotracheal tubes;
- (7) suction equipment;
- (8) stabilization devices for cervical injuries;
- (9) blood pressure monitoring equipment;
- (10) pulse oximeter or similar medical device to measure blood oxygenation;
- (11) tourniquets;
- (12) immobilization devices;
- (13) nasogastric tubes;
- (14) splints;
- (15) Intravenous (IV) therapy supplies;
- (16) suction machine;
- (17) chest tubes;
- (18) indwelling urinary catheters; and
- (19) drugs and biologicals commonly used in life-saving procedures as specified by the medical staff, which shall include:
  - (A) analgesics,
  - (B) local anesthetics,
  - (C) antibiotics,
  - (D) anticonvulsants,
  - (E) antidotes and emetics,
  - (F) serums and toxoids,

- (G) antiarrhythmics,
- (H) cardiac glycosides,
- (I) antihypertensives,
- (J) diuretics, and
- (K) electrolytes and replacement solutions.

(q) Equipment and supplies must be available at the LSRH for administering intravenous medications as well as facilities for bleeding control and emergency splinting of fractures.

(r) The LSRH shall periodically test emergency equipment according to the LSRH's adopted policy.

(s) An LSRH shall provide, either directly or under arrangements, services for the procurement, safekeeping, and transfusion of blood, including the availability of blood products needed for emergencies on a 24-hour a day basis.

(t) Provision for the storage of blood and blood products must be made as needed. If blood banking services are provided under an arrangement, the arrangement is approved by the LSRH's medical staff and by the persons directly responsible for the operation of the LSRH. An LSRH shall ensure all blood and blood components are stored in accordance with §511.45(h) of this subchapter (relating to Laboratory Services).

(u) An LSRH shall, in coordination with emergency response systems in the area, establish procedures under which a physician is immediately available by telephone or radio contact on a 24-hour a day basis to receive emergency calls, provide information on treatment of emergency patients, and refer patients to the LSRH or other appropriate locations for treatment.

*§511.45. Laboratory Services.*

(a) A limited services rural hospital (LSRH) shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient consistent with nationally recognized standards of care for emergency services, patient population, and services offered.

(b) The LSRH must ensure laboratory services are available, either directly or through a contractual agreement with a certified laboratory that complies with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988) in accordance with the requirements specified in Code of Federal Regulations Title 42 (42 CFR) Part 493 (relating to Laboratory Requirements). CLIA 1988 applies to all hospitals with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(c) The LSRH shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(d) Emergency laboratory services shall be available on the premises, including at least the following:

- (1) assays for cardiac markers;
- (2) hematology;
- (3) chemistry; and
- (4) pregnancy testing.

(e) A written description of services provided shall be available to the medical staff.

(f) The laboratory shall ensure proper receipt and reporting of tissue specimens.

(g) The medical staff and a pathologist shall determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examination.

(h) When blood and blood components are stored, the LSRH shall have written procedures readily available containing directions on how to maintain the blood and blood components within permissible temperatures and include instructions to follow in the event of a power failure or other disruption of refrigeration.

(1) Blood transfusions shall be prescribed in accordance with LSRH policy and administered in accordance with a written protocol for the administration of blood and blood components and the use of infusion devices and ancillary equipment.

(2) A label or tray with the recipient's first and last names and identification number, donor unit number and interpretation of compatibility, if performed, shall be attached securely to the blood container.

(3) Personnel administering blood transfusions and intravenous medications shall have special training for this duty according to adopted, implemented, and enforced LSRH policy.

(4) Blood and blood components shall be transfused through a sterile, pyrogen-free transfusion set that has a filter designed to retain particles potentially harmful to the recipient.

(5) LSRH staff must observe the patient for potential adverse reactions during the transfusion and for an appropriate time thereafter, and document the observations and patient's response as defined in the LSRH's blood transfusion policy.

(6) Pretransfusion and posttransfusion vital signs shall be recorded.

(7) Following the transfusion, the blood transfusion record or a copy shall be made a part of the patient's medical record.

(i) The LSRH shall establish a mechanism for ensuring that the patient's physician or other licensed health care professional is made aware of critical value lab results, as established by the medical staff, before or after the patient is discharged.

(j) An LSRH that provides laboratory services shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory that may occur during the normal course of job performance.

(k) Pathology and clinical laboratory services shall include at least the following:

- (1) conducting laboratory procedures that are appropriate to the needs of the patients;
- (2) performing tests in a timely manner;
- (3) distributing test results within 24 hours after completion of a test and maintaining a copy of the results in the laboratory; and
- (4) performing and documenting appropriate quality assurance procedures, including calibrating equipment periodically and validating test results through use of standardized control specimens or laboratories.

(l) Preoperative laboratory procedures may be required as follows.

(1) It shall be at the discretion of the governing body upon the recommendation of the medical staff to require preoperative laboratory orders.

(2) If specific preoperative laboratory work is required, the medical staff shall approve them in accordance with the medical staff bylaws. Other laboratory work shall be performed only on the order of a physician, podiatrist, dentist, or other practitioner, practicing within the scope of their license and education, and written on the patient's chart.

(3) These services shall be provided either directly within or through an effective contract arrangement with a Medicare-approved reference laboratory.

(4) The contractual agreement with the Medicare-approved reference laboratory shall provide for routine and stat work to include pathology, clinical, and blood bank services, if blood is authorized by the LSRH, and shall be available for review.

§511.46. *Radiologic Services.*

(a) A limited services rural hospital (LSRH) shall maintain, or have available, diagnostic radiologic services according to needs of the patients. All radiology equipment, including X-ray equipment, mammography equipment and laser equipment, shall be licensed and registered as required under Texas Administrative Code Title 25 (25 TAC) Chapter 289 (relating to Radiation Control). When therapeutic services are also provided, the services, as well as the diagnostic services, shall meet professionally approved standards for safety and personnel qualifications as required in 25 TAC §§289.227, 289.229, 289.230, and 289.231 (relating to Use of Radiation Machines in the Healing Arts; Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Simulators, and Electronic Brachytherapy Devices; Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography; and General Provisions and Standards for Protection Against Machine-Produced Radiation, respectively). Portable X-ray equipment may be acceptable as a minimum requirement.

(b) An LSRH shall adopt, implement, and enforce policies and procedures describing the radiologic services provided in the LSRH and how the LSRH maintains employee and patient safety.

(c) LSRH policies shall address the quality aspects of radiologic services by:

(1) performing radiologic services only upon the written order of a physician, podiatrist, dentist, or other practitioner, who is practicing within the scope of their license and education, and a concise statement of the reason for the examination; and

(2) limiting the use of any radioactive sources in the facility to physicians who have been granted privileges for such use based on their training, experience, and current competence.

(d) An LSRH shall minimize hazards to patients and personnel when providing radiologic services, particularly ionizing radiology procedures.

(e) An LSRH shall adopt, implement, and enforce policies and procedures to address safety including:

(1) regulation of the use, removal, handling, and storage of any radioactive material that is required to be licensed by the Texas Department of State Health Services (DSHS);

(2) precautions against electrical, mechanical, and radiation hazards;

(3) proper shielding where radiation sources are used;

(4) acceptable monitoring devices for all personnel who might be exposed to radiation, including requiring monitoring devices be worn by all personnel in any area with a radiation hazard;

(5) personnel monitoring dosimeters for nuclear medicine workers to measure their radiation exposure;

(6) maintenance of radiation exposure records on personnel;

(7) authenticated dated reports of all examinations performed shall be made a part of the patient's medical record;

(8) inspection of equipment shall be made by or under the supervision of a licensed medical physicist in accordance with 25 TAC §289.227(o) (relating to Use of Radiation Machines in the Healing Arts). Defective equipment shall be promptly repaired or replaced; and

(9) exposure reports and documentation shall be available for review.

(f) Only personnel designated as qualified by the medical staff shall use the radiology equipment and administer procedures.

(g) LSRH personnel shall provide radiologic services only on the order of individuals granted privileges by the medical staff.

(h) A qualified full-time, part-time, or consulting radiologist shall supervise the ionizing radiologic services and shall interpret radiology tests that are determined by the medical staff to require a radiologist's specialized knowledge. For purposes of this section a radiologist is a physician who is qualified by education and experience in radiology in accordance with medical staff bylaws.

(i) An LSRH shall maintain records of radiologic services. The radiologist or other individuals in accordance with subsections (f) and (h) of this section shall sign reports of their interpretations.

(j) A physician or other practitioner within the scope of their license and education shall read, date, sign, and authenticate all examination reports.

(k) The radiology department shall meet all applicable federal, state, and local laws, codes, rules, regulations, and ordinances.

(l) Procedure manuals shall include procedures for all examinations performed, infection control in the facility, treatment or examination rooms, dress code of personnel, and cleaning of equipment.

(m) When the LSRH provides nuclear medicine services, these services shall meet the needs of the patients in accordance with acceptable standards of practice and be licensed in accordance with 25 TAC §289.256 (relating to Medical and Veterinary Use of Radioactive Material).

(1) The LSRH shall adopt, implement, and enforce policies and procedures describing the LSRH's nuclear medicine services and how the LSRH maintains employee and patient safety with regard to these services.

(2) The organization of the nuclear medicine services shall be appropriate to the scope and complexity of the services offered.

(3) The LSRH shall have a medical director or clinical director who is a physician qualified in nuclear medicine.

(4) The medical director or clinical director shall specify the qualifications, training, functions, and responsibilities of nuclear medicine personnel and the medical staff shall approve them.

(5) Radioactive materials shall be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice and in accordance with 25 TAC §289.256.

(6) In-house preparation of radiopharmaceuticals shall be by, or under, the direct supervision of an appropriately trained licensed pharmacist or physician.

(7) There shall be proper storage and disposal of radioactive materials.

(8) When nuclear medicine services staff perform clinical laboratory tests, the nuclear medicine staff shall comply with CLIA 1988 in accordance with the requirements specified in 42 CFR Part 493.

(9) Equipment and supplies shall be appropriate for the types of nuclear medicine services offered and shall be maintained for safe and efficient performance. Qualified personnel shall inspect, test, and calibrate the equipment at least annually.

(10) The LSRH shall maintain signed and dated reports of nuclear medicine interpretations, consultations, and procedures.

(11) The physician approved by the medical staff to interpret diagnostic procedures shall sign and date the interpretations of these tests.

(12) The LSRH shall maintain records of the receipt and disposition of radiopharmaceuticals until disposal is authorized by DSHS in accordance with 25 TAC §289.256.

(13) Only an individual whose scope of state licensure and whose defined staff privileges allow referrals to nuclear medicine services shall order such services.

*§511.49. Medical Director.*

(a) The medical director shall be on-site at the limited services rural hospital (LSRH) when necessary to fulfill the responsibilities of the position, as described by this chapter and the LSRH's governing body.

(b) Notwithstanding subsection (a) of this section, each LSRH's medical director shall be on-site at the LSRH for at least 12 hours per month.

(c) The medical director's responsibilities shall include:

(1) organizing the emergency services to be provided at the LSRH;

(2) supervising and overseeing the infection control program, quality assessment and performance improvement program, and patient safety program; and

(3) regularly attending meetings of the infection control program, quality assessment and performance improvement program, and patient safety program.

(d) The medical director shall have the authority to contract with outside persons for the performance of the LSRH's peer review activities as necessary.

(e) The medical director shall be a physician licensed to practice medicine in Texas.

*§511.50. Medical Staff.*

(a) A limited services rural hospital (LSRH) shall have an organized medical staff that operates under bylaws approved by the LSRH's governing body, and which is responsible for the quality of medical care provided to patients by the LSRH.

(b) The medical staff shall be composed of physicians and may also include podiatrists, dentists, and other practitioners appointed by the LSRH's governing body.

(c) The medical staff shall be well-organized, in a manner approved by the LSRH's governing body, and accountable to the governing body for the quality of the medical care provided to patients.

(d) The responsibility for organization and conduct of the medical staff must be assigned to a physician.

(e) When an LSRH is part of a system consisting of multiple separately certified hospitals, critical access hospitals, or LSRHs, and the system elects to have a unified and integrated medical staff, each separately certified LSRH must demonstrate:

(1) the decision to have a unified and integrated medical staff is in accordance with all applicable state and local laws;

(2) the medical staff members of each separately certified LSRH in the system (that is, all medical staff members who hold specific privileges to practice at that LSRH) have voted by majority, in accordance with medical staff bylaws, either to accept a unified and integrated medical staff structure or to opt out of such a structure and to maintain a separate and distinct medical staff for their respective LSRH;

(3) the unified and integrated medical staff has bylaws, rules, and requirements describing:

(A) its processes for self-governance, appointment, credentialing, privileging, and oversight;

(B) its peer review policies and due process rights guarantees; and

(C) a process to advise the members of the medical staff of each separately certified LSRH (that is, all medical staff members who hold specific privileges to practice at that LSRH) of their right to opt out of the unified and integrated medical staff structure in accordance with paragraph (2) of this subsection;

(4) the unified and integrated medical staff is established in a manner that considers each member LSRH's unique circumstances and any significant differences in patient populations and services offered in each hospital, critical access hospital (CAH), and LSRH;

(5) the unified and integrated medical staff establishes and implements policies and procedures to ensure that the needs and concerns expressed by members of the medical staff, at each of its separately certified hospitals, CAHs, and LSRHs, regardless of practice or location, are given due consideration; and

(6) the unified and integrated medical staff has mechanisms in place to ensure that issues localized to particular hospitals, CAHs, and LSRHs are duly considered and addressed.

(f) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(g) The medical staff shall examine credentials of a candidate for medical staff membership and make a recommendation to the LSRH's governing body on the candidate's appointment.

(h) When the medical staff has an executive committee, a majority of the members of the committee must be doctors of medicine or osteopathy.

(i) An LSRH shall maintain records of medical staff meetings.

(j) The medical staff shall adopt, implement, and enforce written bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(1) be approved by the governing body;

(2) include a statement of the duties and privileges of each category of medical staff (for example, active, courtesy, etc.);

(3) describe the organization of the medical staff;

(4) describe the candidate qualifications needed for the medical staff to recommend the candidate's appointment by the governing body; and

(5) include criteria for granting privileges to individual practitioners and a procedure for applying the criteria to individuals requesting privileges. For distant-site physicians and practitioners requesting privileges to provide telemedicine services under an agreement with the LSRH, the criteria for determining privileges and the procedure for applying the criteria are also subject to the requirements in the Code of Federal Regulations Title 42 (42 CFR) §485.510(a)(8) and §485.512(a)(9).

(k) To be privileged as an emergency room physician, the physician shall:

(1) be currently board certified in emergency medicine; or

(2) have a minimum of one year experience in emergency services and current certification in advanced cardiac life support, pediatric advanced life support, and advanced trauma life support.

(l) The LSRH shall comply with applicable telemedicine requirements in 42 CFR §485.512.

§511.51. *Provision of Services.*

(a) The limited services rural hospital (LSRH) shall adopt, implement, train, and enforce written policies to ensure all provided services are consistent with accepted professional standards and practice and compliance in accordance with applicable federal and state law.

(b) The LSRH must develop policies with the advice of members of the LSRH's professional health care staff, including:

(1) one or more physicians; and

(2) one or more of the following if they are on staff under the provisions of Code of Federal Regulations Title 42 (42 CFR) §485.528(b)(1):

(A) physician assistants; or

(B) advanced practice registered nurses.

(c) The policies must include:

(1) a description of the services the LSRH provides, including those provided through agreement or arrangement;

(2) policies and procedures for emergency medical services;

(3) guidelines for the medical management of health problems, including:

(A) conditions requiring medical consultation or patient referral;

(B) maintenance of health care records; and

(C) procedures for the periodic review and evaluation of LSRH services; and

(4) policies and procedures that address the post-acute care needs of patients receiving services in the LSRH.

(d) The group of professional personnel described in subsection (b) of this section must review and update the policies as necessary, but at least biennially.

§511.52. *Surgical Services within the Scope of the Practice of Emergency Medicine.*

(a) A limited services rural hospital (LSRH) shall limit the surgical procedures performed at the LSRH to procedures the governing body approved upon the medical staff's recommendation.

(b) Adequate supervision of surgical procedures conducted in the LSRH shall be:

(1) a responsibility of the governing body;

(2) recommended by medical staff; and

(3) provided by appropriate medical staff.

(c) An LSRH shall only perform surgical procedures when:

(1) a physician, dentist, podiatrist, or other practitioner licensed to perform surgical procedures in Texas performs the procedure;

(2) the governing body granted privileges to the physician, dentist, podiatrist, or other practitioner, practicing within the scope of their license and education, to perform surgical procedures;

(3) the LSRH's medical staff recommended the surgical procedure; and

(4) the governing body has medically reviewed the physician's, dentist's, podiatrist's, or other practitioner's documented education, training, experience, and current competence.

(d) An LSRH shall periodically review surgical procedures to be performed in the LSRH as part of the peer review portion of the LSRH's quality assessment and performance improvement program by physically observing planned surgical procedures.

(e) An LSRH shall incorporate an appropriate patient history, physical examination, and pertinent preoperative diagnostic studies into the patient's medical record before surgical procedures.

(f) Unless otherwise provided by law, the LSRH shall discuss the proposed surgical procedure's necessity or appropriateness, as well as any available alternative treatment techniques, with the patient or the patient's legally authorized representative, as applicable, before the surgical procedure.

(g) Unless otherwise provided by law, the LSRH shall obtain the informed consent of the patient or, if applicable, of the patient's legally authorized representative before a surgical procedure is performed. When the LSRH is unable to obtain informed consent before an emergency surgery, the LSRH shall document in the patient's medical record the reason or reasons why the LSRH was unable to obtain the informed consent.

(h) With the exception of those tissues exempted by the governing body after medical review, a pathologist shall examine tissues removed and sign or authenticate the report of the examination for the patient's medical record.

(i) A description of the findings and techniques of surgical procedures shall be accurately and completely incorporated into the patient's medical record immediately after the procedure by the physician or practitioner who performed the procedure. If the description is dictated, an accurate written summary shall be immediately available to the physicians and practitioners providing patient care and shall become a part of the patient's medical record.

(j) The LSRH shall allow patients who have received anesthesia, other than solely topical anesthesia, to leave the facility only in the company of a responsible adult, unless the physician, physician assistant, or an advanced practice registered nurse writes an order that the patient may leave without the company of a responsible adult.

§511.54. *General Outpatient Requirements.*

(a) In addition to providing emergency services and observation care, a limited services rural hospital (LSRH) may provide outpatient and medical health diagnostic and therapeutic items and services that are commonly furnished in a physician's office or at another entry point into the health care delivery system that include: radiology, laboratory, outpatient rehabilitation, surgical, maternal health, and behavioral health services. If an LSRH provides additional outpatient and medical health diagnostic and therapeutic items and services, the LSRH shall comply with the requirements of this section.

(b) The outpatient and medical health diagnostic and therapeutic items and services the LSRH provides shall:

(1) align with the health needs of the community served by the LSRH; and

(2) be appropriately organized and meet the needs of the patients in accordance with acceptable standards of practice.

(c) The LSRH shall:

(1) provide items and services based on nationally recognized guidelines and standards of practice;

(2) have a system in place for referral from the LSRH to different levels of care, including follow-up care, as appropriate;

(3) have effective communication systems in place between the LSRH and the patient (or responsible individual) and their family, ensuring that the LSRH is responsive to their needs and preferences;

(4) have established relationships with hospitals that have the resources and capacity available to deliver care that is beyond the scope of care delivered at the LSRH; and

(5) have personnel providing these services who meet the requirements in subsection (d) of this section.

(d) The LSRH shall meet the following personnel requirements for outpatient services.

(1) The LSRH shall assign one or more individuals to be responsible for outpatient services.

(2) The LSRH shall have appropriate professional and non-professional personnel available at each location where outpatient services are offered, based on the scope and complexity of outpatient services.

(3) For any specialty services offered at the LSRH, the LSRH shall have a physician, advanced practice registered nurse, or physician assistant providing services with experience and training in the specialty service area and in accordance with their scope of practice.

(e) Outpatient medical and health services shall be ordered by a practitioner who is:

(1) responsible for the care of the patient for whom the practitioner is ordering the services;

(2) licensed in the state of Texas;

(3) acting within their scope of practice under state law;

(4) authorized, in accordance with state law and policies adopted by the medical staff; and

(5) approved by the governing body, to order the applicable outpatient services and either:

(A) appointed to the LSRH's medical staff and who have been granted privileges to order the applicable outpatient services; or

(B) not appointed to the medical staff, but who satisfy the requirements for authorization by the medical staff and the LSRH for ordering the applicable outpatient services for their patients.

§511.55. *Surgical Services.*

(a) If a limited services rural hospital (LSRH) performs outpatient surgical services, emergency surgical services, or both, the LSRH shall comply with this section.

(b) The LSRH's governing body, on recommendation of the LSRH's medical staff, shall approve surgical procedures performed in the LSRH.

(c) Surgical services shall be well-organized and provided in accordance with acceptable standards of practice.

(d) An LSRH shall provide adequate space, equipment, and personnel to ensure a safe environment for treating patients during surgical procedures, including adequate safeguards to protect the patient from cross infection.

(e) The organization of the surgical services shall be appropriate for the scope of the services offered.

(f) The LSRH shall periodically review surgical procedures performed in the LSRH as part of the LSRH's quality assessment and performance improvement program.

(g) Appropriate medical staff shall provide adequate supervision of surgical procedures conducted in the LSRH under the recommendation of medical staff and approval of the governing body.

(h) The LSRH shall establish a written procedure for observation and care of the patient during and after surgical procedures.

(i) The LSRH shall establish written protocols for instructing patients in self-care after surgical procedures, including written instructions to be given to patients who receive conscious sedation, regional anesthesia, or both.

(j) The LSRH shall develop an effective written procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the LSRH. The LSRH shall have a written transfer agreement with a hospital as set forth in §511.65 of this subchapter (relating to Patient Transfer Policy).

(k) Surgical procedures shall be performed only by a physician, dentist, podiatrist, or practitioner, practicing within the scope of their license and education, who:

(1) is licensed to perform surgical procedures in Texas; and

(2) has been granted privileges to perform those procedures by the governing body, upon the recommendation of the medical staff, and after medical review of the physician's, dentist's, podiatrist's, or practitioner's documented education, training, experience, and current competence.

(l) The LSRH shall designate the practitioners who are allowed to perform surgery for LSRH patients, in accordance with its approved policies and procedures, and with state scope of practice laws.

(m) The LSRH shall provide adequate staff during surgical procedures.

(1) The operating rooms shall be supervised by an experienced registered nurse (RN) or physician.

(2) Licensed vocational nurses (LVNs) and surgical technologists (operating room technicians) may serve as scrub nurses or technologists only under the supervision of an RN.

(3) Circulating duties in the operating room must be performed by qualified RNs. In accordance with approved medical staff policies and procedures, LVNs and surgical technologists may assist in circulatory duties only under the direct supervision of a qualified RN circulator.

(4) The LSRH shall delineate surgical privileges for all physicians, podiatrists, and dentists performing surgery in accordance with the competencies of each. The surgical services department shall maintain a roster specifying the surgical privileges of each.

(5) If the LSRH employs surgical technologists, the LSRH shall adopt, implement, and enforce policies and procedures to comply with Texas Health and Safety Code Chapter 259 (relating to Surgical Technologists at Health Care Facilities).

(6) Licensed nurses and other personnel assisting in the provision of surgical services shall be appropriately trained and supervised and shall be available in sufficient numbers for the surgical care provided.

(n) Preoperative laboratory procedures may be required as follows.

(1) It shall be at the discretion of the governing body and the medical staff to require preoperative laboratory orders.

(2) If specific preoperative laboratory work is required, the medical staff shall approve them in accordance with the medical staff bylaws. Specific preoperative laboratory work shall be performed only on the order of a physician, podiatrist, dentist, or other practitioner, who is practicing within the scope of their license and education, and written on the patient's chart.

(3) These services shall be provided either directly within or through an effective contract arrangement with a Medicare-approved reference laboratory.

(4) The contractual agreement with the Medicare-approved reference laboratory shall provide for routine and stat work to include pathology, clinical, and blood bank services, and shall be available for review.

(o) Surgical services shall be consistent with needs and resources. Written policies governing surgical care that are designed to ensure the achievement and maintenance of high standards of medical practice and patient care shall be adopted, implemented, and enforced.

(p) There shall be a complete medical history and physical examination, as required under subsections (s) and (t) of this section, in the medical record of every patient prior to surgery, except in emergencies. If this has been dictated verbally, but not yet transcribed in the patient's medical record, there shall be a statement to that effect and an admission note in the record by the individual who admitted the patient.

(q) A properly executed informed consent form for the operation shall be in the patient's medical record before surgery, except in emergencies.

(r) A "time out" shall be conducted before starting the procedure to confirm that the correct patient, site, and procedure have been identified, and that all required documents and equipment are available and ready for use.

(s) A qualified practitioner, as specified in subsection (k) of this section, must examine the patient immediately before surgery to evaluate the risk of the procedure to be performed.

(t) A qualified practitioner, as specified in subsection (k) of this section, must examine each patient before surgery to evaluate the risk of anesthesia.

(u) All persons shall use acceptable aseptic techniques in accordance with the LSRH's chosen infection control standards.

(v) Each treatment or examination room shall be designed and equipped so that the types of surgical procedures conducted can be performed in a manner that protects the lives and ensures the physical safety of all persons in the area.

(w) The facility shall implement environmental controls that ensure a safe and sanitary environment.

(x) Written policies and procedures for decontamination, disinfection, sterilization, and storage of sterile supplies shall be adopted, implemented, and enforced as described in §511.73 of this subchapter (relating to Sterilization).

(1) Performance records for all sterilizers shall be maintained for a period of six months.

(2) The LSRH shall maintain appropriate supplies to prevent immediate use sterilization.

(3) Preventive maintenance of all sterilizers shall be completed according to manufacturer's recommendations on a scheduled basis. A preventive maintenance record shall be maintained for each sterilizer. An LSRH shall retain these records for at least one year and shall ensure their availability for review at the facility within two hours of HHSC's request.

(y) Emergency power adequate for the type of surgical procedures performed shall be available.

(z) Periodic calibration and preventive maintenance of all equipment shall be provided in accordance with manufacturer's guidelines.

(aa) The following equipment shall be available in the operating room suites:

- (1) communication system;
- (2) cardiac monitor;
- (3) resuscitator;
- (4) defibrillator;
- (5) aspirator; and
- (6) tracheotomy set.

(bb) If flammable agents are present in a treatment/examination room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Annex 2, Flammable Anesthetizing Locations, 1999) and with applicable state and local fire codes.

(cc) If nonflammable agents are present in a treatment/examination room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Chapters 4 and 8, 1999) and with applicable state and local fire codes.

(dd) There shall be adequate provisions for immediate postoperative care.

(ee) The operating room register shall be complete and up-to-date. The register shall contain, but not be limited to, the following:

- (1) patient's name and hospital identification number;
- (2) date of operation;
- (3) operation performed;
- (4) operating surgeon and assistant(s);
- (5) type of anesthesia used and name of person administering it;
- (6) time operation began and ended;
- (7) time anesthesia began and ended;
- (8) disposition of specimens;
- (9) names of scrub and circulating personnel;
- (10) unusual occurrences; and
- (11) disposition of the patient.

(ff) An operative report describing techniques, findings, and tissue removed or altered shall be written or dictated immediately following surgery and signed by the surgeon.

(gg) Before discharge from the LSRH, each patient must be evaluated for proper anesthesia recovery by a qualified practitioner, as specified in subsection (k) of this section, as applicable.

(hh) All patients are discharged in the company of a responsible adult, except those exempted by the practitioner who performed the surgical procedure.

*§511.56 Anesthesia Services.*

(a) The anesthesia services must be provided:

- (1) in a well-organized manner;
- (2) under the direction of a qualified physician approved by the governing body; and
- (3) in accordance with Texas Occupations Code Title 3, Subtitle B (relating to Physicians) and Texas Occupations Code Chapter 301 (relating to Nurses).

(b) The LSRH is responsible for and shall document all anesthesia services administered in the LSRH.

(c) The organization of anesthesia services shall be appropriate to the scope of the services offered.

(d) Only personnel who have been approved by the LSRH to provide anesthesia services shall administer anesthesia. All approvals or delegations of anesthesia services as authorized by law shall be documented and include the training, experience, and qualifications of the person who provided the service. On the order of a physician, podiatrist, dentist, or other authorized practitioner practicing within the scope of their license and education, a qualified registered nurse (RN) who is not a certified registered nurse anesthetist (CRNA), may administer topical anesthesia, local anesthesia, minimal sedation, and moderate sedation, in accordance with all applicable rules, polices, directives, and guidelines issued by the Texas Board of Nursing. When an RN who is not a CRNA administers sedation, as permitted in this subsection, the LSRH shall:

- (1) verify that the RN has the requisite training, education, and experience;
- (2) maintain documentation to support that the RN has demonstrated competency in the administration of sedation;

(3) with input from the facility's qualified anesthesia providers, develop, implement, and enforce detailed written policies and procedures to guide the RN; and

(4) ensure that, when administering sedation during a procedure, the RN has no other duties except to monitor the patient.

(e) Anesthesia shall not be administered unless the physician has evaluated the patient immediately before the procedure to assess the risk of the anesthesia and of the procedure to be performed.

(f) The medical staff shall develop written policies and practice guidelines for the anesthesia service, which shall be adopted, implemented, and enforced by the governing body. The policies and guidelines shall include consideration of the applicable practice standards and guidelines of the American Society of Anesthesiologists, the American Association of Nurse Anesthetists, and the licensing rules and standards applicable to those categories of licensed professionals qualified to administer anesthesia.

(g) Anesthesia services shall be consistent with needs and resources. Policies on anesthesia procedures shall include the delineation of pre-anesthesia and post-anesthesia responsibilities. The policies shall ensure that the following are provided for each patient.

(1) A pre-anesthesia evaluation by an individual qualified to administer anesthesia under subsection (e) of this section shall be performed within 48 hours before surgery.

(2) An intraoperative anesthesia record shall be provided. The record shall include any complications or problems occurring during the anesthesia, including time, description of symptoms, review of affected systems, and treatments rendered. The record shall correlate with the controlled substance administration record.

(3) A post-anesthesia follow-up report shall be written by the person administering the anesthesia before transferring the patient from the post-anesthesia care unit and shall include evaluation for recovery from anesthesia, level of activity, respiration, blood pressure, level of consciousness, and patient's oxygen saturation level.

(4) Immediately prior to discharge, a post-anesthesia evaluation for proper anesthesia recovery shall be performed by the person administering the anesthesia, by an RN, within the scope of their license and education, or physician in accordance with policies and procedures approved by the medical staff and using criteria written in the medical staff bylaws for postoperative monitoring of anesthesia.

(h) Anesthesia services provided in the LSRH shall be limited to those that are recommended by the medical staff and approved by the governing body, which may include the following.

(1) Topical anesthesia--An anesthetic agent applied directly or by spray to the skin or mucous membranes, intended to produce transient and reversible loss of sensation to the circumscribed area.

(2) Local anesthesia--Administration of an agent that produces a transient and reversible loss of sensation to a circumscribed portion of the body.

(3) Regional anesthesia--Anesthetic injected around a single nerve, a network of nerves, or vein that serves the area involved in a surgical procedure to block pain.

(4) Minimal sedation (anxiolysis)--A drug-induced state during which patients respond normally to oral commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

(5) Moderate sedation/analgesia ("conscious sedation")--A drug-induced depression of consciousness during which patients respond purposefully to oral commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is not considered a purposeful response.)

(6) Deep sedation/analgesia--A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is not considered a purposeful response.)

(i) Patients who have received anesthesia shall be evaluated for proper anesthesia recovery by the physician or the person administering the anesthesia before discharge using criteria approved by the medical staff.

(j) Patients shall be evaluated immediately before leaving the facility by a physician, the person administering the anesthesia, or an RN acting in accordance with physician's orders and written policies, procedures, and criteria developed by the medical staff.

(k) Emergency equipment and supplies appropriate for the type of anesthesia services provided shall be maintained and accessible to staff at all times. Functioning equipment and supplies that are required for all LSRHs include the following:

- (1) suctioning equipment, including a source of suction and suction catheters in appropriate sizes for the population being served;
- (2) source of compressed oxygen;
- (3) basic airway management equipment, including oral and nasal airways, face masks, and self-inflating breathing bag valve set;
- (4) blood pressure monitoring equipment; and
- (5) emergency medications specified by the medical staff and appropriate to the type of procedures and anesthesia services provided by the facility.

(l) In addition to the equipment and supplies required under subsection (1) of this section, an LSRH that provides moderate sedation/analgesia, deep sedation/analgesia, or regional analgesia shall provide the following:

- (1) intravenous equipment, including catheters, tubing, fluids, dressing supplies, and appropriately sized needles and syringes;
- (2) advanced airway management equipment, including laryngoscopes and an assortment of blades, endotracheal tubes, and stylets in appropriate sizes for the population being served;
- (3) a mechanism for monitoring blood oxygenation, such as pulse oximetry;
- (4) electrocardiographic monitoring equipment;
- (5) cardiac defibrillator; and
- (6) pharmacologic antagonists as specified by the medical staff and appropriate to the type of anesthesia services provided.

(m) The advanced practice registered nurse, the anesthesiologist, or the operating surgeon shall be available until the surgeon's patients operated on that day have been discharged from the post-anesthesia care unit.

(n) Patients who have received anesthesia shall be evaluated for proper anesthesia recovery in accordance with subsection (g) of this section prior to discharge from the post-anesthesia care unit using criteria approved by the medical staff.

(o) Patients who remain in the facility for extended observation following discharge from the post-anesthesia care unit shall be evaluated immediately prior to leaving the facility by a physician, the person administering the anesthesia, or a registered nurse acting in accordance with physician's orders and written policies, procedures, and criteria developed by the medical staff.

(p) A physician shall be on call and able to respond physically or by telephone within 30 minutes until all patients have been discharged from the LSRH.

*§511.60. Staffing and Staff Responsibilities.*

(a) The LSRH must have a professional health care staff that includes one or more physicians, and may include one or more physician assistants, or advanced practice registered nurses (APRN).

(b) Any ancillary personnel are supervised by the professional staff.

(c) There shall be a written delineation of functions, qualifications, and patient care responsibilities for all categories of personnel.

(d) The LSRH shall maintain documentation of evidence that all personnel are trained prior to treatment of services.

(e) The staff shall be sufficient to provide the services essential to the operation of the LSRH.

(f) A nurse shall be on duty whenever the LSRH has one or more patients receiving emergency care or observation care.

(g) If the LSRH provides outpatient services, the services shall meet the needs of the patients in accordance with acceptable standards of practice.

(1) The LSRH shall assign an individual to be responsible for outpatient services.

(2) The LSRH shall have appropriate physicians on staff and other professional and nonprofessional personnel available.

(3) The physician must:

(A) provide medical direction for the LSRH's health care activities and consultation for, and medical supervision of, the health care staff;

(B) participate, in conjunction with any physician assistant or nurse practitioner members, in developing, executing, and periodically reviewing the LSRH's written policies governing the services it furnishes;

(C) review periodically, in conjunction with any physician assistant or nurse practitioner members, the LSRH patient records, provide medical orders, and provide medical care services to the patients of the LSRH; and

(D) review periodically and sign a sample of outpatient records of patients cared for by APRN or physician assistants only to the extent where state law requires record reviews or co-signatures, or both, by a collaborating physician.

(h) A physician must be present for sufficient periods of time to provide medical direction, consultation, and supervision for the services provided in the LSRH, and is available through direct radio or telephone communication or electronic communication for consultation, assistance with medical emergencies, or patient referral.

(i) The physician assistant, the nurse practitioner, or clinical nurse specialist members of the LSRH staff shall:

(1) participate in the development, execution and periodic review of the written policies governing the services the LSRH furnishes; and

(2) participate with a physician in a periodic review of the patients' health records.

(j) The physician assistant, nurse practitioner, or clinical nurse specialist shall perform the following functions to the extent they are not being performed by a physician:

(1) provides services in accordance with the LSRH's policies; and

(2) arranges for, or refers patients to, needed services that cannot be furnished at the LSRH, and assures that adequate patient health records are maintained and transferred as required when patients are referred.

(k) Whenever a patient is placed in observation care at the LSRH by a nurse practitioner, physician assistant, or clinical nurse specialist, a physician on the staff of the LSRH is notified of the patient's status.

(l) When required by law, the quality and appropriateness of the diagnosis and treatment furnished by nurse practitioners, clinical nurse specialists, and physician assistants at the LSRH must be evaluated by a member of the LSRH staff who is a physician or by another physician under contract with the LSRH.

(m) The quality and appropriateness of the diagnosis and treatment provided by a physician at the LSRH must be evaluated by one of the following:

(1) One Quality Improvement Organization (QIO) or equivalent entity;

(2) in the case of distant-site physicians and practitioners providing telemedicine services to the LSRH's patient under an agreement between the LSRH and a distant-site hospital, the distant-site hospital; or

(3) in the case of distant-site physicians and practitioners providing telemedicine services to the LSRH's patients under a written agreement between the LSRH and a distant-site telemedicine entity, one QIO or equivalent entity.

(n) The LSRH staff shall consider the findings of the evaluation and make the necessary changes as specified in Code of Federal Regulations Title 42 §485.528 (b) - (d) (relating to Condition of participation: Staffing and staff responsibilities).

(o) There shall be an organized nursing service under the direction of a qualified registered nurse (RN). The LSRH shall be staffed to assure that the nursing needs of all patients are met.

(p) There shall be a written plan of administrative authority for all nursing services with responsibilities and duties of each category of nursing personnel delineated and a written job description for each category. The scope of nursing service shall include nursing care rendered to patients preoperatively, intraoperatively, and postoperatively.

(1) The responsible individual for nursing services shall be a qualified RN whose responsibility and authority for nursing service shall be clearly defined and includes supervision of both personnel performance and patient care.

(2) There shall be a written delineation of functions, qualifications, and patient care responsibilities for all categories of nursing personnel.

(3) Surgical technicians and licensed vocational nurses may be permitted to serve in the scrub nurse role under the direct supervision of an RN; they shall not be permitted to function as circulating nurses in the operating rooms. Licensed vocational nurses and surgical technicians may assist in circulatory duties under the direct supervision of a qualified RN.

(4) Nursing services shall be provided in accordance with current recognized standards or recommended practices.

(5) The LSRH shall adopt, implement and enforce policies and procedures to comply with Texas Health and Safety Code Chapter 259 (relating to Surgical Technologists at Health Care Facilities).

(6) There shall be an adequate number of RNs on duty to meet the following minimum staff requirements: director of the department (or designee), and supervisory and staff personnel for each service area to assure the immediate availability of an RN for emergency care or for any patient when needed.

(7) An RN shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and qualifications of the nursing staff available.

(8) There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of an RN.

(9) An RN qualified, at a minimum, with current certification in advanced cardiac life support and pediatric advanced life support shall be on duty and on the premises at all times whenever patients are present in the LSRH.

(q) All direct patient care staff must have current certification in basic cardiac life support.

(r) In addition to meeting the requirements for nursing staff under subsections (p) and (q) of this section, LSRHs shall comply with the following staffing requirements.

(1) LSRHs that provide only topical anesthesia, local anesthesia, or minimal sedation are required to have a second individual on duty on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility.

(2) LSRHs that provide moderate sedation/analgesia are required to have the following additional staff:

(A) a second individual on duty on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility; and

(B) an individual trained and currently certified in advanced cardiac life support and, if surgery is performed on pediatric patients, pediatric advanced life support shall be available until all patients have been discharged from the post-anesthesia care unit.

(s) LSRHs that provide deep sedation/analgesia, general anesthesia, or regional anesthesia shall have the following additional staff:

(1) a second individual on duty on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility; and

(2) an individual who is trained and currently certified in advanced cardiac life support and, if surgery is performed on pediatric patients, pediatric advanced life support shall be on duty on the premises and sufficiently free of other duties to enable the individual

to respond rapidly to emergency situations until all patients have been discharged from the post-anesthesia care unit.

(t) As applicable, the LSRH shall establish a nursing peer review committee to conduct nursing peer review, as required by Texas Occupations Code Chapter 303 (relating to Nursing Peer Review).

