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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.102, concerning General Principles of Allowable and Unallowable Costs; §355.306, concerning Cost Finding Methodology; §355.314, concerning Supplemental Payments to Non-State Government-Owned Nursing Facilities; §355.458, concerning Supplemental Payments to Non-State Government-Owned Facilities; §355.722, concerning Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers; §355.743, concerning Reimbursement Methodology for Mental Health Case Management; §355.746, concerning Reimbursement Methodology for Mental Retardation Service Coordination; §355.781, concerning Rehabilitative Services Reimbursement Methodology; §355.8210, concerning Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care; §355.8421, concerning Reimbursement for Case Management Services for Infants and Toddlers with Developmental Disabilities; §355.8422, concerning Reimbursement for Specialized Rehabilitation Services for Infants and Toddlers with Developmental Disabilities; and §355.9040, concerning Reimbursement Methodology for Comprehensive Rehabilitation Services Program.

BACKGROUND AND PURPOSE

In 2020, the Rate Analysis Department of HHSC underwent a rebranding to change the department's name to "Provider Finance Department." The purpose of the proposal is to amend several rules within the Texas Administrative Code that contain instances of the previous department name and replace them with the current department name.

SECTION-BY-SECTION

The proposed amendments to §355.102, §355.306, §355.314, §355.458, §355.722, §355.743, §355.746, §355.781, §355.8210, §355.8421, §355.8422, and §355.9040 replace instances of "Rate Analysis," "Rate Analysis Department," or "RAD" with "Provider Finance," "Provider Finance Department," and "PFD," respectively.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

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.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved communication with stakeholders and prevention of confusion regarding the Provider Finance Department's renaming.

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 there are no costs associated with the proposed amendments.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Alexa Hites at (512) 730-7455 in HHSC Provider Finance Department.

Written comments on the proposal may be submitted to Alexa Hites, Management Analyst, at H400, 4601 W Guadalupe St, Austin, TX 78751; or by e-mail to ProviderFinanceDept@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R003" in the subject line.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.102

STATUTORY AUTHORITY

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

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

§355.102. General Principles of Allowable and Unallowable Costs.

(a) Allowable and unallowable costs. Allowable and unallowable costs, both direct and indirect, are defined to identify expenses that are reasonable and necessary to provide contracted client care and are consistent with federal and state laws and regulations. When a particular type of expense is classified as unallowable, the classification means only that the expense will not be included in the database for reimbursement determination purposes because the expense is not considered reasonable and/or necessary. The classification does not mean that individual contracted providers may not make the expenditure. The description of allowable and unallowable costs is designed to be a general guide and to clarify certain key expense areas. This description is not comprehensive, and the failure to identify a particular cost does not necessarily mean that the cost is an allowable or unallowable cost.

(b) Cost-reporting process. The primary objective of the cost-reporting process is to provide a basis for determining appropriate reimbursement to contracted providers. To achieve this objective, the reimbursement determination process uses allowable cost information reported on cost reports or other surveys. The cost report collects actual allowable costs and other financial and statistical information, as required. Costs may not be imputed and reported on the cost report when no costs were actually incurred (except as stated in §355.103(b)(19)(A)(i) of this title (relating to Specifications for Allowable and Unallowable Costs) or when documentation does not exist for costs even if they were actually incurred during the reporting period).

(c) Accurate cost reporting. Accurate cost reporting is the responsibility of the contracted provider. The contracted provider is responsible for including in the cost report all costs incurred, based on an accrual method of accounting, which are reasonable and necessary, in accordance with allowable and unallowable cost guidelines in this section and in §355.103 of this title, revenue reporting guidelines in §355.104 of this title (relating to Revenues), cost report instructions, and applicable program rules. Reporting all allowable costs on the cost report is the responsibility of the contracted provider. The Texas Health and Human Services Commission (HHSC) is not responsible for the contracted provider's failure to report allowable costs; however, in an effort to collect reliable, accurate, and verifiable financial and statistical data, HHSC is responsible for providing cost report training, general and/or specific cost report instructions, and technical assistance to providers. Furthermore, if unreported and/or understated allowable costs are discovered during the course of an audit desk review or field audit, those allowable costs will be included on the cost report or brought to the attention of the provider to correct by submitting an amended cost report.

(d) Cost and accountability report training. It is the responsibility of the provider to ensure that each cost or accountability report preparer has completed the required state-sponsored training. Preparers may be employees of the provider or persons who have been contracted by the provider for the purpose of cost or accountability report preparation. Preparers must complete training for each program for which a cost or accountability report is submitted, as applicable. Contracted preparer's fees to complete training are considered allowable expenses for cost reporting purposes. Preparers that participate in training may be assessed a convenience fee, which will be determined by HHSC. Convenience fees assessed for training are allowable costs. Applicable federal and state accessibility standards apply to training. Beginning with the 2018 cost reports and 2019 accountability reports, reporting schedules per program are determined by HHSC and are published on the HHSC website.

(1) Training schedules.

(A) For programs with odd-year and even-year cost reports. Preparers must complete state-sponsored cost report training every other year in order to be eligible to complete both that odd-year cost report and the following even-year cost report. If a new preparer wishes to complete an even-year cost report and has not completed the previous odd-year cost report training, the preparer must complete an even-year cost report training.

(B) For programs with odd-year and even-year accountability reports. Preparers must complete state-sponsored accountability report training every other year in order to be eligible to complete both that odd-year accountability report and the following even-year accountability report. If a new preparer wishes to complete an even-year accountability report and has not completed the previous odd-year accountability report training, the preparer must complete an even-year accountability report training.

(C) For all other programs. Preparers must complete the state-sponsored training for each program for which a cost or accountability report is submitted. Beginning with the 2018 cost reports, new preparers must complete cost report training every other year for each program cost or accountability report being prepared in order to be eligible to complete both that year's cost report and the following year's accountability report, if applicable. If a new preparer wishes to complete an accountability report and has not completed the previous year's cost report training, the preparer must complete an accountability report training for that program for that year.

(2) Failure to complete the required cost or accountability report training.

(A) For nursing facilities, failure to file a completed cost or accountability report signed by preparers who have completed the required cost report training may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(B) For School Health and Related Services (SHARS) providers, failure to complete the required cost report training may result in an administrative contract violation as specified in §355.8443 of this title.

(C) For all other programs, failure to file a completed cost or accountability report signed by preparers who have completed the required cost report training constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(e) Generally accepted accounting principles. Except as otherwise specified by the cost determination process rules of this chapter, cost report instructions, or policy clarifications, cost reports should be prepared consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. In cases where cost reporting rules differ from GAAP, IRS, or other authorities, HHSC rules take precedence for provider cost-reporting purposes.

(f) Allowable costs. Allowable costs are expenses, both direct and indirect, that are reasonable and necessary, as defined in paragraphs (1) and (2) of this subsection, and which meet the requirements as specified in subsections (i), (j), and (k) of this section, in the normal conduct of operations to provide contracted client services meeting all pertinent state and federal requirements. Only allowable costs are included in the reimbursement determination process.

(1) "Reasonable" refers to the amount expended. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious buyer pays for a given item or service. In determining the reasonableness of a given cost, the following are considered:

(A) the restraints or requirements imposed by arm's-length bargaining, i.e., transactions with nonowners or other unrelated parties, federal and state laws and regulations, and contract terms and specifications; and

(B) the action that a prudent person would take in similar circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, and members, and the fulfillment of the purpose for which the business was organized.

(2) "Necessary" refers to the relationship of the cost, direct or indirect, incurred by a provider to the provision of contracted client care. Necessary costs are direct and indirect costs that are appropriate in developing and maintaining the required standard of operation for providing client care in accordance with the contract and state and federal regulations. In addition, to qualify as a necessary expense, a direct or indirect cost must meet all of the following requirements:

(A) the expenditure was not for personal or other activities not directly or indirectly related to the provision of contracted services;

(B) the cost does not appear as a specific unallowable cost in §355.103 of this title;

(C) if a direct cost, it bears a significant relationship to contracted client care. To qualify as significant, the elimination of the expenditure would have an adverse impact on client health, safety, or general well-being;

(D) the direct or indirect expense was incurred in the purchase of materials, supplies, or services provided to clients or staff in the normal conduct of operations to provide contracted client care;

(E) the direct or indirect costs are not allocable to or included as a cost of any other program in either the current, a prior, or a future cost-reporting period;

(F) the costs are net of all applicable credits;

(G) allocated costs of each program are adequately substantiated; and

(H) the costs are not prohibited under other pertinent federal, state, or local laws or regulations.

(3) Direct costs are those costs incurred by a provider that are definitely attributable to the operation of providing contracted client services. Direct costs include, but are not limited to, salaries and nonlabor costs necessary for the provision of contracted client care. Whether or not a cost is considered a direct cost depends upon the specific contracted client services covered by the program. In programs in which client meals are covered program services, the salaries of cooks and other food service personnel are direct costs, as are food, nonfood supplies, and other such dietary costs. In programs in which client transportation is a covered program service, the salaries of drivers are direct costs, as are vehicle repairs and maintenance, vehicle insurance and depreciation, and other such client transportation costs.

(4) Indirect costs are those costs that benefit, or contribute to, the operation of providing contracted services, other business components, or the overall contracted entity. These costs could include, but are not limited to, administration salaries and nonlabor costs, building costs, insurance expense, and interest expense. Central office or home office administrative expenses are considered indirect costs. As specified in §355.8443 of this title, SHARS providers use an unrestricted indirect cost rate to determine indirect costs.

(g) Unallowable costs. Unallowable costs are expenses that are not reasonable or necessary, according to the criteria specified in subsection (f)(1) - (2) of this section and which do not meet the requirements as specified in subsections (i), (j), and (k) of this section or which are specifically enumerated in §355.103 of this title or program-specific reimbursement methodology. Providers must not report as an allowable cost on a cost report a cost that has been determined to be unallowable. Such reporting may constitute fraud. (Refer to §355.106(a) of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports)).

(1) For nursing facilities, placement as an allowable cost on a cost report of a cost which has been determined to be unallowable may result in vendor hold as specified in §355.403 of this title.

(2) For Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), Home and Community-based Services (HCS), Service Coordination/Targeted Case Management, Rehabilitative Services, and Texas Home Living (TxHmL) programs, placement as an allowable cost on a cost report a cost, which has been determined to be unallowable, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(3) For SHARS providers, submission of a cost that has been determined to be unallowable may result in an administrative contract violation as specified in §355.8443 of this title.

(4) For all other programs, submission of a cost, which has been determined to be unallowable, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(h) Other financial and statistical data. The primary purpose of the cost report is to collect allowable costs to be used as a basis for reimbursement determination. In addition, providers may be required on cost reports to provide information in addition to allowable costs to support allowable costs, such as wage surveys, workers' compensation surveys, or other statistical and financial information. Additional data requested may include, when specified and in the appropriate section or line number specified, costs incurred by the provider which are unallowable costs. All information, including other financial and statistical data, shown on a cost report is subject to the documentation and verification procedures required for an audit desk review and/or field audit.

(1) For nursing facilities, inaccuracy in providing, or failure to provide, required financial and statistical data may result in vendor hold as specified in §355.403 of this title.

(2) For ICF/IID, HCS, Service Coordination/Targeted Case Management, Rehabilitative Services, and TxHmL programs, inaccuracy in providing, or failure to provide, required financial and statistical data constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(3) For SHARS, inaccuracy in providing, or failure to provide, required financial and statistical data may result in an administrative contract violation as specified in §355.8443 of this title.

(4) For all other programs, inaccuracy in providing, or failure to provide, required financial and statistical data constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(i) Related party transactions.

(1) In determining whether a contracted provider organization is related to a supplying organization, the tests of common ownership and control are to be applied separately. Related to a contracted provider means that the contracted provider to a significant extent is associated or affiliated with, has control of, or is controlled by the organization furnishing the services, equipment, facilities, leases, or supplies. Common ownership exists if an individual or individuals possess any ownership or equity in the contracted provider and the institution or organization serving the contracted provider. Control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. If the elements of common ownership or control are not present in both organizations, then the organizations are deemed not to be related to each other. The existence of an immediate family relationship will create an irrefutable presumption of relatedness through control or attribution of ownership or equity interests where the significance tests are met. The following persons are considered immediate family for cost-reporting purposes:

(A) husband and wife;

(B) natural parent, child, and sibling;

(C) adopted child and adoptive parent;

(D) stepparent, stepchild, stepsister, and stepbrother;

(E) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law;

(F) grandparent and grandchild;

(G) uncles and aunts by blood or marriage;

(H) nephews and nieces by blood or marriage; and

(I) first cousins.

(2) A determination as to whether an individual (or individuals) or organization possesses ownership or equity in the contracted provider organization and the supplying organization, so as to consider the organizations related by common ownership, will be made on the basis of the facts and circumstances in each case. This rule applies whether the contracted provider organization or supplying organization is a sole proprietorship, partnership, corporation, trust or estate, or any other form of business organization, proprietary or nonprofit. In the case of a nonprofit organization, ownership or equity interest will be determined by reference to the interest in the assets of the organization, e.g., a reversionary interest provided for in the articles of incorporation of a nonprofit corporation.

(3) The term control includes any kind of control, whether or not it is legally enforceable and however it is exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. The facts and circumstances in each case must be examined to ascertain whether legal or effective control exists. Since a determination made in a specific case represents a conclusion based on the entire body of facts and circumstances involved, such determination should not be used as a precedent in other cases unless the facts and circumstances are substantially the same. Organizations, whether proprietary or nonprofit, are considered to be related through control to their directors in common.

(4) Costs applicable to services, equipment, facilities, leases, or supplies furnished to the contracted provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, the cost must not exceed the price of comparable services, equipment, facilities, leases, or supplies that could be purchased or leased elsewhere. The purpose of this principle is twofold: to avoid the payment of a profit factor to the contracted provider through the related organization (whether related by common ownership or control), and to avoid payment of artificially inflated costs which may be generated from less than arm's-length bargaining. The related organization's costs include all actual reasonable costs, direct and indirect, incurred in the furnishing of services, equipment, facilities, leases, or supplies to the provider. The intent is to treat the costs incurred by the supplier as if they were incurred by the contracted provider itself. Therefore, if a cost would be unallowable if incurred

by the contracted provider itself, it would be similarly unallowable to the related organization. The principles of reimbursement of contracted provider costs described throughout this title will generally be followed in determining the reasonableness and allowability of the related organization's costs, where application of a principle in a nonprovider entity would be clearly inappropriate.

(5) An exception is provided to the general rule applicable to related organizations. The exception applies if the contracted provider demonstrates by convincing evidence to the satisfaction of HHSC that certain criteria have been met. If all of the conditions of this exception are met, then the charges by the supplier to the contracted provider for such services, equipment, facilities, leases, or supplies are allowable costs. If Medicare has made a determination that a related party situation does not exist or that an exception to the related party definition was granted, HHSC will review the determination made by Medicare to determine if it is applicable to the current situation of the contracted provider and in compliance with this subsection (relating to related party transactions). In order to have the Medicare determination considered for approval by HHSC, a copy of the applicable Medicare determination must accompany each written exception request submitted to HHSC, along with evidence supporting the Medicare determination for the current cost-reporting period. If the exception granted by Medicare no longer is applicable due to changes in circumstances of the contracted provider or because the circumstances do not apply to the contracted provider, HHSC may choose not to consider the Medicare determination. Written requests for an exception to the general rule applicable to related organizations must be submitted for approval to the HHSC Provider Finance [~~Rate Analysis~~] Department no later than 45 days prior to the due date of the cost report in order to be considered for that year's cost report. Each request must include documentation supporting that the contracted provider meets each of the four criteria listed in subparagraphs (A) - (D) of this paragraph. Requests that do not include the required documentation for each criteria will not be considered for that year's cost report.

(A) The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the contracted provider organization.

(B) A majority of the supplying organization's business activity of the type carried on with the contracted provider is transacted with other organizations not related to the contracted provider and the supplier by common ownership or control and there is an open, competitive market for the type of services, equipment, facilities, leases, or supplies furnished by the organization. In determining whether the activities are of similar type, it is important also to consider the scope of the activity. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arm's-length bargaining by well-informed buyers and sellers.

(C) The services, equipment, facilities, leases, or supplies are those which commonly are obtained by entities such as the contracted provider from other organizations and are not a basic element of contracted client care ordinarily furnished directly to clients by such entities. This requirement means that entities such as the contracted provider typically obtain the services, equipment, facilities, leases, or supplies from outside sources, rather than producing them internally.

(D) The charge to the contracted provider is in line with the charge of such services, equipment, facilities, leases, or supplies in the open, competitive market and no more than the charge made under comparable circumstances to others by the organization for such services, equipment, facilities, leases, or supplies.

(6) Disclosure of all related-party information on the cost report is required for all costs reported by the contracted provider, including related-party transactions occurring at any level in the provider's organization, (e.g., the central office level, and the individual contracted provider level). The contracted provider must make available, upon request, adequate documentation to support the costs incurred by the related party. Such documentation must include an identification of the related person's or organization's total costs, the basis of allocation of direct and indirect costs to the contracted provider, and other business entities served. If a contracted provider fails to provide adequate documentation to substantiate the cost to the related person or organization, then the reported cost is unallowable. For further guidelines regarding adequate documentation, refer to §355.105(b)(2) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(7) When calculating the cost to the related organization, the cost-determination guidelines specified in this section and in §355.103 of this title apply.

(j) Cost allocation. Direct costing must be used whenever reasonably possible. Direct costing means that allowable costs, direct or indirect, (as defined in subsection (f)(3) - (4) of this section) incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. For example, the payroll costs of a direct care employee who works across cost areas within one contracted program would be directly charged to each cost area of that program based upon that employee's continuous daily time sheets and the costs of a direct care employee who works across more than one service delivery area would also be directly charged to each service delivery area based upon that employee's continuous daily time sheets. Health insurance premiums, life insurance premiums, and other employee benefits must be direct costed.