§511.61. *Nursing Services.*

(a) A limited services rural hospital (LSRH) shall have a well-organized nursing service with a plan of administrative authority and delineation of responsibilities for patient care and provides 24-hour nursing services as needed.

(b) An LSRH shall provide nursing services in accordance with current recognized standards or recommended practices.

(c) Nursing services shall be under the administrative authority of a chief nursing officer (CNO) who is a registered nurse (RN).

(1) The CNO shall be responsible for the operation of nursing services, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the LSRH.

(2) The CNO shall report directly to the individual who has authority to represent the LSRH and who is responsible for the operation of the LSRH according to the policies and procedures of the LSRH's governing board.

(3) The CNO shall participate with the governing body, medical staff, and clinical areas, in planning, promoting and conducting performance improvement activities.

(d) An LSRH shall adopt, implement and enforce a procedure to verify nursing personnel for whom licensure is required have valid and current licensure.

(e) An LSRH shall comply with the following nursing staff requirements.

(1) The LSRH shall have adequate numbers of RNs, licensed vocational nurses (LVNs), and other personnel to provide nursing care to all patients as needed in accordance with subsection (f) of this section.

(2) The LSRH shall have an adequate number of RNs on duty to meet the LSRH's minimum staff requirements in accordance with subsection (f)(2) of this section to include supervisory and staff RNs to ensure the immediate availability of an RN for emergency care or for any patient when needed.

(3) The nursing staff shall develop and keep current a nursing plan of care for each patient which addresses the patient's needs.

(4) The LSRH shall establish a nurse staffing committee as a standing committee of the LSRH. The committee shall be established in accordance with Texas Health and Safety Code (HSC) Chapter 161, Subchapter D (relating to Medical Committees, Medical Peer Review Committees, and Compliance Officers), to be responsible for soliciting and receiving input from nurses on the development, ongoing monitoring, and evaluation of the staffing plan. As used in this section, "committee" or "staffing committee" means a nurse staffing committee established under this paragraph.

(f) An LSRH shall adopt, implement, and enforce a written official nurse services staffing plan. As used in this subsection, "patient care unit" means a unit or area of an LSRH in which registered nurses provide patient care.

(1) The official nurse services staffing plan and policies shall:

(A) require significant consideration to be given to the nurse staffing plan recommended by the LSRH's nurse staffing committee and the committee's evaluation of any existing plan;

(B) be based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(C) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(D) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(E) protect from retaliation nurses who provide input to the nurse staffing committee;

(F) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations and should be developed based upon a review of the codes of ethics developed by the nursing profession through national nursing organizations; and

(G) comply with this section.

(2) The plan shall set minimum staffing levels for patient care units that are:

(A) based on multiple nurse and patient considerations including:

(i) patient characteristics and number of patients for whom care is being provided, including number of admissions, discharges, and transfers on a unit;

(ii) intensity of patient care being provided and variability of patient care across a nursing unit;

(iii) scope of services provided;

(iv) context within which care is provided, including architecture and geography of the environment, and the availability of technology; and

(v) nursing staff characteristics, including staff consistency and tenure, preparation and experience, and the number and competencies of clinical and non-clinical support staff the nurse must collaborate with or supervise;

(B) determined by the nursing assessment and in accordance with evidence-based safe nursing standards; and

(C) recalculated at least annually, or as necessary.

(3) The plan shall include:

(A) a method for adjusting the staffing plan shift to shift for each patient care unit based on factors, such as, the intensity of patient care to provide staffing flexibility to meet patient needs;

(B) a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources;

(C) how on-call time will be used;

(D) a mechanism for evaluating the effectiveness of the official nurse services staffing plan based on patient needs, nursing sensitive quality indicators, nurse satisfaction measures collected by the LSRH, and evidence-based nurse staffing standards, which must include at least one from each of the following three types of outcomes shall be correlated to the adequacy of staffing:

(i) nurse-sensitive patient outcomes selected by the nurse staffing committee, such as, patient falls, adverse drug events, injuries to patients, skin breakdown, pneumonia, infection rates, upper

gastrointestinal bleeding, shock, cardiac arrest, length of stay, or patient readmissions;

(ii) operational outcomes, such as, work-related injury or illness, vacancy and turnover rates, nursing care hours per patient day, on-call use, or overtime rates; and

(iii) substantiated patient complaints related to staffing levels;

(E) a process that facilitates the timely and effective identification of concerns about the adequacy of the staffing plan by the nurse staffing committee, which includes:

(i) a prohibition on retaliation for reporting concerns;

(ii) a requirement that nurses report concerns timely through appropriate channels within the LSRH;

(iii) orientation of nurses on how to report concerns and to whom;

(iv) encouraging nurses to provide input to the committee relating to nurse staffing concerns;

(v) review, assessment, and response by the committee to staffing concerns expressed to the committee;

(vi) a process for providing feedback during the committee meeting on how concerns are addressed by the committee; and

(vii) use of the nurse safe harbor peer review process pursuant to Texas Occupations Code §303.005 (relating to Request for Peer Review Committee Determination); and

(F) policies and procedures that require:

(i) orientation of nurses and other personnel who provide nursing care to all patient care units to which they are assigned on either a temporary or permanent basis;

(ii) the orientation of nurses and other personnel and the competency to perform nursing services is documented in accordance with LSRH policy; and

(iii) nursing assignments be congruent with documented competency.

(g) The LSRH shall use the staffing plan required under subsection (f) of this section as a component in setting the nurse staffing budget and guiding the LSRH in assigning nurses LSRH wide.

(h) The LSRH shall make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

(i) There shall be a semiannual evaluation by the staffing committee of the effectiveness of the official nurse services staffing plan and variations between the staffing plan and actual staffing.

(1) The evaluation shall consider the outcomes and nursing-sensitive indicators as set out in subsection (f)(3)(D)(i) of this section, patient needs, nurse satisfaction measures collected by the LSRH, and evidence-based nurse staffing standards.

(2) The evaluation shall be documented in the minutes of the committee and presented to the LSRH governing body.

(3) The LSRH may determine whether the evaluation is done on a unit or facility level basis.

(4) To assist the committee with the semiannual evaluation, the LSRH shall report to the committee the variations between

the staffing plan and actual staffing. This report of variations shall be confidential.

(j) The LSRH shall retain each staffing plan for a period of two years.

(k) Nonemployee licensed nurses who are working in the LSRH shall adhere to the LSRH's policies and procedures. The LSRH's CNO shall provide for the adequate orientation, supervision, and evaluation of the clinical activities of nonemployee nursing personnel that occur within the responsibility of the nursing services.

(l) The LSRH shall annually report to the Texas Health and Human Services Commission on:

(1) whether the LSRH governing body has adopted a nurse staffing policy;

(2) whether the LSRH has established a nurse staffing committee that meets the requirements of subsection (e)(4) of this section;

(3) whether the nurse staffing committee has evaluated the LSRH official nurse services staffing plan and has reported the results of the evaluation to the LSRH's governing body; and

(4) the nurse-sensitive outcome measures the committee adopted for use in evaluating the LSRH official nurse services staffing plan.

(m) The LSRH shall adopt, implement and enforce policies on use of mandatory overtime. The policies shall comply with the following requirements.

(1) As used in this subsection:

(A) "on-call time" means time spent by a nurse who is not working but who is compensated for availability; and

(B) "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. Mandatory overtime does not include prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety.

(2) An LSRH may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(3) This subsection does not prohibit a nurse from volunteering to work overtime.

(4) An LSRH may not use on-call time as a substitute for mandatory overtime.

(5) The prohibitions on mandatory overtime do not apply if:

(A) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(B) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(C) there is an emergency or unforeseen event of a kind that:

(i) does not regularly occur;

(ii) increases the need for health care personnel at the LSRH to provide safe patient care; and

(iii) could not prudently be anticipated by the LSRH; or

(D) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient. The nurse staffing committee shall ensure that scheduling a nurse for a procedure that could be anticipated to require the nurse to stay beyond the end of his or her scheduled shift does not constitute mandatory overtime.

(6) If an LSRH determines that an exception exists under paragraph (5) of this subsection, the LSRH shall, to the extent possible, make and document a good faith effort to meet the staffing need through voluntary overtime, including calling per diem and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

(7) An LSRH may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

(n) Drugs and biologicals shall be prepared and administered in accordance with federal and state laws, the orders of the individuals granted privileges by the medical staff, and accepted standards of practice.

(o) All drugs and biologicals shall be administered by, or under supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing rules, and in accordance with the approved medical staff policies and procedures.

(p) All orders for drugs and biologicals shall be in writing, dated, timed, and signed by the individual responsible for the care of the patient as specified under §511.46(x) of this subchapter (relating to Radiologic Services). When telephone or verbal orders must be used, they shall be:

(1) accepted only by personnel who are authorized to do so by the medical staff policies and procedures, consistent with federal and state laws;

(2) dated, timed, and authenticated within 96 hours by the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges that are consistent with the written orders; and

(3) used infrequently.

(q) There shall be an LSRH procedure for immediately reporting transfusion reactions, adverse drug reactions, and errors in administration of drugs to the attending physician and, if appropriate, to the LSRH-wide quality assessment and performance improvement program.

(r) Blood transfusions shall be prescribed in accordance with LSRH policy and administered in accordance with a written protocol for the administration of blood and blood components and the use of infusion devices and ancillary equipment.

(s) Personnel administering blood transfusions and intravenous medications shall have special training for this duty according to written, adopted, implemented, and enforced LSRH policy.

(t) Blood and blood components shall be transfused through a sterile, pyrogen-free transfusion set that has a filter designed to retain particles potentially harmful to the recipient.

(u) Nursing staff shall observe and monitor the patient during blood and blood component transfusions and for an appropriate time

thereafter as required by the LSRH's blood transfusion policy for suspected adverse reactions.

(v) Pretransfusion and posttransfusion vital signs shall be recorded.

(w) When warming of blood is indicated, this shall be accomplished during its passage through the transfusion set. The warming system shall be equipped with a visible thermometer and may have an audible warning system. Blood shall not be warmed above 42 degrees Centigrade.

(x) Drugs or medications, including those intended for intravenous use, shall not be added to blood or blood components. A 0.9% sodium chloride injection, United States Pharmacopeia, may be added to blood or blood components. Other solutions intended for intravenous use may be used in an administration set or added to blood or blood components under either of the following conditions:

(1) they have been approved for this use by the U.S. Food and Drug Administration; or

(2) there is documentation available to show that addition to the component involved is safe and efficacious.

(y) There shall be a system for detection, reporting, and evaluation of suspected complications of transfusion. Any adverse event experienced by a patient in association with a transfusion is to be regarded as a suspected transfusion complication. In the event of a suspected transfusion complication, the personnel attending the patient shall notify immediately a responsible physician and the transfusion service and document the complication in the patient's medical record. All suspected transfusion complications shall be evaluated promptly according to an established procedure.

(z) Following the transfusion, the blood transfusion record or a copy shall be made a part of the patient's medical record.

(aa) An LSRH shall adopt, implement, and enforce a policy to ensure the LSRH complies with Texas Occupations Code Chapter 301, Subchapter I (relating to Reporting Violations and Patient Care Concerns), and Chapter 303 (relating to Nursing Peer Review), and with the rules adopted by the Texas Board of Nursing in Texas Administrative Code Title 22 §217.16 (relating to Minor Incidents), §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections), and §217.20 (relating to Safe Harbor Peer Review for Nurses and Whistleblower Protections).

(bb) The LSRH shall adopt, implement, and enforce policies and procedures related to the work environment for nurses which:

(1) improve workplace safety and reduce the risk of injury, occupational illness, and violence; and

(2) increase the use of ergonomic principles and ergonomically designed devices to reduce injury and fatigue.

(cc) The policies and procedures adopted under subsection (bb) of this section must address at least the following:

(1) evaluating new products and technology that incorporate ergonomic principles;

(2) educating nurses in the application of ergonomic practices;

(3) conducting workplace audits to identify areas of risk of injury, occupational illness, or violence and recommending ways to reduce those risks;

(4) controlling access to those areas identified as having a high risk of violence; and

(5) promptly reporting crimes committed against nurses to appropriate law enforcement agencies.

(dd) The LSRH shall adopt, implement and enforce policies and procedures to identify, assess, and develop strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient. The policies and procedures shall establish a process that includes at least the following:

(1) analysis of the risk of injury to both patients and nurses posed by the patient handling needs of the patient populations served by the LSRH and the physical environment in which patient handling and movement occurs;

(2) education of nurses in the identification, assessment, and control of risks of injury to patients and nurses during patient handling;

(3) evaluation of alternative ways to reduce risks associated with patient handling, including evaluation of equipment and the environment;

(4) restriction, to the extent feasible with existing equipment and aids, of manual patient handling or movement of all or most of a patient's weight to emergency, life-threatening, or otherwise exceptional circumstances;

(5) collaboration with and annual report to the nurse staffing committee;

(6) procedures for nurses to refuse to perform or be involved in patient handling or movement that the nurse believes in good faith will expose a patient or a nurse to an unacceptable risk of injury;

(7) submission of an annual report to the governing body on activities related to the identification, assessment, and development of strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient; and

(8) development of architectural plans for constructing or remodeling a LSRH or a unit of an LSRH in which patient handling and movement occurs, with consideration of the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

*§511.63. Patient's Rights.*

(a) A limited services rural hospital (LSRH) shall protect and promote each patient's rights.

(b) An LSRH shall adopt, implement, and enforce a policy to ensure patients' rights are upheld within the limits of law. The LSRH's written patient's rights policy shall include the following:

(1) the right to participate in the development and implementation of their plan of care;

(2) the right to make informed decisions regarding their care, including being informed of their health status, and being able to request or refuse treatment;

(3) the right to formulate advance directives and to have LSRH staff and practitioners who provide care in the LSRH comply with these directives, in accordance with Code of Federal Regulations Title 42 (42 CFR) §§489.100 (relating to Definitions), 489.102 (relating to Requirement for Providers), and 489.104 (relating to Effective Dates) and Texas Health and Safety Code Chapter 166 (relating to Advance Directives);

(4) the right to have personal privacy;

(5) the right to receive medical standard of care in a safe setting;

(6) the right to be free from all forms of abuse, neglect, exploitation, and harassment;

(7) the right to have confidentiality of their medical records;

(8) the right to the LSRH's reasonable response to the patient's requests and needs for treatment or service, within the LSRH's capacity, stated mission, and applicable law and regulation;

(9) the right to considerate and respectful care, which includes:

(A) the care of the patient includes consideration of the psychosocial, spiritual, and cultural variables that influence perceptions of illness; and

(B) the care of a dying patient optimizes the comfort and dignity of the patient through:

(i) treating primary and secondary symptoms that respond to treatment as desired by the patient or surrogate decision maker;

(ii) effectively managing pain; and

(iii) acknowledging the psychosocial and spiritual concerns of the patient and the family regarding dying and the expression of grief by the patient and family;

(10) the right of the patient or their legally authorized representative (LAR) to, in collaboration with the patient's physician, make decisions involving their health care, including:

(A) the right to accept medical care or to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal; and

(B) the right to formulate advance directives and to appoint a surrogate to make health care decisions on their behalf to the extent permitted by law;

(11) a mechanism to ascertain the existence of, and, as appropriate, assist in the development of advance directives at the time of the patient's admission;

(12) the right to not have the provision of care conditioned on the existence of an advance directive;

(13) the right of a patient to the information necessary to enable them to make treatment decisions reflecting their wishes;

(14) the right of a patient to receive at the time of admission information about the LSRH's patient rights policy or policies and the mechanism for the initiation, review, and, when possible, resolution of patient complaints concerning the quality of care;

(15) the right to receive information about the patient's rights in advance of receiving or discontinuing patient care whenever possible;

(16) the right of the patient or the patient's legally authorized representative to participate in the consideration of ethical issues that arise in the care of a patient;

(17) a mechanism for the consideration of ethical issues arising in the care of patients and to provide education to care givers and patients on ethical issues in health care;

(18) the right of the patient to be informed of and consent to any human experimentation or other research or educational projects affecting their care or treatment;

(19) the right of the patient or the patient's legally authorized representative to access the information contained in the patient's medical record, on oral or written request; and

(20) the right of the patient's guardian, next of kin, or LAR to exercise, to the extent permitted by law, the rights delineated on behalf of the patient if the patient:

(A) has been adjudicated incompetent in accordance with the law;

(B) is found by their physician to be medically incapable of understanding the proposed treatment or procedure;

(C) is unable to communicate their wishes regarding treatment; or

(D) is a minor.

(c) An LSRH must post the patient bill of rights prominently and conspicuously for display in a public area of the LSRH that is readily available to patients, residents, employees, and visitors.

(1) In addition to these patient bill of rights requirements, an LSRH that provides chemical dependency services shall comply with this section and Texas Administrative Code Title 25 (25 TAC) §448.701 (relating to Client Bill of Rights) applicable to patients who receive such services.

(2) In addition to these patient bill of rights requirements, an LSRH that provides mental health services shall comply with this section and 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services) applicable to patients who receive such services.

(3) The patient bill of rights posted for display shall be in English and in a second language appropriate to the demographic makeup of the community served.

(d) An LSRH's medical staff and governing body shall adopt, implement, and enforce a policy on informed decision making that is consistent with any legal requirements.

(e) An LSRH shall establish a process for prompt resolution of patient complaints and inform each patient whom to contact to file a complaint. The LSRH's governing body or responsible individual shall approve and be responsible for the effective operation of the complaint process and shall review and resolve complaints, unless it delegates the responsibility, in writing, to a complaint committee. The complaint process shall include a mechanism for timely referral of patient concerns regarding quality of care or premature discharge to the appropriate Utilization and Quality Control Quality Improvement Organization.

(1) The LSRH shall establish a clearly explained procedure for the submission of a patient's written or verbal complaint to the LSRH.

(2) The complaint process shall specify timeframes for review of the complaint and the provision of a response.

(3) In its resolution of the complaint, the LSRH shall provide the patient with written notice of its decision that contains the name of the LSRH contact person, the steps taken on behalf of the patient to investigate the complaint, the results of the complaint process, and the date of completion.

(f) Notwithstanding subsection (b) of this section, an LSRH may deny treatment or services deemed medically unnecessary or inappropriate.

§511.65. *Patient Transfer Policy.*

(a) The governing body of each limited services rural hospital (LSRH) shall adopt, implement, and enforce a policy relating to patient transfers consistent with this section and contains each of the requirements in subsection (b) of this section. The policy shall identify LSRH staff that has authority to represent the LSRH and the physician regarding transfers from the LSRH.

(b) The LSRH's governing body shall adopt the transfer policy after consultation with the medical staff. The policy shall apply to patient transfers to general and special hospitals licensed under Texas Health and Safety Code (HSC) Chapter 241 (relating to Hospitals) and private psychiatric hospitals licensed under HSC Chapter 577 (relating to Private Mental Hospitals and Other Mental Health Facilities), as well as transfers to general, special, and private psychiatric hospitals that are exempt from licensing.

(c) The LSRH's transfer policy shall govern transfers not covered by a transfer agreement.

(d) The LSRH's transfer policy shall include a written operational plan to provide for patient transfer transportation services if the LSRH does not provide its own patient transfer transportation services.

(e) The LSRH's governing body, after consultation with the medical staff, shall implement its transfer policy by adopting transfer agreements with hospitals in accordance with this section.

(f) The LSRH's transfer policy shall recognize and comply with the requirements HSC Chapter 61 §§61.030 - 61.032 and §§61.057 - 61.059 (relating to Indigent Health Care and Treatment Act).

(g) The LSRH's transfer policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations that may exist concerning a patient and a designated provider.

(h) The LSRH's transfer policy shall require the LSRH to take all reasonable steps to secure the written informed consent of a patient, or a person acting on a patient's behalf, when refusing a transfer or related examination and treatment. Reasonable steps include:

(1) providing a factual explanation regarding:

(A) the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring hospital;

(B) any increased risks to the patient from not effecting the transfer; and

(C) the medical benefits reasonably expected from the provision of appropriate treatment at another hospital; and

(2) documenting the informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation, or transfer and obtaining, if possible, the signature of the patient or the person acting on the patient's behalf, regarding the refusal that is dated and witnessed by the attending physician or facility employee, and placed in the patient's medical record.

(i) The LSRH's transfer policy shall recognize an individual's right to request a transfer into the care of a physician and a hospital of the individual's own choosing.

(j) The LSRH's transfer policy shall prohibit a patient transfer from being predicated upon arbitrary, capricious, or unreasonable dis-

crimination based upon race, religion, national origin, age, sex, physical condition, economic status, insurance status, or ability to pay.

(k) The LSRH's transfer policy shall require, when a patient requests or consents to transfer for economic reasons and the patient's choice is based on or influenced by representations made by the transferring physician or LSRH administration regarding the availability of medical care and hospital services at a reduced cost or no cost to the patient, the physician or facility administration to fully disclose to the patient the eligibility requirements established by the patient's chosen physician or hospital.

(l) The LSRH's transfer policy shall provide that each patient who arrives at the facility is:

(1) evaluated by a physician at the time the patient presents or is presented or evaluated by a physician on-call who is:

(A) physically able to reach the patient within 30 minutes after being informed that a patient is present at the LSRH who requires immediate medical attention; or

(B) accessible by direct, telephone, or radio communication within 30 minutes with a registered nurse, physician assistant, or other qualified medical personnel as established by the governing body at the LSRH under orders to assess and report the patient's condition to the physician; and

(2) personally examined and evaluated by the physician before an attempt to transfer is made; however:

(A) after receiving a report on the patient's condition from the LSRH's registered nurse, physician assistant, or other qualified medical personnel as established by the governing body by telephone or radio, if the physician on-call determines that an immediate transfer of the patient is medically appropriate and that the time required to conduct a personal examination and evaluation of a patient will unnecessarily delay the transfer to the detriment of the patient, the physician on-call may order the transfer by telephone or radio;

(B) physician orders for the transfer of a patient which are issued by telephone or radio shall be reduced to writing in the patient's medical record, signed by the registered nurse, physician assistant, or other qualified medical personnel as established by the governing body receiving the order, and countersigned by the physician authorizing the transfer as soon as possible; and

(C) patient transfers resulting from physician orders issued by telephone or radio shall be subject to automatic review by the medical staff pursuant to subsection (q)(6) of this section.

(m) The transfer policies of the transferring LSRH and receiving general or special hospital shall require the facilities to have licensed nurses and other qualified personnel available and on duty to assist with patient transfers. The policies shall require written protocols or standing delegation orders to be in place to guide facility personnel when a patient requires transfer to another hospital.

(n) If a patient at an LSRH has an emergency medical condition that has not been stabilized, or when stabilization of the patient's vital signs is not possible because the LSRH does not have the appropriate equipment or personnel to correct the underlying process, the LSRH shall evaluate and treat the patient, then transfer the patient as quickly as possible.

(o) The LSRH's transfer policy shall prohibit the LSRH from transferring a patient with an emergency medical condition that has not been stabilized unless:

(1) the individual (or a legally responsible person acting on the individual's behalf), after being informed of the LSRH's obligations

under this section and of the risk of transfer, requests the transfer in writing, indicates the reasons for the request, and states the individual is aware of the risks and benefits of the transfer; or

(2) a physician signs a certification, which includes a summary of the risks and benefits based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another hospital outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer.

(p) except as specifically provided in subsection (o) of this section, the LSRH's policy shall provide that the transfer of patients who have emergency medical conditions, as determined by a physician, shall be undertaken for medical reasons only. The LSRH must provide medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child.

(q) The LSRH's transfer policy shall include the following information related to physicians' duties and standard of care. The policy shall require:

(1) the transferring physician to determine and order life support measures that are medically appropriate to stabilize the patient before transfer and to sustain the patient during transfer;

(2) the transferring physician to determine and order the utilization of appropriate personnel and equipment for the transfer;

(3) the transferring physician, in determining the use of medically appropriate life support measures, personnel, and equipment, to exercise that degree of care which a reasonable and prudent physician exercising ordinary care in the same or similar locality would use for the transfer;

(4) except as allowed under subsection (o) of this section, before each patient transfer, the physician who authorizes the transfer to personally examine and evaluate the patient to determine the patient's medical needs and to ensure that the proper transfer procedures are used;

(5) before each patient transfer, the transferring physician to ensure the receiving general or special hospital and physician are appropriate to the patient's medical needs and have accepted responsibility for the patient's medical treatment and hospital care; and

(6) the LSRH's medical staff review appropriate records of patients transferred from the LSRH to determine that the appropriate standard of care has been met.

(r) The LSRH's transfer policy shall comply with the following requirements related to medical records.

(1) The policy shall require the LSRH to forward a copy of the portions of the patient's medical record, which are available and relevant to the transfer and to the continuing care of the patient, to the receiving physician and receiving hospital with the patient. When all necessary medical records for the continued care of the patient are not available at the time the patient is transferred, the transferring LSRH shall forward the records to the receiving physician and hospital as soon as possible.

(2) The patient's medical record shall contain at least the following:

(A) a brief description of the patient's medical history and physical examination;

(B) a working diagnosis and recorded observations of physical assessment of the patient's condition at the time of transfer;

- (C) the reason for the transfer;
- (D) the results of all diagnostic tests, such as laboratory tests;
- (E) relevant radiological films and reports; and
- (F) any other relevant information.

(s) The LSRH's transfer policy shall require the LSRH to complete a memorandum of transfer for every transferred patient.

(1) The memorandum shall contain the following information:

- (A) if known, the patient's:
  - (i) full name;
  - (ii) race, religion, national origin, age, sex, disability status;
  - (iii) address and phone number; and
  - (iv) next of kin address and phone number;
- (B) the transferring and receiving physicians' names, telephone numbers, and addresses;
- (C) the transferring LSRH's and receiving general or special hospital's names, addresses, and telephone numbers;
- (D) the time and date on which the patient first presented or was presented to the transferring physician and transferring LSRH;
- (E) the time and date on which the transferring physician secured a receiving physician;
- (F) the name of the hospital contact and date and time hospital administration was contacted in the receiving general or special hospital;
- (G) the transferring LSRH administrator's signature and title and time the administrator contacted the receiving hospital;
- (H) certification required by subsection (o)(2) of this section, if applicable (the certification may be part of the memorandum of transfer form or may be on a separate form attached to the memorandum of transfer form);
- (I) the time and date the receiving physician assumed responsibility for the patient;
- (J) the time and date the patient arrived at the receiving general or special hospital;
- (K) the signature and date of receiving hospital administration;
- (L) the type of vehicle and company used to transport the patient;
- (M) the type of equipment and personnel needed in transfers;
- (N) the name and city of hospital where the patient was transported;
- (O) the patient's diagnosis by the transferring physician; and
- (P) the attachments by the transferring LSRH.

(2) The transferring LSRH shall retain a copy of the memorandum of transfer for five years and file the memorandum separately

from the patient's medical record and in a manner facilitating its inspection by the Texas Health and Human Services Commission.

(t) An LSRH violates HSC Chapter 241 and this section if:

(1) the LSRH fails to comply with the requirements of this section; or

(2) the LSRH's governing body fails or refuses to:

(A) adopt a transfer policy that complies with this section and contains all requirements listed in this section;

(B) adopt a memorandum of transfer form that complies with the content requirements contained in this section; or

(C) enforce its transfer policy and the use of the memorandum of transfer.

*§511.67. Medical Records.*

(a) A limited services rural hospital (LSRH) shall maintain a medical records system in accordance with the LSRH's written policies and procedures, which must:

(1) contain procedures for collecting, processing, maintaining, storing, retrieving, authenticating, and distributing patient medical records; and

(2) require the medical records to be:

(A) legible;

(B) completely and accurately documented, dated, and timed;

(C) authenticated by the person responsible for providing or evaluating the service provided no later than 48 hours after the patient's discharge;

(D) systematically organized according to a predetermined and uniform medical record format;

(E) confidential, secure, and safely stored; and

(F) readily accessible, including that all a patient's relevant clinical information is readily available to physicians or practitioners involved in that patient's care, and an individual's records are timely retrievable upon request.

(b) An LSRH shall designate a member of the LSRH's professional staff who is responsible for maintaining the records and for ensuring the records comply with the LSRH's written policies and procedures under subsection (a) of this section.

(c) An LSRH shall maintain a uniformly formatted and organized medical record for each patient receiving health care services at the LSRH. The record shall include the following, as applicable:

(1) complete patient identification and social data, as described in Code of Federal Regulations Title 42 §485.540(a)(4)(i) (relating to Conditions of Participation: Medical Records);

(2) date, time, and means of the patient's arrival and discharge;

(3) evidence of properly executed informed consent forms;

(4) allergies and untoward reactions to drugs recorded in a prominent and uniform location;

(5) relevant medical history;

(6) the patient's advance directive;

(7) assessment of the patient's health status and health care needs;

(8) a brief summary of the episode, any care given to the patient before the patient's arrival to the LSRH, the patient's disposition, and instructions given to the patient;

(9) a complete detailed description of treatment and procedures performed in the LSRH;

(10) clinical observations, diagnostic impression, and consultative findings, including results of:

(A) physical examinations, including vital signs;

(B) diagnostic and laboratory tests, including clinical laboratory services; and

(C) treatment provided and procedures performed;

(11) a pre-anesthesia evaluation by an individual qualified to administer anesthesia before and LSRH administers anesthesia to a patient;

(12) pathology report on all tissues removed, except those exempted by the governing body;

(13) for a patient with a length of stay greater than eight hours, an evaluation of nutritional needs and evidence of how the LSRH met the patient's identified needs;

(14) all orders of physicians or another practitioner, who is practicing within the scope of their license and education;

(15) all reports of treatments and medications, including all medications administered and the drug dose, route of administration, frequency of administration, and quantity of all drugs administered or dispensed to the patient by the facility;

(16) nursing notes and documentation of complications;

(17) other relevant information necessary to monitor the patient's progress, such as temperature graphics and progress notes describing the patient's response to treatment;

(18) evidence of the patient's evaluation by a physician, podiatrist, dentist, or another practitioner, who is practicing within the scope of their license and education, before dismissal;

(19) conclusion at the termination of evaluation and treatment, including final disposition, the patient's condition on discharge or transfer, and any instructions given to the patient or family for follow-up care;

(20) medical advice given to a patient by telephone; and

(21) dated signatures of the physician or other health care professional.

(d) Except when otherwise required or permitted by law, an LSRH shall maintain the strict confidentiality of patient record information, including any record that contains clinical, social, financial, or other data on a patient, and provide safeguards against loss, tampering, altering, improper destruction, unauthorized use, or inadvertent disclosure.

(e) An LSRH shall have written policies and procedures governing the use and removal of records from the LSRH and the conditions for the release of information. The written policies and procedures shall include all the following requirements.

(1) An LSRH shall obtain a patient's or their legally authorized representative's written consent before releasing information not required by law.

(2) An LSRH shall retain medical records until at least the 10th anniversary of the last entry date when the patient was last treated

in the LSRH except as required in subparagraphs (A) and (B) of this paragraph.

(A) If a patient was younger than 18 years of age when the LSRH last treated the patient, the LSRH shall retain the patient's medical records until on or after the date of the patient's 20th birthday or on or after the 10th anniversary of the last entry date when the LSRH last treated the patient, whichever date is later.

(B) The LSRH shall not destroy medical records that relate to any matter that is involved in litigation if the LSRH knows the litigation has not been finally resolved.

(3) If an LSRH plans to close, the LSRH shall arrange for disposition of the medical records in accordance with applicable law. The LSRH shall notify HHSC at the time of closure of the disposition of the medical records, including where the medical records will be stored and the name, address, and phone number of the custodian of the records.

(f) An LSRH shall provide written notice to a patient, or a patient's legally authorized representative as defined in Texas Health and Safety Code §241.151, that the LSRH, unless the exception in subsection (e)(2)(B) of this section applies, may authorize the disposal of medical records relating to the patient on or after the periods specified in this section.

(1) The LSRH shall provide the notice to the patient or the patient's legally authorized representative not later than the date on which the patient who is or will be the subject of a medical record is treated, except in an emergency treatment situation.

(2) In an emergency treatment situation, the LSRH shall provide the notice to the patient or the patient's legally authorized representative as soon as is reasonably practicable following the emergency treatment situation.

(g) When necessary for ensuring continuity of care, the LSRH shall transfer summaries or electronic copies of the patient's record to the physician or practitioner to whom the patient was referred and, if appropriate, to the facility where future care will be rendered.

(h) When the LSRH utilizes an electronic medical records system or other electronic administrative system, which is conformant with the content exchange standard at Code of Federal Regulations Title 45 §170.205(d)(2) (relating to Content Exchange Standards and Implementation Specifications for Exchanging Electronic Health Information), then the LSRH must demonstrate:

(1) the system's notification capacity is fully operational and the LSRH uses it in accordance with all state and federal laws and regulations applicable to the LSRH's exchange of patient health information;

(2) the system sends notifications that must include at least patient name, treating practitioner name, and sending institution name;

(3) to the extent permissible under applicable federal and state law and regulations, and not inconsistent with the patient's expressed privacy preferences, the system sends notifications directly, or through an intermediary that facilitates exchange of health information, at the time of the patient's registration in the LSRH's emergency department;

(4) to the extent permissible under applicable federal and state law and regulations, and not inconsistent with the patient's expressed privacy preferences, the system sends notifications directly, or through an intermediary that facilitates exchange of health information, either immediately prior to, or at the time the patient's discharge or transfer from the LSRH's emergency department; and

(5) the LSRH has made a reasonable effort to ensure the system sends the notifications to all applicable post-acute care services providers and suppliers, as well as to any of the following practitioners and entities, which need to receive notification of the patient's status for treatment, care coordination, or quality improvement purposes:

(A) the patient's established primary care practitioner;

(B) the patient's established primary care practice group or entity; or

(C) other practitioner, or other practice group or entity, identified by the patient as the practitioner, or practice group or entity, primarily responsible for their care.

(i) An LSRH shall provide medical records in the form and format requested by the individual or their legally authorized representative, if it is readily producible in such form and format. This includes in an electronic form or format when such medical records are maintained electronically or if not, in a readable hard copy form or such other form and format as agreed to by the LSRH and the individual.

(j) An LSRH shall provide records within a reasonable timeframe. The LSRH must not frustrate the legitimate efforts of individuals to gain access to their own medical records and must actively seek to meet these requests as quickly as its record keeping system permits.

§511.68. *Emergency Preparedness.*

(a) A limited services rural hospital (LSRH) shall develop, adopt, implement, enforce, and maintain a written emergency preparedness plan. The LSRH shall review and update the plan at least every two years. The plan shall:

(1) be based on and include a documented, facility-based and community-based risk assessment, using an all-hazards approach;

(2) include strategies for addressing emergency events identified by the risk assessment;

(3) identify the services the LSRH has the ability to provide in an emergency and include strategies for addressing and serving the patient population;

(4) include the use of a Texas Health and Human Services Commission (HHSC)-approved process to update patient station availability as requested by HHSC during a public health emergency or state-declared disaster;

(5) include continuity of operations, including delegations of authority and succession plans;

(6) include a process for cooperation and collaboration with local, tribal, regional, state, and federal emergency preparedness officials' efforts to maintain an integrated response during a disaster or emergency situation; and

(7) incorporate applicable information listed in subsection (e) of this section and the State of Texas Emergency Management Plan. Information regarding the State of Texas Emergency Management Plan is available from the city or county emergency management coordinator.

(b) An LSRH shall send the plan, which may be subject to review and approval by HHSC, to the local disaster management authority.

(c) The LSRH shall develop the plan through a joint effort of the LSRH governing body, administration, medical staff, LSRH personnel, and emergency medical services partners.

(d) An LSRH shall have an effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services when these services are not immediately available due to system failure.

(e) An LSRH shall develop and implement emergency preparedness policies and procedures, based on the emergency plan set forth in subsection (a) of this section, risk assessment at subsection (a)(1) of this section, and the communication plan at subsection (f) of this section. The LSRH shall review and update the policies and procedures at least every two years. The policies and procedures shall at least address the following:

(1) reception, treatment, and disposition of casualties that can be used if a disaster situation requires the LSRH to accept multiple patients;

(2) the process, developed in conjunction with appropriate agencies, for allowing essential health care workers and personnel to safely access their delivery care sites;

(3) providing subsistence needs throughout the duration of the response for staff, volunteers, and patients, whether they evacuate or shelter in place, including:

(A) food, water, medical and pharmaceutical supplies, personal protection equipment, and appropriate immunizations;

(B) alternate sources of power to maintain:

(i) temperatures to protect patient health and safety and for the safe and sanitary storage of provisions;

(ii) emergency lighting;

(iii) fire detection, extinguishing, and alarm systems; and

(iv) sewage and waste disposal; and

(C) a system to track the location of on-duty staff and sheltered patients in the LSRH's care during an emergency, which also requires the LSRH to document the specific name and location of the receiving facility or other location when on-duty staff or sheltered patients are relocated during the emergency;

(4) safe evacuation from the LSRH, which includes the following:

(A) activation procedures, including who makes the decision to activate and how it is activated;

(B) consideration of care and treatment needs of evacuees;

(C) staff responsibilities;

(D) plan for the order of removal of patients and planned route of movement;

(E) transportation of staff, volunteers, and patients;

(F) records and supplies transportation, including the protocol for transferring patient-specific medications and records to the receiving facility, which requires records to include at a minimum:

(i) the patient's most recent physician assessment if seen by a physician;

(ii) the most recent assessment if the patient was last assessed by a practitioner within the scope of their license and education;

(iii) the order sheet;

(iv) medication administration record (MAR); and

- (v) patient history with physical documentation;
  - (G) a weather-proof patient identification wrist band (or equivalent identification) must be intact on all patients;
  - (H) identification of any evacuation locations and destinations, including protocol to ensure the patient destination is compatible to patient acuity and health care needs; and
  - (I) primary and alternate means of communication with external sources of assistance;
- (5) a means to shelter in place for patients, staff, and volunteers who remain in the LSRH;
- (6) a system of medical documentation that does the following:
- (A) preserves patient information;
  - (B) protects confidentiality of patient information; and
  - (C) secures and maintains the availability of records;
- (7) the use of volunteers in an emergency and other staffing strategies, including the process and role for integration of state and federally designated health care professionals to address surge needs during an emergency; and
- (8) An LSRH's emergency preparedness policies and procedures shall include the LSRH's role in providing care and treatment at an alternate care site identified by federal and local emergency management officials, in the event of a declared disaster or national emergency in accordance with federal rules, regulations, and associated waivers.
- (f) An LSRH must develop and maintain an emergency preparedness communication plan that complies with federal, state, and local laws. The LSRH shall review and update the communication plan at least every two years. The communication plan shall include:
- (1) names and contact information for:
    - (A) staff;
    - (B) entities providing services under arrangement;
    - (C) patients' physicians; and
    - (D) volunteers;
  - (2) contact information for:
    - (A) federal, state, tribal, regional, and local emergency preparedness staff, including the city and county emergency management officers;
    - (B) the LSRH water supplier; and
    - (C) other sources of assistance;
  - (3) primary and alternate means for communicating with:
    - (A) LSRH staff; and
    - (B) federal, state, tribal, regional, and local emergency management agencies;
  - (4) procedures for notifying each of the following entities, as soon as practicable, regarding the closure or reduction in hours of operation of the LSRH due to an emergency:
    - (A) HHSC;
    - (B) each hospital with which the facility has a transfer agreement in accordance with §511.66 of this subchapter (relating to Patient Transfer Agreements);

- (C) the trauma service area regional advisory council that serves the geographic area in which the facility is located; and
  - (D) each applicable local emergency management agency;
  - (5) a method for sharing information and medical documentation for patients under the LSRH's care, as necessary, with other health care providers to maintain the continuity of care;
  - (6) a means, in the event of an evacuation, to notify a patient's emergency contact or contacts of an evacuation and the patient's destination and release patient information as permitted under Code of Federal Regulations Title 45 (45 CFR) §164.510(b)(1)(ii) (relating to Uses and Disclosures Requiring an Opportunity for the Individual to Agree or to Object);
  - (7) a means of providing information about the general condition and location of patients under the LSRH's care as permitted under 45 CFR §164.510(b)(4);
  - (8) a means of providing information about the LSRH's needs, and its ability to provide assistance, to the authority having jurisdiction, the Incident Command Center, or designee; and
  - (9) evidence that the LSRH has communicated prospectively with the local utility and phone companies regarding the need for the LSRH to be given priority for the restoration of utility and phone services and a process for testing internal and external communications systems regularly.
- (g) An LSRH shall post a phone number listing specific to the LSRH equipment and locale to assist staff in contacting mechanical and technical support in the event of an emergency.
- (h) An LSRH must develop and maintain an emergency preparedness training and testing program that is based on the emergency plan set forth in subsection (a) of this section, risk assessment in subsection (a)(1) of this section, policies and procedures in subsection (E) of this section, and the communication plan in subsection (f) of this section. The LSRH shall review and update the training and testing program at least every two years.
- (1) The LSRH shall:
    - (A) provide initial training in emergency preparedness policies and procedures to all new and existing staff, individuals providing on-site services under arrangement, and volunteers, consistent with their expected roles;
    - (B) provide emergency preparedness training at least every two years;
    - (C) maintain documentation of all emergency preparedness training;
    - (D) demonstrate staff knowledge of emergency procedures; and
    - (E) conduct training on the updated policies and procedures if the LSRH significantly updates the emergency preparedness policies and procedures.
  - (2) The LSRH shall conduct exercises to test the emergency plan at least annually. The LSRH shall comply with all of the following requirements.
    - (A) The LSRH shall participate in a full-scale exercise that is community-based every two years.
      - (i) When a community-based exercise is not accessible, the LSRH shall conduct an LSRH-based functional exercise every two years; or

(ii) If the LSRH experiences an actual natural or man-made emergency that requires activation of the emergency plan, the LSRH is exempt from engaging in its next required community-based or individual, facility-based functional exercise following the onset of the emergency event.

(B) The LSRH shall conduct an additional exercise at least every two years, opposite the year the LSRH conducts the full-scale or functional exercise under subparagraph (A) of this paragraph, that may include the following:

(i) a second full-scale exercise that is community-based, or an individual, facility-based functional exercise;

(ii) a mock disaster drill; or

(iii) a tabletop exercise or workshop that is led by a facilitator and includes a group discussion using a narrated, clinically relevant emergency scenario, and a set of problem statements, directed messages, or prepared questions designed to challenge an emergency plan.

(C) The LSRH shall analyze the LSRH's response to and maintain documentation of all drills, tabletop exercises, and emergency events and revise the LSRH's emergency plan, as needed.

(3) An LSRH participating in an exercise or responding to a real-life event shall develop an after-action report (AAR) within 60 days after the exercise or event. The LSRH shall retain an AAR for at least three years and be available for review by the local emergency management authority and HHSC. The LSRH shall revise the LSRH's emergency plan, as needed, in response to the AAR.

(i) An LSRH must implement emergency and standby power systems based on the emergency plan set forth in subsection (a) of this section.

(1) The generator shall be located in accordance with the location requirements found in the Health Care Facilities Code (National Fire Protection Association (NFPA) 99 and Tentative Interim Amendments (TIA) 12-2, TIA 12-3, TIA 12-4, TIA 12-5, and TIA 12-6), Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12-1, TIA 12-2, TIA 12-3, and TIA 12-4), and NFPA 110, when a new structure is built or when an existing structure or building is renovated.

(2) The LSRH shall implement emergency power system inspection and testing requirements found in the Health Care Facilities Code, NFPA 110, and the Life Safety Code.

(3) An LSRH that maintains an onsite fuel source to power emergency generators must have a plan for how it will keep emergency power systems operational during the emergency unless it evacuates.

(j) When an LSRH is part of a health care system consisting of multiple separately certified health care facilities that elects to have a unified and integrated emergency preparedness program, the LSRH may choose to participate in the health care system's coordinated emergency preparedness program. If elected, the unified and integrated emergency preparedness program shall:

(1) demonstrate that each separately certified facility within the system actively participated in the development of the unified and integrated emergency preparedness program;

(2) be developed and maintained in a manner that takes into account each separately certified facility's unique circumstances, patient populations, and services offered;

(3) demonstrate that each separately certified facility is capable of actively using the unified and integrated emergency preparedness program and is in compliance;

(4) include a unified and integrated emergency plan that meets the requirements of this section and include the following:

(A) a documented community-based risk assessment, utilizing an all-hazards approach; and

(B) a documented individual facility-based risk assessment for each separately certified facility within the health system, utilizing an all-hazards approach; and

(5) include integrated policies and procedures that meet the requirements set forth in subsection (e) of this section, and a coordinated communication plan and training and testing programs that meet the requirements of subsections (f) and (h) of this section, respectively.

(k) The following material listed in this subsection is incorporated by reference into this section.

(1) NFPA 99, Health Care Facilities Code, 2012 edition, issued August 11, 2011.

(2) TIA 12-2 to NFPA 99, issued August 11, 2011.

(3) TIA 12-3 to NFPA 99, issued August 9, 2012.

(4) TIA 12-4 to NFPA 99, issued March 7, 2013.

(5) TIA 12-5 to NFPA 99, issued August 1, 2013.

(6) TIA 12-6 to NFPA 99, issued March 3, 2014.

(7) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011.

(8) TIA 12-1 to NFPA 101, issued August 11, 2011.

(9) TIA 12-2 to NFPA 101, issued October 30, 2012.

(10) TIA 12-3 to NFPA 101, issued October 22, 2013.

(11) TIA 12-4 to NFPA 101, issued October 22, 2013.

(12) NFPA 110, Standard for Emergency and Standby Power Systems, 2010 edition, including TIAs to chapter 7, issued August 6, 2009.

§511.76. *Patient Visitation.*

(a) A limited services rural hospital (LSRH) shall adopt, implement, and enforce written policies and procedures regarding patient visitation rights, including those setting forth any clinically necessary or reasonable restriction or limitation that the LSRH may need to place on such rights and the reasons for the clinical restriction or limitation.

(b) An LSRH shall:

(1) inform each patient (or support person, where appropriate) of their visitation rights, including any clinical restriction or limitation on such rights, when they are informed of their other rights under §511.63 of this subchapter (relating to Patient's Rights);

(2) inform each patient of the LSRH's visitation policy;

(3) inform each patient (or support person, where appropriate) of the right, subject to their consent, to receive the visitors whom they designate, including a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend, and their right to withdraw or deny such consent at any time;

(4) not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability;

(5) ensure all visitors enjoy full and equal visitation privileges consistent with patient preferences; and

(6) record any clinically justified visitation restrictions in the patient's medical record.

(c) In accordance with Texas Health and Safety Code (HSC) §260C.002 (relating to In-Person Visitation with Religious Counselor), except as provided by subsections (d) and (e) of this section, an LSRH may not prohibit a patient from receiving in-person visitation with a religious counselor during a public health emergency upon the request of the patient or, if the patient is incapacitated, upon the request of the patient's legally authorized representative, including a family member of the patient.

(d) An LSRH may prohibit in-person visitation with a religious counselor during a public health emergency if federal law or a federal agency requires the LSRH to prohibit in-person visitation during that period.

(e) To the extent that an LSRH establishes policies and procedures for in-person religious counselor visitation during a public health emergency, these policies and procedures shall comply with the following.

(1) The policies and procedures shall establish minimum health and safety requirements for in-person visitation with religious counselors consistent with:

(A) state, local, and federal directives and guidance regarding the public health emergency;

(B) public health emergency and disaster preparedness plans; and

(C) other policies adopted by the LSRH, including the LSRH's general visitation policy and infection control policy.

(2) The policies and procedures shall address considerations for patients who are receiving end-of-life care.

(3) The policies and procedures may contain reasonable time, place, and manner restrictions on in-person visitation with religious counselors to mitigate the spread of a communicable disease or address a patient's medical condition.

(4) The policies and procedures may condition in-person visitation with religious counselors on the counselor's compliance with guidelines, policies, and procedures established under this subsection.

(f) In accordance with HSC §241.012 (relating to In-Person Hospital Visitation During Period of Disaster), an LSRH may not, during a qualifying period of disaster prohibit in-person visitation with a patient receiving care or treatment at the LSRH unless federal law or a federal agency requires the LSRH to prohibit in-person visitation during that period.

(g) Notwithstanding subsection (f) of this section, an LSRH may, during a qualifying period of disaster:

(1) restrict the number of visitors a patient receiving care or treatment at the LSRH may receive to not fewer than one, except for religious counselors visiting under subsection (b) of this section;

(2) require a visitor, including a religious counselor visiting under subsection (c) of this section, to:

(A) complete a health screening before entering the LSRH; and

(B) wear personal protective equipment at all times while visiting a patient at the LSRH; and

(3) deny entry to or remove from the LSRH's premises a visitor, including a religious counselor visiting under subsection (c) of this section, who fails or refuses to:

(A) submit to or meet the requirements of a health screening administered by the LSRH; or

(B) wear personal protective equipment that meets the LSRH's infection control and safety requirements in the manner prescribed by the LSRH.

(h) A health screening administered by an LSRH under this section and during a qualifying period of disaster must be conducted in a manner that, at a minimum, complies with:

(1) LSRH policy; and

(2) if applicable, guidance or directives issued by the Texas Health and Human Services Commission, the Centers for Medicare & Medicaid Services, or another agency with regulatory authority over the LSRH.

(i) This section does not require an LSRH to:

(1) provide a specific type of personal protective equipment to a visitor, including a religious counselor visiting under subsection (c) of this section; or

(2) except for a religious counselor visiting under subsection (c) of this section, allow in-person visitation with a patient receiving care or treatment at the LSRH if an attending physician determines and documents in the patient's medical record that in-person visitation with that patient may lead to the transmission of an infectious agent that poses a serious community health risk during a qualifying period of disaster.

(j) A determination made by an attending physician under subsection (h) of this section is valid for not more than five days after the date the determination is made unless renewed by an attending physician.

(k) When a visitor to an LSRH is denied in-person visitation with a patient receiving care or treatment at a LSRH because of a determination made by an attending physician under subsection (i)(2) of this section, the LSRH shall:

(1) provide each day a written or oral update of the patient's condition to the visitor if the visitor:

(A) is authorized by the patient to receive relevant health information regarding the patient;

(B) has authority to receive the patient's health information under an advance directive or medical power of attorney; or

(C) is otherwise the patient's surrogate decision-maker regarding the patient's health care needs under LSRH policy and other applicable law; and

(2) notify the person who receives the daily update required under paragraph (1) of this subsection of the estimated date and time at which the patient will be discharged from the LSRH.

§511.78. *Restraint and Seclusion.*

(a) All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time.

(b) A limited services rural hospital (LSRH) may only use restraint or seclusion when less restrictive interventions have been deter-

mined to be ineffective to protect the patient, a staff member, or others from harm.

(c) The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the patient, a staff member, or others from harm.

(d) The LSRH shall have written policies and procedures regarding the use of restraint and seclusion that are consistent with current standards of practice.

(e) An LSRH may only seclude a patient for the management of violent or self-destructive behavior.

(f) The patient has the right to safe implementation of restraint or seclusion by trained staff.

(1) The LSRH shall provide patient-centered competency-based training and education on the use of restraint and seclusion to LSRH personnel and staff, including medical staff and, as applicable, personnel providing contracted services in the LSRH.

(2) The training must include de-escalation techniques and other alternatives to the use of restraint or seclusion.

(g) An LSRH shall comply with the restraint and seclusion documentation and reporting requirements under Code of Federal Regulations Title 42 §485.534(g).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. INSPECTIONS AND INVESTIGATIONS

### 26 TAC §§511.111 - 511.116

#### STATUTORY AUTHORITY

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

§511.111. *Integrity of Inspections and Investigations.*

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, a limited services rural hospital (LSRH):

(1) shall not record, listen to, or eavesdrop on any HHSC interview with LSRH staff or patients that the LSRH staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; or

(2) shall not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of LSRH staff when HHSC has requested a private room or office or distanced themselves from LSRH staff and the LSRH obtains HHSC written approval before beginning to record or listen to the discussion.

(b) An LSRH shall inform HHSC when security cameras or other existing recording devices in the LSRH are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC permits facility staff by words or actions to be present, an interview or conversation for which facility staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray

Chief Counsel

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



## SUBCHAPTER E. ENFORCEMENT

### 26 TAC §511.121

#### STATUTORY AUTHORITY

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

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## SUBCHAPTER F. FIRE PREVENTION AND SAFETY

## 26 TAC §§511.141 - 511.143

### STATUTORY AUTHORITY

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

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## SUBCHAPTER G. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

### 26 TAC §§511.161 - 511.169

#### STATUTORY AUTHORITY

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

§511.163. *Spatial Requirements.*

(a) Administration and public suite.

(1) Architectural requirements. The following rooms or areas shall be provided.

(A) Primary entrance. An entrance at grade level shall be accessible and protected from inclement weather with a drive under canopy for loading and unloading passengers.

(B) Lobby. A main lobby shall be located at the primary entrance and shall include a reception and information counter or desk, waiting space, public toilet facilities, public telephones, drinking fountain, and storage room or alcove for wheelchairs.

(C) Admissions area. An admissions area shall include a waiting area, work counters or desk, private interview spaces, and storage room or alcove for wheelchairs. The waiting area and wheelchair storage may be shared with similar areas located in the main lobby.

(D) General or individual offices. Office space shall be provided for business transactions, medical and financial records, and administrative and professional staffs.

(E) Multipurpose rooms. A multipurpose room or rooms shall be provided for conferences, meetings, and health education purposes including provisions for showing visual aids.

(F) Storage. Storage for office equipment and supplies shall be provided. The construction protection for the storage room or area shall be in accordance with National Fire Protection Association 101, Life Safety Code, 2012 edition (NFPA 101) §18.3.2.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter (relating to General Construction Requirements).

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter.

(b) Cart cleaning and sanitizing unit.

(1) Architectural requirements.

(A) Facilities. Cart cleaning, sanitizing, and storage facilities shall be provided for carts serving central services, dietary services, and linen services.

(B) Location. Cart facilities may be provided for each service or be centrally located.

(C) Hand washing fixtures. Hand washing fixtures shall be provided in cart cleaning, sanitizing, and storage areas.

(2) Details and finishes. When interior cart cleaning facilities are provided, details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Flooring. Flooring in the cart cleaning and sanitizing unit shall be of the seamless type, or ceramic or quarry tile as required by §511.162(d)(2)(B)(iii)(III) or (IV) of this subchapter.

(B) Ceilings. Ceilings in the cart cleaning and sanitizing unit shall be the monolithic type as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter and this paragraph.

(A) Hand washing fixtures. Hand washing fixtures shall be provided with hot and cold water. Hot and cold water fixtures shall be provided in cart cleaning and sanitizing locations regardless of whether they are interior or exterior.

(B) Floor drains and floor sinks. Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned by removal of the cover. Removable stainless steel mesh shall be provided in addition to a gridded drain cover to prevent entry of large particles of waste that might cause stoppages. Floor drains and floor sinks shall be located to avoid conditions where removal of covers for cleaning is difficult.

(5) Electrical requirements. Electrical requirements shall be in accordance with §511.162(d)(5) of this subchapter.

(c) Central sterile supply suite.

(1) Architectural requirements.

(A) General. When surgical services are provided, the following rooms or areas shall be provided.

(i) Decontamination room. This room shall be physically separated from all other areas of the suite. The room shall include work counters or tables, flush type utility sink, equipment for initial disinfection, and hand washing facilities with hands-free operable controls. Materials shall be transferred from the decontamination room to the clean assembly room by way of pass-through doors, windows, or washer equipment. The dirty side of the decontamination room may be combined with a soiled utility room if all functions for each space are provided within the room.

(ii) Clean and assembly room. The room shall include counters or tables, equipment for sterilizing, and hand washing facilities with hands-free operable controls. Clean and soiled work areas shall be physically separated.

(iii) Breakdown storage room. A storage room for breakdown of supplies shall be provided. The storage room shall have adequate areas and counters for breakdown of prepackaged supplies.

(iv) Sterile and clean supply room. A sterile and clean supply room shall be provided. Storage of sterile and clean supplies shall not occur within the breakdown room.

(v) Equipment storage. An equipment storage room shall be provided.

(vi) Cart storage room. The storage room for distribution carts shall be adjacent to clean and sterile storage and close to main distribution points.

(vii) Multipurpose room. The equipment storage and cart storage room may be combined into a multipurpose room.

(B) Service areas. The central supply suite shall provide the following service areas.

(i) Office space. Office space for director of central services.

(ii) Staff toilets. Facilities may be outside the unit but must be convenient for staff use and shall contain hand washing fixtures with hands-free operable controls.

(iii) Locker room. When provided, the locker room for staff shall include lockers, toilets, lavatories, showers, and male and female dressing rooms or cubicles. A central changing locker room may be shared and made available within the immediate area of the central sterile supply suite.

(iv) Housekeeping room. A housekeeping room shall be provided and contain a floor receptor or service sink and storage space for housekeeping supplies and equipment. The housekeeping room shall be located on the decontamination or soiled side of the central sterile supply suite.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Details. Mirrors shall not be installed at hand washing fixtures in clean and sterile supply areas.

(B) Finishes.

(i) Flooring. Flooring used in the decontamination room and the clean assembly room shall be of the seamless type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter.

(ii) Ceilings. Ceilings in the decontamination room, clean assembly room, and supply storage room shall be the monolithic type as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(3) Mechanical Requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Ventilation, humidity, and temperature control. The sterile supply room and the clean and assembly room shall include provisions for ventilation, humidity, and temperature control.

(B) Ethylene oxide (EO) sterilizers. When provided, installations of EO sterilizers shall comply with the requirements of 30 TAC §106.417 (relating to Ethylene Oxide Sterilizers) administered by the Texas Commission on Environmental Quality (TCEQ), and the following requirements.

(i) EO sterilizer requirements. All source areas shall be exhausted, including the sterilizer equipment room, service and aeration areas, over sterilizer door, and the aerator. If the EO cylinders are not located in a well-ventilated unoccupied equipment space, an exhaust hood shall be provided over the cylinders. The relief valve shall be terminated in a well-ventilated, unoccupied equipment space, or outside the building.

(ii) Airflow. General airflow shall be away from sterilizer operators and towards the sterilizers.

(iii) Exhaust. A dedicated exhaust fan and an exhaust duct system shall be provided for EO sterilizers. The exhaust outlet to the atmosphere shall be located on the highest roof, directed upward, and not less than 25 feet from any air intake. A legible warning sign shall be provided to identify the exhaust stack on the roof.

(iv) Alarm. An audible and visual alarm located in sterilizer work area and a 24-hour staffed location shall be activated upon loss of airflow in the exhaust system.

(C) Filtration. Filtration requirements for air handling units serving the central sterile supply suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §511.169(d) of this subchapter (relating to Tables).

(D) Ducts. Duct linings exposed to air movement shall not be used in ducts serving the central sterile supply suite unless terminal filters of at least 90 percent efficiency are installed downstream of linings. This requirement shall not apply to mixing boxes and acoustic traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter. When medical gas systems are provided, the systems shall comply with §511.162(d)(4) of this subchapter and this paragraph.

(A) Drainage and waste piping. Drainage and waste piping shall not be installed within the ceiling or installed in an exposed location in sterile areas unless precautions are taken to protect the space below from leakage and condensation from necessary overhead piping. Any required secondary protection shall be labeled, "code required secondary drain system" every 20 feet in a highly visible print or label.

(B) Plumbing lines. No plumbing lines may be exposed or on walls where possible leaks would create a potential of contamination of the sterile areas.

(C) Compressed air requirements. The compressed air required for the decontamination room shall not be connected to the medical air piping distribution system such as supporting breathable air for respiratory assistance needs, anesthesia machines, intermittent positive pressure breathing machine (IPPB), etc. A separate compressed

air supply source shall be provided for maintenance and equipment needs for facility support use.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph. An electrical circuit or circuits to equipment in wet areas shall be provided with ground fault circuit interrupters (GFCIs).

(d) Dietary suite.

(1) Architectural requirements.

(A) General. Construction, equipment, and installation shall comply with all applicable local and state requirements for food safety and handling and food service.

(B) Food service facilities. Food services shall be provided by an on-site food preparation system or an off-site food service system or a combination of the two. The following minimum functional elements shall be provided on site regardless of the type of dietary services.

(i) Dining area. Provide dining space for ambulatory patients, staff, and visitors. These spaces shall be separate from the food preparation and distribution areas.

(ii) Receiving area. This receiving area shall have direct access to the outside for incoming dietary supplies or off-site food preparation service and shall be separate from the general receiving area. The receiving area shall contain a control station and an area for breakout for loading, unloading, uncrating, and weighing supplies. The entrance area to the receiving area shall be covered from the weather.

(iii) Storage spaces. Storage spaces shall be convenient to receiving area and food preparation area and shall be located to exclude traffic through the food preparation area. Regardless of the type of food services provided, the facility shall provide storage of food for emergency use for a minimum of four calendar days.

(I) Storage space. Storage space shall be provided for bulk, refrigerated, and frozen foods.

(II) Cleaning supply storage. This room or closet shall be used to store nonfood items that might contaminate edibles. This storage area may be combined with the housekeeping room.

(iv) Food preparation area. Counter space shall be provided for food preparation work, equipment, and an area to assemble trays for distribution for patient meals.

(v) Ice-making equipment. Ice-making equipment shall be provided for both drinks and food products (self-dispensing equipment) and for general use (storage-bin type equipment).

(vi) Hand washing. Hand washing fixtures with hands-free operable controls shall be conveniently located at all food preparation areas and serving areas.

(vii) Food service carts. When a cart distribution system is provided, space shall be provided for storage, loading, distribution, receiving, and sanitizing of the food service carts. The cart traffic shall be designed to eliminate any danger of cross-circulation between outgoing food carts and incoming soiled carts, and the cleaning and sanitizing process. Cart circulation shall not be through food processing areas.

(viii) Ware washing room. A ware washing room equipped with commercial type dishwasher equipment shall be located separate from the food preparation and serving areas. Space shall be provided for receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to the using areas. Hand washing

facilities with hands-free operable controls shall be located within the soiled dish wash area. A physical separation to prevent cross-traffic between "dirty side" and "clean side" of the dish wash areas shall be provided.

(ix) Pot washing facilities. A three compartmented sink of adequate size for intended use shall be provided convenient to the food preparation area. Supplemental heat for hot water to clean pots and pans shall be by booster heater or by steam jet.

(x) Waste storage room. A food waste storage room shall be conveniently located to the food preparation and ware washing areas but not within the food preparation area. It shall have direct access to the LSRH's waste collection and disposal facilities.

(xi) Sanitizing facilities. Storage areas and sanitizing facilities for garbage or refuse cans, carts, and mobile tray conveyors shall be provided. All containers for trash storage shall have tight-fitting lids.

(xii) Housekeeping room. A housekeeping room shall be provided for the exclusive use of the dietary department. Where hot water or steam is used for general cleaning, additional space within the room shall be provided for the storage of hoses and nozzles.

(xiii) Office spaces. An office shall be provided for the use of the food service manager or the dietary service manager. In smaller LSRHs, a designated alcove may be located in an area that is part of the food preparation area.

(xiv) Toilets and locker spaces. A toilet room with at least one hand washing fixture with hands-free operable controls shall be provided for the exclusive use of the dietary staff. A toilet room shall not open directly into the food preparation areas, but must be in close proximity to them. For larger LSRHs, a locker room or space for lockers shall be provided for staff belongings.

(C) Additional service areas, rooms, and facilities. When an on-site food preparation system is used, in addition to the items required in subparagraph (B) of this paragraph, the following service areas, rooms and facilities shall be provided.

(i) Food preparation facilities. When food preparation systems are provided, there shall be space and equipment for preparing, cooking, and baking.

(ii) Tray assembly line. A patient tray assembly and distribution area shall be located within close proximity to the food preparation and distribution areas.

(iii) Food storage. When food is prepared on site, the storage room shall be adequate to accommodate food for a seven calendar day menu cycle.

(iv) Additional storage rooms. An additional room or rooms shall be provided for the storage of cooking wares, extra trays, flatware, plastic and paper products, and portable equipment.

(v) Drying storage area. Provisions shall be made for drying and storage of pots and pans from the pot washing room.

(D) Equipment. Equipment for use in the dietary suite shall meet the following requirements.

(i) Mechanical devices. Mechanical devices shall be heavy duty, suitable for the use intended, and easily cleaned. Where equipment is movable, provide heavy duty locking casters. Equipment with fixed utility connections shall not be equipped with casters.

(ii) Panels. Floor, wall, and top panels of walk-in coolers, refrigerators, and freezers shall be insulated. Coolers and refrigerators shall be capable of maintaining a temperature down to freez-

ing. Freezers shall be capable of maintaining a temperature of 20 degrees below 0 degrees Fahrenheit. Coolers, refrigerators, and freezers shall be thermostatically controlled to maintain desired temperature settings in increments of two degrees or less. Interior temperatures shall be indicated digitally and visible from the exterior. Controls shall include audible and visible high and low-temperature alarm. The time of alarm shall be automatically recorded.

(iii) Walk-in units. Walk-in units may be lockable from the outside but must have a release mechanism for exit from inside at all times. The interior shall be lighted. All shelving shall be corrosion-resistant, easily cleaned, and constructed and anchored to support a load of at least 100 pounds per linear foot.

(iv) Cooking equipment. All cooking equipment shall be equipped with automatic shutoff devices to prevent excessive heat buildup.

(E) Vending services. When vending machines are provided, a dedicated room or an alcove shall be located so that access is available at all times.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Details.

(i) Food storage. Food storage shelves shall not be less than four inches above the finished floor and the space below the bottom shelf shall be closed in and sealed tight for ease of cleaning.

(ii) Windows. Operable windows and doors not equipped with automatic closing devices shall be equipped with insect screens.

(iii) Food processing areas. Food processing areas in the central dietary kitchen shall have ceiling heights not less than nine feet. Ceiling-mounted equipment shall be supported from rigid structures located above the finished ceiling.

(iv) Mirrors. Mirrors shall not be installed at hand washing fixtures in the food preparation areas.

(B) Finishes.

(i) Flooring. Floors in areas used for food preparation, food assembly, soiled and clean ware cleaning shall be water-resistant and grease-proof. Floor surfaces, including tile joints, shall be resistant to food acids.

(ii) Wall bases. Wall bases in food preparation, food assembly, soiled and clean ware cleaning, and other areas that are frequently subject to wet cleaning methods shall be made integral and coved with the floor, tightly sealed to the wall, constructed without voids that can harbor insects, retain dirt particles, and be impervious to water.

(iii) Wall construction, finishes, and trim. In the dietary and food preparation areas, the wall construction, finishes, and trim, including the joints between the walls and the floors, shall be free of voids, cracks, and crevices.

(iv) Food preparation and food assembly area ceiling. The ceiling in food preparation and food assembly areas shall be washable as required by §511.162(d)(2)(B)(vi)(II) of this subchapter.

(v) Soiled and clean ware cleaning area ceiling. The ceiling in the soiled and clean ware cleaning area shall be of the monolithic type as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(3) Mechanical Requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Exhaust hood requirements. Exhaust hoods handling grease-laden vapors in food preparation centers shall comply with National Fire Protection Association 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2011 edition. All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat-actuated fan controls. Clean out openings shall be provided every 20 feet and at any changes in direction in the horizontal exhaust duct systems serving these hoods. (Horizontal runs of ducts serving range hoods should be kept to a minimum.)

(B) Air change standards. When air change standards in Table 3 of §511.169(c) of this subchapter do not provide sufficient air for proper operation of exhaust hoods (when in use), supplementary filtered make-up air shall be provided in these rooms to maintain the required airflow direction and exhaust velocity. Make-up systems for hoods shall be arranged to minimize "short circuiting" of air and to avoid reduction in air velocity at the point of contaminant capture.

(C) Air handling units. Air handling units serving the dietary suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §511.169(d) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §511.162(d)(4) of this subchapter and this paragraph.

(A) Grease trap location. The kitchen grease traps shall be located and arranged to permit easy access without the need to enter food preparation or storage areas. Grease traps shall be of capacity required and shall be accessible from outside of the building without need to interrupt any services.

(B) Grease traps or grease interceptors. Grease traps or grease interceptors shall be located outside the food preparation area and shall comply with the requirements in the National Association of Plumbing-Heating-Cooling Contractors (PHCC), National Standard Plumbing Code, 2000 edition.

(C) Plumbing fixtures. The material used for plumbing fixtures shall be nonabsorptive and acid-resistant.

(D) Water spouts. Water spouts used at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and containers.

(E) Food handler hand washing fixtures. Hand washing fixtures used by food handlers shall be trimmed with valves that can be operated without hands. Single lever or wrist blade devices may be used. Blade handles used for this purpose shall not be less than four inches in length.

(F) Drainage and waste piping. Drainage and waste piping shall not be installed within the ceiling or installed in an exposed location in food preparation centers, food serving facilities and food storage areas unless precautions are taken to protect the space below from leakage and condensation from necessary overhead piping. Any required secondary protection shall be labeled, "code required secondary drain system" every 20 feet in a highly visible print or label.

(G) Plumbing lines. No plumbing lines may be exposed overhead or on walls where possible leaks would create a potential for food contamination.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph.

(A) Exhaust hoods. Exhaust hoods shall have an indicator light indicating that the exhaust fan is in operation.

(B) Electrical circuits. The electrical circuit or circuits to equipment in wet areas shall be provided with five milliamperere GFCI.

(e) Emergency suite. This subsection applies to all LSRHs included under the LSRH license.

(1) Architectural requirements.

(A) Emergency treatment area.

(i) Emergency treatment room. An LSRH shall provide at least one emergency treatment room and facilities to handle emergencies. The room and facilities shall meet the following requirements.

(I) Single patient room area requirements. The emergency treatment room for a single patient shall have a minimum clear floor area of 120 square feet exclusive of fixed and movable cabinets and shelves. The minimum clear room dimension exclusive of fixed cabinets and built-in shelves shall be 10 feet. The emergency treatment room shall contain cabinets, medication storage, work counter, examination light, and a hand washing fixture with hands-free operable controls.

(II) Multiple-patient room area requirements. When a multiple-patient station emergency treatment room is provided, the clearance between the side of a gurney and a wall or partition shall be a minimum of four feet. The clearance between the sides of gurneys shall be a minimum of six feet. The minimum distance at the foot of the gurney shall not be less than seven feet for single load area or room or ten feet for double load area or room. Four feet of the passage space at the foot of the gurney may be shared between two gurneys. The multiple-patient station emergency treatment room shall contain cabinets, medication storage, work counter, examination light, and a hand washing fixture with hands-free operable controls. The fixed and movable cabinets and shelves shall not encroach upon the gurney clear floor space or area.

(III) Hand washing fixtures. One hand washing fixture with hands-free operable controls shall be provided for each gurney location. One hand washing fixture may serve two gurneys if distributed appropriately between the two.

(IV) Storage space. Storage space shall be provided within the room or suite and be under staff control for general medical-surgical emergency supplies and medications. Adequate space shall be provided for emergency equipment such as emergency treatment trays, ventilator, defibrillator, splints, cardiac monitor, etc.

(V) Medication preparation storage. Locked storage space shall be provided for drugs and an area for preparation of medication with a work counter, refrigerator, and hand washing fixture with hands-free operable controls.

(VI) Stretcher and wheelchair storage. An alcove shall be provided for stretcher and wheelchair storage. The storage shall be located out of the line of traffic.

(VII) Patient toilet room. At least one patient toilet room shall be provided and shall be convenient to treatment rooms, examination rooms, and holding rooms, and a hand washing fixture with hands-free operable controls.

(VIII) Emergency entry signage. An emergency sign shall be provided at the entry from the public roads or streets serving the site. The emergency sign at the entry to the site shall be illuminated and connected to the emergency essential electrical system. Additional signs on-site may be required to direct patients to the emergency treatment area entrance when the emergency treatment area is

not visible from the site entry. The letters on the entry sign shall be red with a contrasting background, all capitalized, at least eight inches in height, and an arrow indicating direction.

(IX) Entrances. Separate ambulance and pedestrian entrances at grade level shall be well-illuminated, identified by signs, and protected from inclement weather. The ambulance entry shall have a drive under canopy for protection from inclement weather. The emergency access to permit discharge of patients from automobile and ambulances shall be paved. Parking shall be provided near and convenient to the pedestrian entrance.

(X) Control station. A registration, reception, discharge or control station shall be located to permit staff observation and control of access to treatment rooms, pedestrian and ambulance entrances, and public waiting areas. When a dedicated triage space is provided, it shall include a counter with a hand washing fixture with hands-free operable controls.

(XI) Public waiting room. A public waiting room shall be provided.

(XII) Public facilities. Toilet facilities, public telephone, and drinking fountain shall be provided for the exclusive use of the waiting room.

(XIII) Diagnostic radiographic (X-ray) room. Imaging facilities for diagnostic services shall be readily available to the emergency suite. If a separate radiographic (X-ray) room is installed within the emergency suite, it shall comply with the requirements in subsection (j)(1)(A) of this section. When the diagnostic X-ray room is exclusively used for the emergency treatment area, the dressing rooms may be omitted.

(XIV) Laboratory unit. Laboratory services shall be made available to the emergency suite. If a separate laboratory workroom is installed within the emergency suite, it shall comply with the requirements in subsection (k)(1)(C)(i) of this section. All laboratory services provided on site or by contractual arrangement shall comply with §511.45 of this chapter (relating to Laboratory Services).

(XV) Medical staff work area and charting areas. A medical staff work area and charting area shall be provided. The area may be combined with the reception and control area.

(XVI) Clean storage room. A clean storage room shall be provided for clean supplies, linens, and medications as needed. A hand washing fixture shall be provided with hands-free operable controls.

(XVII) Soiled workroom. The workroom shall contain a work counter, a clinical sink or equivalent flushing type fixture, hand washing fixture with hands-free operable controls, waste receptacles, and soiled linen receptacles.

(XVIII) Housekeeping room. The housekeeping room shall contain a floor receptor or service sink, storage space for housekeeping supplies and equipment, and be located within the suite. When automatic film processors are used, a receptacle of adequate size with hot and cold water for cleaning the processor racks shall be provided.

(XIX) Staff toilets. Toilets may be outside the suite but shall be convenient for staff use and include hand washing fixtures with hands-free operable controls. When a department has four or more treatment or examination rooms, toilet facilities shall be in the suite.

(ii) Other rooms. If an LSRH provides one or more of the following rooms, the room shall meet the applicable requirements in this clause.

(I) Examination room. When provided, the examination room for a single patient shall have a minimum clear floor area of 100 square feet exclusive of fixed and movable cabinets and shelves. The minimum clear room dimension exclusive of fixed cabinets and built-in shelves shall be nine feet. The examination room shall contain cabinets, medication storage, work counter, examination light, and a hand washing fixture with hands-free operable controls.

(II) Multi-bed examination room. When a multiple-patient station examination room is provided, the clearance between the side of the gurney and a wall or partition shall be a minimum of three feet. The clearance between sides of the gurneys shall be a minimum of six feet. The minimum distance at the foot of the gurney shall not be less than seven feet for single load area or room or ten feet for double load area or room. Four feet of the passage space at the foot of the bed may be shared between two gurneys. The multiple-patient station examination room shall contain cabinets, work counters, and a hand washing fixture with hands-free operable controls. One hand washing fixture shall be provided for every four gurneys or fraction thereof. Fixtures shall be uniformly distributed. The fixed and moveable cabinets and shelves shall not encroach upon the gurney clear floor space or area.

(III) Isolation room. The need for an airborne infection isolation room in the emergency suite shall be determined by the LSRH and the infection risk assessment. When an LSRH provides treatment rooms to perform procedures on persons who are known or suspected of having an airborne infectious disease, these procedures shall be performed in a designated treatment room meeting airborne infection isolation ventilation requirements. The isolation room shall have functional space in accordance with clause (i)(I) of this subparagraph, and meet the ventilation requirements contained in Table 3 of §511.169(c) of this subchapter.

(IV) Secured holding room. When provided, this room shall be constructed to allow for security, patient and staff safety, patient observation, and sound mitigation. The secure holding room shall have a minimum clear floor area of 100 square feet exclusive of fixed cabinets. The minimum clear room dimension exclusive of fixed cabinets shall be 10 feet.

(V) Orthopedic and cast room. When provided, the room may be in a separate room or in the trauma room. The room shall contain a work counter, storage for splints and orthopedic supplies, traction hooks, medication storage, examination light, and a hand washing fixture with hands-free operable controls. When a cast room is provided it shall be equipped with hand washing facilities, plaster sink, storage, and other provisions required for cast procedures.

(VI) Film processing room. When a radiographic (X-ray) room is provided, a darkroom for processing film shall be provided unless the processing equipment does not require a darkroom for loading and transfer. When daylight processing is used, the darkroom may be minimal for emergency and special uses. Film processing shall be located convenient to the darkroom.

(VII) Decontamination room. When provided, a decontamination room shall have an exterior entry point and as far as practical from any other entry point to the emergency treatment area. The internal door from the decontamination room shall open directly to the corridor into the emergency treatment area. The door shall swing into the room and be lockable against ingress from the corridor. The room shall have a minimum clear floor area of at least 80 square feet and a hand washing fixture with hands-free operable controls.

(B) Holding or observation room area.

(i) Location. When a holding or observation room or area is provided within or adjacent to the emergency suite, it shall comply with the following.

(I) Single occupancy room area. A single occupancy holding or observation room shall have a minimum clear area of 100 square feet exclusive of fixed and movable cabinets and shelves. The holding or observation room shall contain a work counter and hand washing fixture with hands-free operable controls.

(II) Single occupancy room location. The single occupancy holding or observation room shall be near the nurse station and near a patient toilet room that contains a hand washing fixture with hands-free operable controls.

(III) Multiple occupancy room area. In a multiple occupancy holding or observation room or area, the clearance between the side of the gurney and a wall or partition shall be at least three feet. The clearance between sides of the gurneys shall be at least six feet. The minimum distance at the foot of the gurney shall not be less than seven feet for a single load area or room or ten feet for a double load area or room. Four feet of the passage space at the foot of the gurney may be shared between two gurneys. The multiple occupancy holding or observation room or area shall contain cabinets, work counters, and a hand washing fixture with hands-free operable controls. One hand washing fixture shall be provided for every four holding or observation gurneys or fraction thereof. Fixtures shall be uniformly distributed. The fixed and moveable cabinets and shelves shall not encroach upon the gurney clear floor space or area.

(IV) Toilet room. In a multiple occupancy holding or observation room or area, a patient toilet room with a hand washing fixture with hands-free operable controls shall be provided within the room or area.

(ii) Multiple occupancy room location. When a multiple occupancy holding or observation room is not within or adjacent to the emergency suite, the following additional spaces shall be provided:

(I) a stretcher and wheelchair storage alcove, that shall be located out of the line of traffic;

(II) a clean storage room for clean supplies, linen and medication as needed that is located within or adjacent to the holding or observation room and contains a hand washing fixture with hands-free operable controls;

(III) a soiled workroom located within or adjacent to the holding or observation room and contains a work counter, a clinical sink or equivalent flushing type fixture, hand washing fixture with hands-free operable controls, waste receptacles, and soiled linen receptacles; and

(IV) a housekeeping room located within or near the holding or observation room and contains a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(C) Trauma center. When provided, a trauma center shall comply with subparagraph (B) of this paragraph and the following requirements.

(i) Trauma room. At least one trauma room shall be provided with 250 square feet of clear floor area exclusive of aisles and fixed and moveable cabinets and shelves. The minimum clear dimension between fixed cabinets and built-in shelves shall be 12 feet. The trauma room shall contain a work counter, cabinets, medication storage, and examination light.

(ii) Multiple-station trauma room. When multiple-patient stations are provided, the clearance between the head of the gurney to the wall or partition shall be at least three feet. The clearance between the side of a gurney and a wall or partition shall be at least six feet. The clearance between the sides of gurneys shall be at least twelve feet. The minimum distance at the foot of the gurney shall not be less than seven feet for a single load area or room or ten feet for a double load area or room. Four feet of the passage space at the foot of the gurney may be shared between two gurneys. The multiple-station trauma room shall contain cabinets, medication storage, work counter, examination light, and scrub sink with hands-free operable controls. The fixed and moveable cabinets and shelves shall not encroach upon the gurney clear floor space or area.