(1) If cost allocation is necessary for cost-reporting purposes, contracted providers must use reasonable methods of allocation and must be consistent in their use of allocation methods for cost-reporting purposes across all program areas and business entities.

(A) The allocation method should be a reasonable reflection of the actual business operations. Allocation methods that do not reasonably reflect the actual business operations and resources expended toward each unique business entity are not acceptable. Allocated costs are adjusted if HHSC considers the allocation method to be unreasonable. An indirect allocation method approved by some other department, program, or governmental entity is not automatically approved by HHSC for cost-reporting purposes.

(B) HHSC reviews each cost-reporting allocation method on a case-by-case basis in order to ensure that the reported costs fairly and reasonably represent the operations of the contracted provider. If in the course of an audit it is determined that an existing or approved allocation method does not fairly and reasonably represent the operations of the contracted provider, then an adjustment to the allocation method will be made consistent with subsection (f)(3) - (4) of this section. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(C) Any allocation method used for cost-reporting purposes must be consistently applied across all contracted programs and business entities in which the contracted provider has an interest.

(D) Providers must use an allocation method approved or required by HHSC. Any change in cost-reporting allocation methods from one year to the next must be fully disclosed by the contracted

provider on its cost report and must be accompanied by a written explanation of the reasons and justification for such change. If the provider wishes to use an allocation method that is not in compliance with the cost-reporting allocation methods in paragraphs (3) - (4) of this subsection, the contracted provider must obtain written prior approval from HHSC's Provider Finance [~~Rate Analysis~~] Department.

(i) Requests for approval to use an allocation method other than those identified in paragraphs (3) - (4) of this subsection or for approval of a provider's change in cost-reporting allocation method other than those identified in paragraphs (3) - (4) of this subsection must be received by HHSC's Provider Finance [~~Rate Analysis~~] Department prior to the end of the contracted provider's fiscal year. Requests for approval of allocation methods will not be acceptable as a basis for the extension of the cost report due date.

(ii) The HHSC Provider Finance [~~Rate Analysis~~] Department will forward its written decision to the contracted provider within 45 days of its receipt of the provider's original written request. If sufficient documentation is not provided by the provider to verify the acceptability of the allocation method, then HHSC may extend the decision time frame. However, an extension of the due date of the cost report will not be granted. Written decisions made on or after the due date of the cost report will apply to the next year's cost report. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §355.110 of this title.

(iii) Failure to use an allocation method approved or required by HHSC or to disclose a change in an allocation to HHSC will result in the following.

(I) For nursing facilities, failure to disclose a change in an allocation method or failure to use the allocation method approved or required by HHSC may result in vendor hold as specified in §355.403 of this title.

(II) For ICF/IID, HCS, Service Coordination/Targeted Case Management, Rehabilitative Services, and TxHmL programs, failure to use the allocation method approved or required by HHSC constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(III) For SHARS, failure to use the allocation method approved or required by HHSC constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.8443 of this title.

(IV) For all other programs, failure to disclose a change in an allocation method or failure to use the allocation method approved or required by HHSC constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(E) For small and large state-operated ICF/IID, designated as Bond Homes and State Supported Living Centers for cost reporting purposes, these facility types may use an allocation method other than those identified in paragraphs (3) - (4) of this subsection in order to represent indirect costs that are a reasonable reflection of the actual business operations. If an allocation method other than those identified in paragraphs (3) - (4) of this subsection is used for indirect costs, the allocation method must adhere to Generally Accepted Accounting Principles.

(2) Cost-reporting methods for allocating costs must be clearly and completely documented in the contracted provider's workpapers, with details as to how pooled costs are allocated to each segment of the business entity, for both contracted and noncontracted programs.

(A) If a contracted provider has questions regarding the reasonableness of an allocation method, that contracted provider should request written approval from the HHSC Provider Finance [~~Rate Analysis~~] Department prior to submitting a cost report utilizing the allocation method in question. Requests for approval must be received by the HHSC Provider Finance [~~Rate Analysis~~] Department prior to the end of the contracted provider's fiscal year. Requests for approval of allocation methods will not be acceptable as a basis for the extension of the cost report due date.

(B) The HHSC Provider Finance [~~Rate Analysis~~] Department will forward its written decision to the contracted provider within 45 days of its receipt of the original written request. If sufficient documentation is not provided by the provider to verify the acceptability of the allocation method, HHSC may extend the decision time frame. However, an extension of the due date of the cost report will not be granted. Written decisions made on or after the due date of the cost report will apply to the next year's cost report. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §355.110 of this title.

(3) When a building is shared and the building usage is separate and distinct for each entity using the building, the building costs, identified as building and facility cost categories on the cost report, should be allocated based upon square footage and may not be allocated with other indirect costs as a pool of costs. When the same building space is shared by various entities, the shared building costs, identified as building and facility cost categories on the cost report, should be allocated using a reasonable method which reflects the actual usage, such as an allocation based on time in shared activity areas or a functional study of shared dietary costs related to shared dining and kitchen areas.

(4) Where costs are shared, are not directly chargeable and are allocated as a pool of costs, the following allocation methods are acceptable for cost-reporting purposes.

(A) If all the business components of a contracted provider have equivalent units of equivalent service, indirect costs must be allocated based upon each business component's units of service. For example, if a provider had two nursing facilities, indirect costs requiring allocation as a pool of costs must be allocated based upon each nursing facility's units of service, since the units of service are equivalent units and the services are equivalent services. If a provider had a nursing facility and a residential care program, indirect costs requiring allocation as a pool of costs could not be allocated based upon units of service because even though the units of service for a nursing facility and a residential care facility are equivalent units, the services are not equivalent services. If a home health agency has indirect costs requiring allocation as a pool of costs across its Medicare home health services and its Medicaid primary home care services, it could not use units of service to allocate those costs, since neither the units of service nor the services are equivalent.

(B) If all of a contracted provider's business components are labor-intensive without programmatic residential facility or residential building costs, the contracted provider must allocate its indirect costs requiring allocation as a pool of costs based either on each business component's pro rata share of salaries or labor costs or on a cost-to-cost basis.

(i) For cost-reporting cost allocation purposes, the term "salaries" includes wages paid to employees directly charged to the specific business component. The term "salaries" also includes fees paid to contracted individuals, excluding consultants, who perform services routinely performed by employees, which are directly charged to the specific business component. The term "salaries" does not include payroll taxes and employee benefits associated with the wages of employees.

(ii) For cost-reporting cost-allocation purposes, the term "labor costs" includes salaries as defined in clause (i) of this subparagraph, plus the payroll taxes and employee benefits associated with the wages of the employees.

(iii) The cost-to-cost method allocates costs based upon the percentage of each business component's directly-charged costs to the total directly-charged costs of all business components.

(C) If a contracted provider's business components are mixed, with some being labor-intensive and others having a programmatic residential or institutional component, the contracted provider must allocate its indirect costs requiring allocation as a pool of costs either:

(i) based upon the ratio of each business component's total costs less that business component's facility or building costs, as related to the contracted provider's total business component costs less facility or building costs for all the contracted provider's business components, with "facility or building costs" referring to those cost categories as identified on the cost report; or

(ii) based upon the labor costs method stated in subparagraph (B)(ii) of this paragraph.

(D) In order to achieve a more accurate and representative reporting of costs than results from allocating shared indirect costs as a pool of costs, a provider may choose to allocate its indirect shared expenses on an appropriate and reasonable functional basis. If allocating shared direct client care costs, a provider may use an appropriate and reasonable functional method. For example, costs of a central payroll operation could be allocated to all business components based on the number of checks issued; the costs of a central purchasing function could be allocated based on the number of purchases made or requisitions handled; payroll costs for an administrative employee working across business components could be directly charged based upon that employee's time sheets and/or allocated based upon a documented time study; food costs could be allocated based upon a functional study of shared dietary costs; transportation equipment costs could be allocated based upon mileage logs; and shared laundry costs could be allocated based upon a functional study of the number of pounds/loads of laundry processed. Providers choosing to allocate allowable employee-related self-insurance paid claims in accordance with §355.103(b)(13)(B)(ii) of this title should base the allocation on percentage of salaries of employees benefiting from the coverage for fully self-insured situations or on percentage of premiums of covered employees for partially self-insured situations since purchased premiums must be directly charged.

(E) Because the determination of reimbursement is based on cost data, allocation methods based upon revenue streams are inappropriate and unallowable.

(k) Net expenses. Net expenses are gross expenses less any purchase discounts or returns and allowances. Purchase discounts are cash discounts reducing the purchase price as a result of prompt payment, quantity purchases, or for other reasons. Purchase returns and allowances are reductions in expenses resulting from returned merchandise or merchandise which is damaged, lost, or incorrectly billed. Only net expenses may be reported on the cost report. Expenses reported on the cost report must be adjusted for all such purchase discounts or returns and allowances.

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

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Karen Ray
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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.306, §355.314

STATUTORY AUTHORITY

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

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

§355.306. Cost Finding Methodology.

(a) Cost reports. Cost reporting requirements vary depending on whether the provider participates in the Direct Care Staff Rate enhancement program. All providers who participate in the rate enhancement program must file a cost report, as described in §355.308 of this title (relating to Direct Care Staff Rate Component). A provider that is not participating in the rate enhancement program must file a cost report unless:

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

(2) the cost report would represent costs accrued during a time period immediately preceding a period of decertification, if the decertification period was greater than either 30 calendar days or one entire calendar month.

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

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

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

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

(ii) an auditor determines that reported costs are not verifiable.

(B) In the event that all cost reports submitted for a specific facility are disqualified through the application of subparagraph (A)(i) and/or (ii) of this paragraph, the facility will not be represented in the reimbursement database for the cost report year in question.

(2) Adjustments and exclusions of cost report data include, but are not necessarily limited to:

(A) Fixed capital asset costs.

(i) HHSC staff determine fixed capital asset costs as detailed in this section.

(ii) Fixed capital asset costs are reimbursed in the form of a use fee calculated as described in §355.307 of this title (relating to Reimbursement Setting Methodology). The following fixed capital charges are excluded from the reimbursement base:

(I) building and building equipment depreciation and lease expense;

(II) mortgage interest;

(III) land improvement depreciation; and

(IV) leasehold improvement amortization.

(B) Limits on other facility and administration costs. To ensure that the results of HHSC's cost analyses accurately reflect the costs that an economic and efficient provider must incur, HHSC may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. HHSC sets upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(i) total buildings and equipment rental or lease expense;

(ii) total other rental or lease expense for transportation, departmental, and other equipment;

(iii) building depreciation;

(iv) building equipment depreciation;

(v) departmental equipment depreciation;

(vi) leasehold improvement amortization;

(vii) other amortization;

(viii) total interest expense;

(ix) total insurance for buildings and equipment;

(x) facility administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xi) assistant administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party assistant administrator salaries, wages, and/or benefits;

(xii) facility owner, partner, or stockholder salaries, wages, and/or benefits (when the owner, partner, or stockholder is not the facility administrator or assistant administrator), with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xiii) other administrative expenses including the cost of professional and facility malpractice insurance, advertising expenses, travel and seminar expenses, association dues, other dues, professional service fees, management consultant fees, interest expense on working capital, management fees, other fees, and miscellaneous office expenses; and

(xiv) total central office overhead expenses or individual central office line items. Individual line item caps are based on an array of all corresponding line items.

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

(i) 85%; or

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

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

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

(c) Reimbursement determinations and allowable costs. Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC excludes from reimbursement determinations any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(d) General information. In addition to the requirements of this section, cost reports will be governed by the information in §355.101 of this title (relating to Introduction), §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), and §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(e) Final cost reports for change of ownership. When a facility changes ownership, for a provider who participates in the rate enhancement program, the prior owner must submit a final Staffing and

Compensation Report as described in §355.308 of this title. When a facility changes ownership, for a provider not participating in the rate enhancement program, the prior owner is excused from submitting a final cost report and, if its prior cost report is pending audit completion, the audit will be suspended and the cost report excluded from the final cost report database.

(f) Requirements for cost report completion. A completed nursing facility cost report must:

(1) meet the definition of completed cost report specified in §355.105(b)(4)(A) of this title;

(2) have attached the property appraisal used to determine the allowable appraised property value as described in subsection (g) of this section;

(3) not report figures for days of service and number of beds that reflect occupancy of greater than 100%;

(4) have a management contract attached, if applicable; and

(5) have a lease agreement attached, if applicable.

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

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

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

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

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

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

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

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

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

(iii) Facilities making capital improvements, or requiring reconstruction due to fire, flood, or other natural disaster, when the improvements or reconstruction cost more than $2,000 per licensed bed, may contract with an independent appraiser to have land and improvements reappraised within the cost reporting period in which the improvement(s) is placed into service.

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

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

(h) In addition to the requirements of §355.102 and §355.103 of this title, the following apply to costs for the nursing facilities (NF) program.

(1) Medical costs. The costs for medical services and items delineated in 40 TAC §19.2601 (relating to Vendor Payment) are allowable. These costs must also comply with the general definition of allowable costs as stated in §355.102 of this title.

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

(3) Voucherable costs. Except as detailed in subparagraphs (A) and (B) of this paragraph, any expenses directly reimbursable to the provider through a voucher payment and any expenses in excess of the limit, or ceiling, for a voucher payment system are unallowable costs.

(A) The ventilator dependent supplemental voucher system and the children with tracheostomies supplemental voucher system are not subject to the cost reporting restrictions described in this paragraph.

(B) Select voucher systems, when indicated by department procedures, are not subject to the cost reporting restrictions described in this paragraph. To avoid the possibility of providers being reimbursed through the voucher system and the daily rate for the same expenses, the department may not waive the cost reporting restrictions described in this paragraph unless the following criteria are met:

(i) the voucher system is a temporary system;

(ii) the costs represent ongoing costs; and

(iii) the costs are not represented in the payment rate until after the voucher system has been discontinued.

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

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

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

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

(a) Introduction. Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments are available under this section for nursing facility services provided by eligible non-state government-owned nursing facilities.

(b) Definitions. When used in this section, the following definitions apply:

(1) Adjudicated claim--A claim for a covered Medicaid nursing facility service that has been paid by HHSC.

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

(3) Intergovernmental transfer (IGT)--A transfer of public funds from a non-state governmental entity to HHSC.

(4) Medicaid supplemental payment limit--The maximum supplemental payment available to a participating non-state government-owned nursing facility for a specific quarterly calculation period as calculated in subsection (f) of this section.

(5) Medicaid supplemental payment limit calculation period--The federal fiscal quarter determined by HHSC for which supplemental payment amounts are calculated based on adjudicated claims for days of service provided in the same quarter in the prior federal fiscal year.

(6) Non-state governmental entity--A hospital authority, hospital district, healthcare district, city, or county.

(7) Non-state government-owned nursing facility--A nursing facility where a non-state governmental entity holds the license and is party to the facility's Medicaid contract.

(8) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a non-state governmental entity that holds the license and is party to the Medicaid contract of the nursing facility identified in subsection (c) of this section. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(9) Upper payment limit--A reasonable estimate of the amount that would be paid for the services furnished by a non-state government-owned nursing facility under Medicare payment principles, as calculated in subsection (f) of this section.

(10) Upper payment limit calculation period--The federal fiscal quarter one year prior to the Medicaid supplemental payment limit calculation period. For example, October 1 - December 31, 2011, is the upper payment limit calculation period for the October 1 - December 31, 2012, Medicaid supplemental payment limit calculation period.

(c) Eligible nursing facilities.

(1) Supplemental payments are available under this section to all non-state government-owned nursing facilities that comply with the requirements described in subsection (d) of this section.

(2) A nursing facility participating in this supplemental payment program must notify the HHSC Provider Finance [~~Rate Analysis~~] Department of changes in ownership that may affect the nursing facility's continued eligibility within 30 days after such change.

(3) A nursing facility that has not received a payment under this supplemental payment program for four consecutive quarters is ineligible for future supplemental payments unless the nursing facility applies again for the supplemental payment program in accordance with subsection (d) of this section.

(d) Required application. Before a non-state government-owned nursing facility may receive supplemental payments under this section, the appropriate non-state governmental entity must certify certain facts, representations, and assurances regarding program requirements.

(1) The appropriate non-state governmental entity must certify the following facts on a form prescribed by HHSC before the first day of the next scheduled Medicaid supplemental payment limit calculation period in order for the nursing facility to receive a supplemental payment for that period:

(A) That it is a non-state government-owned nursing facility where a non-state governmental entity holds the license and is party to the facility's Medicaid contract.

(B) That all funds transferred to HHSC via IGT for use as the state share of supplemental payments are public funds.

(C) That no part of any supplemental payment paid to the nursing facility under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the supplemental funds.

(D) That the person signing the certification on behalf of the nursing facility is legally authorized to bind the nursing facility and to certify the matters described in the application.

(2) The nursing facility is eligible for supplemental payments for Medicaid supplemental payment limit calculation periods that begin after HHSC receives completed application forms from the appropriate non-state governmental entity. A non-state governmental entity that has submitted a change of ownership (CHOW) application to the Department of Aging and Disability Services (DADS) may submit a provisional application for participation in the supplemental payment program. If the CHOW is finalized by DADS within six months of the submission of the provisional application for participation, the facility will be eligible for payments beginning on the effective date of the CHOW. If the CHOW is not finalized by DADS within six months of the submission of the provisional application for participation, the provisional application is denied and the facility will not be eligible for payments until the first day of the Medicaid supplemental payment limit calculation period that begins after the submission of a new application for participation.

(e) Source of funding.

(1) State funding for supplemental payments authorized under this section is limited to and obtained through IGTs of public funds from the non-state governmental entity that holds the license and is party to the Medicaid contract of the nursing facility identified in subsection (c) of this section.

(2) An IGT that is not received by the date specified by HHSC may not be accepted. In such a situation, the IGT will be returned to the non-state governmental entity and the NF will not be eligible to receive a supplemental payment.

(f) Medicaid supplemental payment limits. A quarterly supplemental payment amount for each non-state government owned nursing facility is calculated using the most recent reliable data available at the time the calculation is made by taking the difference between the upper payment limit from paragraph (1) of this subsection and the Medicaid payment from paragraph (2) of this subsection:

(1) The upper payment limit for each non-state government-owned nursing facility will be calculated based on Medicare payment principles and in accordance with the Medicaid upper payment limit provisions codified at Title 42 Code of Federal Regulations (CFR) §447.272. A total Medicare-equivalent payment is determined for each non-state government-owned facility as the sum of the products of Medicaid days of service by Resource Utilization Group (RUG) for adjudicated Medicaid days of service provided by the facility during the upper payment limit calculation period multiplied by the Medicare payment rate for that RUG that will be in effect dur-

ing the associated Medicaid supplemental payment limit calculation period. If the Center for Medicare and Medicaid Services has not adopted Medicare RUG rates for the Medicaid supplemental payment limit calculation period at the time the calculation is performed, the Medicaid days of service by RUG will be multiplied by the Medicare payment rate for that RUG in effect on the last day of the upper payment limit calculation period.

(2) The Medicaid payment for each non-state government-owned nursing facility prior to the supplemental payment will be the sum of the following components calculated for that nursing facility from data derived from upper payment limit calculation period:

(A) The sum of Medicaid RUG payments for all adjudicated Medicaid days of service provided by the facility during the upper payment limit calculation period adjusted to reflect any changes in Medicaid RUG rates between the upper payment limit calculation period and the Medicaid supplemental payment limit calculation period; and

(B) Medicaid payments for pharmacy services as defined in 40 TAC Chapter 19, Subchapter P (relating to Pharmacy Services), specialized services as defined in 40 TAC §19.1303 (relating to Specialized Services in Medicaid-certified Facilities), customized equipment as defined in 40 TAC §19.2614 (relating to Customized Power Wheelchairs) and emergency dental services as defined in 40 TAC §19.1402 (relating to Medicaid-certified Nursing Facility Emergency Dental Services), not included in the Medicaid nursing facility rate in effect during the upper payment limit calculation period.

(i) Medicaid payments for pharmacy services are based on Texas specific pharmacy payment and rebate data for Texas Medicaid nursing facility residents during the upper payment limit calculation period.

(ii) Medicaid payments for emergency dental, customized equipment and specialized services are based on Texas specific emergency dental, customized equipment and specialized services payment data for Texas Medicaid nursing facility residents during the upper payment limit calculation period.

(3) Changes of ownership.

(A) For a nursing facility that changed ownership prior to the first day of the Medicaid supplemental payment limit calculation period but after the first day of the upper payment limit calculation period, the data used for the calculations described in paragraphs (1) and (2) of this subsection will include data from the facility for the entire upper payment limit calculation period including data relating to payments for days of service provided under the prior owner. The inclusion of data relating to payments for days of service provided under the prior owner will ensure that the calculation of the supplemental payment amount for the Medicaid supplemental payment limit calculation period reflects a full quarter of services.

(B) For a nursing facility that changes ownership on or after the first day of the Medicaid supplemental payment limit calculation period, the data used for the calculations described in paragraphs (1) and (2) of this subsection will include data from the facility for the entire upper payment limit calculation period relating to payments for days of service provided under the prior owner, pro-rated to reflect only the number of calendar days during the Medicaid supplemental payment limit calculation period that the facility is owned by the new owner.

(g) Payment frequency. HHSC will distribute supplemental payments to participating non-state government-owned nursing facilities on a quarterly basis subsequent to the Medicaid supplemental payment limit calculation period.

(h) Supplemental payment methodology.

(1) HHSC will give notice of the non-state government-owned nursing facility quarterly Medicaid supplemental payment limits determined in subsection (f) of this section, the maximum IGT amount that can be provided for each participating nursing facility based on the Federal Medical Assistance Percentage (FMAP) in place at the time notice is given, and the deadline for completing the transfer.

(2) The amount of the supplemental payment to the nursing facility will be calculated in proportion to the amount transferred by the non-state governmental entity.

(A) For governmental entities that own a single nursing facility:

(i) If the non-state governmental entity transfers the maximum IGT described in paragraph (1) of this subsection, the nursing facility will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the non-state governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection, the nursing facility will receive a supplemental payment that is proportionate to the percentage of the maximum IGT that was actually transferred.

(B) For governmental entities that own multiple nursing facilities:

(i) If the non-state governmental entity transfers the maximum IGT described in paragraph (1) of this subsection for all of the nursing facilities it owns, each of the nursing facilities will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the non-state governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection for all of the nursing facilities it owns, each of the nursing facilities will receive a proportion of the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section based on the proportion of the total maximum IGT for all of the nursing facilities owned by the non-state governmental entity that was actually transferred.

(C) Supplemental payments to remaining non-state government-owned nursing facilities will not be increased due to the failure of a non-state governmental entity to transfer the maximum IGT described in paragraph (1) of this subsection.

(3) A non-state governmental entity that did not transfer the maximum IGT described in paragraph (1) of this subsection in one or more of the first three quarters in a federal fiscal year, but was eligible to do so will be allowed to fund the remaining Medicaid supplemental payment limit from those quarters during the fourth quarter of that fiscal year. HHSC will give notice of the remaining Medicaid supplemental payment limits and the maximum IGT that can be provided for each non-state government-owned nursing facility. Such notice will also contain instructions and deadlines for governmental entities to notify HHSC of the fourth-quarter transfer amount.

(4) The amount of the payment to the nursing facility will be calculated using the FMAP in place when HHSC gave notice as described in paragraph (1) or (3) of this subsection, as applicable.

(i) Recoupment.

(1) If payments under this section result in overpayment to a nursing facility, or in the event of a disallowance by the federal Centers for Medicare and Medicaid Services (CMS) of federal participation related to a nursing facility's receipt or use of supplemental payments

authorized under this section, HHSC may recoup an amount equivalent to the amount of supplemental payments overpaid or disallowed.

(2) Supplemental payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations and state and federal statutes. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the nursing facility to which an overpayment was made or against which any disallowance was directed.

(B) If, within 30 days of the nursing facility's receipt of HHSC's written notice of recoupment, the nursing facility has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all Medicaid payments from the nursing facility until HHSC has recovered an amount equal to the amount overpaid or disallowed. If funds identified for recoupment cannot be repaid from the nursing facility's Medicaid payments, the non-state governmental entity that owns the nursing facility will be liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the non-state governmental entity and will bar the non-state governmental entity from receiving any new contracts with HHSC or its designees until repayment is made in full.

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

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SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

1 TAC §355.458

STATUTORY AUTHORITY

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

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

§355.458. Supplemental Payments to Non-State Government-Owned Facilities.

(a) Introduction. Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments are available under this section for intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) services provided by eligible non-state government-owned ICFs/IID.

(b) Definitions. When used in this section, the following definitions apply:

(1) Aggregate upper payment limit--A reasonable estimate of the amount that would be paid for the services furnished by non-state government-owned ICFs/IID under Medicare payment principles, as calculated in subsection (f) of this section.

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

(3) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(4) Medicaid supplemental payment limit--The maximum supplemental payment available to a participating non-state government-owned ICF/IID for a specific Medicaid supplemental payment limit calculation period as calculated in subsection (f) of this section.

(5) Medicaid supplemental payment limit calculation period--The federal fiscal quarter determined by HHSC for which supplemental payment amounts are calculated.

(6) Non-state government-owned ICF/IID--An ICF/IID where a non-state governmental entity is party to the facility's Medicaid contract.

(7) Non-state governmental entity--A community center established under Chapter 534, Subchapter A of the Texas Health and Safety Code or a hospital authority, hospital district, healthcare district, city, or county.

(8) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of the governmental entity that is party to the Medicaid contract of the ICF/IID identified in subsection (c) of this section. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(c) Eligible ICFs/IID.

(1) Supplemental payments are available under this section to all non-state government-owned ICFs/IID that comply with the requirements described in subsection (d) of this section.

(2) An ICF/IID participating in this supplemental payment program must notify the HHSC Provider Finance [~~Rate Analysis~~] Department of changes in ownership that may affect the ICF/IID's continued eligibility within 30 days after such change.

(3) An ICF/IID that has not received a payment under this supplemental payment program for four consecutive quarters is ineligible for future supplemental payments unless the ICF/IID applies again for the supplemental payment program in accordance with subsection (d) of this section.

(d) Required application. Before a non-state government-owned ICF/IID may receive supplemental payments under this section, the appropriate governmental entity must certify certain facts, representations, and assurances regarding program requirements.

(1) The appropriate governmental entity must certify the following facts on a form prescribed by HHSC before the first day of the next scheduled Medicaid supplemental payment limit calculation period in order for the ICF/IID to receive a supplemental payment for that period:

(A) That a non-state governmental entity is party to the ICF/IID's Medicaid contract.

(B) That all funds transferred to HHSC via IGT for use as the state share of supplemental payments are public funds.

(C) That no part of any supplemental payment paid to the ICF/IID under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the ICF/IID's receipt of the supplemental funds.

(D) That the person signing the certification on behalf of the ICF/IID is legally authorized to bind the ICF/IID and to certify the matters described in the application; and

(2) The ICF/IID is eligible for supplemental payments for Medicaid supplemental payment limit calculation periods that begin after HHSC receives completed application forms from the appropriate governmental entity.

(e) Source of funding.

(1) State funding for supplemental payments authorized under this section is limited to and obtained through IGTs of public funds from the governmental entity that is party to the Medicaid contract of the ICF/IID identified in subsection (c) of this section.

(2) An IGT that is not received by the date specified by HHSC may not be accepted. In such a situation, the IGT will be returned to the governmental entity and the ICF/IID will not be eligible to receive a supplemental payment.

(f) Medicaid supplemental payment limits.

(1) The aggregate supplemental payment amount for non-state government-owned ICFs/IID is calculated for each Medicaid supplemental payment limit calculation period by taking the difference between the aggregate upper payment limit from subparagraph (A) of this paragraph and the aggregate Medicaid payment from subparagraph (B) of this paragraph:

(A) The aggregate upper payment limit for non-state government-owned ICFs/IID will be calculated based on Medicare payment principles and in accordance with the Medicaid upper payment limit provisions codified at Title 42 Code of Federal Regulations (CFR) §447.272. The aggregate upper payment limit is equal to the sum of the Medicare-equivalent payments for all non-state government-owned ICFs/IID. The Medicare-equivalent payment for each non-state government-owned ICF/IID is calculated as follows based on data from the most recent reliable Medicaid cost report:

(i) Determine the Medicare adjusted cost by subtracting ancillary and fixed capital costs from total Medicaid allowable costs and multiplying the remaining costs by 1.12.

(ii) Determine the Medicare adjusted cost per day of service by dividing the value from clause (i) of this subparagraph by the total days of service.

(iii) Determine the Medicare-equivalent payment by multiplying the dividend from clause (ii) of this subparagraph by the total Medicaid days of service.

(B) The aggregate Medicaid payment for non-state government-owned ICFs/IID prior to the supplemental payment will be the sum of Medicaid Level of Need (LON) payments for all non-state government-owned ICFs/IID as captured on the most recent reliable Medicaid cost report.

(2) The Medicaid supplemental payment limit for each participating non-state government-owned ICF/IID for each Medicaid supplemental payment limit calculation period will be determined by dividing that facility's Medicaid units of service during the Medicaid supplemental payment limit calculation period by the total Medicaid units of service during the Medicaid supplemental payment limit calculation period for all non-state government-owned ICFs/IID, multiplying the resulting percentage by the aggregate supplemental payment amount from paragraph (1) of this subsection, and dividing the resulting product by four.

(g) Payment frequency. HHSC will distribute supplemental payments to participating non-state government-owned ICFs/IID on a quarterly basis subsequent to the Medicaid supplemental payment limit calculation period.

(h) Supplemental payment methodology.

(1) HHSC will give notice of the non-state government-owned ICF/IID Medicaid supplemental payment limits determined in subsection (f) of this section, the maximum IGT amount that can be provided for each participating ICF/IID based on the Federal Medical Assistance Percentage (FMAP) in place at the time notice is given, and the deadline for completing the transfer.

(2) The amount of the supplemental payment to the ICF/IID will be calculated in proportion to the amount transferred by the governmental entity.

(A) For governmental entities that own a single ICF/IID:

(i) If the governmental entity transfers the maximum IGT described in paragraph (1) of this subsection, the ICF/IID will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection, the ICF/IID will receive a supplemental payment that is proportionate to the percentage of the maximum IGT that was actually transferred.

(B) For governmental entities that own multiple ICFs/IID:

(i) If the governmental entity transfers the maximum IGT described in paragraph (1) of this subsection for all of the ICFs/IID it owns, each of the ICFs/IID will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection for all of the ICFs/IID it owns, each of the ICFs/IID will receive a proportion of the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section based on the proportion of the total maximum IGT for all of the ICFs/IID owned by the governmental entity that was actually transferred.

(C) Supplemental payments to remaining non-state government-owned ICFs/IID will not be increased due to the failure

of a governmental entity to transfer the maximum IGT described in paragraph (1) of this subsection.

(3) A governmental entity that did not transfer the maximum IGT described in paragraph (1) of this subsection in one or more of the first three quarters in a federal fiscal year will be allowed to fund the remaining Medicaid supplemental payment limit during the fourth quarter of that fiscal year, subject to the following:

(A) HHSC will give notice of the remaining Medicaid supplemental payment limits and the maximum IGT that can be provided for each non-state government-owned ICF/IID. Such notice will also contain instructions and deadlines for governmental entities to notify HHSC of the fourth-quarter transfer amount.

(B) Following the deadline for notification described in subparagraph (A) of this paragraph, if HHSC determines that the supplemental payments for the federal fiscal year will exceed the applicable aggregate supplemental payment amount for non-state government-owned ICFs/IID, HHSC will reduce the amount of the transfer for the fourth-quarter payment under this clause proportionately for each participating ICF/IID in an amount sufficient to ensure compliance with the applicable aggregate supplemental payment amount.

(4) The amount of the payment to the ICF/IID will be calculated using the FMAP in place when HHSC gave notice as described in paragraph (1) or (3) of this subsection, as applicable.

(i) Recoupment.

(1) If payments under this section result in overpayment to an ICF/IID, or in the event of a disallowance by the federal Centers for Medicare and Medicaid Services (CMS) of federal participation related to an ICF/IID's receipt or use of supplemental payments authorized under this section, HHSC may recoup an amount equivalent to the amount of supplemental payments overpaid or disallowed.

(2) Supplemental payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations and state and federal statutes. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the ICF/IID to which an overpayment was made or against which any disallowance was directed.

(B) If, within 30 days of the ICF/IID's receipt of HHSC's written notice of recoupment, the ICF/IID has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all Medicaid payments from the ICF/IID until HHSC has recovered an amount equal to the amount overpaid or disallowed. If funds identified for recoupment cannot be repaid from the ICF/IID's Medicaid payments, the governmental entity that owns the ICF/IID will be liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the governmental entity and will bar the governmental entity from receiving any new contracts with HHSC or its designees until repayment is made in full.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 730-7455

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

1 TAC §§355.722, 355.743, 355.746, 355.781

STATUTORY AUTHORITY

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

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

§355.722. Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers.

(a) Submittal of cost reports. On a biennial basis, providers must submit cost reports to Texas Health and Human Services Commission (HHSC) Provider Finance Department [~~Rate Analysis~~] only in even years, beginning with providers' 2018 cost reports. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Attendant service costs. Attendant service costs are defined in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(2) Staff who provide both attendant and non-attendant services. For staff whose duties include work other than the provision of attendant services for the provider, time spent providing attendant services and associated expenses may be reported as attendant service costs if properly documented in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(3) Providers must report the following costs:

(A) Staff wages related to the delivery of attendant services.

(B) These costs may be either the provider's actual expense or contracted expenditures.

(b) Reviews of exclusions or adjustments. A provider who disagrees with HHSC's exclusion or adjustment of items in cost reports

may request an informal review and, when appropriate, an administrative hearing as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(c) Field audit and desk review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports).

(d) Notification of exclusions and adjustments. HHSC will notify a provider of the results of a desk review or field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(e) Cost reporting guidelines. Providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

(f) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs).

(g) Revenues. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) Related parties. Allowable compensation for owners and related parties and definitions of owners and related parties are specified in §355.102(i) and §355.103(b)(2) of this title.

(1) Time sheet requirement. Owners and related parties who provide multiple types of attendant service (e.g., direct care workers, direct care trainers, and job coaches) or both attendant services and non-attendant services must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to the compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title.

(2) Calculation of allowable hourly wage rate and benefits. Allowable hourly wage rate and benefits for attendant service work must be the lesser of the actual hourly wage rate paid and benefits paid or the hourly wage rate and benefits for a comparable attendant assumed in the fully-funded model. The fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs) for the rate period.

(3) Calculation of allowable hours for attendants. Allowable hours per unit of service for an attendant when the reported hours include related-party hours, are determined as follows:

(A) Step 1. Determine the hours per unit of service for a comparable attendant-service staff-type assumed in the fully-funded model as defined in paragraph (2) of this subsection, adjusted for the provider's average Level of Need (LON) during the reporting period. For TxHmL, until such time as LONs are established, the provider's average LON is assumed to be LON 5.

(B) Step 2. Determine the hours per unit of service encompassed by the 90th percentile in the array of hours per unit of service for comparable attendant-service staff-types as reported by those contracted providers not reporting any related-party hours for that staff-type, adjusted for the provider's average LON during the reporting period. For TxHmL, until such time as LONs are established, the provider's average LON is assumed to be LON 5.