(iii) Scrub facilities. A scrub station shall be located at the entrance to each trauma room either inside or outside of the room. One scrub station may serve two trauma gurneys. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts. The scrub sinks shall be recessed out of the main line of traffic.

(iv) Doorways. All doorway openings from the ambulance entrance to the trauma room shall be at least five feet wide.

(D) Emergency clinic. When an emergency clinic (that may also be referred to as "urgent care," "fast track," "express care," "minor care," etc.) is provided, the clinic shall be separate and distinct from the emergency treatment area and trauma center and shall meet all the requirements of subparagraph (A) of this paragraph. All facilities required by subparagraph (A) of this paragraph may be shared with the emergency treatment area and trauma center except for the emergency treatment room. An emergency treatment room in the emergency clinic shall not be less than 100 square feet. An emergency exam room in the emergency clinic shall not be less than 80 square feet.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Details.

(i) Area. Trauma rooms shall have ceiling heights not less than nine feet.

(ii) Fixtures. The decontamination room shall be equipped with two hand-held showerheads with temperature controls and a dedicated holding tank with a floor drain.

(B) Finishes.

(i) Flooring. Flooring used in a trauma room, treatment room, examination room, holding area, and soiled workroom shall be of the seamless type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter. Seamless type flooring is not required in the examination room in the emergency clinic.

(ii) Ceiling. Ceilings in soiled workrooms, isolation rooms, and trauma rooms shall be of the monolithic type as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(iii) Surfaces. The decontamination room floor shall be self-coved to a height of six inches. The room shall have all smooth, nonporous, scrubbable, nonabsorbent and nonperforated surfaces.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Duct linings. Duct linings exposed to air movement shall not be used in ducts serving any trauma rooms, treatment rooms, examination rooms, holding areas, and clean room. This requirement

shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(B) Air supply. When a trauma room is provided under paragraph (1)(C)(i) of this subsection, the air supply for the trauma or surgical room shall be from ceiling outlets that are as near the work centers as possible, and a minimum of two low return inlets shall be located diagonally opposite from one another.

(C) Return air inlets. Return air inlets shall be not lower than four inches nor higher than 12 inches from floor level.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter and this paragraph.

(A) Medical gas systems. Medical gas systems shall be provided in accordance with §511.162(d)(4)(A)(iii) of this subchapter.

(B) Ice machine. An ice machine shall be provided for therapeutic purposes and shall be located in the clean utility room. A self-dispensing ice machine shall be provided for ice for human consumption.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph.

(A) General.

(i) Examination room electrical receptacles. Each treatment and examination room in the emergency treatment area and trauma center shall have at least six duplex electrical receptacles located convenient to the head of each patient station.

(ii) Emergency clinic suite electrical receptacles. Each treatment and examination room in the emergency clinic suite shall have a minimum of four duplex electrical receptacles located convenient to the head of each patient station.

(iii) Work counter electrical receptacles. Each work counter and table shall have access to at least one duplex receptacle connected to the critical branch of the emergency electrical system.

(iv) Film illuminators. The LSRH shall provide X-ray film illuminators for handling at least four films simultaneously in all treatment, examination, and trauma rooms in the emergency treatment area. When the entire emergency treatment area is provided with digital imaging, at least two X-ray film illuminators shall be provided within a central location within the emergency treatment area.

(B) Nurses calling systems. The nurse call system shall comply with §511.162(d)(5)(L) of this subchapter and Table 7 of §511.169(g) of this subchapter.

(f) Employees suite.

(1) Architectural requirements.

(A) Compliance. Architectural requirements shall comply with §511.162(d)(1) of this subchapter and this paragraph.

(B) Lockers, lounges, toilets, and showers. Lockers, lounges, toilets, and showers shall be provided within the LSRH for employees and volunteers. These facilities are in addition to, and separate from, those required for the medical staff and the public.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this chapter.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter.

(g) Engineering suite and equipment areas.

(1) Architectural requirements. Architectural requirements comply with §511.162(d)(1) of this subchapter and this paragraph.

(A) General. The following facilities shall be provided:

(i) an engineer's office with file space and provisions for protected storage of facility drawings, records, manuals, etc.;

(ii) a general maintenance shop or shops for repair and maintenance;

(iii) a separate room for building maintenance supplies and equipment, and storage of bulk solvents and flammable liquids shall be in a separate building and not within the LSRH building;

(iv) a medical equipment room that includes provisions for the storage, repair, and testing of electronic and other medical equipment;

(v) a separate room or building for yard maintenance equipment and supplies. When a separate room is within the physical plant the room shall be located so that equipment may be moved directly to the exterior. Yard equipment or vehicles using flammable liquid fuels shall not be stored or housed within the LSRH building; and

(vi) sufficient space in all mechanical and electrical equipment rooms for proper maintenance of equipment. Provisions shall also be made for removal and replacement of equipment.

(B) Additional areas or rooms. Additional areas or rooms for mechanical, and electrical equipment shall be provided within the physical plant or installed in separate buildings or weather-proof enclosures with the following exceptions.

(i) An area shall be provided for cooling towers and heat rejection equipment when such equipment is used.

(ii) An area for the medical gas park and equipment shall be provided. For smaller medical gas systems, the equipment may be housed in a room within the physical plant in accordance with National Fire Protection Association 99, Standard for Health Care Facilities, 2012 edition (NFPA 99), Chapters 4 and 8.

(iii) When provided, compactors, dumpsters, and incinerators shall be located in an area remote from public entrances.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter.

(h) General storage. A general storage room shall be provided at least equal to five percent of the total area of the patient care units.

(i) Hyperbaric suite.

(1) Architectural requirements. When a hyperbaric suite is provided, it shall meet the requirements of NFPA 99 Chapter 20, and NFPA 101 Chapter 18.

(A) Hyperbaric chamber clearances. Multiple occupancy chambers (Class A) shall comply with NFPA 99 Chapter 20. The minimum clearances for individual (Class B) hyperbaric chambers and the side of a chamber and a wall or partition shall be at least three feet. The clearance between sides of chambers shall be at least six feet. The minimum distance at the chamber entry shall not be less than seven feet for a single load area or room or ten feet for a double load area or room. Four feet of the passage space at the chamber entry may be shared between two chambers. The chamber room shall contain cabinets, medication storage, work counter and a hand washing fixture with hands-free operable controls. The fixed and movable cabinets and shelves shall not encroach upon the chamber clear floor space or area.

(B) Service areas. The following minimum service areas and facilities shall be provided convenient to the hyperbaric chamber suite.

(i) Patient waiting area. The area shall be out of traffic, under staff control, and shall have seating capacity in accordance with the LSRH's functional program. Patient waiting areas are not required where two or fewer individual hyperbaric chamber units are provided.

(ii) Control desk and reception area. A control desk and reception area shall be provided.

(iii) Holding area. A holding area under staff control shall accommodate patients on stretchers or beds. Stretcher patients shall be out of the direct line of normal traffic. The patient holding area is not required where two or fewer individual hyperbaric chamber units are provided.

(iv) Patient toilet rooms. Toilet rooms shall be provided with hand washing fixtures with hands-free operable controls and with direct access from the hyperbaric suite.

(v) Patient dressing room. A dressing room for outpatients shall be provided and shall include a seat or bench, mirror, and provisions for hanging patients' clothing and for securing valuables. At least one dressing room shall be provided to accommodate wheelchair patients.

(vi) Staff facilities. Toilets with hand washing fixtures with hands-free operable controls may be outside the suite but shall be convenient for staff use. These facilities may be shared with an adjacent suite.

(vii) Consultation room. An appropriate consultation room for individual consultation with referring clinicians shall be provided for outpatients. This room may be shared with an adjacent suite.

(viii) Storage space. A clean storage space shall be provided for clean supplies and linens. The space shall contain a hand washing fixture with hands-free operable controls. The storage room may be shared with another department if convenient to both.

(ix) Soiled holding room. A soiled holding room shall be provided with waste receptacles and soiled linen receptacles. This room may be shared with an adjacent suite.

(x) Hand washing. A lavatory equipped for hand washing with hands-free operable controls shall be located in the room where the hyperbaric chambers are located.

(xi) Housekeeping room. The housekeeping room shall contain a floor receptor or service sink, storage space for housekeeping supplies and equipment, and be located nearby.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph.

(A) Grounding of hyperbaric chambers shall be connected only to the equipment ground in accordance with NFPA 99 §3-3.2.1.2, and National Fire Protection Association 70, National Electrical Code, 2011 edition (NFPA 70) Article 250 (A)-(C), and Article 517.

(B) Additional grounds such as earth or driven grounds shall not be permitted.

(C) The nurse call shall comply with §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter.

(j) Imaging suite.

(1) Architectural requirements.

(A) General. An LSRH shall have a diagnostic radiographic (X-ray) room convenient to emergency suites, and where provided surgery suites.

(i) Room size. All diagnostic imaging room sizes shall be in compliance with the manufacturer's recommendations for the specific equipment. Clearance and unobstructed space shall not be less than three feet around the diagnostic equipment.

(ii) Radiation protection. When radiation protection is required for any diagnostic imaging room, a medical physicist licensed under the Texas Occupations Code Chapter 602 (relating to Medical Physicists), shall specify the type, location, and amount of radiation protection to be installed for the layout and equipment selections.

(iii) Shielded control. Each room where radiation protection is required shall include a shielded control alcove. The control alcove shall be provided with a view window designed to permit full view of the examination table and the patient at all times.

(iv) Warning signs. Warning signs capable of indicating that the equipment is in use shall be provided.

(v) Ventilation requirements. Diagnostic and procedure room intended for patients with airborne infectious diseases shall meet the ventilation requirements as contained in Table 3 of §511.169(c) of this subchapter.

(B) Diagnostic X-ray and radiographic and fluoroscopy (R&F) rooms. X-ray and R&F rooms shall comply with the manufacturer's recommendations for the specific equipment. Clearance and unobstructed space shall not be less than three feet around the diagnostic equipment.

(i) Control alcove. A control alcove shall be provided with a view window designed to provide full view of the patient at all times.

(ii) Toilet room. A toilet room shall be provided including a hand washing fixture with hands-free operable controls and have direct access to each R&F room and a corridor.

(C) Noninvasive angiography imaging room. When noninvasive angiography imaging is provided, the room shall have a minimum clear floor area of 250 square feet exclusive of built-in shelves or cabinets. Clearance and unobstructed space shall not be less than three feet around the diagnostic equipment.

(i) Control alcove. A control alcove shall be provided with a view window designed to provide full view of the patient at all times.

(ii) Viewing room or area. A viewing room or area shall be provided and shall be at least 10 feet in length. The viewing room or area may be provided in combination with the control room.

(iii) Scrub sink. A scrub sink shall be near the entrance to each angiographic room and shall be recessed out of the main traffic areas or corridor. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts.

(iv) Storage space. Storage space for portable equipment and supplies shall be provided.

(D) Computerized tomography (CT) scanning. When CT services are provided, the CT room's size shall comply with the manufacturer's recommendations and shall contain the following.

(i) Control room. A control room shall be provided with a view window permitting view of the patient. The control room shall be located to allow convenient film processing.

(ii) Patient toilet room. A patient toilet shall be provided conveniently to the procedure room. When directly accessible to the scan room, the toilet shall be arranged so that a patient may leave the toilet room without having to reenter the scan room. The toilet room shall have a hand washing fixture with hands-free operable controls.

(E) Mammography. When mammography services are provided, the room shall have a minimum clear floor area of 100 square feet exclusive of built-in shelves or cabinets.

(i) Control alcove. A control alcove shall be provided with a view window designed to provide full view of the patient at all times.

(ii) Built-in shielding. When mammography machines with built-in shielding for the operator are provided, the alcove is not required when approved by a medical physicist licensed under Texas Occupations Code Chapter 602.

(F) Magnetic resonance imaging (MRI). When MRI services are provided, the room shall be of sufficient size to house equipment but no less than 325 square feet of clear floor area exclusive of built-in shelves or cabinets.

(i) Control alcove. A control alcove shall be provided with a view window designed to provide full view of the patient at all times.

(ii) Computer room. A separate computer room shall be provided to accommodate the equipment.

(iii) Cryogen storage requirements. When cryogen is provided, a storage room or closet shall have a minimum clear floor area of 50 square feet for two large dewars of cryogen. A storage room or closet is required in areas where service to replenish supplies is not readily available.

(iv) Darkroom. When a darkroom is provided, the room shall be located near the required control room and shall be outside the 10-gauss field.

(v) Spectroscopy. When spectroscopy is provided, caution should be exercised in locating it in relation to the magnetic fringe fields.

(vi) Magnetic shielding. Magnetic shielding may be required to restrict the magnetic field plot. Radio frequency shielding is required to attenuate stray radio frequencies.

(vii) Patient holding area. A patient holding area shall be provided and shall be located near the MRI unit and be large enough to accommodate stretchers.

(viii) Hand washing fixture. A hand washing fixture with hands-free controls shall be provided near the entrance to the MRI room and shall be recessed out of the main traffic areas or corridor.

(ix) 3T magnetic strength MRI. A 3T or larger magnetic strength MRI shall be secured behind locked doors. The patient and staff entrance to the MRI shall have a traffic pattern from the waiting, dressing, holding and work areas through a lockable control station before entering the MRI. At no time shall patients or nonpatients be allowed to enter this restricted area without MRI staff present when the magnet is active.

(G) Ultrasound room. When ultrasound services are provided, the room's size shall comply with the manufacturer's recommendations. A patient toilet room shall be provided convenient to the procedure room and a corridor. The toilet room shall have a hand washing fixture with hands-free operable controls.

(H) Cardiac catheterization laboratory. The cardiac catheterization laboratory is normally a separate suite, but may be within the imaging suite. If provided, a cardiac catheterization laboratory shall comply with the requirements of subsection (w)(1)(C) of this section.

(I) Service areas. The following common service areas shall be provided.

(i) Patient waiting area. The area shall be out of traffic and under direct staff visual control.

(ii) Control desk and reception area. A control desk and reception area shall be provided.

(iii) Holding area. The holding area shall be out of direct traffic patterns and under visual control by staff. At least one stretcher station shall be provided for each three diagnostic and procedure rooms or fraction thereof. The minimum clear floor space in the holding area shall be 80 square feet exclusive of aisles and fixed and moveable cabinets and shelves. The area shall contain cabinets, a work counter, and a hand washing fixture with hands-free operable controls. The holding area may be reduced to 50 square feet exclusive of aisles and fixed and moveable cabinets and shelves for mammography, bone density, and other similar procedures.

(iv) Post-procedure observation room. When invasive diagnostic X-ray services are provided with anesthesia, a room for extended post-procedure observation of patients shall be provided. The minimum clear floor space for the observation space shall be 100 square feet exclusive of aisles and fixed and moveable cabinets and shelves. The room shall contain cabinets, a work counter, and a hand washing fixture with hands-free operable controls.

(v) Patient toilet rooms. A toilet room with hand washing facilities shall be located convenient to the waiting area.

(vi) Patient dressing rooms or cubicles. Dressing rooms or cubicles shall be convenient to the waiting areas and X-ray rooms. Each room shall include a seat or bench, mirror, and provisions for hanging patients' clothing and for securing valuables. At least one dressing room shall be provided to accommodate wheelchair patients.

(vii) Hand washing facilities. A hand washing fixture with hands-free controls shall be provided in or near the entrance to each diagnostic and procedure room unless noted otherwise. When a hand washing fixture is provided in the room, the fixture shall be located near the entrance to the room or near the staff entrance. When a hand washing fixture is located outside the room, the fixture shall be recessed in the egress corridor and located within five feet of the entrance to the room. Hand washing facilities shall be arranged to minimize any incidental splatter on nearby personnel or equipment.

(viii) Staff facilities. Toilets may be outside the suite and may be shared with other departments but shall be convenient for staff use. When four or more diagnostic or procedure imaging rooms are provided, a staff toilet is required with a hand washing fixture with hands-free controls.

(ix) X-ray film illuminator viewers. When all the diagnostic and imaging procedures are provided with digital imaging, two mounted X-ray film illuminator viewers shall be provided in the central viewing area or room.

(x) Contrast media preparation. This room shall include a work counter, a sink with hands-free operable controls, and storage. One preparation room may serve any number of rooms. When prepared media is used, this area is not required, but storage shall be provided for the media.

(xi) Film processing room. A darkroom shall be provided for processing film unless the processing equipment normally used does not require a darkroom for loading and transfer. When daylight processing is used, the darkroom may be minimal for emergency and special uses. Film processing shall be located convenient to the procedure rooms and to the quality control area.

(xii) Quality control area or room. An area or room for film viewing shall be located near the film processor. All view boxes shall be illuminated to provide light of the same color value and intensity.

(xiii) Film storage (active). When X-ray film is used, it shall be stored in a room with a cabinet or shelves for filing patient film for immediate retrieval.

(xiv) Film storage (inactive). When X-ray film is used, a room for inactive film storage shall be provided. It may be outside the imaging suite, but must be under the administrative control of imaging suite personnel and be properly secured to protect films against loss or damage.

(xv) Storage for unexposed film. When X-ray film is used, storage facilities for unexposed film shall include protection of film against exposure or damage.

(xvi) Storage of cellulose nitrate film. When used, cellulose nitrate film shall be stored in accordance with the requirements of National Fire Protection Association 40, Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film, 2011 edition.

(xvii) Additional spaces. When four or more diagnostic or procedure rooms are provided in the LSRH, the following shall be required:

- (1) an office for radiologists and assistants;

(II) clerical office spaces, as necessary for the functional program;

(III) consultation area or room;

(IV) medication station. Storage and preparation of medication shall be done from a room, alcove area, or from a self-contained dispensing unit but must be under visual control of nursing staff. A work counter, hand washing fixture with hands-free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks are not acceptable for hand washing;

(V) clean storage room. Clean storage room shall be provided for clean supplies and linens. A hand washing fixture shall be provided with hands-free operable controls. When conveniently located, the clean storage room may be shared with another department; and

(VI) soiled workroom. The soiled workroom shall not have direct connection to the diagnostic and procedure rooms. The room shall contain a clinical sink or equivalent flushing type fixture, work counter, hand washing fixture with hands-free operable controls, waste receptacle, and soiled linen receptacle. When contaminated soiled material or fluid waste is not handled, only a soiled holding room shall be required.

(xviii) Housekeeping room. The room may serve multiple departments when conveniently located.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Details.

(i) Radiation protection. Radiation protection shall be designed, tested, and approved by a medical physicist licensed under Texas Occupations Code Chapter 602.

(I) Room shielding. Room shielding calculations for linear accelerators, teletherapy units and remote control brachytherapy units must be submitted to the Department of State Health Services Radiation Control Program (RC) for approval prior to use. Shielding in diagnostic radiographic rooms will be reviewed by RC inspectors, in the field, subsequent to use. Any changes in design or shielding that affects radiation exposure levels adjacent to those rooms requires prior approval by RC.

(II) Facility design and environmental controls. Facility design and environmental controls associated with licensable quantities of radioactive material in laboratories, imaging rooms, or both shall be approved by RC prior to licensed authorizations.

(ii) Protected alcoves. Where protected alcoves with view windows are required, provide a minimum of one foot six inches from the edge where the glazing and the frame connect and the outside partition edge.

(iii) Ceilings. Imaging procedure rooms shall have ceiling heights not less than nine feet. Ceilings containing ceiling-mounted equipment shall be of sufficient height to accommodate the equipment of fixtures and their normal movement.

(B) Finishes.

(i) Flooring. Flooring used in contrast media preparation and soiled workroom shall be of the seamless type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter.

(ii) Ceilings. A lay-in type ceiling is acceptable for the diagnostic and procedure rooms.

(3) Mechanical Requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Cryogen gas venting and exhaust. The cryogen gas venting from the MRI unit shall be exhausted to the exterior. When a cryogen storage room is provided to replenish supplies, the storage room shall be vented and exhausted to the exterior.

(B) Air conditioning. Self-contained air conditioning to supplement the cooling capacity in computer rooms is permitted.

(C) Air handling units. Air handling units serving the imaging suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §511.169(d) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter and this paragraph. When automatic film processors are used, a receptacle of adequate size with hot and cold water for cleaning the processor racks shall be provided.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph.

(A) General.

(i) Each imaging procedure room shall have at least four duplex electrical receptacles.

(ii) A special grounding system in areas such as imaging procedures rooms where a patient may be treated with an internal probe or catheter shall comply with NFPA 99 Chapter 9 and NFPA 70 Article 517.

(iii) General lighting with at least one light fixture powered from a normal circuit shall be provided in imaging procedures rooms in addition to special lighting units at the procedure or diagnostic tables.

(B) Nurses calling system. The nurse call shall comply with §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter.

(k) Laboratory suite.

(1) Architectural requirements.

(A) General.

(i) Laboratory facilities. Laboratory facilities and services shall be provided by the LSRH such as hematology, clinical chemistry, urinalysis, cytology, anatomic pathology, immunohematology, microbiology, bacteriology and others.

(ii) Code requirements. Each laboratory unit shall meet the requirements of NFPA 99 Chapter 11 (relating to Laboratories), and NFPA 101 Chapter 18 (relating to New Health Care Occupancies).

(B) Minimum laboratory facilities. When laboratory services are provided off site by contract, the following minimum facilities shall be provided within the LSRH.

(i) Laboratory work room. The laboratory workroom shall include a counter and a sink with hands-free operable controls.

(ii) General storage. Cabinets or closets shall be provided for supplies and equipment used in obtaining samples for testing. A refrigerator or other similar equipment shall be provided for specimen storage waiting for transfer to off-site testing.

(iii) Blood storage facilities. Refrigerated blood storage facilities for transfusions shall be provided. The blood storage

refrigerator shall be equipped with temperature monitoring and alarm signals.

(iv) Specimen collection facilities. A blood collection area shall be provided with a counter, space for seating, and hand washing fixture with hands-free operable controls. A toilet and lavatory with hands-free operable controls shall be provided for specimen collection. This facility may be outside the laboratory suite if conveniently located.

(C) On-site laboratory facilities. When the LSRH provides on-site laboratory services, the following facilities shall be provided in addition to the requirements in subparagraphs (A) and (B) of this paragraph.

(i) Laboratory workroom. The laboratory work room shall include a counter, space appropriately designed for laboratory equipment and a sink with hands-free operable controls.

(ii) General storage. Storage, including refrigeration for reagents, standards, supplies, and stained specimen microscope slides, etc. shall be provided. Separate facilities shall be provided for such incompatible materials as acids and bases, and vented storage shall be provided for volatile solvents.

(iii) Chemical safety facilities. When chemical safety is a requirement, provisions shall be made for an emergency shower and eye flushing devices.

(iv) Flammable liquids. When flammable or combustible liquids are used, the liquids shall be stored in approved containers, in accordance with National Fire Protection Association 30, Flammable and Combustible Liquids Code, 2012 edition.

(v) Radioactive materials. When radioactive materials are employed, storage facilities shall be provided.

(D) Bone marrow laboratory. A cryopreservation laboratory and a human leukocyte antigen laboratory shall be provided in hospitals providing bone marrow transplantation services.

(E) Service areas and facilities. The following service areas and facilities shall be provided.

(i) Hand washing facilities. Each laboratory room or work area shall be provided with a hand washing fixture with hands-free operable controls.

(ii) Office spaces. The scope of laboratory services shall determine the size and quantity for administrative areas including offices as well as space for clerical work, filing, and record maintenance. At a minimum, an office space shall be provided for the use of the laboratory service director.

(iii) Staff facilities. Lounge, locker, and toilet facilities shall be conveniently located for male and female laboratory staff. These may be outside the laboratory area and shared with other departments.

(iv) Housekeeping room. A housekeeping room shall be located within the suite or conveniently located nearby.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter. Floors in laboratories shall comply with the requirements of §511.162(d)(2)(B)(iii) of this subchapter except that carpet flooring shall not be used.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Air recirculation. No air from the laboratory areas shall be recirculated to other parts of the LSRH. Recirculation of air within the laboratory suite is allowed.

(B) Laboratory hoods. When laboratory hoods are provided, they shall meet the following general requirements.

(i) Face velocity. The average face velocity of each exhaust hood shall be at least 75 feet per minute.

(ii) Exhaust system. The exhaust shall be connected to an exhaust system to the exterior that is separate from the building exhaust system. Biological safety cabinets with HEPA filters and alarms to alert staff do not have to be exhausted to the exterior. If the air changes for biological safety cabinets as provided in Table 3 of §511.169(c) of this subchapter do not provide sufficient air for proper operation of the safety cabinets (when in use), supplementary make-up air (filtered and preheated) shall be provided around these units to maintain the required airflow direction and exhaust velocity. Make-up air system for safety cabinets shall be arranged to minimize "short circuiting" of air and to avoid reduction in air velocity at the point of contaminant capture.

(iii) Exhaust fan. The exhaust fan shall be located at the discharge end of the system.

(iv) Exhaust duct system. The exhaust duct system shall be of noncombustible and corrosion-resistant material.

(v) Fume hoods. Where fume hoods are used, the design should consider the placement and types of air distribution devices to avoid the disturbance of a uniform velocity across the face of the hood.

(C) Special laboratory hoods. When special laboratory hoods are provided, they shall meet the following special standards for these types of hoods.

(i) Associated equipment. Fume hoods, and their associated equipment in the air stream, intended for use with perchloric acid and other strong oxidants, shall be constructed of stainless steel or other material consistent with special exposures, and be provided with a water wash and drain system to permit periodic flushing of duct and hood. Electrical equipment intended for installation within such ducts shall be designed and constructed to resist penetration by water. Duct systems serving these hoods shall be constructed of acid-resistant stainless steel for at least 10 feet from the hood. Lubricants and seals shall not contain organic materials. When perchloric acid or other strong oxidants are only transferred from one container to another, standard laboratory fume hoods and the associated equipment may be used in lieu of stainless steel construction.

(ii) Infectious or radioactive material laboratory hoods. Each laboratory hood used to process infectious or radioactive materials shall have a minimum face velocity of 90-110 feet per minute and be connected to an independent exhaust system, with suitable pressure-independent air modulating devices and alarms to alert staff of fan shutdown or loss of airflow. Each hood shall also have filters with a 99.97 percent efficiency (based on the dioctyl-phthalate (DOP) test method) in the exhaust stream, and be designed and equipped to permit the safe removal, disposal, and replacement of contaminated filters. Filters shall be as close to the hood as practical to minimize duct contamination.

(iii) Radioactive isotope hoods. Fume hoods intended for use with radioactive isotopes shall be constructed of stainless steel or other material suitable for the particular exposure and shall comply with National Fire Protection Association 801, Standard

for Facilities Handling Radioactive Materials, 2003 edition and NFPA 99 §11.3.5.

(iv) Air modulating devices. Each laboratory hood shall have a suitable pressure-independent air modulating device and alarm to alert staff of fan shutdown or loss of airflow. The alarm shall be audible within the laboratory and at a 24-hour manned location.

(D) Filtration requirements. Filtration requirements for air handling units serving the laboratory suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §511.169(d) of this subchapter.

(E) Duct linings. Duct linings exposed to air movement shall not be used in ducts serving any laboratory room and clean room unless terminal filters of at least 80 percent efficiency are installed downstream of linings. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter and this paragraph.

(A) General.

(i) Faucet spouts. Faucet spouts at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and the contents of beakers, test tubes, etc.

(ii) Sink drain lines. Drain lines from sinks used for acid waste disposal shall be made of acid-resistant material.

(iii) Other drain lines. Drain lines serving some types of automatic blood-cell counters must be of carefully selected material that will eliminate potential for undesirable chemical reactions, explosions, or both between sodium azide wastes and copper, lead, brass, and solder, etc.

(B) Medical gas systems. When provided, medical gas systems shall comply with §511.162(d)(4)(A)(iii) and (iv) of this subchapter. The number of outlets in the laboratory for vacuum, gases, and air shall be determined by the LSRH's functional program requirements.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter.

(A) Blood storage refrigerator alarm. The blood storage refrigerator shall have an alarm device to indicate a temperature increase or malfunction and indicate an audible warning at a 24-hour manned location.

(B) Blood storage refrigerator connection. The blood storage refrigerator shall be connected to the critical branch of the emergency essential electrical system.

(C) Exhaust hoods. All exhausts hoods shall be connected to the emergency essential electrical system.

(l) Laundry suite. Laundry facilities shall be provided on site or off site. On-site laundry services may be within the LSRH or in a separate building on-site. The laundry facilities shall be separated from a patient treatment room, patient examination room, and a patient diagnostic room, or areas of food preparation and storage, and areas in which clean supplies and equipment are stored.

(1) Architectural requirements.

(A) When laundry service is provided on site, it shall comply with the following.

(i) Soiled and clean linen processing room. Soiled and clean linen processing rooms shall be provided. When the soiled and clean linen processing are combined in a single room, each process shall be physically separated within the room.

(ii) Hand washing facilities. Adequate hand washing facilities shall be provided in both the soiled and clean processing areas.

(iii) Receiving, holding, and sorting room. A receiving, holding, and sorting room for control and distribution of soiled linen shall be provided. This area may be combined with the soiled linens processing room. Discharge from soiled linen chutes may be received in the soiled room or area or in a separate dedicated room.

(iv) Laundry processing room. A laundry processing room shall be provided with a commercial washer and dryer capable of processing at least a seven-day laundry supply within the regular scheduled work week.

(v) Clean linen processing room. A clean linen processing room or area shall be provided with folding counters or tables. This area shall have provisions for inspections, folding, packing, and mending of linen.

(vi) Storage room. A holding room or area for storage and issuing of clean linen shall be provided but may be combined with clean linen processing room.

(vii) Storage space. Storage space and cabinets for soaps, stain removers, and other laundry processing agents shall be located in the soiled and clean processing room or areas.

(viii) Laundry equipment. Laundry equipment shall be arranged so that the processing of laundry is an orderly work flow from soiled to clean operations. Cross-traffic shall be held to a minimum to prevent contamination.

(B) Off-site laundry. When laundry service is provided off site, the following minimum requirements shall be provided on site:

(i) a service entrance that shall have a drive under canopy for protection from inclement weather, for loading and unloading of linen;

(ii) a control station for pickup and receiving. This may be a room at the common loading dock, in the soiled linen holding room, or the central clean linen storage room;

(iii) a soiled linen holding room; and

(iv) a central clean linen storage and issuing room in addition to linen storage required at the individual patient units.

(C) Required areas or rooms. The following areas or rooms shall be provided regardless of delivery type of laundry service:

(i) office space for the director of laundry services;

(ii) cart storage rooms for clean and soiled linen. The cart storage areas may be provided within the clean and soiled rooms. Carts may not be parked or stored in the egress corridor;

(iii) cart sanitizing facilities that comply with subsection (b) of this section;

(iv) staff toilet in the laundry suite or convenient for staff use and with a hand washing fixture with hands-free operable controls;

(v) lockers for staff use may be in laundry suite or part of a central locker room when convenient to the laundry; and

(vi) housekeeping room within the laundry suite or available nearby.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter.

(3) Mechanical Requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Ventilation system. The ventilation system shall include adequate intake, filtration, exchange rate, and exhaust in accordance with Table 3 and Table 4 of §511.169(c) and (d) of this subchapter, respectively.

(B) Filtration. Filtration requirements for air handling units serving the laundry suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §511.169(d) of this subchapter.

(C) Air flow. Direction of air flow of the HVAC systems shall be from clean to soiled areas.

(D) Soiled processing ventilation. The ventilation system for soiled processing area shall have negative air pressure while the clean processing area shall have positive pressure.

(E) Lint interceptors. Lint interceptors shall be located outside the laundry area. Drainage piping that serves laundry equipment shall employ suds-control features.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter.

(m) Medical records suite.

(1) Architectural requirements. The following rooms, areas, or offices shall be provided in the medical records suite:

(A) medical records administrator or technician office;

(B) review and dictating rooms or spaces;

(C) work area that includes provisions for sorting, recording, scanning, or microfilming records; and

(D) file room. When nondigital files are stored on site, the room shall be considered as hazardous. The construction protection for the storage room or area shall comply with Chapter 18 of NFPA 101 §18.3.2.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter.

(n) Mental health and chemical dependency treatment.

(1) General requirements. Areas that a patient receiving mental health or chemical dependency services at the LSRH may occupy shall comply with the requirements in this subsection.

(2) Details and finishes.

(A) Details.

(i) Security. The type and degree of security and patient safety required in the suite shall be determined by LSRH administration and described in the LSRH's functional program narrative, unless stated otherwise within these rules.

(ii) Visibility. All areas where a person receiving mental health services is located in the LSRH, including entrances to patient care rooms, shall be visible from the nurse station. Observation by video cameras of seclusion rooms, entrances, hallways, and activity areas shall be acceptable.

(iii) Fasteners. All exposed and accessible fasteners shall be tamper-resistant.

(iv) Hardware. Suitable hardware shall be provided on doors to toilet rooms so that access to these rooms can be controlled by staff. Hardware shall be utilized that is appropriate to prevent patient injury.

(v) Breakaway fixtures. Only breakaway or collapsible clothes bars in wardrobes, lockers, and closets and shower curtain rods shall be permitted in areas that a patient receiving mental health or chemical dependency treatment services may occupy in the LSRH.

(vi) Hangers. Wire coat hangers shall not be permitted in the suite.

(vii) Special hardware. Special fixtures, hardware, and tamper-proof screws are required throughout the suite.

(viii) Grab bars. Horizontal grab bars shall be constructed to prevent looping or tying of cords, ropes, etc.

(ix) Safety glazing. Where glass fragments may create a hazard, safety glazing or other appropriate security features shall be incorporated.

(B) Finishes. Patient sleeping rooms, patient toilet rooms and seclusion rooms shall have monolithic ceilings and bonded walls for patient safety and security measures. The ceiling in the soiled workroom shall be monolithic type as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with 25 TAC §133.163(t)(3) and this paragraph. Special consideration shall be given to the type of heating and cooling units, ventilation outlets, and appurtenance installed in patient-occupied areas of mental health nursing units. The following shall apply:

(A) All air grilles and diffusers shall be of a type that prevents the insertion of foreign objects.

(B) All convector or HVAC enclosures exposed in the room shall be constructed with rounded corners and shall have enclosures fastened with tamper-resistant fasteners.

(C) HVAC equipment shall be of a type that minimizes the need for maintenance within the room.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with 25 TAC §133.163(t)(4) and this paragraph.

(A) Piping systems.

(i) Medical gas. Piped medical gas systems are not required.

(ii) Sprinklers and showerheads. Only tamper-proof sprinkler and tamper-proof showerheads from which it is not possible to suspend any objects shall be installed.

(B) Plumbing fixtures.

(i) Faucet controls. Faucet controls shall not be equipped with handles that may be easily broken off.

(ii) Bedpan washers. Bedpan washers are not allowed in patient bathrooms or toilet rooms.

(5) Electrical requirements. Electrical requirements shall be in accordance with 25 TAC §133.163(t)(5) and this paragraph.

(A) Nurse call. A nurse call system shall comply with the requirements of §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter. Pull cords shall not exceed 18 inches in length, and provisions shall be made to permit removal of call buttons and use of blank plates as required for security.

(B) Each patient room shall have duplex grounded receptacles. There shall be one receptacle at each side of the head of each bed and one on every other wall. Receptacles in areas intended for mental health and chemical dependency patients of all ages shall be protected by GFCI breakers installed in distribution panel enclosures serving the unit.

(C) Fifteen-ampere and 20-ampere, 125-volt receptacles intended to supply patient care areas shall be tamper-resistant as permitted by NFPA 70, §517-18, or shall be protected by GFCI breakers. A tamper-resistant receptacle is one that is constructed to limit improper access to its energized contacts.

(o) Morgue.

(1) Architectural requirements.

(A) General. When a morgue or body-holding room is provided, it shall be located to avoid the need for transporting bodies of deceased patients through public areas. A body-holding room shall be provided.

(B) Autopsy performed within LSRH. When autopsies are performed within the LSRH, the following rooms, areas, and equipment shall be provided.

(i) Facilities. Refrigerated facilities shall be provided for body-holding.

(ii) Room requirements. The autopsy room shall contain work counters, hand washing facilities with hands-free operable controls, autopsy table and storage space for supplies, equipment and specimens.

(iii) Sink. A deep sink shall be provided for washing specimens.

(iv) Change area. A clothing change area shall be provided with shower, toilet, hand washing facilities and lockers.

(C) Service areas. The following service areas shall be provided:

(i) a pathologist office;

(ii) staff toilets may be outside the suite but be convenient for staff use with a hand washing fixture with hands-free operable controls; and

(iii) a housekeeping room that meets the requirements of §511.162(d)(2)(A)(xxviii) of this subchapter shall be provided for the exclusive use of the morgue when autopsies are performed.

(D) Minimum requirements. If autopsies are performed outside the LSRH, a well-ventilated, temperature-controlled, nonrefrigerated body-holding room shall be provided.

(2) Details and finishes. Details and finishes shall be in accordance with §511.162(d)(2) of this subchapter and this paragraph.

(A) Flooring used in the autopsy room shall be the seamless type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter.

(B) Ceilings in the autopsy rooms shall be monolithic as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §511.162(d)(3) of this subchapter and this paragraph.

(A) The autopsy room shall be equipped with low exhaust grilles.

(B) The body-holding room shall be ventilated in accordance with Table 3 of §511.169(c) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Electrical requirements shall be in accordance with §511.162(d)(5) of this subchapter and this paragraph. Refrigerators for body-holding in the autopsy room shall be connected to the equipment branch of the essential electrical distribution system.

(p) Nuclear medicine suite.

(1) Architectural requirements.

(A) General. When nuclear medicine services are provided, the facilities may be in a separate suite or combined with an imaging suite.

(i) Radiation protection. When nuclear medicine requires radiation protection, a medical physicist licensed under Texas Occupations Code Chapter 602 shall specify the type, location, and amount of radiation protection to be installed for the layout, equipment selections and storage, handling and disposal of radioactive material.

(ii) Room size. The nuclear medicine room shall be sufficiently sized to house all fixed and moveable equipment and allow a minimum of three feet of clear and unobstructed working space on all sides of equipment accessible to staff and patient.

(B) Radioisotope room (Hot lab). When radiopharmaceutical preparation is performed on site, the room shall include sufficient space for equipment, storage of radionuclides, chemicals for preparation, dose calibrators, and record keeping. When preprepared materials are used, storage and calculation area may be smaller than for on-site preparation.

(i) Radiation shielding. The room and isotope handling areas within the room shall have appropriate radiation shielding.

(ii) Radioisotope storage. There shall be a shielded area or enclosed shielded cabinet for long-term storage of decaying radioisotopes.

(iii) Hood exhaust. When venting of radioactive gases is required, a hood shall exhaust to the exterior.

(C) Positron emission tomography (PET). When PET services are provided, scanner and cyclotron rooms shall be in compliance with the manufacturer's recommendations and provide a minimum of three feet of clear and unobstructed working space on all sides of equipment accessible to staff and patient.

(i) Control alcove. A control alcove shall be provided with a view window permitting view of the patient.

(ii) Equipment area. An equipment area large enough to contain necessary electronic and electrical gear shall be provided.

(iii) Dose administration room. A dose administration room with radiation shielding shall be located near the treatment room. Patients in route to procedure rooms shall not pass through public corridors and waiting rooms after injection with radioisotope.

(iv) Patient toilet. A patient toilet with radiation shielding shall be provided with or adjacent to the dose administration room. The patient toilet room shall contain a hand washing fixture with hands-free operable controls.

(D) Service areas.

(i) Patient waiting area. The area shall be out of traffic and under direct staff visual control.

(ii) Control desk and reception area. A control desk and reception area shall be provided.

(iii) Dictation and report preparation area. The dictation and report preparation area may be incorporated with the control station.

(iv) Holding area. The holding area shall be under direct staff control, out of the direct line of traffic, and have space for stretchers. The holding area shall accommodate two stretchers for the first procedure room with one additional station for each additional procedure room.

(v) Patient toilet facilities. A toilet room with a hand washing fixture with hands-free operable controls shall be provided convenient to the waiting room and procedure room.