(C) Step 3. Determine the greater of Step 1 and Step 2.

(D) Step 4. Determine the actual hours worked by the staff-type per unit of service.

(E) Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable hours per unit of service for the attendant-service staff-type in question.

(4) Exception to related-party adjustment. If at least 40 percent of total labor hours in a specific related-party's attendant-service staff-type were provided by non-related-parties, the related-party's hourly wage rate may be the higher of the model assumption for that attendant-service staff-type described in paragraph (2) of this subsection or the non-related party average for that attendant-service staff-type, so long as the non-related party average does not exceed the related-party's actual hourly wage.

(5) Maximum attendant-care hours. During any single fiscal year, the sum of all attendant-care hours reported on any cost report(s) for any individual owner or related party cannot exceed 2,600.

(6) Classification of hours over the limit. Hours, hourly wages and benefits above the limits described in paragraphs (2) - (5) of this subsection are to be reported as administrative hours, hourly wages and benefits.

(i) Adjusting reported cost. Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title.

(j) Fiscal Accountability for HCS. This subsection applies to services delivered on or before August 31, 2009 and only for HCS program services.

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the reimbursement rates.

(2) Annual reporting. Fiscal accountability will consist of the annual reporting of the direct service costs including wages, and benefits, from all providers. The data will be collected on a cost report designed by HHSC in accordance with §355.105(b) of this title.

(A) The Department of Aging and Disability Services (DADS) will place a vendor hold on payments to a provider whose provider agreement is being assigned or terminated. The provider will submit a cost report for the current reporting period to HHSC. Upon receipt of an acceptable cost report and repayment of any amounts due in accordance with this section, the vendor hold will be released.

(B) Providers that do not submit a cost report completed in accordance with all applicable rules and instructions within 60 days of the placement of a vendor hold due to the failure to submit the cost report are subject to an immediate recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in paragraphs (5) - (7) of this subsection. If an acceptable cost report is not received within 365 days of the due date, the recoupment will become permanent.

(C) Providers with an ownership change from one legal entity to a different legal entity or a contract termination that do

not submit a cost report for the fiscal year of the ownership change or contract termination within 60 days of the change of ownership or contract termination are subject to recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in paragraphs (5) - (7) of this subsection. If an acceptable cost report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent.

(3) Comparison of direct-service costs to total direct-service revenue. HHSC will require providers to report all direct costs incurred on an annual fiscal year basis. HHSC will compare the reported direct service costs to the total direct service revenue.

(4) Calculation of direct-service revenues and fiscal accountability repayment. Direct Service Revenues are calculated by multiplying the number of units eligible for payment that have been paid for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.

(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) Providers whose direct service costs are less than 90% but greater than or equal to 85% of the direct service revenues will be required to pay to DADS 50% of the difference between the direct service costs and 90% of the direct service revenues.

(C) Providers whose direct service costs are less than 85% but greater than or equal to 80% of the direct service revenues will be required to pay to DADS 100% of the difference between the direct service costs and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.

(D) Providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to DADS the difference between the direct service costs and 95% of the direct service revenues.

(E) Providers who do not submit a cost report as described in paragraph (2)(B) or (C) of this subsection will be assumed to have direct service costs equal to 65% of the direct services revenues and will be required to pay to DADS the difference between 65% of the direct services revenues and 95% of the direct service revenues, subject to the provisions of paragraph (2)(B) or (C) of this subsection.

(5) Notification of recoupment. Providers will be notified, by certified mail, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC. If a subsequent review by HHSC or audit results in adjustments to the cost report as described in subsection (a) of this section that change the amount to be repaid to HHSC, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. Providers will submit the repayment amount within 60 days of notification.

(6) Repayment. Repayment will be made by the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(7) Providers required to repay revenues to DADS will be jointly and severally liable for any repayment. DADS will apply a vendor hold on Medicaid payments to a provider for not making the payment to DADS within 60 days of receiving notice.

(8) Aggregation.

(A) Definitions. The following words and terms have the following meanings when used in this paragraph.

(i) Aggregation--For an entity defined in clause (iii) of this subparagraph that controls, as defined in clause (iv) of this subparagraph, more than one HCS component code, the process of determining compliance with the spending requirements detailed in paragraph (4) of this subsection for all component codes controlled by the entity in the aggregate rather than requiring each component code to meet its spending requirement individually. For commonly owned corporations defined in clause (ii) of this subparagraph, the process of determining compliance with the spending requirements detailed in paragraph (4) of this subsection for all component codes in the controlled small group in the aggregate rather than requiring each component code to meet its spending requirement individually. Corporations that do not meet the definitions under clauses (ii) - (iii) of this subparagraph are not eligible for aggregation.

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

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

(iv) Control--greater than 50% ownership by the entity.

(B) Component Codes Included in Aggregation. If an entity controlling more than one HCS component code or commonly owned corporations requests aggregation, compliance with the spending requirements will be evaluated in the aggregate for all HCS component codes that the entity or commonly owned corporations controlled at the end of its fiscal year or at the effective date of the change of ownership or termination of its last HCS contract.

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

(D) Frequency of Aggregation Requests. The entity or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(E) Ownership Changes and Contract Terminations. HCS contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per paragraph (4) of this subsection, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

§355.743. Reimbursement Methodology for Mental Health Case Management.

(a) Authority. Payments are made to qualified providers delivering Mental Health Case Management (CM) to Medicaid-enrolled individuals who are eligible for CM according to program rules established by the Department of State Health Services (DSHS). The reimbursement determination authority is specified in §355.101 of this title (relating to Introduction).

(b) Reimbursement rates. Separate rates are set for services based on the following:

(1) Site-based setting. Routine CM is a face-to-face contact with the client at the provider's place of business (e.g., clinic, outpatient office).

(2) Community-based setting. Intensive CM is a face-to-face contact with the client at the client's home, work place, school, or other location that best meets the need of the client.

(c) Qualified providers are reimbursed based on a 15-minute face-to-face unit of service that is prospective and uniform statewide.

(d) Rate methodology.

(1) Initial rates. The initial rates effective September 1, 2011, will be determined by summing the total agency expenditures for each type of case management service for the most recent cost-settled fiscal year, and dividing by the total number of units of each type of service provided during that fiscal year. The total agency expenditures to provide case management services include both the interim rates paid and any adjustments made to the interim rates, such as additional payments or recoupments.

(2) Cost report-based rates. After the Health and Human Services Commission (HHSC) determines that cost data collected as described in subsection (e) of this section is reliable and sufficient to support development of a cost report-based rate, HHSC will develop statewide reimbursement rates using the data that replaced the initial rates as follows:

(A) Project each provider's total allowable cost per type of service from the historical cost reporting period to the prospective reimbursement period using inflation factors according to §355.108 of this title (relating to Determination of Inflation Indices);

(B) For each provider, divide the projected cost per type of service, determined in subparagraph (A) of this paragraph, by the provider's total units of service per type of service delivered during the historical cost reporting period, to arrive at the provider's projected cost per unit of service for each type of service; and

(C) For each type of service:

(i) Arrange all providers' projected cost per unit of service in an array from low to high, with the corresponding total number of units of service for each provider;

(ii) Sum the total number of units of service for each provider in the array progressively, from the lowest projected cost per unit to the highest, to create a running total;

(iii) Divide the total number of units of service by two;

(iv) Identify the value, from the running total sums calculated in clause (ii) of this subparagraph, that is closest to the result in clause (iii) of this subparagraph; and

(v) Identify the cost per unit of service that corresponds to the value identified in clause (iv) of this subparagraph, to arrive at the recommended rate for that service.

(e) Reporting of costs. CM providers must submit cost report data according to HHSC's specifications.

(1) All CM providers must submit a cost report unless the number of days between the date the first client received services and the fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by the HHSC Provider Finance [~~Rate Analysis~~] Department before the due date of the cost report.

(2) CM service providers must submit cost report data according to HHSC's specifications. In addition to the requirements of this section, the following cost reporting guidelines apply: §355.101 of this title (relating to Introduction); §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this title (relating to Revenues); §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this title (relating to Notification of Exclusions and Adjustments); §355.108 of this title (relating to Determination of Inflation Indices); §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); §355.110 of this title (relating to Informal Reviews and Formal Appeals); and §355.111 of this title (relating to Administrative Contract Violation).

(3) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended rates. To ensure that the database reflects costs and other information that are necessary for the provision of services and is consistent with federal and state regulations, HHSC excludes from rate determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(4) Individual provider cost reports may not be included in the database used for reimbursement determination if:

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

(B) an auditor determines that reported costs are not verifiable.

§355.746. Reimbursement Methodology for Mental Retardation Service Coordination.

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

(1) Allowable costs--Those expenses that are reasonable and necessary costs in the normal conduct of operations relating to case management services as defined in §355.102(f)(1) and (2) of this title (relating to General Principles of Allowable and Unallowable Costs).

(2) Provider--An entity delivering service coordination to Medicaid-enrolled individuals according to program rules established by Department of Aging and Disability Services (DADS).

(3) Collateral--An actively involved person as defined in 40 TAC §2.553(1) (relating to Definitions).

(4) Unit of Service--Two statewide encounter rates are established for Mental Retardation Service Coordination services. The encounter unit of service is established as follows:

(A) Comprehensive encounter (Encounter Type A) is a face-to-face contact with the client based on an average time of 45 minutes per contact. The comprehensive encounter is limited to one billable encounter per client per calendar month.

(B) Follow-up encounter (Encounter Type B) is a face-to-face, telephone, or telemedicine contact that involves interface with the client or collateral and is based on an average time of 15 minutes per contact. The follow-up encounter is limited to three follow-up encounters per provider per calendar month for each comprehensive encounter that has occurred within the calendar month. The follow-up encounter does not have to be provided to the client for whom the comprehensive encounter was provided.

(b) Rate methodology.

(1) Initial rates effective September 1, 2011. The initial rates will be determined by summing the total agency expenditures for each type of service coordination service for the most recent cost-settled fiscal year, and dividing that sum by the estimated total number of units of service by type of service for the fiscal year. The total cost to provide service coordination services includes both the interim rates paid and any adjustments made to the interim rates such as additional payments or recoupments.

(2) Cost-report based rates. After the Health and Human Services Commission (HHSC) determines that cost data collected as described in subsection (c) of this section is reliable and sufficient to support development of a cost-report based rate, HHSC will develop statewide reimbursement rates using that data to replace the initial rates as follows:

(A) Project each provider's total allowable costs per type of service from the historical cost reporting period to the prospective reimbursement period using inflation factors according to §355.108 of this title (relating to Determination of Inflation Indices) to arrive at the projected cost per type of service.

(B) For each provider, divide the projected cost per type of service, determined in subparagraph (A) of this paragraph, by the provider's total units of service per type of service delivered during the historical cost reporting period, to arrive at the provider's projected cost per unit of service for each type of service; and

(C) For each type of service:

(i) Arrange all providers' projected cost per unit of service in an array from low to high, with the corresponding total number of units of service for each provider;

(ii) Sum the total number of units of service for each provider in the array progressively, from the lowest projected cost per unit to the highest, to create a running total;

(iii) Divide the total number of units of service by two;

(iv) Identify the value, from the running total sums calculated in clause (ii) of this subparagraph, that is closest to the result in clause (iii) of this subparagraph; and

(v) Identify the cost per unit of service that corresponds to the value identified in clause (iv) of this subparagraph, to arrive at the recommended rate for that service.

(c) Reporting of costs. Service Coordination providers must submit cost report data according to HHSC's specifications.

(1) Exceptions. All Service Coordination providers must submit a cost report unless:

(A) the number of days between the date the first client received services and the fiscal year end is 30 days or fewer; or

(B) if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. To be excused from submitting a cost report under this subparagraph, the HHSC Provider Finance [~~Rate Analysis~~] Department must receive the request before the due date of the cost report.

(2) Additional requirements. In addition to following the requirements of this section, the provider must follow the cost reporting guidelines described in: §355.101 of this title (relating to Introduction); §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this title (relating to Revenues); §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this title (relating to Notification of Exclusions and Adjustments); §355.108 of this title (relating to Determination of Inflation Indices); §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); §355.110 of this title (relating to Informal Reviews and Formal Appeals); and §355.11 of this title (relating to Administrative Contract Violation).

(3) Allowable costs. Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended rates.

(4) Unallowable costs. To ensure that the database reflects costs and other information that are necessary for the provision of services and is consistent with federal and state regulations, HHSC excludes from rate determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. Individual provider cost reports may not be included in the database used for reimbursement determination if:

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

(B) an auditor determines that reported costs are not verifiable.

§355.781. Rehabilitative Services Reimbursement Methodology.

(a) Authority. Payments are made to qualified providers delivering rehabilitative services to Medicaid-eligible individuals who are eligible for rehabilitative services according to the program rules established by the Department of State Health Services (DSHS). The reimbursement determination authority is specified in §355.101 of this title (relating to Introduction).

(b) Reimbursement rates. Prospective and uniform statewide rates for rehabilitative services are determined for rehabilitative services specified in the Mental Health Services program rules in 25 TAC Chapter 419, Subchapter L (relating to Mental Health Rehabilitative Services) for the following:

(1) Day programs for acute needs--adult;

(2) Crisis intervention services--individual-child/adolescent and adult;

(3) Medication training and support--individual-child/adolescent and adult;

(4) Medication training and support--group-adult;

(5) Medication training and support--group-child/adolescent;

(6) Psychosocial rehabilitative services--individual-adult;

(7) Psychosocial rehabilitative services--group-adult;

(8) Skills training and development--individual-child/adolescent and adult;

(9) Skills training and development--group-adult; and

(10) Skills training and development-group-child/adolescent.

(c) Units of service. Qualified providers are reimbursed based on the following face-to-face units of service:

(1) Day programs for acute needs--45-60 continuous minutes;

(2) Crisis intervention services--15 continuous minutes;

(3) Medication training and support--15 continuous minutes;

(4) Psychosocial rehabilitative services--15 continuous minutes; and

(5) Skills training and development--15 continuous minutes.

(d) Rate methodology.

(1) Initial rates. Initial statewide rates effective September 1, 2011, will be determined by summing the total agency expenditures to provide rehabilitative services for each type of service for the most recent cost-settled fiscal year, and dividing by the total number of units of each type of service provided during that fiscal year. The total agency expenditure to provide rehabilitative services includes both the interim rates paid and any adjustments made to the interim rates, such as additional payments or recoupments.

(2) Cost report-based rates. After the Texas Health and Human Services Commission (HHSC) determines that cost data collected as described in subsection (e) of this section are reliable and sufficient to support development of a cost report-based rate, HHSC will develop statewide reimbursement rates using that data to replace the initial rates as follows:

(A) Project each provider's total allowable cost for each type of service from the historical cost reporting period to the prospective reimbursement period using inflation factors set out in §355.108 of this title (relating to Determination of Inflation Indices) to arrive at the projected cost for each type of service.

(B) For each provider, divide the projected cost for each type of service, determined in subparagraph (A) of this paragraph, by the provider's total units of service for each type of service delivered during the historical cost-reporting period, to arrive at the provider's projected cost for each unit of service for each type of service.

(C) For each type of service:

(i) Arrange all providers' projected cost for each unit of service in an array from low to high, with the corresponding total number of units of service for each provider;

(ii) Sum the total number of units of service for each provider in the array progressively from low to high to create a running total;

(iii) Divide the total number of units of service by two;

(iv) Identify the value, from the running total sums calculated in clause (ii) of this subparagraph, that is closest to the result in clause (iii) of this subparagraph; and

(v) Identify the cost for each unit of service that corresponds to the value identified in clause (iv) of this subparagraph to arrive at the recommended rate for that service.

(e) Reporting of costs.

(1) All rehabilitative services providers must submit a cost report unless the number of days between the date the first client received services and the fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by the HHSC Provider Finance [~~Rate Analysis~~] Department before the due date of the cost report.

(2) Cost reporting. Rehabilitative services providers must submit cost report data according to HHSC's specifications. In addition to the requirements of this section, the cost reporting guidelines will be governed by the information in §355.101 of this title (relating to Introduction), §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.11 of this title (relating to Administrative Contract Violation).

(3) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended rates. To ensure that the database reflects costs and other information that are necessary for the provision of services and is consistent with federal and state regulations, HHSC excludes from rate determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(4) Individual provider cost reports may not be included in the database used for reimbursement determination if:

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

(B) an auditor determines that reported costs are not verifiable.

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 J. PURCHASED HEALTH SERVICES
DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8210

STATUTORY AUTHORITY

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

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

§355.8210. Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care.

(a) Introduction. Beginning October 1, 2019, Texas Healthcare Transformation and Quality Improvement 1115 Waiver payments are available under this section for eligible governmental ambulance providers to help defray the uncompensated cost of charity care. Waiver payments to governmental ambulance providers for uncompensated care provided before October 1, 2019, are described in §355.8600 of this subchapter (relating to Reimbursement Methodology for Ambulance Services).

(b) Definitions.

(1) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(2) Certified public expenditure (CPE)--An expenditure certified by a governmental entity to represent its contribution of public funds in providing services that are eligible for federal matching Medicaid funds.

(3) Charity care--Healthcare services provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association Principles and Practices Board Statement 15 (December 2012). Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(4) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. Demonstration year one was October 1, 2011, through September 30, 2012.

(5) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

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

(7) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(8) Governmental ambulance provider--An ambulance provider that uses paid government employees to provide ambulance services. The ambulance services must be directly funded by a governmental entity. A private ambulance provider under contract with a governmental entity to provide ambulance services is not considered a governmental ambulance provider for the purposes of this section.

(9) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(10) Uncompensated-care payments--Payments intended to defray the uncompensated costs of charity care as defined in paragraph (3) of this subsection.

(11) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of medical assistance in section 1905(a) of the Social Security Act (Medicaid services), if such inclusion is specified in the hospital's charity-care policy or financial assistance policy and the patient meets the hospital's policy criteria.