(vi) Staff toilet facilities. Toilets and hand washing fixtures with hands-free operable controls may be outside the suite but shall be convenient for staff use.

(vii) Patient dressing rooms or cubicles. Dressing rooms or cubicles shall be provided convenient to the waiting areas and procedure rooms. Each room or cubicle shall include a seat or bench, mirror, and provisions for hanging patients' clothing and for securing valuables. At least one dressing room shall be provided to accommodate patients using wheelchairs.

(viii) Exam rooms. When examination rooms are provided, each room shall have a minimum of 100 square feet of clear floor area exclusive of built-in shelves or cabinets. Each exam room shall be equipped with a work counter and a hand washing fixture with hands-free operable controls.

(ix) Dose administration area. When a dose administration area is provided, the area shall be located near the preparation area and include visual privacy for the patients.

(x) Computer control area or room. Computer control area shall be located within or adjacent to the treatment room or rooms. When a centralized computer area is provided, it shall be a separate room with access terminals available within the treatment rooms.

(xi) Film processing room. A darkroom shall be provided for film processing unless the processing equipment normally used does not require a darkroom for loading and transfer. When daylight processing is used, the darkroom may be minimal for emergency and special uses. Film processing shall be located convenient to the treatment room or rooms and to the quality control area.

(xii) Quality control area or room. A quality control area shall include view boxes illuminated with light of the same color value and intensity.

(xiii) Film storage room (active). A room with cabinet or shelves for filing patient film for immediate retrieval shall be provided.

(xiv) Film storage room (inactive). A room for inactive film storage may be located outside the nuclear medicine suite, but must be under the administrative control of nuclear medicine personnel and properly secured to protect films against loss or damage.

(xv) Digital imaging. If digital imaging is utilized throughout the suite, the darkroom film processing area and film viewers is not required.

(xvi) Storage for unexposed film. Storage facilities for unexposed film shall include protection of film against exposure or damage.

(xvii) Offices for physicians, oncologist, physicists, and assistants. Offices shall include provisions for individual consultation, viewing, and charting of film.

(xviii) Clerical office spaces. Clerical office spaces shall be provided.

(xix) Consultation room. A consultation room shall be provided.

(xx) Clean storage room. A clean storage room shall be provided for clean supplies and linens. A hand washing fixture shall be provided with hands-free operable controls. When conveniently located, the clean storage room may be shared with another department.

(xxi) Soiled workroom. The soiled workroom shall not have direct connection to the nuclear medicine procedure or diagnostic rooms or sterile activity rooms. The room shall contain a clinical sink or equivalent flushing type fixture, work counter, hand washing fixture with hands-free operable controls, waste receptacle, and soiled linen receptacle. When contaminated soiled material or fluid waste is not handled, only a soiled holding room is required.

(xxii) Housekeeping room. The housekeeping room shall be located within the suite.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Details.

(i) Radiation protection. Radiation protection shall be designed, tested and approved by a medical physicist licensed under Texas Occupations Code Chapter 602.

(I) Room shielding. Room shielding calculations for the stipulated rooms within the nuclear medicine suite must be submitted to the Department of State Health Services Radiation Control Program (RC) for approval prior to use. Shielding in diagnostic radiographic rooms will be reviewed by RC inspectors, in the field, subsequent to use. Any changes in design or shielding that affects radiation exposure levels adjacent to those rooms requires prior approval by RC.

(II) Facility design and environmental controls associated with licensable quantities of radioactive material in laboratories or procedure rooms must be approved by RC prior to licensed authorizations.

(ii) The nuclear medicine treatment rooms shall have ceiling heights not less than nine feet. Ceilings containing ceil-

ing-mounted equipment shall be of sufficient height to accommodate the equipment of fixtures and their normal movement.

(B) Finishes.

(i) Flooring. Flooring used in the nuclear medicine procedure room, any work or treatment areas where radioactive material is handled, and soiled workrooms shall be of the seamless monolithic type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter.

(ii) Ceiling. Ceilings in radiopharmacy, hot laboratory, and soiled workrooms shall be monolithic as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Radiopharmaceutical preparations. When radiopharmaceutical preparations are performed, vents and traps for radioactive gases shall be provided.

(B) Direction of air flow of the HVAC system shall be from nonradioactive spaces into the radioactive spaces. A minimum of two return air inlets located diagonally opposite from one another and near floor level shall be provided.

(C) In the PET suite, special ventilation systems together with monitors, sensors, and alarm systems shall be required to vent gases and chemicals. The ventilation shall be directly to the exterior.

(D) Filtration requirements for air handling units serving the nuclear medicine suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §511.169(d) of this subchapter.

(E) Where fume hoods are used, the design should consider the placement and types of air distribution devices to avoid the disturbance of a uniform velocity across the face of the hood. Fume hoods shall be exhausted directly to the exterior.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph.

(A) General.

(i) Nuclear medicine procedure room. Each nuclear medicine procedure room shall have at least four duplex electrical hospital grade receptacles.

(ii) Nuclear medicine procedures rooms shall have general lighting in addition to that provided by special lighting units at the procedure tables.

(B) Nurses calling systems. The nurse call shall comply with §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter.

(q) Nursing unit. The requirements in this subsection apply to nursing units in LSRHs. Architectural requirements shall comply with §511.162(d)(1) of this subchapter and this subsection.

(1) Accessibility requirements. At least 10 percent of each patient room type, isolation room, bathing units and toilets in medical/surgical, intermediate care, universal care, antepartum, postpartum, mental health, chemical dependency, and pediatric nursing units and all public and common use areas shall be designed and constructed to be Americans with Disabilities Act (ADA) accessible. These requirements shall apply in all new construction and when an existing nursing

unit or a portion thereof is converted from one service to another (e.g., mental health care to medical or surgical nursing care).

(2) Patient room suites. A patient room suite shall consist of the patient room and a bathroom. Patient room suites shall comply with the following requirements.

(A) Maximum patient room capacity. The maximum patient room capacity shall be two patients. In existing facilities where renovation work is undertaken and the present capacity is more than two patients, the maximum room capacity shall be no more than the present capacity with a maximum of four patients.

(B) Single-patient station room. In a single-patient station room, the minimum clear floor area shall be 120 square feet.

(C) Multi (two)-patient station room. The clearance between the side of a station and a wall or partition shall be a minimum of three feet. The clearance between sides of stations shall be a minimum of five feet. The minimum distance at the foot of the station shall not be less than four feet for a single load area or room or seven feet for a double load area or room. Four feet of the passage space at the foot of the station may be shared between two stations.

(D) Multi (two)-station accessible patient room. The clearance between the side of a station and a wall or partition shall be a minimum of five feet. The clearance between sides of stations shall be a minimum of four feet. The minimum distance at the foot of the station shall not be less than four feet for a single load area or room or seven feet for a double load area or room. Four feet of the passage space at the foot of the station may be shared between two stations.

(E) Arrangement of patient rooms. Minor encroachments including columns and wall hung lavatories that do not interfere with functions may be ignored when determining space requirements for patient rooms.

(i) Clear floor space. Required clear floor space in patient rooms shall be exclusive of toilet rooms, closets, lockers, built-in cabinets, wardrobes, alcoves, or vestibules.

(ii) Visual privacy. Visual privacy shall be provided each patient in multi-station room. Design for privacy shall not restrict independent patient access to the corridor, lavatory, or bathroom.

(F) Patient bathroom. Each patient shall have access to a bathroom without having to enter the general corridor area. Each bathroom shall contain a toilet with bed pan washers, hand washing fixture with hands-free operable controls, bathing facilities, and storage shelf or cabinet and serve not more than two patient rooms. Hand washing facilities shall be located in the patient room and in the patient bathroom. The hand washing fixture in the room shall be located outside of the patient's cubicle curtain in multi-station patient room.

(G) Patient storage. Each patient shall have a separate wardrobe, locker, or closet that is suitable for hanging full-length garments and for storing personal effects. A minimum of 12 lineal inches of hanging space shall be provided per patient.

(3) Airborne infection isolation suites. Where provided, a minimum of one isolation room shall be designated for pediatric patient care. Each airborne infection isolation suite shall consist of a work area, a patient room, and a patient bathroom.

(A) The work area may be a separately enclosed anteroom or a vestibule that is open to and is located immediately inside the door to the patient room. It shall have facilities for hand washing, gowning, and storage of clean and soiled materials. One enclosed anteroom may serve multiple isolation rooms.

(B) Each patient room shall have a clear floor area of 120 square feet exclusive of the work area and shall contain only one patient station. A patient bathroom shall be provided in accordance with paragraph (2)(F) of this subsection.

(C) At least one airborne infection isolation suite with an enclosed anteroom shall be provided.

(D) A door from an anteroom to an airborne infection isolation room and a door from an egress corridor into an anteroom shall be provided with a self-closing device. When an isolation room does not have an anteroom, the door from the egress corridor into the isolation room shall be provided with a self-closing device. When sliding doors are used in isolation rooms and in surgical suite post-anesthesia care units, the self-closing device may not be required as long as assurances of negative air pressure are met when sliding doors are opened.

(E) Pressure differential monitors or air flow devices shall be installed outside the isolation room and anteroom. Devices shall be installed in corridors, passageways, etc.

(F) Where a special assisted bathing facility is provided, it shall meet the requirements of this paragraph, including space for attendant, for patients on stretchers, carts, and wheelchairs. This may be on another floor if convenient for use. The central bathing room shall contain a bathtub that is accessible to a patient using a wheelchair or a shower that can accommodate a gurney. The room shall have space for drying and dressing and be provided with a hand washing fixture with hands-free operable controls and a toilet with three feet of clear space on sides and front of the water closet; The nurse call shall comply with §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter.

(r) LSRH-based outpatient suite.

(1) Architectural requirements.

(A) Site, administration and public areas. The following areas shall be provided.

(i) Public waiting area. Toilet facilities, public telephone, and drinking fountain shall be provided. When pediatric services are provided, pediatric and adult patients waiting areas shall be separate.

(ii) Control station. A control station shall be located to permit staff observation of waiting area and control of access to LSRH-based outpatient clinical rooms.

(iii) Wheelchair storage alcove. The alcove provided for wheelchair storage shall be located out of line of traffic.

(iv) Interview space. Interview spaces shall be provided for social services, credit, and admissions. Provisions shall be made for privacy and dignity of the patient during interview, LSRH-based outpatient clinical services.

(v) Office. At least one office shall be provided for business transaction, records, and administrative and professional staff.

(B) LSRH-based outpatient room. The room shall have a minimum clear floor area of 100 square feet exclusive of fixed cabinets and shelves. Each examination room shall contain a work counter, cabinets, examination light and hand washing fixture with hands-free operable controls. A clearance of three feet shall be provided at each side and the foot of the examination table.

(C) Service areas. The following service areas and facilities shall be provided within the outpatient suite unless noted otherwise.

(i) Nurse stations. The nurse station shall contain a work counter, communication system, space for supplies, and provisions for charting.

(ii) Hand washing fixtures. Hand washing fixtures with hands-free operable controls shall be available at all patient care areas.

(iii) Patient toilet rooms. A toilet room shall be conveniently located to treatment rooms, examination rooms, and diagnostic rooms and shall include hand washing fixtures with hands-free operable controls.

(iv) Staff toilet facilities. Toilet rooms equipped with hand washing fixtures with hands-free operable controls shall be provided for the exclusive staff use. Toilet facilities may be provided in conjunction with the staff lounge.

(v) Staff lounge. A staff lounge with separate male and female staff clothing change rooms and toilets with hand washing fixtures with hands-free operable controls shall be provided in an LSRH having a total of six or more LSRH-based outpatient clinical rooms.

(vi) Medication station. Storage and distribution of medication may be done from a medicine preparation room, medicine alcove area, or from a self-contained medicine dispensing unit but must be under visual control of nursing staff. A work counter, a hand washing fixture with hands-free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks provided in many self-contained units are not acceptable for hand washing. The medication station may be shared with the clean workroom.

(vii) Dictation and report preparation area. This area may be accessible from the lounge.

(viii) Cast room. When a cast room is provided, it shall be equipped with hand washing facilities, plaster sink, storage, and other provisions required for cast procedures.

(ix) Wheelchair and stretcher storage. Wheelchair and stretcher storage space or alcove shall be provided and located out of direct line of traffic.

(x) Storage. Storage facilities shall be provided for office supplies, sterile supplies, pharmaceutical supplies, splints and other orthopedic supplies, and housekeeping supplies and equipment.

(xi) Ice machine. A self-dispensing ice machine shall be provided.

(xii) Clean workroom. A clean workroom or clean supply room shall be provided.

(xiii) Storage room. A storage room for the outpatient services shall be provided at least equal to five percent of the total area of the outpatient suite. This required storage room area may be combined with general stores.

(xiv) Soiled workroom. A soiled workroom shall be provided. It shall not have direct access to any patient treatment, examination, diagnostic rooms, or sterile rooms. The room shall contain a clinical sink or equivalent flushing rim fixture, work counter, hand washing fixture with hands-free operable controls, waste receptacle, and linen receptacle.

(xv) Housekeeping room. The housekeeping room shall be located within the suite.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph. Treatment

rooms shall be provided with seamless flooring in accordance with requirements contained in §511.162(d)(2)(B)(iii)(III) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph. Filtration requirements for air handling units serving the outpatient and surgical suite shall be equipped with filters having efficiencies equal to, or greater than specified for patient care areas in Table 4 of §511.169(d) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter and this paragraph. Sinks used for the disposal of plaster of paris shall have a plaster trap.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph. The nurse call shall comply with §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter.

(s) Pharmacy suite.

(1) Architectural requirements.

(A) General. The pharmacy room or suite shall be located for convenient access, staff control, and security for drugs and personnel.

(B) Dispensing area. The pharmacy room or suite shall include the following functional spaces and facilities:

(i) area for pickup, receiving, reviewing and recording;

(ii) extemporaneous compounding area with sufficient counter space for drug preparation and sink with hands-free operable controls;

(iii) work counter space for automated and manual dispensing activities;

(iv) storage or areas for temporary storage, exchange, and restocking of carts; and

(v) security provisions for drugs and personnel in the dispensing counter area.

(C) Manufacturing. The pharmacy room or suite shall provide the following functional spaces and facilities for the manufacturing area:

(i) bulk compounding area with work space and counters; and

(ii) area for packaging, labeling and quality control.

(D) Storage. The following spaces shall be provided in cabinets, shelves, or separate rooms or closets:

(i) space for bulk storage, active storage, and refrigerated storage;

(ii) storage in a fire safety cabinet or storage room that is constructed under the requirements for protection from hazardous areas in accordance with NFPA 101 Chapter 12, for alcohol or other volatile fluids, when used;

(iii) storage in a secure vault, safe, or double locking wall cabinet for narcotics and controlled drugs; and

(iv) storage space for general supplies and equipment not in use.

(E) Intravenous (IV) solutions area. When IV solutions are prepared in a pharmacy, a sterile work area shall be provided and

be in compliance with 22 TAC §291.133 (relating to Pharmacies Compounding Sterile Preparations) and the United States Pharmacopeia Chapter 797, Pharmaceutical Compounding—Sterile Preparations.

(i) IV work area components. The IV work area shall consist of a preparation room, hood room and, if provided, a separate chemo-hood room. Access to the preparation room shall be through the pharmacy only, access to the hood room or chemo-hood room shall be through the preparation room only.

(ii) Preparation room components. The preparation room shall contain a work counter, gowning area, and shelving.

(iii) Hand washing fixtures. A hand washing fixture with hands-free operable controls shall be in the preparation room and within five feet of each entrance to the hood room or chemo-hood room. Hand washing fixtures and floor drains are not allowed inside the hood room or chemo-hood room.

(iv) Laminar-flow hoods/work stations. Laminar-flow hoods/work stations shall be located inside the hood room.

(F) Compounding aseptic isolator (CAI). When a CAI is used for compounding in lieu of the IV solutions area, it may be done within the pharmacy provided it complies with the following.

(i) CAI requirements. The CAI shall provide isolation from the room and maintain the International Organization for Standardization (ISO) Class 5 (100 particles greater than or equal to 0.5 microns per cubic foot) levels during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(ii) Particle counts. The particle counts sampled shall be six to 12 inches upstream of the critical exposure site within the CAI and maintain ISO Class 5 levels during compounding operations.

(iii) CAI documentation. The pharmacy shall obtain documentation from the manufacturer that the CAI will meet this standard when located in worse than ISO Class 7 (10,000 particles greater than or equal to 0.5 microns per cubic foot environments).

(G) Administrative areas. The following functional spaces and facilities shall be included for the administrative areas:

(i) office area for the chief pharmacist and any other offices areas required for records, reports, accounting activities, and patients profiles;

(ii) poison control center with storage facilities for reaction data and drug information centers; and

(iii) a room or area for counseling and instruction when individual medication pick-up is available for inpatients or outpatients.

(H) Satellite pharmacy facilities. When provided, the room shall include a work counter, a sink with hands-free operable controls, storage facilities, and refrigerator for medications. As applicable, items required in subparagraphs (B) and (C) of this paragraph may be incorporated into the satellite pharmacy.

(I) Service areas and facilities. The following service areas and facilities shall be provided.

(i) Hand washing facilities. A hand washing fixture with hands-free operable controls shall be located in each room where open medication is handled except for IV prepared chemo-hood rooms.

(ii) Staff facilities. Toilet rooms with hand washing fixture with hands-free operable controls may be outside the suite but shall be convenient for staff use.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Flooring. Flooring in the IV solutions area for the preparation room, hood room and chemo-hood room shall be seamless and coved to the wall.

(B) Ceilings. IV solutions area ceiling and wall finishes for the preparation room, hood room and chemo-hood room shall be interlocking monolithic panels and sealed together or monolithic epoxy-painted gypsum board. The ceiling shall be coved to the wall.

(C) Sealing requirements. All penetrations in the walls and ceilings shall be sealed.

(D) Door requirements. The door from hood room shall swing into the preparation room. The door from preparation room shall swing into the chemo room. The door from preparation room shall swing into pharmacy.

(3) Mechanical Requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Laminar-flow system. When IV solutions are prepared, the required laminar-flow system shall include a nonhygroscopic filter rated at 99.97 percent (HEPA). A pressure gauge shall be installed for detection of filter leaks or defects.

(B) Fume hoods for chemotherapy. When fume hoods are used for chemotherapy, the air and fumes shall be exhausted directly to the exterior. The hood exhaust shall not use the building exhaust system. When more than one fume hood is in the same hood room and the work stations face each other, at least six feet must separate work area openings.

(C) General fume hood requirements. When fume hoods are used, the design should consider the placement and types of air distribution devices to avoid the disturbance of a uniform velocity across the face of the hood.

(D) Filtration. All air entering the IV solutions area for the preparation room, hood room and chemo-hood room shall be HEPA filtered.

(E) Air pressure. In the IV solutions area the air pressure in the preparation room shall be positive to the pharmacy, the hood room shall be positive to the preparation room, and the chemo-hood room shall be negative to the preparation room.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter and this paragraph.

(A) Material used for plumbing fixtures shall be nonabsorptive and acid-resistant.

(B) Water spouts used at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and the contents of carafes, etc.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph.

(A) Under-counter receptacles. Under-counter receptacles and conduits shall be arranged (raised) to not interfere with cleaning of the floor below or of the equipment.

(B) Exhaust hoods. Exhaust hoods shall have an indicator light indicating that the exhaust fan is in operation.

(C) Electrical circuits. Electrical circuits to equipment in wet areas shall be provided with five milliamperere GFCI.

(t) Radiotherapy suite. When radiotherapy services are provided, the suite may contain equipment for electron beam therapy, radiation therapy, or both. The following facilities shall be provided.

(1) Architectural requirements.

(A) Radiation protection. Cobalt, linear accelerators, and simulation rooms require radiation protection. A medical physicist licensed under Texas Occupations Code Chapter 602, shall specify the type, location, and amount of radiation protection to be installed for the layout and equipment selections. Room layouts and construction shall prevent the escape of radioactive particles. Openings into the room, including doors, ductwork, vents, and electrical raceways and conduits, shall be baffled to prevent direct exposure to other areas of the facility.

(B) Room size. Cobalt, linear accelerator, and simulation rooms shall be sized in accordance with the installed equipment requirements, patient access on a stretcher, medical staff access to the equipment and patient, and access for servicing the equipment.

(C) Mold room. When a mold room is provided, it shall contain a ventilation hood exhausted to the exterior and a hand washing fixture with hands-free operable controls.

(D) Block room. A block room with storage for the linear accelerator may be combined with the mold room.

(E) Hot laboratory. A hot laboratory in support of cobalt therapy shall be provided.

(F) Service areas. The following service areas shall be provided unless these are accessible from other departments such as imaging or outpatient areas:

(i) a stretcher hold area adjacent to the treatment rooms, screened for privacy, and combined with a seating area for outpatients;

(ii) exam rooms for each treatment room shall be at least 100 square feet and shall be provided with hand washing facilities;

(iii) a patient gowning area with provisions for safe storage of valuables and clothing. At least one space shall be sized to allow for staff-assisted dressing;

(iv) convenient access to a housekeeping room;

(v) film file area;

(vi) film storage area for unprocessed film; and

(vii) a radioisotope decay room, that may be combined with the hot lab.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Details.

(i) Radiation protection. Radiation protection shall be designed, tested, and approved by a medical physicist licensed under the Texas Occupations Code Chapter 602.

(ii) Room shielding. Room shielding calculations for linear accelerators, cobalt, and simulation rooms shall be submitted to the Department of State Health Services Radiation Control Program (RC) for approval prior to use. Shielding in diagnostic radiographic rooms will be reviewed by inspectors, in the field, subsequent to use. Any changes in design or shielding that affects radiation exposure levels adjacent to those rooms requires prior approval by RC.

(iii) Ceiling heights. The cobalt, simulation, and linear accelerator rooms shall have ceiling heights not less than nine feet. Ceilings containing ceiling-mounted equipment shall be of sufficient height to accommodate the equipment of fixtures and their normal movement.

(iv) Ceiling-mounted equipment. Properly designed rigid support structures for ceiling-mounted equipment shall be located above the finished ceiling.

(B) Finishes.

(i) Flooring. Flooring in the soiled workroom and any work or treatment areas in the radiotherapy suite where radioactive materials are handled shall be of the seamless type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter.

(ii) Walls. Walls shall be constructed of materials that are easily decontaminated from accidental radioactive spills and finished in accordance with §511.162(d)(2)(B)(iv) of this subchapter.

(iii) Ceilings. Ceilings in the hot laboratory and soiled workroom shall be monolithic as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Fume hoods. Where fume hoods are used, the design should consider the placement and types of air distribution devices to avoid the disturbance of a uniform velocity across the face of the hood.

(B) Radioactive material fume hoods. Each hood used to process radioactive materials shall have a minimum face velocity of 90-110 feet per minute, be connected to an independent exhaust system, with suitable pressure-independent air modulating devices and alarms to alert staff of fan shutdown or loss of airflow. Each hood shall also have filters with a 99.97 percent efficiency (based on the dioctyl-phthalate (DOP) test method) in the exhaust stream, and be designed and equipped to permit the safe removal, disposal, and replacement of contaminated filters. Filters shall be as close to the hood as practical to minimize duct contamination.

(4) Plumbing fixtures and piping systems. Piping systems and plumbing fixtures shall comply with the requirements of §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Each radiotherapy suite shall comply with the requirements of §511.162(d)(5) of this subchapter and this paragraph.

(A) Radiotherapy procedure room. Each radiotherapy procedure room shall have at least four electrical receptacles.

(B) Ground fault circuit. Ground fault circuit interrupters shall not be used in radiotherapy procedure rooms.

(C) Nurses calling system. The nurse call shall comply with §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter.

(u) Rehabilitation therapy suite. Rehabilitation therapy may include one or more categories of services. Where two or more rehabilitation services are provided, the services may share common areas when appropriate.

(1) Architectural requirements.

(A) Occupational therapy. When occupational therapy services are provided, the following rooms or areas shall be included:

(i) an activity area with work areas, counters and a hand washing fixture with hands-free operable controls. Work areas and counters shall be suitable for wheel chairs;

(ii) an area for teaching daily living activities with space for a bed, kitchen counter with appliances and sink, bathroom, and a table and chair. The daily living activities area may be combined with the activity area;

(iii) an office for the occupational therapist; and

(iv) a storage room for supplies and equipment.

(B) Physical therapy. When physical therapy services are provided, the following rooms or areas shall be included.

(i) Provisions shall be made for thermotherapy, diathermy, ultrasonics, and hydrotherapy when required by the LSRH's functional program.

(ii) Treatment areas shall be provided with at least 70 square feet of clear floor area for each patient station, exclusive of four foot aisle space. Privacy screens or curtains shall be provided at each treatment station.

(iii) A hand washing fixture with hands-free operable controls shall be provided in each treatment room or space. One hand washing fixture may serve up to four patient stations when cubicles or open room concepts are used and when the fixture is conveniently located.

(iv) An area shall be provided for exercise and may be combined with treatment areas in open plan concepts.

(v) An office shall be provided for the physical therapist.

(vi) Separate storage shall be provided for soiled linen, towels, and supplies.

(vii) A storage area or room for equipment, clean linen, and supplies shall be provided.

(viii) When outpatient physical therapy services are provided, the suite shall have as a minimum patient dressing areas, showers and lockers. These shall be accessible and usable by people with disabilities.

(C) Prosthetics and orthotics. When prosthetics and orthotics services are provided, the following rooms or areas shall be included:

(i) work space with counters and shelves for technicians;

(ii) a treatment space for evaluating and fitting with privacy screens or curtains; and

(iii) a storage area or room for equipment and supplies.

(D) Speech and hearing. When speech and hearing services are provided, the following rooms or areas shall be included:

(i) a space for evaluating and treatment with privacy screens or curtains; and

(ii) a storage area or room for equipment and supplies.

(E) Service areas. The following areas or items shall be provided in a rehabilitation therapy suite, but may be shared when multiple rehabilitation services are offered:

(i) patient waiting area out of traffic with space for wheelchairs;

(ii) patient toilet facilities containing hand washing fixtures, with hands-free operable controls;

(iii) reception and control stations shall be located to provide supervision of activities areas. The control station may be combined with office and clerical spaces;

(iv) office and clerical space;

(v) wheelchair and stretcher storage room or alcove that shall be in addition to other storage requirements;

(vi) lockable closets, lockers or cabinets for securing staff personal effects;

(vii) staff toilets may be outside the suite but shall be convenient for staff use and contain hand washing fixtures with hands-free operable controls;

(viii) soiled holding room; and

(ix) housekeeping room with service sink, conveniently accessible.

(2) Details and finishes.

(A) Details. Details shall comply with §511.162(d)(2)(A) of this subchapter.

(B) Finishes. Finishes shall comply with §511.162(d)(2)(B) of this subchapter and this paragraph.

(i) Flooring in a treatment room and soiled workroom shall be of the seamless type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter.

(ii) Wall finishes shall comply with the requirements of §511.162(d)(2)(B)(iv) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph. Air handling units serving the rehabilitation therapy suite shall be equipped with filters having efficiencies equal to, or greater than specified for patient care areas in Table 4 of §511.169(d) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph. The nurse call shall comply with §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter.

(v) Respiratory therapy suite. The type and extent of respiratory therapy services vary greatly in each LSRH.

(1) Architectural requirements.

(A) Respiratory therapy suite. When respiratory services are provided from a centralized area, the following rooms or areas shall be included:

(i) an office for the respiratory therapist;

(ii) office and clerical space with provision for filing and retrieval of patient records;

(iii) receiving/decontamination workroom with work counter or table, a deep sink, and a hand washing fixture with hands-free operable controls;

(iv) a storage room for clean and sterile supplies that is separate from the receiving/decontamination workroom;

(v) when a blood gas analyzer is provided, it shall be located in a room and contain a counter and hand washing sink;

(vi) when a portable blood gas analyzer is used, it may be used in rooms that have a work counter and hand washing facilities with hands-free operable controls and storage of the unit may occur in an alcove or equipment storage room;

(vii) patient waiting area with space for wheelchairs;

(viii) reception and control station with visual control of waiting and activities areas;

(ix) patient toilet facilities that include hand washing fixtures with hands-free operable controls;

(x) office and clerical space; and

(xi) consultation/education room.

(B) Cough-inducing and aerosol-generating procedures. All cough-inducing procedures performed on patients who may have infectious Mycobacterium tuberculosis shall be performed in rooms, booths or special enclosures using local exhaust ventilation devices with HEPA filters located at the discharge end and exhaust directly to the outside.

(C) Service areas. The following areas and facilities shall be provided for the respiratory therapy suite but may be shared with other departments when conveniently located:

(i) wheelchair and stretcher storage room or alcove that is in addition to other storage requirements;

(ii) lockable closets, lockers or cabinets for securing staff personal effects;

(iii) staff toilets that include a hand washing fixture with hands-free operable controls. Staff toilets may be located outside suite if location is near and convenient; and

(iv) the housekeeping room shall be located within the suite or nearby, and shall contain a service sink and storage space for housekeeping supplies and equipment.

(2) Details and finishes.

(A) Details. Details shall comply with §511.162(d)(2)(A) of this subchapter.

(B) Finishes. Finishes shall comply with §511.162(d)(2)(B) of this subchapter and this paragraph.

(i) Flooring. Flooring in a decontamination room shall be of the seamless type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter.

(ii) Wall finishes. Wall finishes shall comply with the requirements of §511.162(d)(2)(B)(iv) of this subchapter.

(iii) Ceilings. Ceilings shall comply with §511.162(d)(2)(B)(vi)(III) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter.

(w) Special procedure suite.

(1) Architectural requirements.

(A) General. When special procedures such as endoscopy, bronchoscopy, and cardiac catheterization and other similar special procedures are provided, procedure rooms may be in a separate suite or may be part of the surgical suite.

(i) When special procedure rooms are part of the surgical suite and noninvasive procedures are performed, these rooms are not required to be part of the sterile environment.

(ii) Nonsurgical or noninvasive procedure rooms shall have a minimum clear floor area of 250 square feet, and a minimum clear dimension between fixed cabinets and built-in shelves shall be 14 feet.

(iii) A hand washing fixture or a scrub sink with hands-free controls shall be located within five feet of the entrance to each nonsurgical procedure room either in the room or outside. Hand washing facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts and recessed out of the main traffic areas.

(iv) When general anesthesia or inhalation anesthetizing agents are used during special procedures, these rooms shall comply with the detail, finish, mechanical and electrical requirements for an operating room contained in subsection (x) of this section.

(B) Special procedure room. Special procedure rooms for surgical cystoscopic and other endourologic procedures.

(i) Room area. The procedure room shall have a minimum clear floor area of 350 square feet exclusive of fixed cabinets and shelves. The minimum clear dimension between fixed cabinets and built-in shelves shall be 15 feet.

(ii) Room design. Procedure rooms shall be designed for visual and acoustical privacy for the patient.

(iii) Scrub station. One scrub station shall be located within five feet of the outside entrance of each special procedure surgical room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel, medical equipment, or supply carts. The scrub sinks shall be recessed out of the main traffic areas. The scrub sink shall be located off the restricted areas of the special procedure surgical procedure rooms. Scrub sinks or sinks shall not be located inside the sterile area.

(iv) Changing rooms. Appropriately sized areas shall be provided for male and female changing rooms within the special procedure surgical suite. These areas shall contain lockers, showers, toilets, hand washing fixtures with hands-free operable controls, and space to change into scrub suits and boots. Separate locker or changing rooms shall be provided for male and female staff. The shower and toilet room may be unisex. These areas shall be arranged to provide a traffic pattern so that personnel entering from outside the special procedure surgical suite can shower, change, and move into the restricted portions of special procedure surgical suite.

(C) Catheterization laboratory. A catheterization procedure room may be in a separate suite, part of a special procedure suite, surgical suite, or in the imaging suite. The following items and facilities shall be provided.

(i) The room shall be located in an area restricted to authorized personnel.

(ii) The procedure room shall be a minimum of 400 square feet of clear floor area exclusive of fixed and movable cabinets

and shelves. The minimum clear dimension between fixed cabinets and built-in shelves shall be 18 feet.

(iii) A control room shall have a view window that permits complete observation of the patient from the control console. The control room shall be large enough to contain the efficient functioning of the X-ray and image recording equipment.

(iv) An area for viewing images and film file room shall be provided. When digital imaging is provided throughout the suite, at least two X-ray film illuminators shall be provided within a central location within the catheterization laboratory and the film file room is not required.

(v) An equipment room large enough to contain X-ray transformers, power modules, and necessary electronics and electrical gear shall be provided.

(vi) Appropriately sized areas shall be provided for male and female changing rooms within the catheterization laboratory suite. These areas shall contain lockers, showers, toilets, hand washing fixtures with hands-free operable controls, and space to change into scrub suits and boots. Separate locker or changing rooms shall be provided for male and female staff. The shower and toilet rooms may be unisex. These areas shall be arranged to provide a traffic pattern so that personnel entering from outside the catheterization laboratory can shower, change, and move into the restricted portions of catheterization laboratory.

(vii) One scrub station shall be located within five feet of the outside entrance of each cardiac catheterization laboratory procedure room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel, medical equipment, or supply carts. The scrub sinks shall be recessed out of the main traffic areas. The scrub sink shall be located off the restricted areas of the cardiac catheterization laboratory. Scrub sinks or sinks shall not be located inside the sterile area.

(viii) Sterilizing facilities for immediate or emergency use shall be provided unless instruments are all disposable. A work space and hand washing fixture with hands-free operable controls shall be included.

(D) Patient holding and preparation area. In suites with two or more special procedure rooms, a patient holding and preparation area shall be provided to accommodate ambulatory and stretcher patients and meet the following requirements:

(i) two-stretcher stations shall be provided for first procedure room with one additional station for each additional procedure room;

(ii) the minimum clear floor space in a private holding and preparation room shall be 100 square feet exclusive of toilet room, built-in cabinets, work counter, alcove, or vestibules. A hand washing fixture with hands-free operable controls shall be provided. A minimum of 10 feet width shall be provided for the head wall;

(iii) in a multiple-station holding and preparation area, the clearance between the side of a gurney and a wall or partition shall be a minimum of three feet. The clearance between sides of gurneys shall be a minimum of six feet. The minimum distance at the foot of the gurney shall not be less than seven feet for single load area or room or ten feet for double load area or room. Four feet of the passage space at the foot of the gurney may be shared between two gurneys. The fixed and moveable cabinets and shelves shall not encroach upon the gurney clear floor space or area;

(iv) a control station and charting area arranged to permit staff visual observation of holding and preparation area;

(v) a work counter and a hand washing fixture with hands-free operable controls for every four gurneys located in the preparation area; and

(vi) cubicle curtains at each station for patient privacy.

(E) Recovery room or area. In suites with two or more special procedure rooms, a recovery room or area shall be provided to accommodate ambulatory and stretcher patients and meet the following requirements:

(i) a minimum of one patient recovery station shall be provided for each special procedure room;

(ii) in a single patient recovery room, there shall be a minimum clear area of 130 square feet exclusive of aisles and fixed and moveable cabinets and selves. A minimum of 10 feet width shall be provided for the head wall. The room shall contain cabinets, work counter, and a hand washing fixture with hands-free operable controls. The fixed and movable cabinets and shelves shall not encroach upon the gurney clear floor space or area;

(iii) when multiple-gurney recovery patient stations are provided, the clearance between side of gurney and a wall or partition shall be a minimum of four feet. The clearance between sides of gurneys shall be a minimum of six feet. The minimum distance at the foot of the gurneys shall not be less than eight feet for single load area or room or twelve feet for double load area or room. Four feet of passage space requirement at the foot of the gurney may be shared between two gurneys. The multiple-gurney recovery patient station shall contain cabinets, medication storage, and work counter. The fixed and movable cabinets and shelves shall not encroach upon the gurney clear floor space or area. One hand washing fixture with hands-free operable controls shall be provided for every four stations or fraction thereof;

(iv) a nurse station with a hand washing fixture with hands-free operable controls and charting area shall be provided and arranged to provide visual observation of recovery room area;

(v) a staff toilet room with a hand washing fixture with hands-free operable controls shall be provided and located within the working area to maintain staff availability to patients;

(vi) cubicle curtains shall be provided at each station for patient privacy; and

(vii) the recovery room or area may be within the patient holding area.

(F) Instrument processing room. When instruments and equipment are processed, cleaned and disinfected within the suite, dedicated rooms shall be provided. The room may serve multiple procedure rooms. The following rooms shall be included.

(i) A decontamination room shall be provided and equipped with work counters, two sinks remote from each other and a hand washing fixture with hands-free operable controls. One of the sinks shall be utility type.

(ii) A clean room shall be provided and the process of cleaning the instruments or equipment shall flow from the contaminated area to the clean area, and finally, to storage. The room shall include a work counter and a hand washing sink fixture with hands-free operable controls. Instruments and equipment shall be protected from contamination.

(iii) When endoscopy scope wash rooms are provided, cleaning, washing and drying may occur in the same room. The room shall contain two sinks.

(G) Service areas. The following services shall be provided for all types of special procedure rooms unless noted otherwise.

(i) Control station. In facilities with two or more special procedure rooms in a suite, a nurse station shall be provided and located to permit visual surveillance of all traffic that enters the special procedure rooms suite.

(ii) Dictation and report preparation area. This area may be incorporated with the control station.

(iii) Medication station. Provision shall be made for the storage and distribution of medication to be administered to patients. This may be done from a medicine preparation room, medicine alcove area or from a self-contained medicine dispensing unit. The medicine preparation room, medicine alcove area or self-contained medicine dispensing unit shall be under visual control of nursing staff. A work counter, hand washing fixture with hands-free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks provided in many self-contained units are not acceptable for hand washing. The medication station may be shared with the clean work room.

(iv) Patient toilet room. A toilet room shall be conveniently located to special procedure rooms and patient changing areas and shall include hand washing fixtures with hands-free operable controls.

(v) Staff toilet facilities. Facilities shall be provided for exclusive staff use and include a hand washing fixture with hands-free operable controls. The toilet may be accessible from a staff lounge, when a staff lounge is provided.

(vi) Storage. A storage room shall be provided for equipment and supplies used in the special procedure suite. Each special procedure suite shall provide at least 150 square feet of storage area or 50 square feet per procedure room, whichever is greater.

(vii) Wheelchair and stretcher storage. A wheelchair and stretcher storage space or alcove shall be provided and located out of direct line of traffic.

(viii) Staff storage. Storage space for employees' personal effects shall be provided.

(ix) Ice machine. An ice machine shall be provided.

(x) Clean storage room. A clean storage room shall be provided for clean supplies and linens. A hand washing fixture shall be provided with hands-free operable controls.

(xi) Soiled workroom. The soiled workroom shall not have direct connection to the special procedure or diagnostic rooms or other sterile or clean activity rooms. The room shall contain a clinical sink or equivalent flushing type fixture, work counter, hand washing fixture with hands-free operable controls, waste receptacle, and linen receptacle.

(xii) Housekeeping room. A housekeeping room shall be provided for the exclusive use of the special procedure suite. It shall be directly accessible from the suite and shall contain a floor receptor or service sink and storage for supplies and housekeeping equipment.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Details. Special procedure rooms shall have ceiling heights not less than nine feet.

(B) Finishes.

(i) **Flooring.** Flooring used in special procedure rooms, decontamination room, and in the soiled workroom shall be of the seamless type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter.

(ii) **Ceilings.** Ceiling finishes in special surgical procedure rooms and isolation rooms, soiled workroom and sterile processing rooms shall be monolithic as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(iii) **Nonsurgical special procedure room ceilings.** A lay-in type ceiling is acceptable in nonsurgical special procedure rooms.

(iv) **Nonsurgical or noninvasive cauterization lab ceilings.** A nonsurgical or noninvasive catheterization lab shall have a washable ceiling.

(3) **Mechanical Requirements.** Mechanical requirements comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) **Air supply.** Air supply for the special procedure rooms shall be from ceiling outlets that are as near the work centers as possible. At least two low return inlets shall be located diagonally opposite from one another.

(B) **Return air inlets.** Return air inlets shall be not lower than four inches nor higher than 12 inches from floor level.

(C) **Smoke removal system.** Smoke removal systems shall be provided in accordance with §511.162(d)(3)(D)(iv)(II) of this subchapter, for special procedure rooms that have piped-in nitrous oxide medical gas or where anesthesia is administered to patients.

(D) **Ventilation.** The decontamination room shall meet the ventilation requirements that are contained in Table 3 of §511.169(c) of this subchapter.

(E) **Temperature and humidity indicating devices.** Each special procedure room and recovery room shall have wall-mounted temperature and humidity indicating devices.

(F) **Airborne infection ventilation.** When patients with airborne infectious disease are treated, the room shall meet requirements for airborne infection ventilation for patient care areas in accordance with Table 3 of §511.169(c) of this subchapter.

(4) **Piping systems and plumbing fixtures.** Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter and this paragraph.

(A) **Drainage and waste piping** shall not be installed within the ceiling or installed in an exposed location in special procedure rooms and sterile processing rooms unless precautions are taken to protect the space below from leakage and condensation from necessary overhead piping. Any required secondary protection shall be labeled, "code required secondary drain system" every 20 feet in a highly visible print or label.

(B) A medical gas system shall be provided in accordance with §511.162(d)(4)(A)(iii) and (iv), and Table 6 of §511.169(f) of this subchapter.

(5) **Electrical requirements.** Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph.

(A) **General.**

(i) **X-ray film illuminators.** X-ray film illuminators for handling at least four films simultaneously shall be provided in a central location. When the entire special procedure suite is provided

with digital imaging system capabilities, at least two X-ray film illuminators viewers shall be provided.

(ii) **Electrical receptacles.** Each special procedure room shall have at least six duplex electrical hospital grade receptacles.

(iii) **Additional receptacles.** In locations where mobile X-ray, laser, or other equipment requiring special electrical configuration is used, the additional receptacles shall be distinctively marked for the special use.

(iv) **GFCIs.** The electrical circuits to equipment in wet areas shall be provided with GFCIs. GFCI circuits shall not be used in special procedure rooms. When ground fault circuit interrupters are used in critical areas, provisions shall be made to ensure that other essential equipment is not affected by activation of one interrupter.

(v) **Special grounding system.** Special grounding system in areas such as special procedure rooms where a patient may be treated with an internal probe or catheter the ground system shall comply with NFPA 99 Chapter 10 and NFPA 70 Article 517.

(vi) **Lighting.** Special procedures rooms shall have general lighting in addition to that provided by special lighting units at the procedure tables.

(B) **Nurses calling system.** The nurse call shall comply with §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter.

(x) **Surgical suite.**

(1) **Architectural requirements.**

(A) **General.**

(i) **Waiting room.** A public waiting room shall be provided.

(ii) **Toilet facilities.** Toilet facilities, public telephone, and drinking fountains shall be provided within or nearby.

(iii) **Unrelated traffic.** The surgical suite shall be located and arranged to preclude unrelated traffic through the suite.

(B) **General operating room.** At least one operating room shall be provided and shall have a minimum clear floor area of 400 square feet exclusive of fixed and movable cabinets and shelves. The minimum clear dimension between fixed cabinets and built-in shelves shall be 20 feet. There shall be no direct access between operating rooms.

(C) **Operating rooms for cardiovascular, orthopedic, neurological, and other special surgical procedures** that require additional personnel and large equipment.

(i) When provided, these rooms shall have a minimum clear floor area of 600 square feet, with a minimum of 20 feet clear dimension exclusive of fixed or wall-mounted cabinets and built-in shelves.

(ii) An additional room shall be provided in the restricted area of the surgical suite, preferably adjoining this operating room, where extra corporeal pumps, supplies and accessories can be stored and serviced.

(iii) When complex orthopedic surgery and neurosurgery are performed, additional rooms shall be provided in the restricted area of the surgical suite, preferably adjoining the specialty operating rooms, for storage of equipment used during these procedures.

(D) **Preoperative patient holding areas or rooms.** In facilities with two or more operating rooms, a patient holding area or rooms shall be provided. The preoperative patient holding area may

be used for secondary recovery. The area shall meet the following requirements.

(i) Clear floor space for private preoperative holding room. The minimum clear floor space in a private preoperative holding room shall be 100 square feet exclusive of aisles and fixed and moveable cabinets and selves. A minimum of nine feet width shall be provided for the head wall.

(ii) Clear floor space for multiple-patient station preoperative holding area. In a multiple-patient station preoperative holding area, the clearance between the side of a gurney and a wall or partition shall be a minimum of three feet. The clearance between sides of gurneys shall be a minimum of six feet. The minimum distance at the foot of the gurney shall not be less than seven feet for single load area or room or ten feet for double load area or room. Four feet of the passage space at the foot of the gurney may be shared between two gurneys. The fixed and moveable cabinets and shelves shall not encroach upon the gurney clear floor space or area.

(iii) Control station. A control station and charting area shall be provided and arranged to permit staff visual observation of holding and preparation area.

(iv) Work counter. A work counter with hand washing fixture with hands-free operable controls shall be provided and located in the preparation area.

(v) Cubicle curtains. Cubicle curtains shall be provided at each station for patient privacy.

(vi) Hand washing fixtures. One hand washing fixture with hands-free operable controls shall be provided for every four preoperative holding beds or fraction thereof. Fixtures shall be uniformly distributed. One hand washing fixture with hands-free operable controls shall be provided within each single-bed preoperative holding room.

(E) Post-anesthesia care units.

(i) Post-anesthesia care units (PACU) requirements. PACUs for surgical patients shall contain a medication distribution station, nurse station with charting facilities, clinical sink provisions for bedpan cleaning, and storage space for stretchers, supplies, and equipment. The nurse station shall be arranged to permit the staff to have full visual control of the PACU area.

(ii) Patient station. At least one and a half patient stations per operating room shall be provided for post-anesthesia care or fraction thereof. At least two stations shall be provided when there is only one operating room.

(iii) Private recovery room clear floor area. The minimum clear floor space in a private recovery room shall be 130 square feet exclusive of aisles and fixed and moveable cabinets and selves. A minimum of 10 feet width shall be provided for the head wall. The room shall contain cabinets, work counter, and hand washing fixture with hands-free operable controls. The fixed and movable cabinets and shelves shall not encroach upon the gurney clear floor space or area.

(iv) Multiple-gurney recovery patient station area. In multiple-gurney recovery patient stations, the clearance between the side of gurney and a wall or partition shall be a minimum of five feet. The clearance between sides of gurneys shall be a minimum of six feet. The minimum distance at the foot of the gurney shall not be less than eight feet for single load area or room or twelve feet for double load area or room. Four feet of the passage space at the foot of the gurney may be shared between two gurneys. The multi-gurney recovery patient station shall contain cabinets, medication storage, and work counter. The

fixed and movable cabinets and shelves shall not encroach upon the gurney clear floor space or area.

(v) Cubicle curtains. Cubicle curtains shall be provided for patient privacy.

(vi) Doors. At least one door to the PACU room shall be within the surgical suite.

(vii) Staff toilets. Staff toilet facilities and a hand washing fixture with hands-free operable controls shall be located within or immediately adjacent to the PACU.

(viii) One hand washing fixture shall be provided for every four recovery beds or fraction thereof in open wards. Fixtures shall be uniformly distributed. One hand washing fixture shall be provided within each single-bed recovery room.

(F) Separation of recovery patients. Provisions shall be made for separating all patients subject to general anesthesia from those who did not receive general anesthesia. This requirement may be satisfied by providing separate recovery rooms, cubicles, secondary recovery rooms, or scheduling of procedures.

(G) Service areas. Services, except for the enclosed soiled workroom and the housekeeping room, may be shared with the obstetrical facilities if the LSRH's functional program reflects this concept. Service areas, when shared with delivery rooms, shall be designed to avoid the passing of patients or staff between the operating room and the delivery room areas.

(i) Control station. A control station located to permit visual surveillance of all traffic entering the surgical suite shall be provided.

(ii) Office. A supervisor's office or station shall be provided.

(iii) Scrub facilities. Two scrub stations shall be located in the restricted corridor within five feet of the entrance of each operating room. Two scrub stations may serve two operating rooms if the scrub stations are located adjacent to the entrance of both operating rooms. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel, medical equipment, or supply carts. Viewing panels shall be provided for observation of the surgical room interior. The scrub sinks shall be recessed out of the main traffic areas. The alcove shall be located within the restricted areas of the surgical suite. Scrub sinks shall not be located inside the sterile area.

(iv) Substerile facilities. Sterilizing facilities located conveniently to the operating rooms for immediate or emergency use with work counter shall be provided.

(v) Anesthesia workroom. The anesthesia workroom shall contain a work counter, sink with hands-free operable controls, and storage space for medical gas cylinders and other anesthesia equipment.

(vi) Medication station. Storage and distribution of medication may be done from a medicine preparation room, medicine alcove area, or from a self-contained medicine dispensing unit but must be under visual control of nursing staff. A work counter, hand washing fixture with hands-free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks provided in many self-contained units are not acceptable for hand washing. The medication station may be shared with the clean work room.

(vii) General storage room. At least 50 square feet per operating room is required for general storage space. The minimum requirement for three operating rooms or less is 150 square feet.

This storage room is exclusive of soiled holding, sterile supplies, clean storage, drug storage, locker rooms, and storage alcoves.

(viii) Orthopedic surgery storage. Splints and traction equipment shall be stored in an enclosed storage room. Storage shall be outside the operating room but must be conveniently located.

(ix) Storage alcove. An alcove or alcoves located out of the direct line of traffic shall be provided for the storage of stretchers, portable X-ray equipment, fracture tables, warming devices, auxiliary lamps, etc.

(x) Surgical suite staff clothing change rooms. Appropriately sized areas shall be provided for male and female personnel working within the surgical suite. These areas shall contain lockers, showers, toilets, hand washing fixtures with hands-free operable controls, and space to change into scrub suits and boots. Separate changing rooms shall be provided for male and female staff. The shower and toilet room or rooms may be unisex. These areas shall be arranged to provide a traffic pattern so that personnel entering from outside the surgical suite can shower, change, and move directly into the restricted areas of the surgical suite.

(xi) Lounge. A lounge shall be provided in an LSRH with three or more operating rooms. The lounge shall permit staff use without leaving the surgical suite and may be accessed from the clothing changing rooms. The lounge shall not have direct access from outside the surgical suite. When the lounge is remote from the clothing change rooms, toilet facilities and a hand washing fixture with hands-free operable controls accessible from the lounge shall be provided.

(xii) Staff toilet facilities. Toilet facilities located in the surgical suite for exclusive staff use shall be provided and contain a hand washing fixture with hands-free operable controls. The toilet room may be accessible from a staff lounge, when provided.

(xiii) Dictation and report preparation area. This may be accessible from the lounge area.

(xiv) Cast room. When a cast room is provided, it shall be equipped with hand washing facilities, plaster sink, storage, and other provisions required for cast procedures. This room may be located in the emergency room.

(xv) Ice machines. An ice machine shall be provided for therapeutic purposes. A self-dispensing ice machine shall be provided for human consumption.

(xvi) Clean workroom or clean supply room. A clean workroom is required when clean materials are assembled within the surgical suite prior to use or following the decontamination cycle. It shall contain a work counter, a hand washing fixture with hands-free operable controls, storage facilities for clean supplies, and a space to package reusable items. The storage for sterile supplies must be in a separate room. When the room is used only for storage and holding as part of a system for distribution of clean and sterile supply materials, the work counter and hand washing fixture are not required.

(xvii) Sterile core. When a surgical suite contains a sterile core, it shall be free of any cross-traffic of staff and supplies from the soiled or decontaminated areas to the sterile or clean areas. The use of facilities outside the operating room for soiled or decontaminated processing, clean assembly and sterile processing shall be designed to move the flow of goods and personnel from dirty to clean without compromising universal precautions or aseptic techniques in both departments.

(xviii) Soiled workroom. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter,

hand washing fixture with hands-free operable controls, waste receptacle, and linen receptacle. The clinical sink and work counter may be eliminated if the room is used only for temporary holding of soiled material and cleaning of equipment and instruments and sterilization is provided outside the surgical suite. Provisions shall be made for the disposal of liquid waste. The soiled workroom shall be provided for the exclusive use of the surgical suite, shall be located in the restricted area of the surgical suite, and shall not have direct connection with operating rooms, delivery rooms, or other sterile activity rooms.

(xix) Housekeeping room. A housekeeping room containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided for the exclusive use of the surgical suite and shall be directly accessible from the surgical suite.

(2) Details and finishes. Details and finishes shall comply with §511.162(d)(2) of this subchapter and this paragraph.

(A) Details.

(i) Ceiling height. Operating rooms shall have ceiling heights not less than nine feet.

(ii) Noise minimization. Recreation rooms, exercise rooms, equipment rooms, and similar spaces where impact noises may be generated shall not be located directly over operating suites, unless special provisions are made to minimize such noise.

(B) Finishes.

(i) Flooring. Flooring within operating rooms, soiled workrooms and sterile processing rooms shall be of the seamless type as required by §511.162(d)(2)(B)(iii)(III) of this subchapter.

(ii) Walls. Walls in operating rooms, special procedures rooms, and soiled workrooms shall comply with the requirements of §511.162(d)(2)(B)(iv)(II) of this subchapter.

(iii) Ceilings. Ceilings in operating rooms, isolation rooms, soiled workroom, and sterile processing rooms shall be monolithic as required by §511.162(d)(2)(B)(vi)(III) of this subchapter.

(3) Mechanical requirements. Mechanical requirements shall comply with §511.162(d)(3) of this subchapter and this paragraph.

(A) Air supply for the operating rooms shall be from ceiling outlets near the center of the work area to efficiently control air movement. At least two return air inlets located diagonally opposite from one another and near floor level shall be provided. Design should consider turbulence and other factors of air movement to minimize airborne particulate matter. Where extraordinary procedures require special designs, the installation shall be reviewed on a case-by-case basis.

(B) Smoke removal systems shall be provided in accordance with §511.162(d)(3)(D)(iv)(II) of this subchapter.

(C) The ventilation system for anesthesia storage rooms and medical gases storage shall conform to the requirements of Chapter 5, NFPA 99 §5.1.3.3.3.

(D) Each operating room, PACU, and recovery room shall be provided with conveniently mounted temperature and humidity indicating devices.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall comply with §511.162(d)(4) of this subchapter and this paragraph.

(A) General.

(i) Drainage and waste piping shall not be installed above or below ceilings in operating rooms, and sterile processing rooms unless precautions are taken to protect the space below from leakage and condensation from necessary overhead piping. Any required secondary protection shall be labeled, "code required secondary drain system" every 20 feet in a highly visible print or label.

(ii) Floor drains shall not be installed in operating rooms. Flushing rim type floor drains may be installed in cystoscopic operating rooms. If a floor drain is installed in cystoscopy, it shall contain a nonsplash, horizontal-flow flushing bowl beneath the drain plate.

(iii) Sinks used for the disposal of plaster of paris shall have plaster trap.

(B) Medical gas systems. Medical gas systems and outlets that comply with §511.162(d)(4)(A)(iii) and Table 6 of §511.169(f) of this subchapter shall be provided.

(5) Electrical requirements. Electrical requirements shall comply with §511.162(d)(5) of this subchapter and this paragraph.

(A) General.

(i) X-ray film illuminators for handling at least four films simultaneously shall be provided in each operating room. When the entire surgical suite is provided with digital imaging system capabilities, at least two X-ray film illuminator viewers shall be provided. The film illuminators shall be mounted within the central area of the suite.

(ii) Each operating room shall have at least eight duplex electrical hospital grade receptacles of which three shall be located convenient to the head of the procedure table. Each PACU recovery station shall have at least seven receptacles at the head of each patient station.

(iii) Special grounding system for critical care areas such as operating rooms, and special procedure rooms where patients are subjected to invasive procedures and connected to line-operated, electromedical devices shall comply with NFPA 99 Chapter 9 and NFPA 70 Article 517.

(iv) Operating rooms and special procedure rooms shall have general lighting in addition to that provided by special lighting units at the surgical tables. Each fixed special lighting unit at the operating or delivery table shall be connected to an independent circuit powered by the critical branch of the essential electrical system. Portable units may share circuits. At least one general lighting fixture shall be served from a normal branch panel.

(v) Operating rooms shall be provided with one or more battery-powered emergency lighting units as required by NFPA 99 §13.4.1.2.6(E).

(vi) Operating rooms shall be provided with at least one receptacle powered from a normal power panel. Receptacle shall be labeled, "Normal power receptacle, use only in the event of loss of critical system."

(B) Nurses calling system. The nurse call shall comply with §511.162(d)(5)(L) and Table 7 of §511.169(g) of this subchapter.

(y) Labor, Delivery, and Recovery (LDR).

(1) When provided, each LDR room shall have controlled access and shall be located so that a patient may be transported to the caesarean section operating room without the need to pass through other functional areas.

(2) Each LDR room shall be designed for single occupancy and have a minimum clear floor area of 200 square feet exclusive of the infant resuscitation area, built-in shelves or cabinets, alcove, vestibule or other adjoining rooms. The minimum clear room dimension shall not be less than 11 feet.

(3) A hand washing fixture with hands-free operable controls shall be provided in each LDR room.

(4) Each LDR shall have direct access to and exclusive use of a bathroom with a shower, or tub with shower, hand washing fixture with hands-free operable controls and a toilet.

§511.165. *Building with Multiple Occupancies.*

(a) Multiple hospitals located within one building.

(1) Identifiable location. Each hospital shall conform with all the requirements contained in Chapter 18 of the National Fire Protection Association 101, Life Safety Code, 2012 edition (NFPA 101), relating to New Health Care Occupancies.

(A) The guest hospital shall be in one separately contiguous location.

(B) In no case may a person leave the guest hospital, traverse the host hospital, and then reenter the guest hospital to access the remaining portion of the guest hospital.

(C) A connecting stair within the host hospital may be used to connect the vertical contiguous areas of the guest hospital.

(D) A guest hospital may not occupy two or more non-contiguous areas of a host hospital that contain intervening space of the host hospital even if on the same floor.

(E) Construction of the host hospital building shall conform to the requirements of NFPA 101 Chapter 18, and the building shall be fully sprinklered.

(2) Separate facilities. Each limited services rural hospital (LSRH) shall provide the following separate facilities:

(A) a nursing unit in accordance with the requirements of §511.163(q) of this subchapter (relating to Spatial Requirements);

(B) an administration office with an adjacent waiting room or waiting area;

(C) a medical records room that conforms with the requirements of §511.163(m) of this subchapter;

(D) a pharmacy suite that complies with §511.163(s) of this subchapter;

(E) employee locker facilities that comply with requirements of §511.163(f)(1) of this subchapter;

(F) a housekeeping room that complies with the requirements of §511.162(d)(2)(A)(xxviii) of this subchapter (relating to Construction Requirements);

(G) emergency facilities as required by §511.163(e)(1)(A) of this subchapter;

(H) imaging and other diagnostic services and facilities, in accordance with §511.46 of this chapter (relating to Radiologic Services) and §511.163(j) of this subchapter respectively;

(I) laboratory services and a laboratory suite that comply with §511.163(k) of this subchapter, and §511.45 of this chapter (relating to Laboratory Services) of this chapter respectively;

(J) where surgical services are provided, a surgical suite in accordance with §511.163(x) of this subchapter;

(K) dietary services and dietary suite, including staff dining facilities, which comply with §511.53 of this chapter (relating to Dietary Services) and §511.163(d) of this subchapter respectively;

(L) external signage at the building entrance that identifies each hospital; and

(M) internal signage that provides directions to each hospital.

(3) Means of egress. Means of egress from the host or guest hospital shall not be through a psychiatric hospital or a crisis stabilization unit or other area subject to locking. Means of egress may traverse through a hospital that conforms with the requirements of §511.161 of this subchapter (relating to Requirements for Buildings in Which Existing Licensed Hospitals are Located) or §511.162 of this subchapter. Stairs must have guardrails from the floor of the guest hospital to the level of exit discharge in accordance with NFPA 101 §7.2.2.4.5.

(4) Additional services and facilities. Additional services and facilities when required in each licensed hospital may be provided by contractual agreement with the other hospital when the services and facilities comply with the specific requirements of Subchapter C of this chapter (relating to Operational Requirements) and §511.163 of this subchapter. Some services may be provided by contractual agreement with a commercial contractor; however, the following minimal facilities shall be provided on site by the host hospital and be located in one of the hospitals. If the host hospital fails to provide the facilities and services, the guest hospital shall describe to the Texas Health and Human Services Commission (HHSC) how it plans to provide services:

(A) cart cleaning and sanitizing services and facilities that comply with §511.163(b) of this subchapter;

(B) general storage services and facilities that comply with §511.163(h) of this subchapter;

(C) housekeeping rooms as required in §511.162(d)(2)(A)(xxviii) of this subchapter;

(D) parking facilities, in accordance with §511.162(c)(2) of this subchapter;

(E) physical therapy, occupational therapy services and facilities, or both in accordance with §511.57 of this chapter (relating to Therapy Services), and §511.163(u) of this subchapter respectively;

(F) patient activity facilities shall comply with the requirements for the specific service in accordance with §511.163 of this subchapter as follows: mental health and chemical dependency nursing units §511.163(n)(1) and rehabilitation therapy suite §511.163(u)(1)(A)(i) and (ii) of this subchapter;

(G) respiratory care services and respiratory therapy suite that comply with §511.70 of this chapter (relating to Respiratory Care Services) and §511.163(v) of this subchapter respectively;

(H) body-holding room that complies with §511.163(o)(1)(D) of this subchapter;

(I) central sterile supply that complies with §511.163(c) of this subchapter respectively;

(J) waste and waste disposal services and waste processing and storage units shall comply with §511.71 of this chapter (relating to Waste and Waste Disposal); and

(K) emergency water storage requirement in Texas Administrative Code Title 25 §133.162(d)(4)(A)(i)(VIII) shall be required for the LSRH and the hospital and be located in either the LSRH or other hospital.

(5) Building systems and equipment.

(A) The following systems shall be provided separately in each hospital at a 24-hour staffed location.

(i) Nurses calling systems shall be provided separately in each hospital in accordance with §511.162(d)(5)(L) and Table 7 in §511.169(g) of this subchapter (relating to Tables).

(ii) Medical gas alarms shall be provided in each hospital.

(iii) Fire alarm annunciator panels shall be provided in each hospital so that each hospital can monitor the other.

(iv) An emergency generator annunciator panel shall be provided in each hospital.

(B) Where applicable, the following systems may serve more than one hospital provided the systems meet the new construction requirements of §511.162 of this subchapter.

(i) Air conditioning, heating, and ventilating systems.

(ii) Drainage systems.

(iii) Elevators.

(iv) Fire sprinkler systems. The guest hospital may not be constructed in a host hospital when the host hospital is not fully sprinklered. The host and guest hospitals shall be fully sprinklered.

(v) Medical piping systems.

(vi) Stand pipe systems.

(vii) Steam systems.

(viii) Water supply systems, hot and cold (including emergency water storage).

(ix) Electrical service and equipment.

(I) Where applicable, the building electrical service, lighting, essential electrical system, and fire alarm system may be a part of or extension of those in the existing hospital, provided the existing systems meet these requirements. The host hospital shall be responsible for maintenance, testing and upkeep of the essential electrical system. Power and lighting distribution panels shall be within each hospital served and comply with the requirements of §511.162(d)(5)(E) of this subchapter. Electrical installation details shall conform with all requirements contained in §511.162(d)(5)(A) of this subchapter.

(II) When the existing essential electrical system is nonconforming, the following options are available:

(-a-) a separate conforming essential electrical system shall be provided in the guest hospital; or

(-b-) separate transfer switches connected to the existing on-site generator(s) shall be provided when adequate capacity is available and the host hospital existing nonconforming system shall be corrected. Corrections shall be made in accordance with a plan of correction approved by HHSC.

(b) LSRHs located in buildings with licensed health care facilities other than hospitals.

(1) Before an LSRH is licensed in a building containing other licensed health care facilities, all the requirements of this chapter and the following requirements shall be met.

(A) Construction of the building shall conform to the requirements of NFPA 101 Chapter 18 and the building shall be fully sprinklered.

(B) The LSRH shall be in one identifiable contiguous location and shall be separated (vertically and horizontally) with two-hour fire rated noncombustible construction from the other licensed health care facility and comply with the requirements of this chapter.

(i) In no case may a person leave the LSRH, traverse other licensed health care facilities, and then reenter the LSRH to access the remaining portion of the hospital.

(ii) A connecting stair and elevator within the building shall be provided to connect the vertical contiguous areas of the LSRH.

(iii) An LSRH may not occupy two or more noncontiguous areas of other licensed health care facilities that contain intervening space of the other licensed health care facilities even if on the same floor.

(iv) Access to the LSRH shall be directly from a main lobby or an elevator lobby, if on an upper floor. The required means of egress from the LSRH may be through the other licensed health care facility except not through a psychiatric hospital or a crisis stabilization unit or other area subject to locking.

(I) Each licensed facility shall be identified with external signage at the building entrance.

(II) Internal signage shall provide direction to the LSRH.

(v) The LSRH shall have services and facilities separate from the other licensed health care facility. The required facilities shall be located within the proposed LSRH proper.

(vi) Common use of facilities using time-sharing concepts may be permitted on a case-by-case basis when the other health care facilities comply with the requirements contained in NFPA 101 Chapter 18 and §511.163 of this subchapter, and provided this chapter and the other health care facility licensing regulations allow.

(C) The equipment and systems required in each new LSRH may be provided exclusively for the LSRH or by contractual agreement with a licensed health care facility. The equipment and systems shall comply with §511.162 of this subchapter.

(i) The following equipment and systems shall be provided for the exclusive use of the LSRH, except where noted otherwise.

(I) Where the LSRH is served by the building's normal electrical system, the breaker serving the LSRH shall originate in the main switchboard and shall be labeled, "Hospital Service - Contact Hospital Representative Prior to Opening Breaker".

(II) The LSRH distribution panel board shall be within the LSRH.

(III) An electrical room for the distribution of type I essential electrical system shall be provided separate from the building electrical room. The LSRH staff shall have access at all times to the essential electrical system room and the building's electrical room. The LSRH shall be responsible for maintenance, testing, and upkeep of the essential electrical system. When the existing essential electrical system owned and operated by the other licensed health care facility is nonconforming, the following options are available:

(-a-) a separate conforming essential electrical system shall be provided in the new LSRH; or

(-b-) separate transfer switches connected to the existing on-site generator shall be provided when adequate capacity is available and the other health care facility existing nonconforming

system shall be corrected. Corrections shall be made in accordance with a plan of correction approved by HHSC.

(IV) An emergency generator may be shared when adequate capacity is available. Separate transfer switches shall be provided to serve the LSRH and other licensed health care facilities. The LSRH shall be the owner of the generator, have access to the generator at all times, and shall be responsible for maintenance, testing and upkeep of the generator.

(V) The LSRH shall meet the emergency water storage requirement under 25 TAC §133.162(d)(4)(A)(i)(VIII) and the storage shall be located within the LSRH.

(VI) When the other licensed health care facilities have a fire alarm control center or a main building alarm panel at the main lobby entrance, the LSRH shall have an annunciator panel at a 24-hour staffed location. The LSRH staff shall have access at all times to the main building fire alarm system panels and shall be responsible for verifying the maintenance and upkeep of such system.

(VII) Fireman's test valve for the fire sprinkler system.

(VIII) Air conditioning, heating, and ventilating systems.

(IX) The medical gas supply sources may be shared provided the LSRH is owner of the medical gas system source and is responsible for maintenance, testing and upkeep of the supply sources. The LSRH and other occupancies shall have separate main supply shutoff valves. The LSRH shall be provided with an alarm panel within the LSRH that monitors the medical gas system supply source serving the other licensed health care facilities.

(X) Medical vacuum and medical air.

(XI) Nurses calling systems.

(ii) Where applicable, the following systems may be a part or extension of those in the existing licensed health care facility, provided the existing systems meet the requirements of this chapter for new construction.

(I) Drainage systems.

(II) The LSRH shall be served by the number and size of elevators cabs in accordance with §511.164 of this subchapter (relating to Elevators, Escalators, and Conveyors). The elevators cab lighting, control, communication, and signal systems shall be connected to the life safety panel of the essential electrical system.

(III) The new LSRH may not be constructed in the other health care facility when the other health care facility is not fully sprinklered. The new LSRH and the other health care facility shall be fully sprinklered.

(IV) Stand pipe systems.

(V) The LSRH is responsible for providing all backup systems (such as boilers) as required in this chapter.

(VI) Domestic water supply systems, hot and cold.

(VII) Mechanical chilled and hot water systems.

(2) When an LSRH and a psychiatric hospital share one building, the building systems and equipment may be shared in accordance with subsection (a)(5)(B) of this section, or be provided separately.

(c) LSRHs in buildings with non-health care occupancies.

(1) General. Before an LSRH is licensed in a building also containing occupancies other than health care occupancies, all requirements of this chapter and the following requirements shall be met.

(A) Construction of the building shall conform to the requirements of NFPA 101 Chapter 18, and the building shall be fully sprinklered.

(B) The LSRH shall be in one identifiable contiguous location and shall be separated (vertically and horizontally) with two-hour fire rated noncombustible construction from the other occupancies.

(i) In no case may a person leave the LSRH, traverse other occupancies, and then reenter the LSRH to access the remaining portion of the LSRH.

(ii) A connecting stair and elevator within the building shall be provided to connect the vertical contiguous areas of the LSRH.

(iii) An LSRH may not occupy two or more noncontiguous areas of other occupancies that contain intervening space of the other occupancies even if on the same floor.

(C) Access to the LSRH shall be through a dedicated LSRH lobby or from the building's main lobby. The building's main lobby shall be part of the LSRH and shall comply with the requirements of §511.162 of this subchapter.

(i) External signage shall be provided at the building entrance that identifies the LSRH.

(ii) Internal signage shall be provided to give directions to the LSRH.

(D) The required means of egress from the LSRH shall be independent of and shall not traverse through the other occupancies.

(E) Stairs shall have guardrails and handrails from the floor of the LSRH to the level of exit discharge in accordance with NFPA 101 §7.2.2.4.5.

(2) Services and facilities. Services and facilities shall be provided exclusively for the LSRH in accordance with Subchapters C and F of this chapter (relating to Operational Requirements and Fire Prevention and Safety respectively) and this subchapter. Required services and facilities shall not be shared with the other occupancies except as noted in paragraph (3) of this subsection.

(3) Building equipment and facilities. The equipment and systems shall comply with §511.162 of this subchapter.

(A) The following equipment and systems shall be provided for the exclusive use of the LSRH except where noted otherwise.

(i) An electrical room for the distribution of type I essential electrical system shall be provided separate from the building electrical room. LSRH staff shall have access at all times to the essential electrical system room and the building's electrical room or rooms. The LSRH is responsible for maintenance, testing and upkeep of the essential electrical system.

(ii) An emergency generator may be shared when adequate capacity is available. Separate transfer switches shall be provided to serve the LSRH and other building occupancies. The LSRH shall be the owner of the generator, have access to the generator at all times, and shall be responsible for maintenance, testing and upkeep of the generator.

(iii) Emergency water storage located within the LSRH.

(iv) When the building has a fire alarm control center or a main building alarm panel at the main lobby entrance, the LSRH shall have an annunciator panel at a 24-hour staffed location. The LSRH staff shall have access at all times to the main building fire alarm system panels and shall be responsible for verifying the maintenance and upkeep of such system.

(v) Fireman's test valve for the fire sprinkler system.

(vi) The medical gas supply sources may be shared provided the LSRH is owner of the medical gas system supply source and is responsible for maintenance, testing, and upkeep of the supply sources. The LSRH and other occupancies shall have separate main supply shutoff valves. The LSRH shall be provided with an alarm panel within the LSRH that monitors the medical gas system serving the other occupancies.

(vii) Medical vacuum and medical air.

(viii) Air handling units of other occupancies may not be used for the LSRH. The LSRH air handling units may share the supply source for other occupancies but shall not return air from the other occupancies back to the air handling unit.

(ix) Nurses calling systems.

(B) Where applicable, the following systems may be a part or extension of those in the existing building occupancies provided the existing systems meet the requirements of this chapter for new construction.

(i) Where the LSRH is served by the building's normal electrical system, the breaker serving the LSRH shall originate in the main switchboard and shall be labeled, "Hospital Service - Contact Hospital Representative Prior to Opening Breaker."

(ii) The LSRH's distribution panelboard shall be within the LSRH.

(iii) Drainage systems.

(iv) The LSRH shall be served by the number and size of elevators cabs in accordance with §511.164 of this subchapter. The elevators cab lighting, control, communication, and signal systems shall be connected to the life safety panel of the essential electrical system.

(v) The LSRH may not be constructed in the other type of building occupancies when the other types of occupancies are not fully sprinklered. The LSRH and the other occupancies shall be fully sprinklered.

(vi) Stand pipe systems.

(vii) Fire pump, where applicable; LSRH staff shall have access at all times to the location of the fire pump to verify compliance and maintenance.

(viii) The LSRH is responsible for providing all backup systems (such as boilers) that are required in this chapter.

(ix) Domestic water supply systems, hot and cold.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 15, 2023.

TRD-202303451



## CHAPTER 745. LICENSING

The Texas Health and Human Services Commission (HHSC) adopts new §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, 745.8319, and 745.8321; and the repeal of §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, and 745.8319, in Title 26, Texas Administrative Code (TAC), Chapter 745, Licensing.

New §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8317, 745.8319, and 745.8321; and the repeal of §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, and 745.8319, are adopted without changes to the proposed text, as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2661). These rules will not be republished.

New §745.8315 is adopted with changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2661). This rule will be republished.

### BACKGROUND AND JUSTIFICATION

The new sections and repeals are necessary to align 26 TAC Chapter 745, Subchapter J, with 42 United States Code §671(a)(10) so that HHSC Child Care Regulation (CCR) may only approve a waiver request for a kinship foster home.

The new sections and repeals are also necessary to align 26 TAC Chapter 745, Subchapter J, with current practices and update the subchapter as needed for clarity.

### COMMENTS

The 31-day formal comment period ended June 26, 2023. During this period, HHSC received six comments regarding the proposed rules from three commenters, which included the Texas Alliance of Child and Family Services, a child-placing agency, and a member of the public. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Regarding the rules in general, one commenter referenced rules in Chapters 748 and 749 that provide certain exemptions to minimum standard requirements, indicating that those exemptions are oftentimes confused with the waivers and variances under Chapter 745.

Response: HHSC disagrees with the comment. The rules in Chapter 745, Subchapter J, allow CCR to approve a waiver or variance if the operation or foster home cannot comply with a minimum standard. The rules in Chapters 748 and 749 allow for the operation to approve exemptions without submitting a request for CCR's review or approval. Some of these exemptions were created by state legislation to (1) provide flexibility with training requirements for certain persons, and (2) recognize a medical reason and a reason of conscience for immunization requirements.

Comment: Regarding the rules in general, one commenter stated that it appears that variances are used for documentation

purposes and as a means for agencies to avoid citations, rather than first considering and assessing the risk involved to varying a standard.

Response: HHSC disagrees with the comment. New §745.8313, which incorporates relevant content from repealed §745.8307, requires CCR to consider risk to children when deciding whether to grant a variance; therefore, CCR assesses the potential risk to children involved in varying a standard before determining whether a variance should be granted.

Comment: Regarding §745.8303, two commenters recommended adding a list of categorical exclusions or a chart that identifies which minimum standards are required by state or federal law. One of the two commenters also indicated that this information could be provided in "sub-regulatory guidance."

Response: HHSC disagrees in part with the comment. It would be difficult and impractical to include in rule a list or chart identifying the minimum standards required by state or federal law because state and federal laws requiring certain minimum standards are in flux, which would make updates to rule more frequent if the categorical exclusions or chart existed there. Therefore, HHSC agrees with the suggestion to provide information in "sub-regulatory guidance," which may be interpreted to include a policy update in CCR's publicly available handbook or publishing information on a web page for providers to view. In doing this, information on state and federal requirements can be easily updated in time with any changes that are made to those requirements.

Comment: Regarding §745.8313, one commenter noted that heightened monitoring status is listed as one of CCR's considerations prior to deciding on whether to grant or deny a waiver or variance. The commenter asked that heightened monitoring status be considered as it relates to the heightened monitoring plan and not as a "global mark" against the operation.

Response: HHSC disagrees with the comment. CCR considers compliance history when evaluating a waiver or variance request and heightened monitoring is a part of that compliance history, which must be considered prior to CCR granting a waiver or variance. Doing so allows CCR to have a more comprehensive evaluation of any waiver or variance request, which could reduce risk to children.

Comment: Regarding §745.8315, one commenter recommended that the rule language be clarified for better understanding, especially with regard to referencing 26 TAC §749.2551(b).

Response: HHSC agrees with the comment. HHSC revised the rule to improve readability and provide clarity on how 26 TAC §749.2551(b) relates to the rule.

## SUBCHAPTER J. WAIVERS AND VARIANCES FOR MINIMUM STANDARDS

**26 TAC §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, 745.8319**

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective

Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 18, 2023.

TRD-202303457

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: October 16, 2023

Proposal publication date: May 26, 2023

For further information, please call: (512) 438-3269



**26 TAC §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, 745.8319, 745.8321**

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

*§745.8315. What additional factors does Licensing consider when deciding whether to grant a waiver or variance for a foster home?*

When the request is associated with a foster home, we will consider:

- (1) The compliance history of the foster home.
- (2) If the request is to increase the maximum number of foster children a foster home may care for, whether you may use the exception criteria under §749.2551(b) of this title (relating to What is the maximum number of children a foster family home may care for?); and
- (3) Any limitations in state or federal law, including that:
  - (A) We only may issue a waiver if the home is a kinship foster home;
  - (B) We may not approve a request that would result in a foster home's total capacity exceeding eight foster children; and
  - (C) We may not approve a request that would result in a foster home's foster care capacity exceeding six foster children unless:
    - (i) You are requesting a variance for a reason in §749.2551(b)(1) of this title; and
    - (ii) You are not able to use the exception criteria under §749.2551(b) of this title to increase the foster home's foster care capacity.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 18, 2023.

TRD-202303458

Karen Ray

Chief Counsel

Health and Human Services Commission

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Proposal publication date: May 26, 2023

For further information, please call: (512) 438-3269



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER BB. BATTERY SALES FEE

###### 34 TAC §3.711

The Comptroller of Public Accounts adopts amendments to §3.711, concerning battery sales fee collection and reporting requirements, without changes to the proposed text as published in the August 11, 2023, issue of the *Texas Register* (48 TexReg 4379). The rule will not be republished. The comptroller amends this section to implement Senate Bill 477, 87th Legislature, 2021, which requires marketplace providers to collect the applicable fees related to the sale of lead-acid batteries and to improve readability throughout the section.

The comptroller amends subsection (a) to add paragraphs (3), (4) and (5) to define the terms "marketplace," "marketplace provider," and "marketplace seller," respectively, as those terms are defined in Tax Code, §151.0242(a) but limits the terms to the sale of lead-acid batteries. The comptroller renumbers the subsequent paragraph.

The comptroller amends the title of subsection (b) to reflect that the subsection applies to the collection of the battery sales fee and not the remittance of the fee, which is addressed in subsection (e). The comptroller amends paragraph (1) by adding that, effective July 1, 2022, marketplace providers selling lead-acid batteries are required to collect the battery sales fee. The comptroller also amends paragraph (1) to require the collection of the battery sales fee only on the sale of batteries not for resale, as required under Health and Safety Code, §361.138. The comptroller reorganizes the fee information from paragraph (1) into subparagraphs (A), (B) and (C). The comptroller amends paragraph (2) to add marketplace provider to the provision that allows the comptroller to collect the fee directly from the purchaser in instances where a dealer fails to collect the fee. The comptroller amends paragraph (5) to prohibit a marketplace provider from advertising that a refund is available for any portion of the fee.

The comptroller adds the term marketplace provider to the provisions in subsection (c)(1) and (2), and in subsection (d) to require marketplace providers to follow the same reporting requirements that dealers must follow.