(12) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility.

(1) A governmental ambulance provider must submit a written request for eligibility for supplemental payment in a form prescribed by HHSC to the HHSC Provider Finance [~~Rate Analysis~~] Department by a date specified each year by HHSC. An acceptable request must include:

(A) an overview of the governmental agency;

(B) a complete organizational chart of the governmental agency;

(C) a complete organizational chart of the ambulance department within the governmental agency providing ambulance services;

(D) an identification of the specific geographic service area covered by the ambulance department, by ZIP code;

(E) copies of all job descriptions for staff types or job categories of staff who work for the ambulance department and an estimated percentage of time spent working for the ambulance department and for other departments of the governmental agency;

(F) a primary contact person for the governmental agency who can respond to questions about the ambulance department; and

(G) a signed letter documenting the governmental ambulance provider's voluntary contribution of non-federal funds.

(2) If eligible, a governmental ambulance provider may begin to claim uncompensated-care costs related to services provided on or after the first day of the month after the request for eligibility is approved.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to public funds from governmental entities. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year, HHSC will survey the governmental entities that provide public funds for the governmental ambulance providers in the pool to determine the amount of funding available to support payments from that pool.

(e) Payment frequency. HHSC will distribute uncompensated-care payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Funding limitations.

(1) Payments made under this section are limited by the amount of funds allocated to the provider's uncompensated-care pool for the demonstration year as described in §355.8212 of this division (relating to Waiver Payments to Hospitals for Uncompensated Charity Care). If payments for uncompensated care for the governmental ambulance provider pool attributable to a demonstration year are expected to exceed the amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(3) of this section.

(2) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which all governmental ambulance providers are eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Cost reports. Governmental ambulance providers that are eligible for supplemental payments must submit an annual cost report for ground, water, and air ambulance services delivered to individuals who meet the provider's charity-care policy.

(A) The cost report form will be specified by HHSC. Providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the cost reporting period.

(B) Cost reports must be completed for the full demonstration year for which payments are being calculated. HHSC may require a newly eligible provider to submit a partial-year cost report for their first year of eligibility. The beginning date for the partial-year cost report is the provider's first day of eligibility for supplemental payments as determined by HHSC. The ending date of the partial-year cost report is the last day of the demonstration year that encompasses the cost report beginning date.

(C) The cost report is due on or before March 31 of the year following the cost reporting period ending date and must be certified in a manner specified by HHSC.

(i) If March 31 falls on a federal or state holiday or weekend, the due date is the first working day after March 31.

(ii) A provider may request in writing an extension of up to 30 days after the due date to submit a cost report. HHSC will respond to all written requests for extensions, indicating whether the extension is granted. HHSC must receive a request for extension before the cost report due date. A request for extension received after the due date is considered denied.

(iii) A provider whose cost report is not received by the due date or the HHSC-approved extended due date is ineligible for supplemental payments for the federal fiscal year.

(iv) The individual who completes the cost report on behalf of the provider ("the preparer") must complete the state-sponsored cost report training every other year for the odd-year cost report in order to receive credit to complete both that odd-year cost report and the following even-year cost report. If a new preparer wishes to complete an even-year cost report and has not completed the previous odd-year cost report training, to receive training credit to complete the even-year cost report, the preparer must complete an even-year cost report training. No exemptions from the cost report training requirements will be granted.

(D) A cost report documents the provider's actual allowable charity-care costs for delivering ambulance services in accordance with the applicable state and federal regulations. Because the cost report is used to determine supplemental payments, a provider must submit a complete and acceptable cost report to be eligible for a supplemental payment.

(E) The uncompensated-care payment is contingent upon the governmental ambulance provider's CPEs related to charity-care services. There are two CPE forms that must be submitted with each cost report:

(i) The cost report certification form formally acknowledges that the cost report is true, correct, and complete, and was prepared in accordance to all applicable rules and regulations.

(ii) The certification of funds form acknowledges that the claimed expenditures are allocable and allowable to the State Medicaid program under Title XIX of the Social Security Act, and in accordance with all procedures, instructions, and guidance issued by the single state agency and in effect during the cost report federal fiscal year.

(2) Calculation. An ambulance provider's annual maximum uncompensated-care payment amount is calculated as follows:

(A) As detailed in the cost report instructions, a provider must report their charges associated with charity-care services provided to uninsured patients and any payments attributable to those services.

(B) A provider's total allowable reported costs for ambulance services are allocated to uninsured charity-care patients based on the ratio of charges for uninsured charity-care patients to the charges for all patients. Only allocable expenditures related to uninsured charity care as defined in subsection (b)(3) of this section will be included in calculating the uncompensated-care payment.

(C) The result of subparagraph (B) of this paragraph will be reduced by any related payments reported on the cost report to determine the provider's annual maximum uncompensated-care payment amount.

(3) Reduction to stay within the governmental ambulance provider uncompensated-care pool allocation amount. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the governmental ambulance provider pool to exceed the allocation amount for the pool and will reduce the maximum uncompensated-care payment amounts for each provider in the pool by the same percentage as required to remain within the pool allocation amount.

(h) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a provider's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the federal share of the overpayment or disallowance.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403 of the Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the provider against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the provider's receipt of HHSC's written notice of recoupment, the provider has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the provider until HHSC has recovered an amount equal to the amount overpaid or disallowed.

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 22. REIMBURSEMENT METHODOLOGY FOR THE EARLY CHILDHOOD INTERVENTION PROGRAM

1 TAC §355.8421, §355.8422

STATUTORY AUTHORITY

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

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

§355.8421. Reimbursement for Case Management Services for Infants and Toddlers with Developmental Disabilities.

(a) Authority. Payments are made to qualified providers delivering case management services to Medicaid-eligible individuals who are eligible for services in the Early Childhood Intervention Program (ECI) according to the program rules established by the Department of Assistive and Rehabilitative Services (DARS). The reimbursement determination authority is specified in §355.101 of this title (relating to Introduction).

(b) Unit of service. Qualified providers are reimbursed based on a 15-minute unit of service that is a prospective and uniform statewide rate for the following types of services:

(1) face-to-face case management visit; and

(2) telephone case management visit.

(c) Rate methodology.

(1) Initial rates. The rate effective October 1, 2011, will be the initial statewide rate.

(2) Cost report-based rates. After the Health and Human Services Commission (HHSC) determines that cost data collected as described in subsection (d) of this section is reliable and sufficient to support development of a cost report-based rate, HHSC will develop statewide reimbursement rates using that data to replace the initial rates as follows:

(A) Project each provider's total allowable cost per type of service from the historical cost reporting period to the prospective reimbursement period, using inflation factors according to §355.108 of this title (relating to Determination of Inflation Indices), to arrive at the projected cost per type of service;

(B) For each provider, divide the projected cost per type of service, determined in subparagraph (A) of this paragraph, by the provider's total units of service per type of service delivered during the historical cost reporting period, to arrive at the provider's projected cost per unit of service for each type of service; and

(C) For each type of service:

(i) Arrange all providers' projected cost per unit of service in an array from low to high, with the corresponding total number of units of service for each provider;

(ii) Sum the total number of units of service for each provider in the array progressively from low to high to create a running total;

(iii) Divide the total number of units of service by two;

(iv) Identify the value, from the running total sums calculated in clause (ii) of this subparagraph, that is closest to the result in clause (iii) of this subparagraph; and

(v) Identify the cost per unit of service that corresponds to the value identified in clause (iv) of this subparagraph, to arrive at the recommended rate for that service.

(d) Reporting of costs.

(1) All case management service providers must submit a cost report unless the number of days between the date the first client received services and the fiscal year end is 30 days or fewer. A provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disaster or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by the HHSC Provider Finance [~~Rate Analysis~~] Department before the due date of the

cost report as set out in §355.105(c) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Cost reporting. Case management service providers must submit cost report data according to HHSC's specifications. In addition to the requirements of this section, the following cost reporting requirements apply: §355.101 of this title (relating to Introduction), §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.111 of this title (relating to Administrative Contract Violations).

(3) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended rates. To ensure that the database reflects costs and other information that are necessary for the provision of services and is consistent with federal and state regulations, HHSC excludes from rate determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(4) Individual provider cost reports may not be included in the database used for reimbursement determination if:

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

(B) an auditor determines that the reported costs are not verifiable.

§355.8422. Reimbursement for Specialized Rehabilitation Services for Infants and Toddlers with Developmental Disabilities.

(a) Authority. Payments are made to qualified providers delivering specialized rehabilitation services to Medicaid-eligible individuals who are eligible for services in the Early Childhood Intervention Program (ECI) according to the program rules established by the Department of Assistive and Rehabilitative Services (DARS). The reimbursement determination authority is specified in §355.101 of this title (relating to Introduction).

(b) Unit of service. The unit of service is one hour and will be pro-rated for 15-minute intervals for specialized rehabilitation services on an individual and group basis.

(c) Rate methodology.

(1) Initial rates. The rate effective October 1, 2011, will be the initial statewide rate.

(2) Cost report-based rates. After the Health and Human Services Commission (HHSC) determines that cost data collected as described in subsection (d) of this section is reliable and sufficient to support development of a cost report-based rate, HHSC will develop statewide reimbursement rates using that data to replace the initial rates as follows:

(A) Project each provider's total allowable cost per type of service from the historical cost reporting period to the prospective reimbursement period, using inflation factors according to §355.108 of this title (relating to Determination of Inflation Indices), to arrive at the projected cost per type of service;

(B) For each provider, divide the projected cost per type of service, determined in subparagraph (A) of this paragraph, by the provider's total units of service per type of service delivered during the historical cost reporting period, to arrive at the provider's projected cost per unit of service for each type of service; and

(C) For each type of service:

(i) Arrange all providers' projected cost per unit of service in an array from low to high, with the corresponding total number of units of service for each provider;

(ii) Sum the total number of units of service for each provider in the array progressively from low to high to create a running total;

(iii) Divide the total number of units of service by two;

(iv) Identify the value, from the running total sums calculated in clause (ii) of this subparagraph, that is closest to the result in clause (iii) of this subparagraph; and

(v) Identify the cost per unit of service that corresponds to the value identified in clause (iv) of this subparagraph, to arrive at the recommended rate for that service.

(d) Reporting of costs.

(1) All rehabilitation services providers must submit a cost report unless the number of days between the date the first client received services and the fiscal year end is 30 days or fewer. A provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by the HHSC Provider Finance [~~Rate Analysis~~] Department before the due date of the cost report as set out in §355.105(c) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Cost reporting. Rehabilitation services providers must submit cost report data according to HHSC's specifications. In addition to the requirements of this section, the following cost reporting requirements apply: §355.101 of this title (relating to Introduction), §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.11 of this title (relating to Administrative Contract Violation).

(3) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended rates. To ensure that the database reflects costs and other information that are necessary for the provision of services and is consistent with federal and state regulations, HHSC excludes from rate determination any unallowable expenses included in the cost report and makes the ap-

propriate adjustments to expenses and other information reported by providers.

(4) Individual provider cost reports may not be included in the database used for reimbursement determination if:

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

(B) an auditor determines that the reported costs are not verifiable.

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SUBCHAPTER M. MISCELLANEOUS PROGRAMS
DIVISION 3. COMPREHENSIVE REHABILITATION SERVICES FOR INDIVIDUALS WITH A TRAUMATIC BRAIN INJURY OR TRAUMATIC SPINAL CORD INJURY

1 TAC §355.9040

STATUTORY AUTHORITY

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

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

§355.9040. Reimbursement Methodology for Comprehensive Rehabilitation Services Program.

(a) Payment rate determination. Payment rates are determined based on the methodology described for each service array.

(1) Traumatic Brain Injury (TBI) and Spinal Cord Injury (SCI) Inpatient Comprehensive Medical Rehabilitation Services Array. The Texas Department of Assistive and Rehabilitative Services or its successor agency (DARS) negotiates contracts with inpatient facilities to provide services based on data from the Centers for Medicare & Medicaid Services (CMS) Healthcare Cost Report Information System (HCRIS).

(2) TBI and SCI Outpatient Services Array.

(A) For services and purchases for which a specific rate can be established without regard to the individual receiving the service or item, the Texas Health and Human Services Commission (HHSC) will establish Comprehensive Rehabilitation Services (CRS) fee-for-service rates based on a review of rates for similar services as presented in one or more of the following data sources: HHSC fee schedules, previous DARS fee schedules, Medicare fee schedules, other states' Medicaid fee schedules, and/or commercial insurance fee schedules.

(i) Where information on comparable rates is not available, HHSC will establish rates representing best value based on the factors listed in §391.103(2) of this title (relating to Definitions).

(ii) To ensure adequate access to services, DARS medical director, or optometric consultant may approve exceptions to established rates, with review by the HHSC Provider Finance [~~Rate Analysis~~] Department (PFD) [(~~RAD~~)].

(B) For services and purchases for which a specific rate can be established without regard to the individual receiving the service or item, but for which a CRS rate has not yet been set at the time an individual's program planning team determines that the service is required, HHSC will establish an interim CRS rate.

(i) DARS will contact HHSC PFD [(~~RAD~~)] to request an interim CRS rate.

(ii) HHSC PFD [(~~RAD~~)] will determine the interim CRS rate based on the process in subparagraph (A) of this paragraph.

(iii) Claims paid at an interim rate established under this subparagraph will not be adjusted once a rate is formally adopted for that service.

(C) For services and purchases for which the cost of the service or item purchased is specific to the individual receiving the service or item, HHSC will establish a CRS rate at the time of purchase, based on best value, as defined by the reasonable and customary industry standards for each specific service or item purchased.

(3) Post-Acute Brain Injury (PABI) Residential Services Array. DARS will pay providers a per diem rate for each allowable day of PABI Residential Service. DARS will also pay providers for such ancillary services as have been approved in the individual's program plan and received by the individual.

(A) The initial per diem rate is the sum of a base component, which covers room and board, administration, personal assistance, and facility and operations costs; a core service component, which covers core therapy services; and an additional amount for periodic required evaluations.

(i) HHSC determines the base component as follows:

(I) determine the rates for the small and medium classes of facilities in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) program as specified in §355.456 of this chapter (relating to Reimbursement Methodology);

(II) adjust the ICF/IID rates to account for the specific needs of the CRS population; and

(III) average the adjusted rates for individuals with limited, extensive, pervasive, and pervasive plus levels of need,

weighting by the days of service for those individuals from the most recently reviewed and accepted ICF/IID cost reports.

(ii) HHSC determines the core service component by reviewing the rates or contracted payment amounts for similar services, including the five common core therapy services (Physical Therapy, Occupational Therapy, Speech/Language Therapy, Cognitive Rehabilitation Therapy, and Neuropsychological Therapy) paid by the following payers: HHSC, the Texas Department of Aging and Disability Services (DADS), DARS, Medicare, other states' Medicaid programs, and commercial insurance companies. Based on this review, HHSC determines an appropriate rate per hour that is multiplied by the hours in the tier structure below to determine the rate for each tier. Determination of the applicable tier for a day of service is governed by DARS program standards.

(I) Base - 0 hours.

(II) Base Plus - 0.5 hours.

(III) Tier 1 - 1.5 hours.

(IV) Tier 2 - 2.5 hours.

(V) Tier 3 - 3.5 hours.

(VI) Tier 4 - 4.5 hours.

(VII) Tier 5 - 5.5 hours.

(VIII) Tier 6 - 6.5 hours.

(IX) Tier 7 - 7.5 hours.

(X) Tier 8 - 8.5 hours.

(iii) HHSC determines the additional amount for periodic required evaluations by averaging the common core therapy evaluation rates, multiplying the average by 12, and dividing the product by the number of days in the rate year.

(B) If HHSC determines that adequate cost and services delivery data is available, HHSC may rebase the per diem rate components.

(i) For the base component, if HHSC deems it appropriate to require contracted providers to submit a cost report, HHSC will determine if cost data collected as described in subsection (c) of this section is reliable and sufficient to support development of a cost report-based rate. If such reliable and sufficient data is available, HHSC may develop a reimbursement rate using that data to replace the initial base component.

(ii) For the core service component, HHSC will collect and evaluate detailed service delivery data. HHSC may rebase the core service component based on the detailed service delivery data.

(C) HHSC determines the ancillary services rates as described in paragraph (2) of this subsection.

(4) PABI and Post-Acute SCI Non-Residential Services Array. HHSC will set separate base rates for facility-based and community-based services, as described in subparagraph (A) of this paragraph. DARS will pay for each allowable billing increment, as defined by program standards. DARS will also pay for such core and ancillary services as have been approved in the individual's program plan and received by the individual.

(A) Initial rates will consist of an hourly base rate which covers administration, personal assistance, and facility and operations costs.

(i) For providers offering Non-Residential Services in a setting that is also a residential facility or shares space with a residential facility, HHSC determines the initial hourly base rate as follows:

(I) determine the rates for the small and medium classes of facilities in the ICF/IID program as specified in §355.456 of this chapter;

(II) adjust the ICF/IID rates to account for the specific needs of the CRS population and the base services to be provided in a Non-Residential facility-based setting;

(III) average the adjusted rates for individuals with limited, extensive, pervasive and pervasive plus levels of need, weighting by the days of service for those individuals from the most recently reviewed and accepted ICF/IID cost reports; and

(IV) divide the average by eight.

(ii) For providers offering Non-Residential Services in the home of the individual receiving the service or in a community setting not connected or affiliated with a residential setting, HHSC determines the initial hourly base rate as follows:

(I) determine the case management and the other attendant care cost components (also known as the administration and facility cost area) of the habilitation base rate under the Community Living Assistance and Support Services (CLASS) program, as described in §355.505 of this chapter (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program); and

(II) adjust the rate to account for specific needs of the CRS population and the base services to be provided in a non-residential home or community setting.