The comptroller amends subsection (e) regarding the remittance of the fee to remove the term "person" and instead use the term "dealer or marketplace provider" in paragraph (1) and to add the term "marketplace provider" in paragraph (2).

The comptroller amends subsection (f) to allow a "marketplace provider" who collects the battery sales fee to retain the applicable discount on each fee collected.

The comptroller amends subsection (g) to remove the term "person" and include the terms "dealer" and "marketplace provider" to allow the comptroller or an authorized representative to inspect the records or equipment of a dealer or marketplace provider.

The comptroller amends subsection (h)(7) to apply the battery sales fee exemptions to certain sales made by a marketplace provider.

The comptroller amends subsection (j) to remove the term "person" and instead use the terms "dealer" and "marketplace provider" to assess the applicable penalties to both for failure to file a battery sales fee report in a timely manner.

The comptroller did not receive any comments regarding adoption of the amendment.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments to this section implement Health & Safety Code, §361.138 (Fee on the sale of batteries).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 15, 2023.

TRD-202303441

Jenny Burleson

Director, Tax Policy Division

Comptroller of Public Accounts

Effective date: October 5, 2023

Proposal publication date: August 11, 2023

For further information, please call: (512) 475-2220



## PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

### CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

#### SUBCHAPTER B. LONG-TERM CARE, DISABILITY AND LIFE INSURANCE

##### 34 TAC §§41.15 - 41.20

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts the repeal of rules §§41.15 - 41.20 under Subchapter B (relating to Long-Term Care, Disability, and Life Insurance) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code. These repeals are adopted without changes

to the proposed repeals as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3895). The repeals will not be republished.

#### REASONED JUSTIFICATION

TRS adopts the repeal of Subchapter B of Chapter 41, which contains six existing rules, in order to streamline and clarify Chapter 41 of TRS rules (relating to Health Care and Insurance Programs) by eliminating obsolete administrative rules. Additionally, repealing the six rules under Subchapter B will allow TRS to use these rule numbers for future rulemaking relating to Subchapter A of Chapter 41 (relating to Retiree Health Care Benefits (TRS-Care)). The six existing rules that TRS proposes to repeal are not currently in use, and TRS recommended their repeal in its four-year rule review, which was adopted on August 12, 2022. Their repeal will have no effect on TRS health plans or its participants.

#### COMMENTS

No comments on the proposed repeals were received.

#### STATUTORY AUTHORITY

TRS adopts the repeal of these rules under the authority of Insurance Code §1576.006, which provides that board of trustees may adopt rules as necessary to administer Chapter 1576 of the Insurance Code; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

#### CROSS-REFERENCE TO STATUTE

The repealed rules affect the following statutes: Insurance Code §1576.001 through Insurance Code §1576.013, which relates to TRS provided Group Long-Term Care Insurance for Public School Employees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 15, 2023.

TRD-202303454

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: October 5, 2023

Proposal publication date: July 14, 2023

For further information, please call: (512) 542-3528



## SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

### 34 TAC §41.53

The Teacher Retirement System of Texas (TRS) adopts new §41.53, relating to Special Transitional Plan, under Subchapter C (relating to Texas School Employees Group Health (TRS-ActiveCare)) under Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code without changes to the proposed text as published in the August 11, 2023, issue of the *Texas Register* (48 TexReg 4381). The rule will not be republished.

## REASONED JUSTIFICATION

TRS-ActiveCare's primary health plan operates on a plan year that begins on September 1 and ends on the following August 31. In order to elect to participate in that plan, a participating entity must provide notice by December 31 of the year immediately preceding the next September 1 as of which it intends to enter the plan. See Insurance Code §1579.155 and corresponding TRS Rule 41.30. This creates difficulties for eligible participating entities to transition into TRS-ActiveCare when those entities currently offer a health plan that operates on a plan year that is different. Such entities may find it difficult or too costly to terminate their own plans in the middle of their plan year to transition into TRS-ActiveCare.

New §41.53, relating to Special Transitional Plan, exercises the Board's authority to create new plans under TRS-ActiveCare by creating a "Special Transitional Plan" that will provide an option to facilitate these entities' transition into TRS-ActiveCare. It will also allow such participating entities to provide notice by December 31 to enter TRS-ActiveCare's traditional plan as of the following September 1. In the interim, the participating entity will participate in the Special Transitional Plan.

## COMMENTS

No comments on the proposed new rule were received.

## STATUTORY AUTHORITY

This new §41.53 is adopted under the authority of Chapter 1579, Insurance Code, which establishes the Texas School Employees Uniform Group Health Coverage (TRS-ActiveCare); Insurance Code §1579.052, which allows the trustee to adopt rules relating

to, and to administer, TRS-ActiveCare as considered necessary by the trustee and to take the actions it considers necessary to devise, implement, and administer TRS-ActiveCare; Insurance Code §1579.101, which allows the trustee by rule to establish plans of group coverages for employees participating in TRS-ActiveCare and their dependents; Chapter 825, Texas Government Code, which governs the administration of TRS; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

## CROSS-REFERENCE TO STATUTE

The adopted rule affects Insurance Code §1579.155, concerning Program Participation: Election.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 15, 2023.

TRD-202303452

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: October 5, 2023

Proposal publication date: August 11, 2023

For further information, please call: (512) 542-3528





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Department of State Health Services

### Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for reoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 37, Maternal and Infant Health Services

Subchapter A Federal Laws and Regulations Governing Maternal and Child Health Services Programs

Subchapter B March of Dimes Rules on Health Education Grants

Subchapter C Vision and Hearing Screening

Subchapter D Newborn Screening Program

Subchapter E Newborn Screening for Critical Congenital Heart Disease

Subchapter G Spinal Screening Program

Subchapter H Sudden Infant Death Syndrome

Subchapter I Memoranda of Understanding

Subchapter J Neonatal Care

Subchapter M Texas Perinatal Care System

Subchapter P Surveillance and Control of Birth Defects

Subchapter Q Reporting, Treatment and Investigation of Child Blood Lead Levels

Subchapter R Advisory Committees

Subchapter S Newborn Hearing Screening

Subchapter T School-Based Health Centers

Subchapter U Epinephrine Auto-Injector Policies in Schools

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 37, Maternal and Infant Health Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing com-

ments, please indicate "Comments on Proposed Rule Review Chapter 37" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([texas.gov](http://texas.gov)).

TRD-202303485

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: September 19, 2023

## Adopted Rule Reviews

Office of the Attorney General

### Title 1, Part 3

The Office of the Attorney General of Texas (OAG) adopts the review of Chapter 52, concerning Administration, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3523). No comments were received on the proposed rule review. The OAG has assessed whether the reasons for adopting or readopting the rules continue to exist. The OAG finds that the rules in Chapter 52 are needed, reflect current legal and policy considerations, and reflect current procedures of the OAG. The reasons for initially adopting the rules continue to exist. The OAG, therefore, readopts 1 TAC Chapter 52.

TRD-202303440

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: September 15, 2023

Texas Commission on the Arts

### Title 13, Part 3

The Texas Commission for the Arts (Commission) publishes its notice of intent to complete the Quadrennial rule review process of Title 13 Texas Administrative Code Chapter 31 (Agency Procedures), Chapter 32 (Memoranda of Understanding), and Chapter 35 (A Guide to Programs and Services) pursuant to Texas Government Code § 2001.039.

The Commission has considered whether the reasons for adopting the rules contained in these chapters continue to exist. The commission did not receive comments. The reasons for adopting these rules continue to exist.

Any questions should be directed to the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406, ATTN: Gary Gibbs, or by email to [gary@arts.texas.gov](mailto:gary@arts.texas.gov).

TRD-202303484  
Gary Gibbs  
Executive Director  
Texas Commission on the Arts  
Filed: September 19, 2023



Texas State Board of Plumbing Examiners

**Title 22, Part 17**

The Texas State Board of Plumbing Examiners (TSBPE) filed a Notice of Intent to Review to consider for readoption, revision, or repeal the rules at Chapter 363 (Examination and Registration), in their entirety, under Title 22, Part 17, of the Texas Administrative Code (TAC). This review was conducted in accordance with Texas Government Code §2001.039.

The Notice of the proposed rule review was published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3987).

No comments were received in response to this notice.

**Review and Recommendation**

The Board reviewed each of the rules in Chapter 363 and has determined that the reasons for adopting or readopting the rules in this chapter continue to exist. The rules are still essential in implementing Chapter 1301 of the Texas Occupations Code (the Plumbing License Law or the PLL.) The rules provide details that are not found in the PLL but are necessary for implementation and operation of the program.

The Board may propose amendments in the future to update, clarify, or supplement the existing rules. Any proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment before final adoption by TSBPE in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

**Board Action**

At its meeting on September 14, 2023, the Texas State Board of Plumbing Examiners readopted 22 TAC, Part 17, Chapter 363, in its entirety and in its current form. This concludes the review of Chapter 363 in accordance with Texas Government Code §2001.039.

TRD-202303504  
Lynn Latombe  
General Counsel  
Texas State Board of Plumbing Examiners  
Filed: September 20, 2023



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 1 TAC §106.5(1)

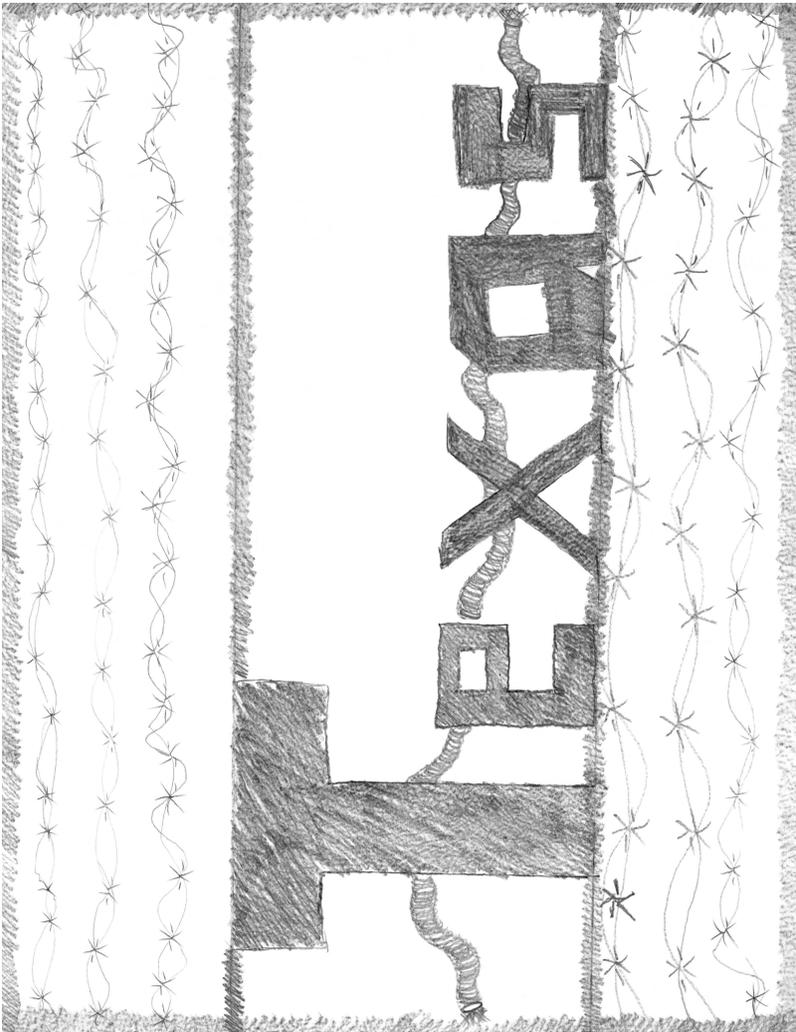
**THE ENTITY MAINTAINING THIS WEBSITE IS A DATA BROKER UNDER CHAPTER 509 OF THE TEXAS BUSINESS AND COMMERCE CODE. TO CONDUCT BUSINESS IN TEXAS, A DATA BROKER MUST REGISTER WITH THE TEXAS SECRETARY OF STATE (TEXAS SOS). YOU MAY SEARCH THE DATA BROKER REGISTRY ON THE TEXAS SOS WEBSITE TO IDENTIFY A SPECIFIC DATA BROKER AND VIEW ITS REGISTRATION INFORMATION.**

Figure: 1 TAC §106.5(2)

**THE ENTITY MAINTAINING THIS MOBILE APPLICATION IS A DATA BROKER UNDER CHAPTER 509 OF THE TEXAS BUSINESS AND COMMERCE CODE. TO CONDUCT BUSINESS IN TEXAS, A DATA BROKER MUST REGISTER WITH THE TEXAS SECRETARY OF STATE (TEXAS SOS). YOU MAY SEARCH THE DATA BROKER REGISTRY ON THE TEXAS SOS WEBSITE TO IDENTIFY A SPECIFIC DATA BROKER AND VIEW ITS REGISTRATION INFORMATION.**

Figure: 22 TAC §102.1(a)	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
<b>DENTIST</b>						
Application by Exam	\$ 330.00	\$ 5.00		\$ 15.00	\$ 10.00	\$ 360.00
Renewal	\$ 411.00	\$ 20.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 458.00
Renewal - Late 1 to 90 days	\$ 486.00	\$ 20.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 533.00
Renewal - Late 91 to 365 days	\$ 561.00	\$ 20.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 608.00
Licensure by Credentials	\$ 2,915.00	\$ 5.00		\$ 15.00	\$ 10.00	\$ 2,945.00
Temporary Licensure by Credentials	\$ 865.00	\$ 5.00		\$ 15.00	\$ 10.00	\$ 895.00
Temporary Licensure by Credentials renewal	\$ 261.00	\$ 4.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 292.00
Provisional License	\$ 100.00					\$ 100.00
Faculty Initial Application	\$ 230.00	\$ 3.00		\$ 15.00	\$ 10.00	\$ 258.00
Faculty Renewal	\$ 305.00	\$ 8.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 340.00
Faculty Renewal - Late 1 to 90 days	\$ 352.00	\$ 8.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 387.00
Faculty Renewal - Late 91 to 365 days	\$ 399.00	\$ 8.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 434.00
Conversion Fee - Faculty to Full Privilege	\$ 161.00	\$ 2.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 190.00
Nitrous Oxide Permit	\$ 32.00					\$ 32.00
Level 1 Permit	\$ 32.00					\$ 32.00
Level 2 Permit	\$ 260.00					\$ 260.00
Level 3 Permit	\$ 260.00					\$ 260.00
Level 4 Permit	\$ 260.00					\$ 260.00
Nitrous Level 1 Permit Renewal	\$ 10.00					\$ 10.00
Level 2 Permit Renewal	\$ 60.00					\$ 60.00
Level 3 Permit Renewal	\$ 60.00					\$ 60.00
Level 4 Permit Renewal	\$ 60.00					\$ 60.00
Application to Reactivate a Retired License	\$ 186.00	\$ 3.00		\$ 15.00	\$ 10.00	\$ 214.00
Reinstatement of a Canceled Dental License	\$ 411.00	\$ 5.00		\$ 15.00	\$ 10.00	\$ 441.00
Duplicate License / Renewal	\$ 25.00	\$ 2.00				\$ 27.00
Conversion Fee - Full Privilege to Faculty	\$ 161.00	\$ 2.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 190.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	\$ 2,165.00	\$ 5.00	\$ 2.00	\$ 15.00	\$ 10.00	\$ 2,197.00
<b>DENTAL HYGIENIST</b>						
Application by Exam	\$ 120.00	\$ 3.00			\$ 2.00	\$ 125.00
Renewal	\$ 216.00	\$ 6.00	\$ 2.00		\$ 2.00	\$ 226.00
Renewal - Late 1 to 90 days	\$ 266.00	\$ 6.00	\$ 2.00		\$ 2.00	\$ 276.00
Renewal - Late 91 to 365 days	\$ 316.00	\$ 6.00	\$ 2.00		\$ 2.00	\$ 326.00
Licensure by Credentials	\$ 635.00	\$ 5.00			\$ 2.00	\$ 642.00
Temporary Licensure by Credentials	\$ 225.00	\$ 5.00			\$ 2.00	\$ 232.00
Temporary Licensure by Credentials renewal	\$ 101.00	\$ 3.00	\$ 2.00		\$ 2.00	\$ 108.00

	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
Faculty Initial Application	\$ 120.00	\$ 3.00			\$ 2.00	\$ 125.00
Faculty Renewal	\$ 201.00	\$ 6.00	\$ 2.00		\$ 2.00	\$ 211.00
Faculty Renewal - Late 1 to 90 days	\$ 243.00	\$ 6.00	\$ 2.00		\$ 2.00	\$ 253.00
Faculty Renewal - Late 91 to 365 days	\$ 285.00	\$ 6.00	\$ 2.00		\$ 2.00	\$ 295.00
Conversion Fee - Faculty to Full Privilege	\$ 51.00	\$ 2.00	\$ 2.00		\$ 2.00	\$ 57.00
Application to Reactivate a Retired License	\$ 76.00	\$ 3.00			\$ 2.00	\$ 81.00
Reinstatement of a Canceled Dental Hygiene License	\$ 213.00	\$ 5.00			\$ 2.00	\$ 220.00
Duplicate License / Renewal	\$ 25.00	\$ 2.00				\$ 27.00
Nitrous Oxide Monitoring Application	\$ 25.00					\$ 25.00
Conversion Fee - Full Privilege to Faculty	\$ 55.00	\$ 2.00	\$ 2.00		\$ 2.00	\$ 61.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	\$ 415.00	\$ 5.00	\$ 2.00		\$ 2.00	\$ 424.00
<b>DENTAL ASSISTANT</b>						
Initial Application	\$ 36.00	\$ 2.00			\$ 2.00	\$ 40.00
Renewal	\$ 63.00	\$ 4.00	\$ 2.00		\$ 2.00	\$ 71.00
Renewal - Late 1 to 90 days	\$ 78.00	\$ 4.00	\$ 2.00		\$ 2.00	\$ 86.00
Renewal - Late 91 to 365 days	\$ 93.00	\$ 4.00	\$ 2.00		\$ 2.00	\$ 101.00
Duplicate License / Renewal	\$ 25.00	\$ 2.00				\$ 27.00
Nitrous Oxide Monitoring Renewal	\$ 63.00	\$ 4.00	\$ 2.00			\$ 69.00
Nitrous Oxide Monitoring Late 1 to 90 days	\$ 78.00	\$ 4.00	\$ 2.00			\$ 84.00
Nitrous Oxide Monitoring Late 91 to 365 days	\$ 93.00	\$ 4.00	\$ 2.00			\$ 99.00
Nitrous Oxide Monitoring Application	\$ 25.00					\$ 25.00
RDA Course Provider Fee	\$ 100.00					\$ 100.00
<b>DENTAL LABORATORIES</b>						
Application	\$ 125.00					\$ 125.00
Renewal	\$ 134.00	\$ 4.00				\$ 138.00
Renewal - Late 1 to 90 days	\$ 200.00	\$ 5.00				\$ 205.00
Renewal - Late 901 to 365 days	\$ 266.00	\$ 5.00				\$ 271.00
Duplicate Certificate	\$ 25.00	\$ 2.00				\$ 27.00
<b>OTHER</b>						
Mobile Application	\$ 121.00					\$ 121.00
Mobile Renewal	\$ 63.00	\$ 2.00				\$ 65.00
Mobile Renewal - 1 to 90 days	\$ 93.00	\$ 2.00				\$ 95.00
Mobile Renewal - 91 to 365 days	\$ 123.00	\$ 2.00				\$ 125.00
Duplicate Certificate Mobile Certificate	\$ 25.00	\$ 2.00				\$ 27.00
Dentist Intern / Resident Prescription Privileges	\$ 51.00		\$ 2.00	\$ 15.00	\$ 15.00	\$ 83.00
Jurisprudence	\$ 54.00					\$ 54.00
Licensure Verification with Seal	\$ 9.00	\$ 2.00				\$ 11.00
Criminal History Evaluation	\$ 25.00					\$ 25.00
Board Scores	\$ 25.00					\$ 25.00



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas State Affordable Housing Corporation

Public Comment Needed: 2024 Texas Foundations Fund Disaster Recovery Guidelines

The 2024 Texas Foundations Fund Disaster Recovery Draft Guidelines are now available for public comment. A copy of the 2024 Texas Foundations Fund Disaster Recovery Draft Guidelines may be found on the Corporation's website at [www.tsahc.org](http://www.tsahc.org). Please submit public comment via email to Michael Wilt at [mwilt@tsahc.org](mailto:mwilt@tsahc.org) with the subject line "Texas Foundations Fund Disaster Recovery Public Comment". Public comment must be submitted for consideration by October 6, 2023 at 5:00 p.m.

TRD-202303491

David Long

President

Texas State Affordable Housing Corporation

Filed: September 19, 2023



Public Comment Needed - TSAHC's Joint Venture Guidelines

The Corporation is publishing for public comment the draft Joint Venture Guidelines. The draft was approved for publication by the Board

of Directors at the Board Meeting held on September 19, 2023. A copy of the TSAHC's Joint Venture Guidelines may be found on the Corporation's website at [www.tsahc.org](http://www.tsahc.org).

All public comment or questions about the Draft Policies and RFP may be submitted via email to [actinfo@tsahc.org](mailto:actinfo@tsahc.org). The Corporation will include written public comments received before October 16th, 2023, in its final recommendations to the Board of Directors at the October Board Meeting.

TRD-202303492

David Long

President

Texas State Affordable Housing Corporation

Filed: September 19, 2023



## Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective October 1, 2023

A 1 1/2 percent city sales and use tax will become effective October 1, 2023 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Bonney (Brazoria Co)	2020266	.020000	.082500

A 1 percent county sales and use tax will become effective October 1, 2023 in the county listed below.

COUNTY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Borden	4017001	.010000	.072500

The additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective September 30, 2023 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Howardwick (Donley Co)	2065039	.010000	.072500
Rio Hondo (Cameron Co)	2031067	.017500	.080000
Santa Rosa (Cameron Co)	2031030	.017500	.080000

The additional 1 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective September 30, 2023 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Blanket (Brown Co)	2025047	.010000	.072500

The city sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2023 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Poth (Wilson Co)	2247049	.020000	.082500

The city sales and use tax will be increased to 2 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2023 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Shiner (Lavaca Co)	2143044	.020000	.082500

The additional city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be increased to 1/2 percent effective October 1, 2023 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Kempner (Lampasas Co)	2141037	.020000	.082500

An additional 1 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2023 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Bayside (Refugio Co)	2196031	.020000	.082500
Parker (Collin Co)	2043223	.020000	.082500

The additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be abolished effective September 30, 2023 and the additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be increased to 1/2 percent effective October 1, 2023 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Knox City (Knox Co)	2138014	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective September 30, 2023 and an additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective October 1, 2023 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Comanche (Comanche Co)	2047023	.020000	.082500
Olney (Young Co)	2252023	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) and the additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will each be reduced to 3/8 percent effective September 30, 2023 and an additional 1/4 percent city sales and use tax for sports and community venue projects as permitted under Chapter 334 of the Texas Local Government Code, will become effective October 1, 2023 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Northlake (Denton Co)	2061319	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduced to 3/8 percent effective September 30, 2023 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Sweeny (Brazoria Co)	2020122	.020000	.082500

The additional 1/2 percent city sales and use tax for property tax relief as permitted under Chapter 321 of the Texas Tax Code will be abolished effective September 30, 2023 and the city sales and use tax will

be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code effective October 1, 2023 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Gatesville (Coryell Co)	2050027	.020000	.082500

The 1/4 percent special purpose district sales and use tax will be increased to 1/2 percent effective October 1, 2023 in the Special Purpose District listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Corral City Municipal Development District	5061612	.005000	.082500

A 1/8 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Sweeny Crime Control and Prevention District	5020541	.001250	SEE NOTE 1
Medina County Emergency Services District No. 4-A	5163566	.001250	SEE NOTE 2

A 1/4 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Medina County Emergency Services District No. 4	5163548	.002500	SEE NOTE 3

A 1/2 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Fort Bend County Emergency Services District No. 8	5079747	.005000	SEE NOTE 4

A 3/4 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Williamson County Emergency Services District No. 10	5246610	.007500	SEE NOTE 5

A 7/8 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Medina County Emergency Services District No. 5-A	5163575	.008750	SEE NOTE 6

A 1 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
East Waller County Management District	5237522	.01000	SEE NOTE 7

A 1 1/4 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Medina County Emergency Services District No. 2	5163539	.012500	SEE NOTE 8
Medina County Emergency Services District No. 5	5163557	.012500	SEE NOTE 9

A 1 1/2 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Brazoria County Management District No. 1	5020532	.015000	SEE NOTE 10
Smith County Emergency Services District No. 1	5212530	.015000	SEE NOTE 11
Tyler County Emergency Services District No. 4	5229522	.015000	SEE NOTE 12
Wise County Emergency Services District No. 2	5249528	.015000	SEE NOTE 13

A 1 3/4 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Kaufman County Emergency Services District No. 4	5129569	.017500	SEE NOTE 14

A 2 percent special purpose district sales and use tax will become effective October 1, 2023 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Cottle County Assistance District No. 1	5051516	.020000	SEE NOTE 15
Fort Bend County Emergency Services District No. 8-A	5079756	.020000	SEE NOTE 16
Kaufman County Emergency Services District No. 6	5129550	.020000	SEE NOTE 17
Kaufman County Emergency Services District No. 7	5129578	.020000	SEE NOTE 18
Limestone County Emergency Services District No. 1	5147512	.020000	SEE NOTE 19
Robertson County Emergency Services District	5198501	.020000	SEE NOTE 20
Williamson County Emergency Services District No. 10-A	5246629	.020000	SEE NOTE 21

The combined areas have been created to administer the local sales and use tax between overlapping local jurisdictions as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2023 in the entities listed below.

COMBINED AREA NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Liberty Hill/Williamson County Emergency Services District No. 4	6246656	.017500	SEE NOTE 22
Liberty Hill/Williamson County Emergency Services District No. 4 (1)	6246665	.020000	SEE NOTE 23
Liberty Hill/Williamson County Emergency Services District No. 4 (2)	6246674	.017500	SEE NOTE 24

NOTE 1: The boundaries of the Sweeny Crime Control and Prevention District are the same boundaries as the city of Sweeny.

NOTE 2: The Medina County Emergency Services District No. 4-A is the portion of the district located in the unincorporated portion of Medina County that overlaps the Natalia Municipal Development District and the Medina County Emergency Services District No. 5-A, which both have a special purpose district sales tax. Contact the district representative at 210-355-5369 for additional boundary information.

NOTE 3: The Medina County Emergency Services District No. 4 is located in the southeastern portion of Medina County, which has a county sales and use tax. The district excludes the city of Lytle, and for sales tax purposes the cities of Devine and Natalia. The district partially overlaps Medina County Emergency Services District No. 2 and completely overlaps Medina County Emergency Services District No. 5, which each have a special purpose district sales tax. The unincorporated areas of Medina County in ZIP Codes 78016, 78052, 78057, 78059, 78861, and 78886 are partially located in the Medina County Emergency Services District No. 4. Contact the district representative at 210-355-5369 for additional boundary information.

NOTE 4: The Fort Bend County Emergency Services District No. 8 is the portion of the district located in the city of Kendleton. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 5: The Williamson County Emergency Services District No. 10 is the portion of the district located in the city of Thrall. Contact the district representative at 512-864-4483 for additional boundary information.

NOTE 6: The Medina County Emergency Services District No. 5-A is the portion of the district located in the unincorporated portion of Medina County that overlaps the Natalia Municipal Development District and the Medina County Emergency Services District No. 4-A, which both have a special purpose district sales and use tax. Contact the district representative at 830-665-6208 for additional boundary information.

NOTE 7: The East Waller County Management District is located in the eastern portion of Waller County. The district is located entirely within the Waller-Harris Emergency Services District No. 200, which has a special purpose district sales and use tax. The unincorporated areas of Waller County in ZIP Code 77493 are partially located within the East Waller County Management District. Contact the district representative at 512-370-2931 for additional boundary information.

NOTE 8: The Medina County Emergency Services District No. 2 is located in the southeastern portion of Medina County, which has a county sales and use tax. The district excludes, for sales tax purposes, the city of Devine. The district is partially overlapped by Medina County Emergency Services District No. 4, which has a special purpose district sales and use tax. The unincorporated areas of Medina County in ZIP Codes 78016, 78057, 78059, 78861, and 78886 are partially located in Medina County Emergency Services District No. 2. Contact the district representative at 830-665-4246 for additional boundary information.

NOTE 9: The Medina County Emergency Services District No. 5 is located in the southeastern portion of Medina County, which

has a county sales and use tax. The district excludes the city of Lytle, and for sales tax purposes the city of Natalia. The district is completely overlapped by Medina County Emergency Services District No. 4, which has a special purpose district sales tax. The unincorporated areas of Medina County in ZIP Codes 78016, 78052, and 78059 are partially within Medina County Emergency Services District No. 5. Contact the district representative at 830-665-6208 for additional boundary information.

NOTE 10: The Brazoria County Management District No. 1 is located in the north-central portion of Brazoria County, which has a county sales and use tax. The unincorporated areas of Brazoria County in ZIP Code 77583 are partially located within the Brazoria County Management District No. 1. Contact the district representative at 713-623-4531 for additional boundary information.

NOTE 11: The Smith County Emergency Services District No. 1 is located in the northwest portion of Smith County, which has a county sales and use tax. The district excludes the city of Lindale for sales tax purposes and the city of Hideaway entirely. The unincorporated areas of Smith County in ZIP Codes 75704, 75706, 75771, and 75773 are partially located in the district. Contact the district representative at 903-882-6492 for additional boundary information.

NOTE 12: The Tyler County Emergency Services District No. 4 is located in the southwest portion of Tyler County, which has a county sales and use tax. The unincorporated areas of Tyler County in ZIP Codes 77664, 77663, 75979, 77624, 77625, 77659, and 77660 are partially located within Tyler County Emergency Services District No. 4. Contact the district representative at 281-832-8137 for additional boundary information.

NOTE 13: The Wise County Emergency Services District No. 2 is located in the southwest portion of Wise County, which has a county sales and use tax. The unincorporated areas of Wise County in ZIP Codes 76073, 76082, 76426, and 76487 are partially located within Wise County Emergency Services District No. 2. Contact the district representative at 307-689-4027 for additional boundary information.

NOTE 14: The Kaufman County Emergency Services District No. 4 is located in the southern portion of Kaufman County. The district partially overlaps the Kemp Municipal Development District, which has a special purpose district sales and use tax. The unincorporated areas of Kaufman County in ZIP Codes 75142, 75143, and 75158 are partially located within Kaufman County Emergency Services District No. 4. Contact the district representative at 214-725-4389 for additional boundary information.

NOTE 15: The Cottle County Assistance District No. 1 has the same boundaries as Cottle County. The district excludes areas within the city of Paducah. Contact the district representative at 806-492-3823 for additional boundary information.

NOTE 16: The Fort Bend County Emergency Services District No. 8-A is located in the western portion of Fort Bend County. The district excludes the city of Beasley and the Fort Bend County Assistance District Nos. 18 and 21, which all have a local sales and use tax. The unincorporated areas of Fort Bend County in ZIP Codes 77417, 77451, 77435, 77471, 77461, 77464, and 77485 are partially located in the district. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 17: The Kaufman County Emergency Services District No. 6 is located in the northwestern portion of Kaufman County. The district excludes the Kaufman County Assistance District No. 1, which has a special purpose district sales and use tax. The unincorporated areas of Kaufman County in ZIP Codes 75032, 75114, 75126, and 75160 are partially located within the district. Contact the district representative at 972-800-9353 for additional boundary information.

NOTE 18: The Kaufman County Emergency Services District No. 7 is located in the eastern portion of Kaufman County. The district excludes the cities of Combine, Crandall, Kaufman, Mesquite, Seagoville and the Kaufman County Assistance District No. 2, which all have a local sales and use tax. The unincorporated areas of Kaufman County in ZIP Codes 75114, 75126, and 75142 are partially located in the district. Contact the district representative at 512-614-0901 for additional boundary information.

NOTE 19: The Limestone County Emergency Services District No. 1 is located in the southeastern portion of Limestone County.

The unincorporated areas of Limestone County in ZIP Codes 75838, 75846, and 76642 are partially located in Limestone County Emergency Services District No. 1. Contact the district representative at 903-626-4062 for additional boundary information.

NOTE 20: The Robertson County Emergency Services District has the same boundaries as Robertson County. The district excludes, for sales tax purposes, the cities of Bremond, Calvert, Franklin, and Hearne. Contact the district representative at 979-828-9940 for additional boundary information.

NOTE 21: The Williamson County Emergency Services District No. 10-A is located in the eastern portion of Williamson County. The district excludes, for sales tax purposes, the city of Coupland. The unincorporated areas of Williamson County in ZIP Codes 76574, 76577, 76578, 78615, and 78621 are partially located in the district. Contact the district representative at 512-864-4483 for additional boundary information.

NOTE 22: The Liberty Hill/Williamson County Emergency Services District No. 4 combined area is the area within Williamson County Emergency Services District No. 4 annexed by the city of Liberty Hill between February 22, 2016 and December 9, 2019, excluding annexation ordinance #'s 17-O-73, 17-O-88 and 19-O-71.

NOTE 23: The Liberty Hill/Williamson County Emergency Services District No. 4 (1) combined area is the area within Williamson County Emergency Services District No. 4 annexed by the city of Liberty Hill via annexation ordinance #'s 17-O-73, 17-O-88 and 19-O-71.

NOTE 24: The Liberty Hill/Williamson County Emergency Services District No. 4 (2) combined area is the area within Williamson County Emergency Services District No. 4 annexed by the city of Liberty Hill on or after June 23, 2021.

TRD-202303501  
Jenny Burleson  
Director, Tax Policy Division  
Comptroller of Public Accounts  
Filed: September 20, 2023

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**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§ 303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/25/23 - 10/01/23 is 18.00% for consumer<sup>1</sup> credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/25/23 - 10/01/23 is 18.00% for commercial<sup>2</sup> credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 10/01/23 - 10/31/23 is 8.50%.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-202303497  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: September 20, 2023

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**Credit Union Department**

**Application for a Merger or Consolidation**

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from United Savers Trust Credit Union (Houston) seeking approval to merge with First Community Credit Union (Houston), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202303496  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: September 20, 2023

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**Applications to Expand Field of Membership**

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Members Choice Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work, or attend school, and businesses and other legal entities located in Harris County, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas, to expand its field of membership. The proposal would permit members of the Texas Consumer Council who reside in Texas, to be eligible for membership in the credit union.

An application was received from Gulf Credit Union, Groves, Texas, to expand its field of membership. The proposal would permit members of the Cornerstone Credit Union Foundation, Friends of the Foundation, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202303495  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: September 20, 2023



#### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Field of Membership - Approved

Credit Union of Texas #1 (Allen) - See *Texas Register* dated on June 30, 2023.

Credit Union of Texas #2 (Allen) - See *Texas Register* dated on June 30, 2023.

Articles of Incorporation - Approved

An application was received from Mobiloil Credit Union (Beaumont) to amend its Articles of Incorporation relating to name change. See *Texas Register* dated on July 28, 2023.

TRD-202303494  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: September 20, 2023



### Texas Education Agency

Request for Applications Concerning the 2023-2025 Texas Reading Initiative - Literacy Coach Professional Development Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-24-110 is authorized by United States Code, Title 20, Chapter 70, Subchapter II, Part B, Subpart 2, §6642.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-24-110 from eligible applicants, which include regional education service centers (ESCs). Eligible applicants

may apply for this grant individually. Grant funds will be used to support activities that directly impact learning in Kindergarten-Grade 12.

Description. TEA seeks to provide grants for supporting the professional development of literacy coaches. Successful professional development includes the three successful pillars to job-embedded professional development: whole group face-to-face training, implementation support, and one-on-one coaching. This framework will be used to create professional development focused on increasing literacy coach efficacy, training on the research-based instructional strategies (RBIS), and high-quality instructional materials (HQIM) implementation. ESCs may apply for the Literacy Coaching Awards individually. This grant serves eligible entities from Kindergarten-Grade 12.

Grantees may use funds from the subgrant to support the three pillars of professional development: whole group face-to-face training, implementation support, and one-on-one coaching. The whole group training will be in the form of one annual literacy coaching conference with sessions focused on RBIS, product-agnostic HQIM implementation, supporting multilingual learners, and student-focused coaching. This conference will also include TEA-led sessions geared toward all Texas Reading Initiative grantees and will serve as part of an annual convening. To provide implementation support and one-on-one coaching, awardees will have several in-person checkpoints. Successful grantees will implement coaching strategies that will allow educators to properly support students with disabilities (e.g., struggling readers, students with dyslexia, and students with other identified or unidentified cognitive impairments) and emergent bilingual students. Competitive preference will also include applications that have the capacity to reach most regions in Texas. It is encouraged that applicants provide evidence of the organization's ability to provide holistic literacy coach professional development and that the professional development plan focuses on providing supports for all students, including emergent bilingual students and struggling readers.

Dates of Project. The 2023-2025 Texas Reading Initiative - Literacy Coach Professional Development grant program will be implemented during the 2023-2024 and 2024-2025 school years. Applicants should plan for a starting date of no earlier than February 5, 2024, and an ending date of September 30, 2025.

Project Amount. Approximately \$811,969 is available for funding the 2023-2025 Texas Reading Initiative - Literacy Coach Professional Development grant program. It is anticipated that one grant will be awarded.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Peer reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down

to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted via a survey which can be found at the link identified in the Program Guidelines of the RFA no later than October 27, 2023. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by November 1, 2023. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), Wednesday, November 15, 2023, to be eligible to be considered for funding. TEA will only accept applications by email to [competitivegrants@tea.texas.gov](mailto:competitivegrants@tea.texas.gov).

Issued in Austin, Texas, on September 20, 2023.