(B) If HHSC deems it appropriate to require contracted providers to submit a cost report, HHSC will determine if cost data collected as described in subsection (c) of this section is reliable and sufficient to support development of a cost-report-based rate. If such reliable and sufficient data is available, HHSC may develop cost-report-based rates to replace the initial hourly base rates.

(C) HHSC will determine the rates for core services as described in paragraph (2)(A) of this subsection.

(D) HHSC will determine the rates for ancillary services as described in paragraph (2) of this subsection.

(b) Related information. The information in §355.101 of this chapter (relating to Introduction) and §355.105(g) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures) applies to this section.

(c) Reporting of cost. To gather adequate financial and statistical information upon which to base reimbursement, HHSC may require a contracted provider to submit a cost report for any service provided through the CRS program.

(1) Cost Reports. If HHSC requires a provider to submit a cost report, the provider must follow the cost reporting guidelines in §355.105 of this chapter and the guidelines for determining whether a cost is allowable or unallowable in §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs) and §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs).

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

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

Filed with the Office of the Secretary of State on October 2, 2023.

TRD-202303670
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 730-7455

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes several repeals and amendments, and one new rule in Chapter 26 Substantive Rules Applicable to Telecommunication Service Providers. The commission also proposes corresponding revisions to commission forms.

The proposed repeals, amendments, and new rule are listed in order as follows: Subchapter A, §26.5, relating to Definitions; Subchapter B, §26.30, relating to Complaints, §26.31, relating to Disclosures to Applicants and Customers, §26.32, relating to Protection Against Unauthorized Billing Charges, §26.34, relating to Telephone Prepaid Calling Services; Subchapter C, §26.52, relating to Emergency Operations, §26.53, relating to Inspections and Tests, §26.54, relating to Service Objectives and Performance Benchmarks, Repeal of §26.55, relating to Monitoring of Service; Subchapter D, §26.73, relating to Annual Earnings Reports, Repeal of §26.78, relating to State Agency Utility Account Information, §26.79, relating to Equal Opportunity Reports, §26.80, relating to Annual Report on Historically Underutilized Businesses, §26.85, relating to Report on Workforce Diversity and other Business Practices, Repeal of §26.87, relating to Infrastructure Reports, §26.89, relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services; Subchapter E, §26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria; Subchapter F, §26.123, relating to Caller Identification Services, §26.127, relating to Abbreviated Dialing Codes, §26.128, relating to Telephone Directories, §26.130, relating to Selection of Telecommunications Utilities; Subchapter G, Repeal of §26.142, relating to Integrated Services Digital Network (ISDN); Subchapter I, §26.171, relating to relating to Small Incumbent Local Exchange Company Regulatory Flexibility, §26.175, relating to Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs); Subchapter J, §26.207, relating to Form and Filing of Tariffs, Repeal of §26.208, relating to General Tariff Procedures, new 26.208, relating to General Tariff Procedures, §26.209, relating to New and Experimental Services, §26.210, relating to Promotional Rates for Local Exchange Company Services, §26.211, relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges, §26.214, relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs), §26.215, relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services, §26.217, relating to Administration of Extended Area Service (EAS) Requests, §26.221, relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges, §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies; Subchapter L, §26.272, relating to Interconnection, §26.276, relating to Unbundling; Subchapter P, §26.403, relating to Texas High Cost Universal Service Plan (THCUSP), §26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan, §26.405, relating to Financial Need for Continued Support, §26.407, relating to Small and Rural Incumbent Local Exchange Company Universal Service, §26.409, relating to Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers, §26.414, Telecommunications Relay Service (TRS), §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, §26.419, relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service; and Subchapter Q, §26.433, relating to Roles and Responsibilities of 9-1-1 Service Providers.

Rule Review Stakeholder Recommendations

On February 10, 2023, commission staff filed a preliminary notice and request for comments which was published in the *Texas Register* on March 3, 2023, at 48 TexReg 1368. Comments were received by the Commission on State Emergency Communications, the Texas Cable Association, the Texas Statewide Telephone Cooperative, Inc., and the Texas Telephone Association. Based upon filed comments and an internal review by commission staff, the commission proposes the following rule changes.

The proposed changes would repeal 16 Texas Administrative Code (TAC) §26.55, §26.78, §26.87, §26.142, and §26.208.

The proposed changes would amend §26.5 by revising §26.5(191), which defines "public service answering point (PSAP)," to include an emergency communications center. This is an informal term used frequently by the Commission on State Emergency Communications (CSEC) and the Federal Communications Commission (FCC) to refer to a PSAP.

The proposed changes would make minor and confirming changes to the following rules, such as updating contact resources used by individuals with hearing or speech difficulties or removing requirements to file multiple copies of a document with the commission:

§26.31, §26.34, §26.73, §26.123; §26.127, §26.130, §26.171, §26.175, §26.214, §26.215, §26.217, §26.221, §26.224, §26.276, §26.417, §26.418, and §26.419.

The proposed changes would amend §26.30 and §26.32 by changing the deadline for, as applicable, a Certificated Telecommunications Utility (CTU), billing telecommunications utility, a billing agent, or a service provider to respond to complaints submitted to the commission from 21 days to 15 days. This

change is to align with recent changes to customer protection rules in Project 52796.

The proposed changes would amend §26.52 by requiring dominant certificated telecommunications utilities (DCTUs) to comply with the backup power obligations associated with fiber optic cables that are prescribed by federal law or other applicable regulations, including the requirements of 47 Code of Federal Regulations §9.20.

The proposed changes would amend §26.53 by revising the requirement for DCTUs to report to the commission the numbers assigned for dial test terminations. Specifically, such numbers would only have to be provided by the DCTU if requested by the commission.

The proposed changes would amend §26.54 by deleting subsection (b) relating to one-party line service and voice band data.

The proposed changes would amend §26.80 by expanding the list of providers to which the section does not apply to include any company that holds a certificate of operating authority (COA), a company that holds a service provider certificate of operating authority (SPCOA) and a registered interexchange carrier (IXC).

The proposed changes would amend §26.85 by expanding the list of providers to which the section does not apply to include any company that holds a COA, a company that holds a SPCOA and a registered IXC.

The proposed changes would amend §26.111 by revising subsection (i)(4) to require applicants to file SPCOA amendment applications with CSEC via electronic mail within five working days from the date the amendment was filed. The proposed change to subsection (i)(4) would also require applicants to provide notice of the SPCOA amendment applications to all affected 9-1-1 administrative entities in the manner provided by paragraph (3)(A)-(D). Additionally, the proposed changes would revise subsection (m)(2) to require a COA or SPCOA holder that intends to cease operations to provide a copy of its application to cease operations and relinquish its certificate to CSEC. The commission also proposes minor and conforming changes to the commission prescribed SPCOA application form.

The proposed changes would also amend §26.111 and §26.272 by correcting the reference to "9-1-1 entity" in paragraph §26.111(i)(4) and §26.272(e)(1)(B)(vi)(I) to properly refer to "9-1-1 administrative entity."

The proposed changes would amend §26.128 by replacing the term State of Texas Telephone Directory with Capitol Complex Telephone System Directory in subsection (b)(1) and (2). The proposed changes would also delete the requirement under subsection (e)(5) for telephone directories published by certain telecommunications utilities or its affiliates to include sample long distance rates.

The proposed changes would amend §26.433 by correcting the references to "9-1-1 administrative entity" in subsection (i)(1).

HB 1597 Implementation

HB 1597, adopted by the 88th Texas Legislature (R.S.), amends the requirements associated with filing a telecommunications tariff with the commission under PURA §52.251. Specifically, HB 1597 authorizes an affiliate or trade association to, on behalf of a public utility, file a tariff for telecommunications service with the commission. HB 1597 also provides that a tariff is considered approved if the commission does not approve or deny the tariff or request supplemental information from the filer within 60 days from the date the tariff was filed. Lastly, HB 1597 requires the filer to provide supplemental information to the commission within 15 days from the request and provides that a tariff is considered approved if the commission does not approve or deny the tariff within 30 days from the date the commission receives the supplemental information.

To implement HB 1597, the commission proposes repealing §26.208 and proposing new §26.208 and proposes amending §26.89; §26.207, §26.209, §26.210, and §26.211.

Proposed new §26.208 aligns the general requirements of PURA §52.251, as amended by HB 1597, with the more specific requirements of PURA Chapter 53, Subchapter C (§§53.101-53.113) when a tariff involves a rate change. The new rule also clarifies the requirements for tariff applications, including those related to effective dates and notice to affected persons, and more clearly describes the process for commission review of such applications. To conform with the abridged timeline for commission review and approval imposed by HB 1597, the new rule prohibits a tariff application from being docketed, unless the application involves a new tariff or a rate change under PURA Chapter 53, Subchapter C. Sections 26.209, 26.210, and 26.211 would be revised to remove references to docketing of an application filed under those provisions. Additionally, §26.209 and §26.210 would be amended to more clearly indicate that a tariff to which §26.209 or §26.210 apply may be filed in accordance with §26.208. Similarly, §26.207 would be amended to clearly reference §§26.208, 26.209, and 26.211. Section 26.211 would be amended to clarify that an informational notice filing in accordance with §26.227, suffices for compliance provided that the notice complies with §26.228 or §26.229, as applicable. Lastly, §§26.89, 26.207, 26.209, 26.210, and 26.211 would be revised to more clearly reflect the statutory language of PURA §52.251.

SB 1425 and SB 1710 Implementation

SB 1425, adopted by the 88th Legislature, amends PURA §56.032 to require Small ILECs seeking adjustments from the Small and Rural Plan to, every calendar year, publicly file with the commission operational information concerning the small ILEC's operations that are regulated by the commission. The commission proposes amending §26.407 to implement HB 1425. The commission also proposes amending the commission prescribed form for the annual report and schedules used by small ILECs, and the associated instructions.

SB 1710 adopted by the 88th Legislature, amends PURA §56.023 to implement revisions to support levels received by eligible telecommunications providers under the High Cost Plan or Small and Rural Plan of the Texas Universal Service Fund (TUSF). SB 1710 also revises eligibility criteria for receipt of support from the TUSF and requires the commission to periodically review such criteria. Lastly, SB 1710 adds provisions for expiration and relinquishment of support from the TUSF. The commission proposes amending §26.403, §26.404, and §26.405 to implement these changes.

The commission also proposes amending §26.409 by setting an expiration date for the provision of December 31, 2023, consistent with the requirements of PURA §56.023(s).

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by Friday, October 27, 2023. Comments must be orga-

nized by rule section in sequential order, and each comment must clearly designate which section is being commented on. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed repeals and amendments. 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 54589. 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 54589.

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.

Growth Impact Statement

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

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

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

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

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

(5) the proposed amendments and repeals will create a new regulation;

(6) the proposed amendments and repeals expand, limit, and repeal existing regulations;

(7) the proposed amendments and repeals will not change the number of individuals subject to the rule's applicability; and

(8) the proposed amendments and repeals will positively 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 amendments and repeals. 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 amendments and repeals 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

Mr. Stephen Mendoza, Senior Rate Analyst, Tariff and Rate Analysis has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Mendoza has determined that for each year of the first five years the proposed amendments and repeals are in effect the public benefit anticipated as a result of enforcing the section will be enhanced clarity on rules applicable to modern technology and the repeal or amendment of rules that have become outdated. 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 amendments and repeals are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on the proposed rules in this project if requested in accordance with Texas Government Code §2001.029. A hearing request must indicate the rule sections for which the hearing is being requested. The request for a public hearing must be received by October 27, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Statutory authority summaries

For rules relating to Customer Service and Protection under Chapter 26, Subchapter B §§26.21-26.37.

Amended §§26.30, 26.31, 26.32, and 26.34 are proposed under PURA §15.023, which authorizes the commission to impose an administrative penalty against a person regulated under PURA who violates PURA or a rule or order adopted under PURA; PURA §17.001, §17.003, and §17.004, and §64.001, and §64.004, which collectively authorize the commission to impose customer protection standards in the telecommunications market; PURA §17.051 which requires the commission to adopt rules relating to certification, registration, and reporting requirements for a certificated telecommunications utility, telecommunications utilities that are not dominant carriers, and pay telephone providers; PURA §17.052(3) and §64.052(3) which collectively authorize the commission to adopt and enforce rules for customer service and protection.

§26.30, relating to Complaints

Amended §26.30 is proposed under PURA §15.051, which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction.

§26.31, relating to Disclosures to Applicants and Customers

Amended §26.031 is proposed under PURA §64.004(a)(7) and (8), which respectively entitle buyers of telecommunications services to accuracy of billing and for bills to be presented in a clear, readable format and in easy-to-understand language.

§26.32, relating to Protection Against Unauthorized Billing Charges

Amended §26.32 is proposed under PURA §64.004(a)(1), which entitles buyers of telecommunications services to protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, Subchapter D of Chapter 17 and 64 PURA §§17.151-17.158 and §§64.151-64.158 which establish customer protections against unauthorized charges.

§26.34, relating to Telephone Prepaid Calling Services

Amended §26.34 is proposed under PURA Chapter 15, Subchapter B §§15.021-15.0233, which generally authorizes the commission to enjoin, require compliance, and assess administrative penalties for violations of PURA by a public utility; PURA §55.253 which authorizes the commission to prescribe standards regarding the information a prepaid calling card company must disclose to customers in relation to the rates and terms of service for prepaid calling services offered in the State of Texas and provides the commission with all necessary jurisdiction to adopt rules under this section and to enforce those rules and this section.

Rules relating to Infrastructure and Reliability under Chapter 26, Subchapter C

Amended §§26.52, 26.53, and 26.54 are proposed under PURA §55.001, which requires a public utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §55.002, relating to commission authority concerning standards in the regulation of telecommunications services; and §55.008, relating to improvements in service by a public utility.

§26.52, relating to Emergency Operations and §26.53, relating to Inspections and Tests

Amended §26.52 and §26.53 are proposed under PURA §55.001, relating to general standards in the provision of service by a public utility; §55.002, relating to commission authority concerning standards in the regulation of telecommunications services; and §55.008, relating to improvements in service by a public utility.

§26.54, relating to Service Objectives and Performance Benchmarks)

Amended §26.54 is proposed under PURA §55.002(3) and (4) which respectively authorize the commission to, on its own motion or on complaint and after reasonable notice and hearing, adopt reasonable rules for examining, testing, and measuring a service; and adopt or approve reasonable rules, specifications, and standards to ensure the accuracy of equipment, including meters and instruments, used to measure a service.

§26.73, relating to Annual Earnings Reports

Amended §26.73 is proposed in accordance with the guidelines of the commission's evaluation of the reporting requirements of Chapter 26 published in Project 32460 and as required by SB 408 §13 (79R). Amended §26.73 is also proposed under PURA §52.207 which authorizes the commission to collect a report from a holder of a COA or SPCOA and maintain the confidentiality of competitive information contained in such reports; PURA §56.024 which authorizes the commission to require certain telecommunications provider to provide a report or information necessary to assess contributions and disbursements to the universal service fund and maintain the confidentiality of such reports; and PURA §65.004 which authorizes the commission to collect and compile information from all telecommunication providers as necessary to evaluate the telecommunications market of this state and maintain the confidentiality of such information.

§26.79 relating to Equal Opportunity Reports

Amended §26.73 is proposed under PURA §52.256, which requires each telecommunications utility to submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses.

§26.80, relating to Annual Report on Historically Underutilized Businesses) and 26.85, relating to Report on Workforce Diversity and Other Business Practices

Amended §26.80 is proposed under PURA §12.252, which authorizes the commission to, after notice and hearing, require each utility subject to regulation under PURA to make an effort to overcome the underuse of historically underutilized businesses; and PURA §52.256 which requires each telecommunications utility to submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses.

§26.89, relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services

Amended §26.89 is proposed under PURA §52.007, which authorizes a telecommunications provider that is not subject to rate of return regulation under Chapter 53 to take certain actions relating to the telecommunication provider's tariffs, price lists, and customer service agreements and PURA §52.154 which prohibits the commission from imposing a burden on a nondominant telecommunications utility a greater regulatory burden than is imposed on a holder of a CCN serving the same area or a deregulated company under PURA §65.002 that meets certain criteria.

§26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

Amended §26.111 is proposed under PURA §52.154, which precludes the commission from adopting a rule or regulatory practice that would impose a greater burden on a nondominant telecommunications utility than is imposed on a holder of a certificate of convenience and necessity serving the same area or on certain deregulated incumbent local exchange carriers; PURA Chapter 54, Subchapter C §§54.101-54.105 and Subchapter D §§54.151-54.159, which respectively provide for standards relating to a certificate of operating authority service provider certificate of operating authority, including relevant limitations, eligibility and applications requirements, and the grant or denial of a certificate; and PURA §65.102, which specifies the requirements applicable to a deregulated ILEC that holds a certificate of operating authority.

§26.123, relating to Caller Identification Services

Amended §26.123 is proposed under PURA §§54.259, 54.260, and 54.261 which collectively ensure access by certificate holders to a third party's property to install or maintain equipment as necessary to provide telecommunications service. Specifically, amended §26.123 is proposed under PURA §54.259, which prohibits property owners from discriminating against a telecommunications utility or otherwise interfering with such a utility when

accessing the property owner's land when necessary for the provision of telecommunications service; PURA §54.260, which authorizes a property owner to establish reasonable conditions for a telecommunications utility's access to the property owner's land; and §54.261 which does not require a property owner to enter into a contract with a telecommunications utility to provide shared tenant services on a property.

§26.127, relating to Abbreviated Dialing Codes

Amended §26.127 is proposed under PURA §55.002(1) and (2), which respectively authorize the commission to, on its own motion or on complaint and after reasonable notice and hearing, adopt just and reasonable standards, classifications, rules, or practices a public utility must follow in furnishing a service; adopt adequate and reasonable standards for measuring a condition, including quantity and quality, relating to the furnishing of a service; Use of N11 Codes and Other Abbreviated Dialing Arrangements, Sixth Report and Order, CC Docket No. 92-105, FCC 05-59 (Mar. 14, 2005).