TRD-202303499

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: September 20, 2023

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 30, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 30, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: AmeriTex Pipe and Products, LLC; DOCKET NUMBER: 2022-1037-AIR-E; IDENTIFIER: RN110780335; LOCATION: Gunter, Grayson County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §106.8(c)(2) and §106.183(5) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the records of the hours of fuel oil firing and fuel oil purchases on-site on a two-year rolling retention period and made available upon request to the commission; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and 30 TAC §116.115(c) and §166.615(2), Standard Permit Registration Number 159336, Amendments to the Air Quality Standard Permit for Concrete Batch Plants, General Requirements Number (5)(E) and Additional Requirements for Permanent Concrete Plants Number (9)(F), and THSC, §385.085(b), by failing to control emissions from in-plant roads and traffic areas at all times, and failing to pave all entry and exit roads and main traffic routes associated with the operation of the concrete batch plant with a cohesive hard surface that can be maintained intact and shall be cleaned; PENALTY: \$21,750; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: ASHBY CAPITAL INVESTMENTS, LLC; DOCKET NUMBER: 2021-1020-EAQ-E; IDENTIFIER: RN111262408; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$6,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: City of Hawk Cove; DOCKET NUMBER: 2021-0024-MWD-E; IDENTIFIER: RN104265848; LOCATION: Hawk Cove, Hunt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014522001, Monitoring and Reporting Requirements Number 5, by failing to calibrate the flow meter at least annually to ensure accuracy; 30 TAC §305.125(1) and TPDES Permit Number WQ0014522001, Other Requirements Numbers 7 and 10, by failing to provide notification of changes to the contracted third-party operation of the facility; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0014522001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (11)(B) and TPDES Permit Number WQ0014522001, Sludge Provisions, Section IV(B), by failing to maintain records of properly completed trip tickets; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014522001, Sludge Provisions, Section IV(C), by failing to submit a complete annual sludge report to the TCEQ by September 30th of each year; 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0014522001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at intervals specified in the permit; 30 TAC §305.125(1) and §319.6 and TPDES Permit Number WQ0014522001, Monitoring and Reporting Requirements Number 1, by failing to assure the quality of all measurements through the use of blanks, standards, duplicates, and matrix spikes; and 30 TAC §317.3(a), by failing to secure the lift station in an intruder-resistant manner; PENALTY: \$39,525; ENFORCEMENT COORDINATOR: Mistie

Gonzales, (254) 761-3056; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Elgin-Butler Brick Company, LLC; DOCKET NUMBER: 2022-0997-WQ-E; IDENTIFIER: RN100724434; LOCATION: Elgin, Bastrop County; TYPE OF FACILITY: ceramics manufacturing facility; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121(a)(1), and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; PENALTY: \$3,983; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: IEA Constructors, LLC; DOCKET NUMBER: 2022-1482-WQ-E; IDENTIFIER: RN111231262; LOCATION: Cisco, Callahan County; TYPE OF FACILITY: wind farm; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR1580EV, Part III, Section G.4.b, by failing to minimize the exposure of building materials, building products, construction waste, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; 30 TAC §305.125(1) and TPDES General Permit Number TXR1580EV, Part III, Section D.2.a, by failing to post a completed construction site notice for the primary operator; 30 TAC §305.125(1) and TPDES General Permit Number TXR1580EV, Part III, Section F.2.a.iii, by failing to develop controls to minimize the off-site transport of litter, construction debris, and construction materials; and 30 TAC §305.125(1) and TPDES General Permit Number TXR1580EV, Part III, Section G.1, by failing to properly install and maintain effective stormwater sediment controls to minimize the discharge of pollutants; PENALTY: \$5,975; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2023-0596-AIR-E; IDENTIFIER: RN100633650; LOCATION: Channelview, Harris County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 4121, 19613, and N282, Special Conditions Number 1, Federal Operating Permit Number O1387, General Terms and Conditions and Special Terms and Conditions Number 28, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$32,525; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$13,010; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Moore Water Supply Corporation; DOCKET NUMBER: 2023-0415-MWD-E; IDENTIFIER: RN103014924; LOCATION: Moore, Frio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014239001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0014239001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at intervals specified in the permit; PENALTY: \$8,525; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(8) COMPANY: Nameless Hollow Council of Co-Owners; DOCKET NUMBER: 2022-0276-PWS-E; IDENTIFIER: RN101191039; LOCATION: Leander, Travis County; TYPE OF FACILITY: public water

supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to develop and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's elevated storage tank annually; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$4,550; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(9) COMPANY: PERMIAN LODGING MONAHANS LLC; DOCKET NUMBER: 2022-1705-MWD-E; IDENTIFIER: RN111000550; LOCATION: Monahans, Ward County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.42 and TWC, 26.121(a)(1), by failing to obtain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$1,625; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: SM Wagner, LLC; DOCKET NUMBER: 2021-1348-EAQ-E; IDENTIFIER: RN111301065; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: aboveground storage tank facility; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(11) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2023-0635-AIR-E; IDENTIFIER: RN109331025; LOCATION: Post, Garza County; TYPE OF FACILITY: sour condensate/crude oil production facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$2,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$800; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(12) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2023-0665-AIR-E; IDENTIFIER: RN111692810; LOCATION: Post, Garza County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$4,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,600; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OF-

FICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(13) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2023-0666-AIR-E; IDENTIFIER: RN111698197; LOCATION: Post, Garza County; TYPE OF FACILITY: sour condensate/crude oil waterflooding facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$650; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(14) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2023-0667-AIR-E; IDENTIFIER: RN111698288; LOCATION: Post, Garza County; TYPE OF FACILITY: sour condensate/crude oil waterflooding facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$650; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(15) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2023-0685-AIR-E; IDENTIFIER: RN111698056; LOCATION: Post, Garza County; TYPE OF FACILITY: sour condensate/crude oil and natural gas waterflooding processing facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$4,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,600; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(16) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2023-0686-AIR-E; IDENTIFIER: RN111698262; LOCATION: Post, Garza County; TYPE OF FACILITY: sour condensate/crude oil production facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$4,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,800; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(17) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2023-0687-AIR-E; IDENTIFIER: RN111698338; LOCATION: Post, Garza County; TYPE OF FACILITY: sour condensate/crude oil production facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$650; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2023-0716-AIR-E; IDENTIFIER: RN111697975; LOCATION: Post, Garza County; TYPE OF FACILITY: sour conden-

sate/crude oil tank battery; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$4,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,800; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(19) COMPANY: THE LUBRIZOL CORPORATION; DOCKET NUMBER: 2023-0393-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 22095, Special Conditions Number 1, Federal Operating Permit Number O1931, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$26,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,500; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: U. S. LAND CORPORATION; DOCKET NUMBER: 2023-0534-UTL-E; IDENTIFIER: RN102691391; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$470; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202303453  
Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: September 15, 2023



### Cancellation of Public Meeting The Peninsula RV Resort LLC Proposed Permit No. WQ0016276001

The public meeting previously scheduled for October 12, 2023, has been cancelled. The application was withdrawn by the applicant on September 14, 2023.

If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk at (512) 239-1201.

TRD-202303490  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: September 19, 2023



### Notice of District Petition

Notice issued September 14, 2023

TCEQ Internal Control No. D-06162023-034; Peacock Capital Holdings LLC, a Texas Limited Liability Company, (Petitioner) filed a petition for creation of Travis County Municipal Utility District No. 28 (District) with the Texas Commission on Environmental Quality

(TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Capital Farm Credit, ACA, on the property to be included in the proposed District and information provided indicates the aforementioned entity has consented to the creation of the District; (3) the proposed District will contain approximately 1,386.774 acres of land located within Travis County, Texas; and (4) the land to be included in the proposed District is not within the corporate boundaries or extraterritorial jurisdiction of any municipality. The petition further states that the proposed District will purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes, and will perform the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, park and recreational facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$35,250,000 (including \$24,500,000 for water, wastewater, and drainage, \$2,750,000 for recreation, and \$8,000,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC

103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202303506

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 20, 2023



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 30, 2023**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 30, 2023**. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: IWR Operating, LLC; DOCKET NUMBER: 2018-0962-AIR-E; TCEQ ID NUMBER: RN110142809; LOCATION: 4460 McHard Road, Missouri City, Fort Bend County; TYPE OF FACILITY: oil and natural gas drill operation; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(a) and (b) and 30 TAC §101.4, by failing to prevent nuisance odor conditions; and THSC, §382.085(b) and 30 TAC §112.32, by causing, suffering, allowing, or permitting emissions of hydrogen sulfide to exceed a net ground level concentration of 0.12 parts per million averaged over any 30-minute period; PENALTY: \$33,000; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Jacob Martinez and Maria Chavira; DOCKET NUMBER: 2021-1246-MSW-E; TCEQ ID NUMBER: RN111267555; LOCATION: 5491 O'Leary Drive near El Paso, El Paso County; TYPE OF FACILITY: residence; RULES VIOLATED: Texas Health and Safety Code, §361.112(a) and 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; PENALTY: \$5,250; STAFF ATTORNEY: Erandi Ratnayake, Litigation, MC 175, (512) 239-6515; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Jeff Milton Haney; DOCKET NUMBER: 2020-0585-PST-E; TCEQ ID NUMBER: RN101808244; LOCATION: 1500 West Reverend Doctor Ransom Howard Street, Port Arthur, Jefferson County; TYPE OF FACILITY: out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.47(a)(2) and TCEQ Default Order Docket Number 2017-0258-PST-E, Ordering Provision Number 3.a., by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$46,875; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Mark Alvarez; DOCKET NUMBER: 2022-0444-AIR-E; TCEQ ID NUMBER: RN105809016; LOCATION: 1421 North Lee Trevino Drive, Suite C1, El Paso, El Paso County; TYPE OF FACILITY: auto body repair and refinishing facility; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), 30 TAC §116.110(a), and TCEQ Default Order Docket Number 2019-1234-AIR-E, Ordering Provision Number 3.a.i., by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and THSC, §382.085(b), 30 TAC §115.421(12), and TCEQ Default Order Docket Number 2019-1234-AIR-E, Ordering Provision Number 3.a.ii., by causing, suffering, allowing, or permitting volatile organic compound emissions to exceed the coatings and solvents emissions limit as delivered to the application system; PENALTY: \$50,625; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-202303486  
Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: September 19, 2023

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**Notice of Water Quality Application**

The following notice was issued on September 15, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to

the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS PUBLISHED IN THE *TEXAS REGISTER*.

**INFORMATION SECTION**

The Texas Commission on Environmental Quality has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0010698002 issued to Upper Trinity Regional Water District, P.O. Box 305, Lewisville, Texas 75067, to correct the 2-hr peak flows for Outfall 002. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located at 1780 Navo Road, in Denton County, Texas 76227.

TRD-202303505  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: September 20, 2023

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**Office of the Governor**

**Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application**

The Governor's Public Safety Office (PSO) is planning to apply for federal fiscal year (FFY) 2023 formula funds under the Edward Byrne Justice Assistance Grant (JAG) program administered by the U.S. Department of Justice, Bureau of Justice Assistance. The FFY 2023 allocation to Texas is \$16.4 million.

PSO proposes to use the FFY 2023 award to fund initiatives that target violent crimes, organized criminal activity, improve technology, substance abuse diversion programs, and offender reentry into the community.

Comments regarding the proposed use of JAG funds should be submitted in writing within 30 days from the date of this announcement in the *Texas Register*. Comments may be submitted to the attention of Ms. Alyssa Smith, Public Safety Office (PSO), Texas Office of the Governor, by email at [Alyssa.Smith@gov.texas.gov](mailto:Alyssa.Smith@gov.texas.gov) or by mail to the Office of the Governor, Public Safety Office, Post Office Box 12428, Austin, Texas 78711. You may also request a copy of the application upon its completion from Ms. Smith.

TRD-202303455  
Angie Martin  
Director of Grants Administration  
Office of the Governor  
Filed: September 15, 2023

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**Department of State Health Services**

**Licensing Actions for Radioactive Materials**

During the second half of July 2023, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

**NEW LICENSES ISSUED:**

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
HOUSTON	ENVIROTECH ENVIRONMENTAL SERVICES LLC	L07188	HOUSTON	00	07/31/23

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AUSTIN	THERMO FINNIGAN LLC	L01186	AUSTIN	59	07/18/23
BEAUMONT	METALFORMS LLC	L06764	BEAUMONT	01	07/18/23
DALLAS	PIPELINE EAST DALLAS LLC DBA WHITE ROCK MEDICAL CENTER	L06955	DALLAS	02	07/21/23
DALLAS	CARDINAL HEALTH	L05610	DALLAS	52	07/18/23
DEER PARK	SHELL CHEMICAL LP	L04933	DEER PARK	36	07/18/23
EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE SIERRA CAMPUS	L04758	EL PASO	40	07/24/23
EL PASO	EL PASO COUNTY HOSPITAL DISTRICT	L00502	EL PASO	82	07/18/23
FORT WORTH	DARREN LACKAN MD PA DBA DIABETES AND THYROID CENTER OF FORT WORTH	L06074	FORT WORTH	08	07/26/23
FREEPORT	BLUE CUBE OPERATIONS LLC	L06926	FREEPORT	08	07/25/23
FREEPORT	ESSENTIAL ELEMENTS USA LLC	L02807	FREEPORT	49	7/25/23
GEORGETOWN	CENTRAL TEXAS MEDICAL SPECIALISTS PLLC	L06618	GEORGETOWN	27	07/21/23
HOUSTON	UIH AMERICA INC	L07090	HOUSTON	08	07/19/23
HOUSTON	MICRO MOTION INC	L06760	HOUSTON	14	07/24/23

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L06366	HOUSTON	24	07/21/23
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L03457	HOUSTON	78	07/19/23
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L00466	HOUSTON	186	07/21/23
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN MEMORIAL CITY MEDICAL CENTER	L01168	HOUSTON	200	07/18/23
LA GRANGE	LOWER COLORADO RIVER AUTHORITY	L02738	LA GRANGE	64	07/21/23
LEWISVILLE	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L05507	LEWISVILLE	30	07/28/23
LONGVIEW	TEXAS ONCOLOGY PA DBA LONGVIEW CANCER CENTER	L05017	LONGVIEW	30	07/21/23
MCALLEN	COLUMBIA RIO GRANDE HEALTHCARE LP	L03288	MCALLEN	63	07/24/23
NEDERLAND	MURLIDHAR A AMIN MD PA	L05735	NEDERLAND	08	07/19/23
NEW BRAUNFELS	RESOLUTE HOSPITAL COMPANY LLC DBA RESOLUTE BAPTIST HOSPITAL	L06632	NEW BRAUNFELS	12	07/19/23

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

RICHARDSON	THE UNIVERSITY OF TEXAS AT DALLAS	L02114	RICHARDSON	70	07/20/23
ROUND ROCK	SCOTT & WHITE HOSPITAL – ROUND ROCK DBA BAYLOR SCOTT & WHITE MEDICAL CENTER – ROUND ROCK	L06085	ROUND ROCK	37	07/28/23
SAN ANTONIO	BURGE-MARTINEZ CONSULTING INC	L05907	SAN ANTONIO	14	07/19/23
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO LTD LLC	L00594	SAN ANTONIO	387	07/24/23
STAFFORD	ALOKI ENTERPRISE INC	L06257	STAFFORD	63	07/26/23
SUGAR LAND	TEXAS THYROID & ENDOCRINE CENTER PA	L06245	SUGAR LAND	02	07/19/23
THROUGHOUT TX	BERRY GP INC	L01575	CORPUS CHRISTI	65	07/18/23
THROUGHOUT TX	ECM INTERNATIONAL INC	L06987	EL PASO	10	07/19/23
THROUGHOUT TX	TEXAS ONCOLOGY PA	L05502	FLOWER MOUND	27	07/24/23
THROUGHOUT TX	METALOGIC INSPECTION SERVICES (SOUTHWEST) LLC	L06772	HOUSTON	15	07/24/23
THROUGHOUT TX	RADIOGRAPHIC SPECIALISTS INC	L02742	HOUSTON	73	07/31/23
THROUGHOUT TX	ARIAS & ASSOCIATES INC	L04964	SAN ANTONIO	64	07/28/23
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L06303	SUGAR LAND	26	07/19/23
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L01833	SUGAR LAND	227	07/20/23

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	LANGERMAN FOSTER ENGINEERING COMPANY LLC	L06382	WACO	10	07/18/23
WACO	BAYLOR UNIVERSITY	L00343	WACO	52	07/25/23
WACO	HILLCREST BAPTIST MEDICAL CENTER DBA BAYLOR SCOTT & WHITE MEDICAL CENTER HILLCREST	L00845	WACO	130	07/31/23

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
HOUSTON	INSIGNIA TTG PARENT LLC	L06535	HOUSTON	12	07/21/23
THROUGHOUT TX	LOTUS LLC	L05147	ANDREWS	35	07/31/23
THROUGHOUT TX	CARDIAC IMAGING INC	L06565	KATY	25	07/31/23

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
EL PASO	TEXAS ONCOLOGY PA DBA EL PASO CANCER TREATMENT CENTER	L05774	EL PASO	22	07/26/23
LUBBOCK	RADIATION ONCOLOGY OF THE SOUTH PLAINS	L05418	LUBBOCK	25	07/19/23

THROUGHOUT TX	WEATHERPROOFING TECHNOLOGIES INC	L06931	TOMBALL	02	07/20/23
THROUGHOUT TX	ADVANCED NUCLEAR CONSULTANTS LLC	L06167	HOUSTON	12	07/31/23

TRD-202303498  
Cynthia Hernandez  
General Counsel  
Department of State Health Services  
Filed: September 20, 2023

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Licensing Actions for Radioactive Materials

During the first half of August 2023, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
THROUGHOUT TX	CONSOLIDATED REINFORCEMENT INC	L07190	HALTOM CITY	00	08/07/23

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BAYTOWN	SAN JACINTO METHODIST HOSPITAL DBA HOUSTON METHODIST BAYTOWN HOSPITAL	L02388	BAYTOWN	83	08/14/23
DALLAS	PETNET SOLUTIONS INC	L05193	DALLAS	64	08/04/23
DALLAS	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	151	08/11/23
DALLAS	COLUMBIA HOSPITAL AT MEDICAL CITY DALLAS SUBSIDIARY LP DBA MEDICAL CITY DALLAS	L01976	DALLAS	236	08/04/23
DALLAS	COLUMBIA HOSPITAL AT MEDICAL CITY DALLAS SUBSIDIARY LP	L01976	DALLAS	237	08/08/23
DENTON	TEXAS ONCOLOGY PA	L05815	DENTON	22	08/01/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

DENTON	TEXAS ONCOLOGY PA	L05815	DENTON	23	08/04/23
DESOTO	DIAB AMERICAS LP	L06208	DESOTO	06	08/02/23
FORT WORTH	BTDI JV LLP DBA TOUCHSTONE IMAGING DOWNTOWN FORT WORTH PET	L06728	FORT WORTH	10	08/07/23
FORT WORTH	TEXAS ONCOLOGY PA	L05545	FORT WORTH	79	08/07/23
HOUSTON	SPECTRACELL LABORATORIES INC	L04617	HOUSTON	22	08/16/23
HOUSTON	HARRIS COUNTY HOSPITAL DISTRICT DBA HARRIS HEALTH SYSTEM	L01303	HOUSTON	110	08/09/23
HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	164	08/11/23
MANSFIELD	HEALTHSCAN IMAGING LLC	L06856	MANSFIELD	25	08/11/23
PORT ARTHUR	GULF COAST CARDIOLOGY GROUP PLLC	L05393	PORT ARTHUR	20	08/15/23
PORT ARTHUR	TOTAL ENERGIES PETROCHEMICA LS & REFINING USA INC	L03498	PORT ARTHUR	37	08/04/23
SAN ANTONIO	ALAMO NUCLEAR PHARMACY SERVICES INC	L06981	SAN ANTONIO	03	08/11/23
SAN ANTONIO	RLS (USA) INC	L04764	SAN ANTONIO	59	08/14/23

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

SAN MARCOS	CHRISTUS SANTA ROSA HEALTH CARE CORPORATION DBA CHRISTUS SANTA ROSA HOSPITAL - SAN MARCOS	L07081	SAN MARCOS	04	08/08/23
SEGUIN	CRAIG CARDIOVASCULAR CENTER	L06623	SEGUIN	03	0/09/23
STEPHENVILLE	STEPHENVILLE MEDICAL AND SURGICAL CLINIC	L05309	STEPHENVILLE	27	08/04/23
THE WOODLANDS	METHODIST HEALTH CENTER DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL	L06861	THE WOODLANDS	18	08/09/23
THROUGHOUT TX	RECON PETROTECHNOLOGIES	L06839	ALVARADO	07	08/02/23
THROUGHOUT TX	TEAM INDUSTRIAL SERVICES INC	L00087	ALVIN	262	08/04/23
THROUGHOUT TX	TEXAS A&M UNIVERSITY ENVIRONMENTAL HEALTH & SAFETY	L05683	COLLEGE STATION	46	08/15/23
THROUGHOUT TX	TEXAS ONCOLOGY PA	L05606	FORT WORTH	34	08/07/23
THROUGHOUT TX	NEXTIER COMPLETION SOLUTIONS INC	L06712	HOUSTON	23	08/02/23
THROUGHOUT TX	GAMMATRON INC	L02148	HOUSTON	35	08/01/23
THROUGHOUT TX	STEP ENERGY SERVICES HOLDINGS LTD	L07095	SPRING	01	08/07/23
WEBSTER	TEXAS ONCOLOGY PA	L06465	WEBSTER	11	08/04/23

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ALICE	CHRISTUS SPOHN HEALTH SYSTEM CORPORATION DBA CHRISTUS SPOHN HOSPITAL ALICE	L02390	ALICE	53	08/09/23
LUBBOCK	LUBBOCK HEART HOSPITAL LLC	L05742	LUBBOCK	15	08/03/23
ODESSA	ECTOR COUNTY HOSPITAL DISTRICT DBA MEDICAL CENTER HOSPITAL	L01223	ODESSA	104	08/07/23
ROSENBERG	CACTUS MEASUREMENT LLC	L07187	RICHMOND	01	08/07/23
SUGAR LAND	ST LUKES COMMUNITY DEVELOPMENT CORPORATION - SUGAR LAND DBA ST LUKES SUGAR LAND HOSPITAL	L06532	SUGAR LAND	04	08/09/23
SUGAR LAND	STILLMEADOW INC	L04497	SUGAR LAND	19	08/07/23
THROUGHOUT TX	AEGEUS INSPECTION SOLUTIONS INC	L06555	HOUSTON	13	08/04/23
THROUGHOUT TX	NATIONAL OILWELL VARCO LP	L00287	HOUSTON	164	08/01/23
THROUGHOUT TX	QSA GLOBAL INC	L06566	LA PORTE	13	08/04/23

TRD-202303500  
 Cynthia Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: September 20, 2023

◆ ◆ ◆  
**Texas Department of Housing and Community Affairs**

## Public Notice of Demolition/Reconstruction of Jaipur Lofts Apartments

Jaipur Lofts Apartments is a 71-unit affordable multifamily complex located on lots around Annex Avenue and Cabell Drive, Dallas, Texas. The site consists of a single residential structure constructed between 1918 and 1933. The new property - to be known as Jaipur Lofts - will be one building with 4 floors and consist of twenty-six 1-bedroom and thirty-seven 2-bedroom and eight 3-bedroom units for a total of 71 units. Demolition was completed in February 2023, and all units are anticipated to be reconstructed by February 2025. It is anticipated that all residents will be permanently displaced as a result of reconstruction occurring over a 16-month period. Funding is provided through Low Income Housing Tax Credit (LIHTC) equity from Hunt Capital Partners with HOME American Rescue Plan (ARP) funding provided by the Texas Department of Housing and Community Affairs, and City of Dallas HOME funds, along with deferred developer fee and contractor loyalty contribution. All 71 units will remain lower income dwelling units for 45 years from the date of initial occupancy as recorded in the Development's HOME-ARP and LIHTC Land Use Restriction Agreements.

### Public Comment Period

Starts at 8:00 a.m. Austin local time on September 29, 2023.

Ends at 5:00 p.m. Austin local time on October 16, 2023.

Comments received after 5:00 p.m. Austin local time on October 16, 2023, will not be accepted.

Written comments may be submitted to:

Texas Department of Housing and Community Affairs

Attn: Carmen Roldan, Jaipur Lofts Apartments

P.O. Box 13941

Austin, Texas 78711-3941

Email: [carmen.rolan@tdhca.state.tx.us](mailto:carmen.rolan@tdhca.state.tx.us)

Written comments may be submitted in hard copy or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific rule, policy, or plan related to their comment, as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

Las personas que no pueden hablar, leer, escribir o entender el idioma inglés pueden llamar al (512) 475-3800 o al número de llamada gratuita (800) 525-0657 para solicitar asistencia con la traducción de documentos, eventos u otra información del Departamento de Vivienda y Asuntos Comunitarios de Texas (Texas Department of Housing and Community Affairs).

Quédese en la línea y permanezca en silencio durante nuestras indicaciones automatizadas de voz en inglés hasta que un representante responda. El representante lo pondrá en espera y le comunicará con un intérprete para ayudarle con su llamada.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Street Address: 221 East 11th Street, Austin, TX 78701

Mailing Address: PO Box 13941, Austin, TX 78711-3941

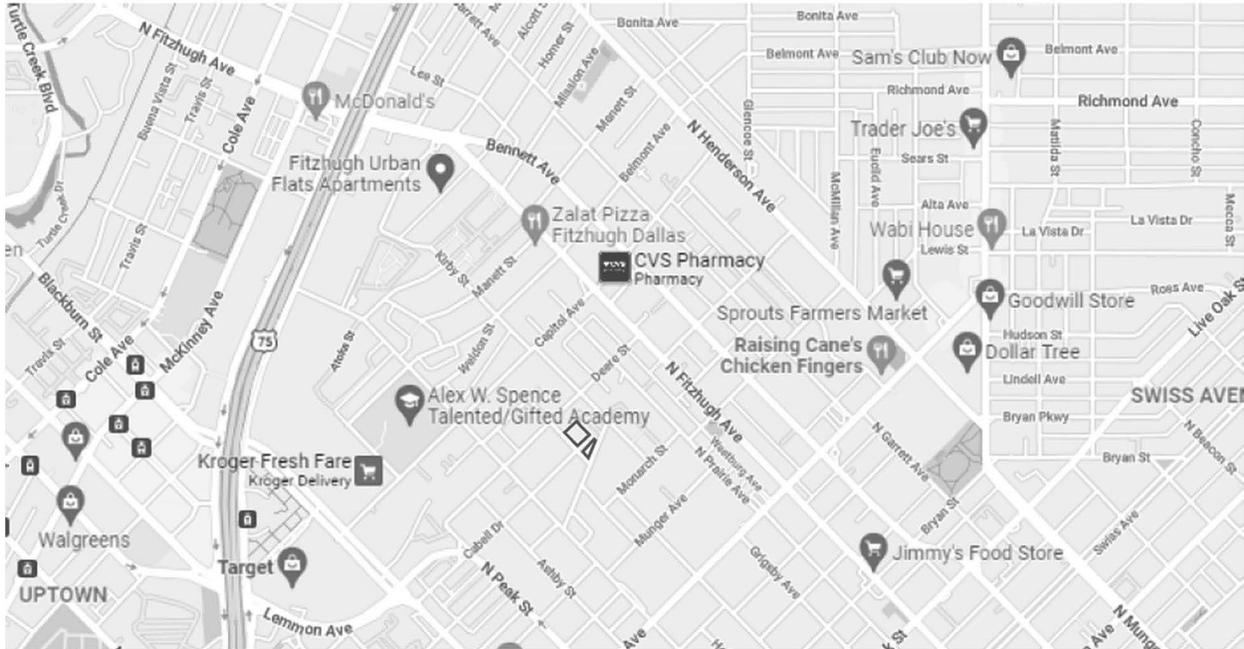
Main Number: 512-475-3800

Toll Free: 1-800-525-0657

Email: info@tdhca.state.tx.us

Web: www.tdhca.state.tx.us

Location of lower-income dwelling units that will be demolished



TRD-202303477  
 Bobby Wilkinson  
 Executive Director  
 Texas Department of Housing and Community Affairs  
 Filed: September 18, 2023

TRD-202303503  
 Justin Beam  
 Chief Clerk  
 Texas Department of Insurance  
 Filed: September 20, 2023

◆ ◆ ◆  
**Texas Department of Insurance**

Company Licensing

Application for incorporation in the state of Texas for Garfield Casualty Company, a domestic fire and/or casualty company. The home office is in Karnes City, Texas.

Application for 21st Century Advantage Insurance Company, a foreign fire and/or casualty company, to change its name to Bantry Insurance Company. The home office is in Chicago, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

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**Texas Lottery Commission**

Scratch Ticket Game Number 2543 "50X POWER BLITZ"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2543 is "50X POWER BLITZ". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2543 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2543.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: ARMORED CAR SYMBOL, ATM CARD SYMBOL, BANK SYMBOL, BILL SYMBOL, CHECK SYMBOL, CHIP SYMBOL, CROWN SYMBOL, DOLLAR SYMBOL, STAR SYMBOL, REGISTER SYMBOL, RING SYMBOL, VAULT SYMBOL, 01, 02, 03,

04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, MONEY BAG SYMBOL, 10X SYMBOL, 20X SYMBOL, 50X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$5,000 and \$200,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2543 - 1.2D

PLAY SYMBOL	CAPTION
ARMORED CAR SYMBOL	ARMCAR
ATM CARD SYMBOL	CARD
BANK SYMBOL	BANK
BILL SYMBOL	BILL
CHECK SYMBOL	CHECK
CHIP SYMBOL	CHIP
CROWN SYMBOL	CROWN
DOLLAR SYMBOL	DOLLAR
STAR SYMBOL	STAR
REGISTER SYMBOL	REGISTER
RING SYMBOL	RING
VAULT SYMBOL	VAULT
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN

17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRV
46	FRSX

47	FRSV
48	FRET
49	FRNI
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
MONEY BAG SYMBOL	WIN\$
10X SYMBOL	WINX10
20X SYMBOL	WINX20
50X SYMBOL	WINX50
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$5,000	FVTH
\$200,000	200TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten

(10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2543), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2543-0000001-001.

H. Pack - A Pack of "50X POWER BLITZ" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "50X POWER BLITZ" Scratch Ticket Game No. 2543.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "50X POWER BLITZ" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty (50) Play Symbols. POWER \$25 SPOT PLAY INSTRUCTIONS: If a player reveals 2 matching Play Symbols in the POWER \$25 SPOT, the player wins \$25. POWER \$50 SPOT PLAY INSTRUCTIONS: If a player reveals 2 matching Play Symbols in the POWER \$50 SPOT, the player wins \$50. POWER \$100 SPOT PLAY INSTRUCTIONS: If a player reveals 2 matching Play Symbols in the POWER \$100 SPOT, the player wins \$100. 50X POWER BLITZ PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If a player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. If a player reveals a "50X" Play Symbol, the player wins 50 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty (50) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty (50) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty (50) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty (50) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to twenty (20) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. KEY NUMBER MATCH: Each Ticket will have four (4) different WINNING NUMBERS Play Symbols.

E. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

F. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than three (3) times.

G. KEY NUMBER MATCH: The "MONEY BAG" (WINS), "10X" (WINX10), "20X" (WINX20) and "50X" (WINX50) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. KEY NUMBER MATCH: The "MONEY BAG" (WINS), "10X" (WINX10), "20X" (WINX20) and "50X" (WINX50) Play Symbols will never appear in any of the POWER SPOT play areas.

I. KEY NUMBER MATCH: The "10X" (WINX10), "20X" (WINX20) and "50X" (WINX50) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

J. KEY NUMBER MATCH: The \$20 Prize Symbol will only appear on winning Tickets when used in a winning combination.

K. KEY NUMBER MATCH: Non-winning Prize Symbols will never be the same as winning Prize Symbol(s).

L. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 15 and \$15).

M. KEY NUMBER MATCH: Matching Play Symbols will only appear as dictated by the prize structure in winning POWER \$25 SPOT, POWER \$50 SPOT and POWER \$100 SPOT play areas.

N. POWER \$25 SPOT, POWER \$50 SPOT and POWER \$100 SPOT: A Play Symbol will not be used more than one (1) time per Ticket across the POWER \$25 SPOT, POWER \$50 SPOT and POWER \$100 SPOT play areas, unless used in a winning combination.

O. POWER \$25 SPOT, POWER \$50 SPOT and POWER \$100 SPOT: The POWER \$25 SPOT, POWER \$50 SPOT and POWER \$100 SPOT Play Symbols will never appear in the WINNING NUMBERS or YOUR NUMBERS Play Symbol spots.

P. POWER \$25 SPOT, POWER \$50 SPOT and POWER \$100 SPOT: In the POWER \$25 SPOT, POWER \$50 SPOT and POWER \$100 SPOT play areas, non-winning Play Symbols will not be the same as winning Play Symbols.

Q. POWER \$25 SPOT, POWER \$50 SPOT and POWER \$100 SPOT: The POWER \$25 SPOT, POWER \$50 SPOT and POWER \$100 SPOT play areas will each be played separately.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "50X POWER BLITZ" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim,

the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "50X POWER BLITZ" Scratch Ticket Game prize of \$5,000 or \$200,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "50X POWER BLITZ" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No lia-

bility for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "50X POWER BLITZ" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "50X POWER BLITZ" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "50X POWER BLITZ" Scratch Ticket may be entered into one (1) of five (5)

promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

### 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 25,080,000 Scratch Tickets in the Scratch Ticket Game No. 2543. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2543 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	2,675,200	9.38
\$10.00	1,588,400	15.79
\$15.00	836,000	30.00
\$25.00	668,800	37.50
\$50.00	334,400	75.00
\$100	52,668	476.19
\$500	1,463	17,142.86
\$5,000	17	1,475,294.12
\$200,000	8	3,135,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.07. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2543 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2543, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202303508  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 20, 2023



**Texas Parks and Wildlife Department**

Notice of Proposed Real Estate Transactions

**Texas Parks and Wildlife Department**

**Notice of Proposed Real Estate Transactions**

**Acquisition of Land - Brown County**

**Approximately 869 Acres at Lake Brownwood State Park**

In a meeting on November 2, 2023, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 869 acres at Lake Brownwood State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [trey.vick@tpwd.texas.gov](mailto:trey.vick@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission meeting.

**Acquisition of Land - Houston County**

**Approximately 12 Acres at Mission Tejas State Park**

In a meeting on November 2, 2023, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 12 acres at Mission Tejas State Park. The public will have an opportunity to comment on the proposed transaction

before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [trey.vick@tpwd.texas.gov](mailto:trey.vick@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission meeting.

#### **Acquisition of Land - Coryell County**

##### **Approximately 95 Acres at Mother Neff State Park**

In a meeting on November 2, 2023, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 95 acres at Mother Neff State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [trey.vick@tpwd.texas.gov](mailto:trey.vick@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission meeting.

#### **Acquisition of Land - Matagorda County**

##### **Approximately 1300 Acres at Mad Island Wildlife Management Area**

In a meeting on November 2, 2023, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 1300 acres at the Mad Island Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to [stan.david@tpwd.texas.gov](mailto:stan.david@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information regarding the Commission meeting.

TRD-202303487

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: September 19, 2023

### **Public Utility Commission of Texas**

#### **Notice of Application for Designation as an Eligible Telecommunications Provider**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 12, 2023, for designation as an eligible telecommunications provider (ETP) in the State of Texas under 16 Texas Administrative Code §26.417.

Docket Title and Number: Application of Syntrio Solutions, LLC for Designation as an Eligible Telecommunications Provider, Project Number 55457.

The Application: Syntrio Solutions, LLC seeks designation as an eligible telecommunications provider (ETP) under 16 Texas Administrative Code §26.417.

Syntrio Solutions, LLC seeks an ETP designation to be eligible to receive funds from the Texas Universal Service Fund. Syntrio seeks ETP designation for 23 wire centers and their associated exchanges and study areas in their entirety. The complete list of wire centers that will comprise the designated service area is contained in attachment B to the Application.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than October 12, 2023, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Project Number 55457.

TRD-202303408

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: September 14, 2023

### **Texas Veterans Commission**

#### **The Texas Veterans Commission Fund for Veterans' Assistance Announcement of the Request for Applications for 2024-2025 Grant Period**

The Texas Veterans Commission (TVC) Fund for Veterans' Assistance (FVA) grant program awards reimbursement grants to eligible charitable organizations, local government agencies, and veterans service organizations that provide direct services to Texas veterans and their dependents.

**Project Overview:** Provide support, services, and resources to veterans, dependents, and surviving spouses where they live to improve their quality of life and strengthen their connections and integration with their communities.

**Eligible Applicants:** 1) Units of local government 2) IRS Code §501(c)(19) Posts or organizations of past or present members of the Armed Forces 3) IRS Code §501(c)(3) nonprofit organizations authorized to do business in Texas; or 4) Texas chapters of IRS Code §501(c)(4) Veteran's service organizations.

**Application Opens:** October 2, 2023 @ 5:00 p.m. CST

**Application Deadline:** December 4, 2023 @ 5:00 p.m. CST

**Estimated Funding:** \$30 million budgeted for all grant programs listed.

**Contract Time Period:** July 1, 2024 - June 30, 2025

**Grant Program Opportunities:** 1) General Assistance 2) Housing for Texas Heroes 3) Veterans Mental Health 4) Veterans Treatment Court.

**Official Documents:** <https://www.tvc.texas.gov/grants/2024-2025-grant-cycle>

**Questions:** All communication between the Applicant and TVC upon release of this RFA must be sent by November 23, 2023, to [RFAquestions@tvc.texas.gov](mailto:RFAquestions@tvc.texas.gov). Questions will be posted on TVC Website on Wednesdays and Fridays.

TRD-202303502

Kathleen Cordova  
General Counsel  
Texas Veterans Commission  
Filed: September 20, 2023

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**Texas Water Development Board**

**Request for Information for Feasibility Study**

Request for public input on the Feasibility Review of Marvin Nichols

Pursuant to House Bill 1, 88th R.S., the Texas Water Development Board (TWDB) is conducting a project feasibility review of the proposed Marvin Nichols Reservoir. Instructions from the legislature are: TWDB shall evaluate the feasibility of the proposed Marvin Nichols Reservoir project to be located on the Sulphur River and upstream of the confluence of the White Oak Creek in Franklin, Titus, and Red River Counties. The review shall analyze the implementation timeline, associated costs, land acquisition considerations, and the economic impact of the proposed project. A report regarding the findings of the review shall be prepared and submitted by TWDB to the Legislative Budget Board and Governor no later than January 5, 2025.

The legislature's definition of feasible, as included in the Texas Water Code, §16.053(h)(10) is: "For purposes of this subdivision, a water management strategy or project is considered infeasible if the proposed sponsor of the water management strategy or project has not taken an affirmative vote or other action to make expenditures necessary to construct or file applications for permits required in connection with the implementation of the water management strategy or project under fed-

eral or state law on a schedule that is consistent with the completion of the implementation of the water management strategy or project by the time the water management strategy or project is projected by the regional water plan or the state water plan to be needed."

TWDB does not have any regulatory oversight of the proposed reservoir. The TWDB does not issue permits or decide whether the proposed reservoir will or will not be built. The purpose of this report is only to inform the legislature of the findings from TWDB's feasibility review of the proposed reservoir.

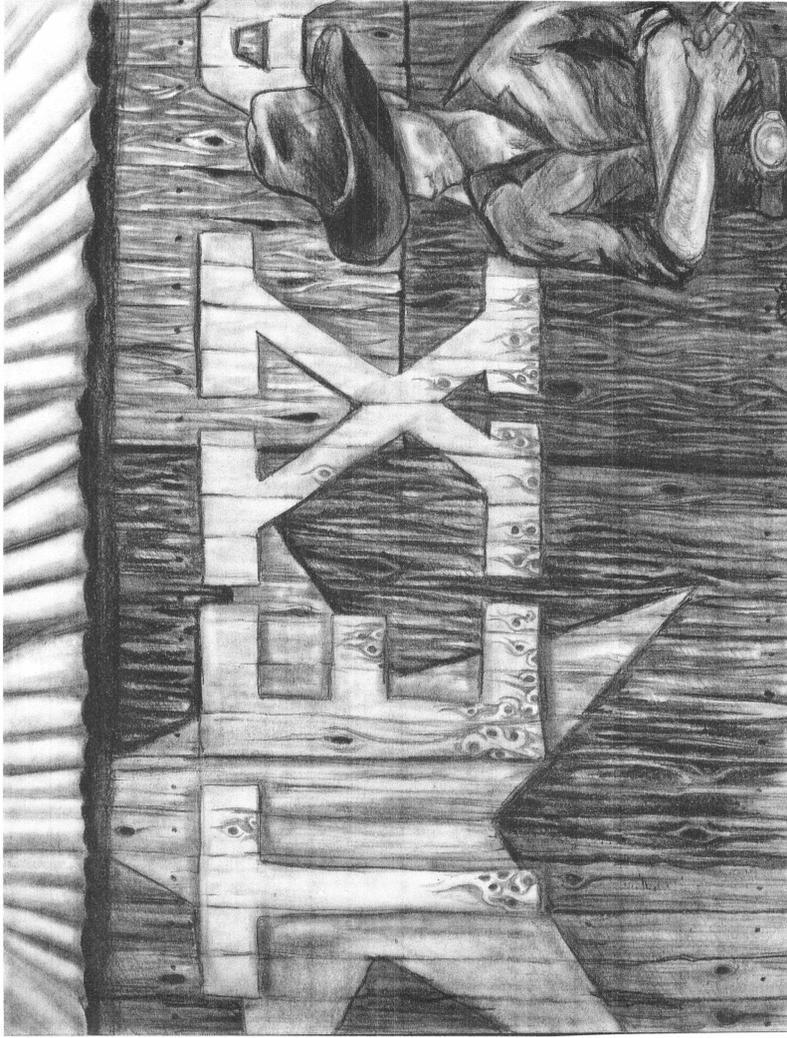
TWDB requests meaningful input and information not already available. Please provide input on the following topics:

1. Implementation timeline
2. Associated costs
3. Land acquisition considerations
4. Economic impact

Your input must be received by December 1, 2023 in order to be considered. You may email your input and any supporting documentation to: [feasibility@twdb.texas.gov](mailto:feasibility@twdb.texas.gov).

TRD-202303493  
Ashley Harden  
General Counsel  
Texas Water Development Board  
Filed: September 20, 2023





## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “48 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 48 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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