§26.128, relating to Telephone Directories

Amended §26.128 is proposed under PURA Chapter 55, Subchapter D §§55.201-204, relating to the terms and requirements of directory listings and assistance for directories published by telecommunications utilities and private publishers; PURA §56.156 which authorizes the commission to promote the Specialized Telecommunications Assistance Program by means of participation in events, advertisements, pamphlets, brochures, forms, pins, or other promotional items or efforts that provide contact information for persons interested in applying for a voucher under the program; and Tex. Bus. & Comm. Code §304.055 which requires a private for-profit publisher of a residential telephone directory that is distributed to the public at minimal or no cost to include in the directory information established by the commission through which a person may request placement of a telephone number on the Texas no-call list or order a copy of the form to make that request.

§26.130, relating to Selection of Telecommunications Utilities

Amended §26.130 is proposed under PURA §17.102, PURA Chapter 55, Subchapter K §§55.301-55.308, and PURA Chapter 64, Subchapter C §§64.101-64.102, which require the commission to ensure that customers are protected from deceptive practices employed in obtaining authorizations of service and in the verification of change orders.

§26.171, relating to Small Incumbent Local Exchange Company Regulatory Flexibility

Amended §26.171 is proposed under PURA Chapter 53, Subchapter G §§53.301-308 which collectively prescribe and authorize certain procedures for the expedited review of telecommunications rates and services offered by small local exchange companies and cooperatives.

§26.175, relating to Reclassification of Telecommunications Services for Electric Incumbent Local Exchange Companies (ILECs)

Amended §26.175 is proposed under PURA §58.024, which authorizes the commission to reclassify telecommunications services and requires the commission to establish standards for such reclassification and PURA §58.051 which identifies which telecommunications services are basic network services, unless reclassified.

§26.207, relating to Form and Filing of Tariffs and §26.208, relating to General Tariff Procedures

Amended §26.207 and new §26.208 are proposed under PURA §14.052, which authorizes the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings; PURA §52.058 which requires the commission to adopt rules and establish procedures relating to new or experimental services or promotional rates; PURA §52.051 which requires a public utility to file with the commission a tariff showing each rate subject to the commission's jurisdiction and in effect for a utility service, product, or commodity offered by the utility; PURA §52.058 also requires a public utility to file as part of its tariff each commission rule that relates to each rate of the utility, utility service, product, or commodity furnished by the utility; PURA Chapter 54, Subchapter C §§53.101-53.113 which establishes the general procedures for rate change proposed by a utility; PURA Chapter 58, Subchapter C §§58.051-58.063 which details the regulation and adjustment of rates for basic network services.

§26.209, relating to New and Experimental Services and §26.210, relating to Promotional Rates for Local Exchange Company Services

Amended §26.209 is proposed under PURA §52.058, which requires the commission to adopt rules and establish procedures for new or experimental services and promotional rates provided by ILECs.

§26.211, relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges

Amended §26.211 is proposed under PURA §52.054, which authorizes the commission to adopt rules or establish procedures applicable to ILECs to determine the level of competition in a specific telecommunications market or submarket and provide appropriate regulatory treatment to allow an incumbent local exchange company to respond to significant competitive challenges.

§26.214, relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs)

Amended §26.214 is proposed under PURA §51.004, which requires a discount or other form of pricing flexibility to not be unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive and establishes the presumption that a price set at or above the long run incremental cost of a service is not a predatory price; PURA §52.0583(b) which authorizes an ILEC to introduce new services and requires an ILEC to price each new service at or above the service's long run incremental cost; PURA §52.0584 authorizes an ILEC to exercise pricing and packaging flexibility for customer promotional offerings and requires an ILEC to price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost.

§26.215, relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services;

Amended §26.215 is proposed under PURA §52.053 which prohibits a rate established under Chapter 52 from being unreasonably preferential, prejudicial, or discriminatory, subsidized either directly or indirectly by a regulated monopoly service; or predatory or anticompetitive PURA §52.059 which authorizes the commission to adopt standards necessary to ensure that a rate es-

tablished under Chapter 52 covers appropriate costs, as determined by the commission.

§26.217, relating to Administration of Extended Area Service (EAS) Requests

Amended §26.217 is proposed under PURA Chapter 55, Subchapter B §§55.021-55.026. which establishes the commission's authority to order local exchange companies that are dominant carriers to provide extended area service and prescribes the cost recovery mechanism and mandatory rate for providing such service.

§26.221, relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges

Amended §26.221 is proposed under PURA §55.024, which requires an incumbent local exchange company that provides mandatory two-way extended area service to impose a charge for that service; PURA §58.061 which exempts a charge permitted under PURA §55.024 from the requirements of PURA Chapter 58, Subchapter C §§58.051-58.063; and PURA §59.024 which exempts a charge permitted under PURA §55.024 from certain rate change requirements.

§26.215, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies

Amended §26.215 is proposed under PURA Chapter 58, Subchapter C §§58.051-063 which collectively prescribe requirements relating to basic network services offered by a company electing for incentive regulation under Chapter 58. Specifically, amended §26.215 is proposed under PURA §58.051, which classifies certain services as basic network services; PURA §58.052 which enumerates the regulatory authority for basic network services; and PURA §58.054, which requires an electing company to commit to not increase a rate for basic network service on or before the fourth anniversary of its election date; PURA §58.055, which authorizes an electing company to increase or decrease a rate for a basic network service during the company's four-year election period; PURA §58.056, which authorizes the commission or an electing company to proportionally adjust rates for services to reflect certain changes in Federal Communications Commission policy; PURA §58.057, which authorizes an electing company to adjust rates under certain conditions; PURA §58.058, which authorizes the commission, upon request by an electing company, to allow a rate group reclassification that results from access line growth; PURA §58.059, which authorizes an electing company to request and the commission to approve, a rate adjustment under PURA §§58.056, 58.057, or 58.058; and PURA §58.060 which authorizes an electing company to increase a rate for a basic network service after the cap period under certain conditions.

§26.272, relating to Interconnection

Amended §26.272 is proposed under PURA §52.001 which states that the public interest requires rules, policies, and principles to be formulated and applied to protect the public interest and to provide equal opportunity to each telecommunications utility in a competitive marketplace; PURA §60.124 which requires each telecommunications provider to maintain interoperable networks; and PURA §60.125 which requires telecommunications providers to negotiate network interconnectivity, charges and terms.

§26.276, relating to Unbundling

Amended §26.276 is proposed under PURA §60.021 which requires, at a minimum, an incumbent local exchange company to unbundle its network to the extent the Federal Communications Commission orders.

For rules relating to the Texas Universal Service Fund under Chapter 26, Subchapter P.

Amended §§26.403, 26.404, 26.405, 26.407, 26.409, 26.414, 26.417, 26.418, and 26.419 are proposed under PURA §51.001(g), which establishes a policy to ensure that customers in all regions of this state, including low-income customers and customers in rural and high cost areas, have access to telecommunications and information services. PURA Chapter 56, Subchapter A §§56.001-56.002 which establishes general provisions applicable to Chapter 56 of PURA. PURA §56.021 which requires the commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund; and PURA §56.023 which establishes the commission's powers and duties in relation to the administration of the universal service fund.

§§26.417, 26.418, and 26.419.

Amended §§26.417, 26.418, and 26.419 are proposed under PURA §56.023(1), which requires the commission, in a manner that assures reasonable rates for basic local telecommunications service, adopting eligibility criteria and review procedures, including a method for administrative review, the commission finds necessary to fund the universal service fund and make distributions from that fund; and PURA §56.023(2) which requires the commission to determine which telecommunications providers meet the eligibility criteria; PURA §55.015 which requires the commission to adopt rules relating to certain requirements of lifeline service and establishes certain requirements relating to the provision of lifeline service by certificated providers of local exchange telephone service.

§26.433

Amended §26.433 is proposed under PURA §54.251, which requires a certificate holder to meet minimum quality of service standards, including standards for 911 service, as determined by the commission; PURA §58.051(a)(8) which establishes access for all residential and business end users to 911 service provided by a local authority and access to dual party relay service as a basic network service; PURA §58.051(b) which requires electing companies to offer each basic networked service as a separately tariffed service in addition to any packages or other pricing flexibility offerings that include those basic network services; PURA §60.021 which requires that at a minimum, an ILEC must unbundle its network to the extent ordered by the Federal Communications Commission; PURA §60.022 which states that the commission may unbundle local exchange company services in addition to the unbundling required by PURA §60.021 after considering the public interest and competitive merits of further unbundling; PURA §60.023 which states that the commission may assign an unbundled component to the appropriate category of services under Chapter 58 according to the purposes and intents of the categories; PURA §60.122 which grants the commission exclusive jurisdiction to determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; PURA §60.124 which requires each telecommunications provider to maintain interoperable networks; PURA §64.051 which requires the commission to adopt rules relating to certification, registration, and reporting requirements of a cer-

tificated telecommunications utility, all telecommunications utilities that are not dominant carriers, and pay telephone providers; PURA §64.052 which establishes the scope of the rules under PURA §64.051; and PURA §64.053 which states the commission may require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under PURA Chapter 64.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.5

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.5. Definitions.

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

(1) - (190) (No change.)

(191) Public safety answering point (PSAP)--A continuously operated communications facility established or authorized by local government authorities that answers 9-1-1 calls originating within a given service area, as further defined in Texas Health and Safety Code Chapters 771 and 772. The term includes an emergency communications center.

(192) - (289) (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 October 6, 2023.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §§26.30 - 26.32, 26.34

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.30. Complaints.

(a) Complaints to a certificated telecommunications utility (CTU). A customer or applicant for a service [~~(complainant)~~] may submit a complaint to a CTU either in person, by letter, telephone, or by any other means determined by the CTU. For purposes of this section, a complainant is a customer or applicant for a service that has submitted a complaint to a CTU or to the commission.

(1) Initial investigation. The CTU must [~~shall~~] investigate the complaint and advise the complainant of the results of the investigation within 21 days of receipt of the complaint. A CTU must [~~shall~~] inform customers of the right to receive these results in writing.

(2) Supervisory review by the CTU. If a complainant is not satisfied with the initial response to the complaint, the complainant may request a supervisory review by the CTU.

(A) A CTU supervisor must [~~shall~~] conduct the supervisory review and [~~shall~~] inform the complainant of the results of the review within ten days of receipt of the complainant's request for a review. A CTU must [~~shall~~] inform customers of the right to receive these results in writing.

(B) A complainant who is dissatisfied with a CTU's supervisory review must [~~shall~~] be informed of:

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

(iii) the following contact information for the commission:

(I) Mailing Address: PUCT, Consumer Protection Division [~~Public Utility Commission of Texas, Customer Protection Division~~], P.O. Box 13326, Austin, Texas 78711-3326;

(II) - (V) (No change.)

(VI) Relay Texas (toll-free): 1-800-735-2989. [~~Telecommunications Device for the Deaf (TTY): (512) 936-7136; and~~]

[(VII) ~~Relay Texas (toll-free): 1-800-735-2989.~~]

(b) Complaints to the commission. The [~~Notwithstanding anything to the contrary, the~~] commission may only review [~~hear~~] a complaint of a retail or wholesale customer against a deregulated company or exempt carrier that is within the scope of the commission's authority provided in Public Utility Regulatory Act (PURA) §65.102.

(1) Informal complaints.

(A) (No change.)

(B) Upon receipt of a complaint from the commission, a CTU must [~~shall~~] investigate and advise the commission in writing of the results of its investigation within 15 [~~21~~] days of the date the complaint was forwarded by the commission.

(C) The commission will [~~shall~~]:

(i) - (iii) (No change.)

(D) While any informal complaint process is ongoing at the commission:

(i) basic local telecommunications service must [~~may~~] not be suspended or disconnected for the nonpayment of disputed charges; and

(ii) (No change.)

(E) The CTU must [~~shall~~] keep a record of any informal complaint forwarded to it by the commission for two years after the determination of that complaint.

(i) This record must [~~shall~~] show the name and address of the complainant, and the date, nature, and adjustment or disposition of the complaint.

(ii) A CTU is not required to keep records of protests regarding commission-approved rates or charges that require no further action by the CTU [~~Protests regarding commission-approved rates or charges that require no further action by the CTU need not be recorded~~].

(2) Formal complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission. This process may include the formal docketing of the complaint as provided [~~in the commission's Procedural Rules,~~] §22.242 of this title (relating to Complaints).

§26.31. Disclosures to Applicants and Customers.

(a) Application. Subsection (b)(4)(C)(viii) of this section does not apply to a deregulated company holding a certificate of operating authority[~~,~~] or to an exempt carrier that meets the criteria of [~~under~~] Public Utility Regulatory Act (PURA) §52.154.

(b) Certificated telecommunications utilities (CTU). The disclosure requirements of this subsection only apply [~~These disclosure requirements shall apply only~~] to residential customers and business customers with five or fewer customer access lines.

(1) Promotional requirements. Promotions, including[~~, but not limited to~~] advertising and marketing, conducted by a [~~any~~] CTU must [~~shall~~] comply with the following:

(A) If any portion of a promotion is translated into another language, then all portions of the promotion must [~~shall~~] be translated into that language. Promotions containing a single informational line or sentence in another language to advise a person on [~~persons~~] how to obtain the same promotional information in a different language are exempt from this requirement.

(B) Promotions must [~~shall~~] not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.

(2) Prior to acceptance of service. A CTU must provide the following information to an applicant before the applicant accepts service [~~Each CTU shall provide the following information to applicants before any acceptance of service~~]:

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

(E) disclosure of [~~any and~~] all money that must be paid prior to installation of a new service or transfer of an existing service to a new location, and whether [~~or not~~] the money is refundable;

(F) - (I) (No change.)

(3) Terms and conditions of service. A CTU must [~~shall~~] provide information regarding terms and conditions of service to customers in writing and free of charge at the initiation of service. Upon request, a customer is [~~customers are~~] entitled to receive an additional copy of the terms and conditions of service free of charge from the CTU every calendar year [~~once annually free of charge~~]. Any contract offered by a CTU must include the terms and conditions of service [~~statement~~]. A CTU is prohibited from offering [~~may not offer~~] a customer a contract or terms and conditions of service that [~~statement which~~] waives the customer's rights under federal or state law, or commission rule.

(A) The information must [~~shall~~] be:

(i) sent to the new customer [~~customers~~] before payment for a full bill is due;

(ii) - (iii) (No change.)

(iv) provided in the same language [~~languages~~] in which the CTU markets the service [~~to a customer~~].

(B) The following information must [~~shall~~] be included:

(i) each rate [~~all rates~~] and charge [~~charges~~] as it [~~they~~] will appear on the telephone bill;

(ii) an itemization of each charge that [~~any charges which~~] may be imposed on the customer, including [~~but not limited to,~~] charges for late payments and returned checks;

(iii) (No change.)

(iv) any applicable minimum contract service terms and [~~any~~] fees for cancellation or early termination;

(v) [~~any and~~] all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether [~~or not~~] the money is refundable;

(vi) - (vii) (No change.)

(viii) the company's cancellation or early termination policy;

(ix) an operational [~~a working~~] toll-free number for customer service [~~inquiries~~]; and

(x) the provider's legal business [~~or "doing business as"~~] name used for providing telecommunications services in the state.

(4) Customer rights. At the initiation of service, a CTU must provide to a customer [~~A CTU shall provide~~] information regarding customer rights [~~to customers~~] in writing and free of charge [~~at the initiation of service~~].

(A) The informational disclosures relating to customer protections required by [~~information in~~] subparagraph (C) of this paragraph must [~~shall~~] be:

(i) sent to the new customer [~~customers~~] before payment for a full bill is due;

(ii) clearly labeled to indicate the customer protection disclosures contain information regarding [~~it contains the~~] customer rights;

(iii) provided in a readable format and written in plain, non-technical language; and

(iv) provided in the same language [~~languages~~] in which the CTU markets the service [~~to a customer~~].

(B) The CTU must [~~shall~~] also provide:

(i) the information in subparagraph (C) of this paragraph to each customer [~~customers~~] at least every other year at no charge; or

(ii) a printed statement on the bill or a billing insert identifying where [~~the location of~~] the information in subparagraph (C) of this paragraph can be obtained. The statement must [~~shall~~] be provided to each customer [~~customers~~] every six months.

(C) The following informational disclosures relating to customer protections must be provided by the CTU [~~information shall be included~~]:

(i) the CTU's customer credit requirements and the circumstances under which a customer deposit or an additional deposit may be required, the manner in which a deposit and interest paid on deposits are calculated, [~~how a deposit is calculated, the interest paid on deposits, and~~] the time frame and requirements [~~requirement~~] for return of the deposit to the customer, and any other terms and conditions related to deposits;

(ii) the time period for payment of [~~allowed to pay~~] outstanding bills without incurring a penalty and the amount and conditions under which a penalty [~~penalties~~] may be applied to delinquent bills;

(iii) the grounds for suspension or [~~and/or~~] disconnection of service;

(iv) the requirements a CTU must meet to suspend or disconnect service [~~the steps that must be taken before a CTU may suspend and/or disconnect service~~];

(v) the requirements a CTU must meet [~~the steps~~] for resolving billing disputes [~~with the CTU~~]and how disputes affect suspension or [~~and/or~~] disconnection of service;

(vi) information on alternative payment plans offered by the CTU, including[~~, but not limited to,~~] payment arrangements and deferred payment plans.[~~,~~] A CTU must provide to each customer a statement that the [~~as well as a statement that a~~] customer has the right to request these alternative payment plans;

(vii) the requirements [~~the steps necessary~~] to have the customer's service restored or [~~and/or~~] reconnected after involuntary suspension or disconnection;

(viii) (No change.)

(ix) information regarding protections against unauthorized billing charges ("cramming") and selection of telecommunications utilities ("slamming") as required by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) and §26.130 of this title (relating to Selection of Telecommunications Utilities), respectively;

(x) the customer's right to file a complaint with the CTU, the procedures for a supervisory review, and the customer's right to file a complaint with the commission regarding any matter concerning the CTU's service. The commission's contact information: PUCT Consumer [~~Public Utility Commission of Texas, Customer~~] Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, [~~fax (512) 936-7003,~~] e-mail address: customer@puc.texas.gov, Internet address: www.puc.texas.gov, [~~TTY (512) 936-7136,~~] and Relay Texas (toll-free) 1-800-735-2989, must [~~shall~~] accompany this information;

(xi) the hours, addresses, and telephone numbers of each CTU office [~~CTU offices~~] where bills may be paid and customer service information may be obtained, or a toll-free number at which the customer may obtain such [~~this~~] information;

(xii) a toll-free telephone number or equivalent, such as the use of wide area telephone service or acceptance of collect calls, that a customer [~~the equivalent (such as use of WATS or acceptance of collect calls) that customers~~] may call to report service problems or make billing inquiries;

(xiii) a statement that each CTU service is [~~services are~~] provided without discrimination as to a customer's race, color, sex, nationality, religion, marital status, income level, source of income, or from unreasonable discrimination on the basis of geographic location;

(xiv) (No change.)

(xv) notice of any special services such as readers or notices in Braille, if available, [~~and~~] the phone number for Relay Texas: 1-800-735-2989, and any teletypewriter or text telephone service offered by the CTU [~~telephone number of the text telephone for the deaf or hard of hearing at the commission~~];

(xvi) how a customer with a physical disability [~~customers with physical disabilities~~], and those who care for them, can identify themselves to the CTU so that special action can be taken to appropriately inform these persons of their rights; and

(xvii) if a CTU is offering Lifeline Service in accordance with §26.412 (relating to Lifeline Service Program), how information about customers who qualify for Lifeline Service may be shared between each relevant state agency and the customer's [~~state agencies and their local~~] phone service provider.

(5) Notice of changes. A CTU must [~~shall~~] provide each customer [~~customers~~] written notice between 30 and 60 calendar days in advance of a material change in the terms and conditions of service or customer rights and must [~~shall~~] give each [~~the~~] customer the option to decline any material change in the terms and conditions of service and cancel service without penalty due to the material change in the terms and conditions of service. This paragraph does not apply to changes that are beneficial to the customer such as a price decrease or changes required by law [~~mandated regulatory changes~~].

(6) Right of cancellation.

(A) A CTU must provide each residential applicant and customer [~~shall provide all of its residential applicants and customers~~] the right of rescission in accordance with applicable law.

(B) If a residential applicant or customer enrolls in a contract with a minimum duration [~~will incur an obligation~~] exceeding 31 days, a CTU must [~~shall~~] promptly provide the applicant or customer with the terms and conditions of service after the applicant or customer has provided authorization to CTU. The CTU must [~~shall~~] offer the

applicant or customer a right to cancel the contract without penalty or fee [~~of any kind~~] for a period of six working [~~business~~] days after the terms and conditions of service are mailed or sent electronically to the applicant or customer.

(c) Dominant certificated telecommunications utility (DCTU). In addition to the requirements of subsection (b) of this section, the following requirements [~~shall~~] apply to residential customers and business customers with five or fewer customer access lines.

(1) Prior to acceptance of service. Before an applicant signs a contract for service, or a DCTU accepts any money for new residential service or transfers a customer's existing residential service to a new location, the DCTU must provide to each applicant the following: [~~Before signing applicants or accepting any money for new residential service or transferring existing residential service to a new location, each DCTU shall provide to applicants information:~~]

(A) information relating to the DCTU's residential service alternatives, beginning with the lowest-priced option, and the range of service offerings available within the applicant's service area with full consideration to the cost associated with [~~about the DCTU's lowest-priced alternatives, beginning with the least cost option, and the range of service offerings available at the applicant's location with full consideration to~~] applicable equipment options and installation charges; and

(B) a statement written in plain English or Spanish that clearly informs the applicant [~~applicants~~] about the availability of Lifeline Service [~~service~~].

(2) Customer rights.

(A) If a DCTU provides [~~its customers with~~] the same information as required by subsection (b)(4)(C) of this section in the telephone directories provided to each customer in accordance with [~~pursuant to~~] §26.128 of this title (relating to Telephone Directories), the DCTU must [~~shall~~] provide a printed statement on each customer's [~~the~~] bill or a billing insert identifying the location of the information within the telephone directory. The statement or billing insert must [~~shall~~] be provided to customers at least every six months.

(B) The information required by subsection (b)(4)(C) of this section and this subsection must [~~shall~~] be provided in plain English and Spanish; however, a DCTU is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the DCTU is exempt from the Spanish language requirement, it must [~~shall~~] notify each customer [~~all customers~~] through a statement provided in plain [~~in both~~] English and Spanish, in the customer rights disclosures[~~,~~] that the information is available in Spanish from the DCTU, [~~both~~] by mail or from [~~and at~~] the DCTU's offices.

(C) The information required in subsection (b)(4)(C) of this section must [~~shall~~] also include:

(i) - (v) (No change.)

[~~(d) Nondominant certificated telecommunications utility (NCTU) implementation. NCTUs shall implement this section no later than March 1, 2001.~~]

§26.32. Protection Against Unauthorized Billing Charges ("Cramming").

(a) Purpose. The provisions of this section are intended to ensure that each customer [~~all customers~~] in this state are protected from unauthorized charges on a customer's telecommunications utility bill. This section establishes the requirements necessary to obtain and verify customer consent for charges for any product or service before the associated charges appear on the customer's telephone bill.

(b) Application. This section applies to all "billing agents," "billing telecommunications utilities," and "service providers" as those terms are defined in §26.5 of this title (relating to Definitions) or the Public Utility Regulatory Act (PURA). This section does not apply to:

(1) an unauthorized change in a customer's local or long distance service provider, which is addressed under [~~in~~] §26.130 of this title (relating to Selection of Telecommunications Utilities);

(2) - (3) (No change.)

(c) Definition. The term "customer," when used in this section, means [~~shall mean~~] the account holder, including the account holder's spouse, in whose name the telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity or person with the legal capacity to request to be billed for telephone service.

(d) Requirements for billing authorized charges. A [~~No~~] service provider or billing agent must comply with this subsection before submitting [~~shall submit~~] charges for any product or service for billing on a customer's telephone bill [~~before complying with all of the following requirements~~]:

(1) Inform the customer. The service provider offering the product or service must [~~shall~~] thoroughly inform each [~~the~~] customer of the product or service being offered, including each charge associated with [~~all associated charges for~~] the product or service, and must [~~shall~~] inform each [~~the~~] customer that the associated charges for the product or service will appear on the customer's telephone bill.

(2) Obtain customer consent. The service provider must [~~shall~~] obtain clear and explicit consent from the customer, verified in accordance with [~~pursuant to~~] subsection (f) of this section, [~~from the customer~~] to obtain the product or service being offered and to have each charge [~~the~~] associated with the service [~~charges~~] appear on the customer's telephone bill. A record of the customer's verified consent must [~~shall~~] be maintained by the service provider offering the product or service for at least 24 months immediately after the verified consent was obtained.

(3) Provide contact information. The service provider offering the product or service, and any billing agent for the service, must [~~shall~~] provide each [~~the~~] customer with a toll-free telephone number that the customer may call, and an address to which the customer may write, to resolve any billing dispute and to obtain answers to any questions.

(4) Provide business information. The service provider, [~~(~~] other than the billing telecommunications utility, [~~)~~] and its billing agent must [~~shall~~] provide the billing telecommunications utility with the service provider's [~~its~~] name, business address, and business telephone number.

(5) Obtain billing telecommunications utility authorization. The service provider and its billing agent must [~~shall~~] execute a written agreement with the billing telecommunications utility to bill for a product or service [~~products or services~~] on the billing telecommunications utility's telephone bill. Record of this agreement must [~~shall~~] be maintained by:

(A) - (B) (No change.)

(C) the billing telecommunications utility for as long as the billing for the product or service continues, and for the 24 months immediately following the permanent discontinuation of the billing for that product or service.

(e) Post-termination billing. A service provider must [~~shall~~] not bill a customer for a product or service after the termination or can-

cellation date for that product or service unless the bill is for a product or service provided prior to the termination or cancellation date; or the service provider subsequently obtains customer consent and verification of that consent in accordance with [~~pursuant to~~] this section.

(f) Verification requirements.

(1) Verification of a customer's consent for an order of a product or service must include:

(A) the date of the customer's [~~customer~~] consent;

(B) the date of the customer's [~~customer~~] verification of consent;

(C) - (D) (No change.)

(2) Verification of a customer's consent for an order of a product or service may not include discussion of any incentives that were or may have been offered by the service provider and must be limited to [~~shall be limited~~], without explanation, [~~to~~] the identification of:

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

(3) During any communication with a customer to verify that the customer's consent for a product or service, the independent third-party verifier or the sales representative, of the service provider must [~~shall~~], after sufficient inquiry, [~~to~~]ensure that the customer is authorized to order the product or service[~~,~~] and obtains the explicit acknowledgment from the customer [~~obtain the explicit customer acknowledgment~~]that charges for the product or service ordered by the customer will be assessed on the customer's telephone bill.

(4) Except in customer-initiated transactions with a certificated telecommunications utility for which the service provider has the appropriate documentation obtained in accordance with subsection (d) of this section [~~pursuant to section (d)~~], verification of customer consent to an order for a product or service must [~~shall~~] be verified by one or more of the following methods:

(A) Written or electronically signed documentation.

(i) Written or electronically signed verification of consent must be provided in [~~shall be~~] a separate document containing only the information required by paragraphs (1) and (2) of this subsection for the sole purpose of verifying the consent for a product or service on the customer's telephone bill. A customer must [~~shall~~] be provided the option of using another form of verification as an alternative to [~~in lieu of~~] an electronically signed verification.

(ii) The document must [~~shall~~] be signed and dated by the customer. Any electronically signed verification must [~~shall~~] include the customer disclosures required by the Electronic Signatures in Global and National Commerce Act 47 United States Code §7001(c) [~~§101(c)~~].

(iii) The document must [~~shall~~] not be combined with inducements of any kind on the same document, screen, or webpage.

(iv) If any portion of the document, screen or webpage is translated into another language, then all portions of the document must [~~shall~~] be translated into that language. Every document must [~~shall~~] be translated into the same language as any promotional materials, or oral or written descriptions[~~,~~] or instructions provided with the document, screen, or webpage.

(B) Toll-free electronic verification placed from the telephone number that is the subject of the product or service, except in exchanges where automatic number identification (ANI) from the local switching system is not technically possible. The service provider must:

(i) (No change.)

(ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the customer's [~~customer~~] consent of charges for the product or service [~~product(s) or service(s)~~] so that the customer calling the toll-free number [~~number(s)~~] will reach a voice response unit or similar mechanism regarding the customer consent for the product [~~product(s)~~] or service [~~service(s)~~] and automatically records the ANI from the local switching system.

(iii) Automated systems must [~~shall~~] provide customers the option of speaking with a live person at any time during the call.

(C) Voice recording by service provider.

(i) The recorded conversation with a customer must be clear and [~~shall be in a clear,~~] easy-to-understand, [~~slow, and deliberate manner~~] and must [~~shall~~] contain the information required by paragraphs (1) and (2) of this subsection.

(ii) The recording must be clear and [~~shall be clearly~~] audible.

(iii) The recording must [~~shall~~] include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iv) The recording must [~~shall~~] be dated and include a clear and conspicuous confirmation that the customer consented to recording the conversation and authorized the charges for a product or service on the customer's telephone bill.

(D) Independent Third-Party Verification. Independent third-party verification of consent must [~~shall~~] meet the following requirements:

(i) Verification must [~~shall~~] be given to an independent and appropriately qualified third party with no participation by a service provider, except as provided in clause (vii) of this subparagraph.

(ii) Verification must [~~shall~~] be recorded.

(iii) The recorded conversation with a customer must [~~shall~~] contain explicit customer consent to record the conversation, be in a clear[~~,~~] and easy-to-understand[~~, slow, and deliberate~~] manner and must [~~shall~~] comply with each of the requirements of paragraphs (1) and (2) of this subsection for the sole purpose of verifying the customer's consent of the charges for a product or service on the customer's telephone bill.

(iv) The recording must be clear and [~~shall be clearly~~] audible.

(v) The independent third-party verification must [~~shall~~] be conducted in the same language used in the sales transaction.

(vi) Automated systems must [~~shall~~] provide customers the option of speaking with a live person at any time during the call.

(vii) A service provider or its sales representative initiating a three-way call or a call through an automated verification system must [~~shall~~] disconnect from the call once a three-way connection with the third-party verifier has been established unless the service provider meets the following requirements:

(I) the service provider files a sworn written certification with the commission that the sales representative is unable to disconnect from the sales call after initiating third party verification. Such certification should provide sufficient information describing the reasons [~~reason(s)~~] for the inability of the sales agent to disconnect from the line after the third-party verification is initiated. The service provider is [~~shall~~] be exempt from this requirement for a period of two years from the date the certification was filed with the commission;

(II) (No change.)

(III) The independent third party verification must [~~shall~~] immediately terminate if the sales agent of an exempt service provider, in accordance with subclause [~~pursuant to subclause~~] (I) of this clause, responds to a customer inquiry, speaks after third party verification has begun, or in any manner prompts one or more of the customer's responses.

(viii) The independent third party must [~~shall~~]:

(I) - (II) (No change.)

(III) operate in a location that is physically separate from the service provider or the service provider's marketing agent.

(ix) The recording must [~~shall~~] include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(x) The recording must [~~shall~~] be dated and include clear and conspicuous confirmation that the customer authorized the charges for a product or service on the customer's telephone bill.

(5) (No change.)

(6) A record of the verification required by subsection (f) of this section must [~~shall~~] be maintained by the service provider offering the product or service for at least 24 months immediately after the verification was obtained from the customer.

(g) Expiration of consent and verification.

(1) If a customer consents to obtain a product or service but that product or service is not provided [~~provisioned~~] within 60 calendar days from the date of customer consent:

(A) - (B) (No change.)

(2) Paragraphs (1)(A) and (B) of this subsection do not apply to a verification of consent relating to multi-line or [~~and/or~~] multi-location business customers that have entered into negotiated agreements with a service provider for a product or service provisioned under, and during the term of, [~~specified in~~] the agreement. The verified consent must [~~shall~~] be valid for the period specified in the agreement.

(h) Unauthorized charges.

(1) Responsibilities of the billing telecommunications utility for unauthorized charges. If a customer [~~customer's telephone bill~~] is charged for any product or service without proper customer verified consent in compliance with this section, the telecommunications utility that billed the customer must[~~, on its knowledge or notification of any unauthorized charge,~~ shall] promptly, but not later than 45 calendar days upon becoming aware [~~after the date of the knowledge or notification of~~] an unauthorized charge meet the following requirements:

(A) A billing telecommunications utililty must [~~utility shall~~]:

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

(iii) refund or credit to the customer all money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded or credited within three billing cycles, must [~~shall~~] pay interest at an annual rate established by the commission in accordance with [~~pursuant to~~] §26.27 of this title (relating to Bill Payment and Adjustments) on the amount of any unauthorized charge until it is refunded or credited;

(iv) upon [~~on~~] the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 working [~~business~~] days after the date of the removal from the customer's telephone bill;

(v) (No change.)

(vi) maintain on an ongoing basis, a rolling 24 month [~~for at least 24 months a~~] record of every customer who has experienced any unauthorized charge for a product or service on the customer's telephone bill and has notified the billing telecommunications utility of the unauthorized charge. The record must [~~shall~~] contain for each alleged unauthorized charge:

(I) (No change).

(II) each [~~the~~] affected telephone number [~~number(s)~~] and address [~~addresses~~];

(III) - (V) (No change.)

(B) A billing telecommunications utility must [~~shall~~] not:

(i) (No change.)

(ii) file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the customer. The customer must [~~shall~~] remain obligated to pay any charges that are not in dispute, and this paragraph does not apply to those undisputed charges.

(2) Responsibilities of the service provider for unauthorized charges. The service provider responsible for placing any unauthorized charge on a customer's telephone bill must [~~shall~~]:

(A) (No change.)

(B) for at least 24 months following the completion of [~~all of~~] the steps required by paragraph (1)(A) of this subsection, maintain a record for every disputed charge for a product or service on the customer's telephone bill. Each record must [~~shall~~] contain:

(i) each affected telephone number and address [~~the number(s) and addresses~~];

(ii) - (iv) (No change.)

(C) (No change.)

(i) Notice of customer rights.

(1) Each notice, as provided under [~~as set out in~~] paragraph (2) of this subsection, must [~~shall~~] also contain the billing telecommunications utility's name, address, and a working, toll-free telephone number for customer contacts.

(2) Every billing telecommunications utility must [~~shall~~] provide the following notice, verbatim, to each of the utility's customers:

Figure: 16 TAC §26.32(i)(2)

[~~Figure: 16 TAC §26.32(i)(2)~~]

(3) Distribution and timing of notice.

(A) Each billing telecommunications utility must [~~shall~~] mail the notice as provided under [~~set out in~~] paragraph (2) of this subsection to each of its residential and business customers within 60 calendar days after the effective date of this section, or by inclusion in the next publication of the utility's telephone directory following 60 calendar days after the effective date of this section. Each [~~In addition, each~~] billing telecommunications utility must [~~shall~~] send the notice to new customers at the time service is initiated or upon customer [~~and on any customer's~~] request.

(B) Every telecommunications utility that prints its own telephone directory must [~~directories shall~~] print the notice in the white pages of the directory [~~such directories~~], in nine point print or larger, beginning with the first publication of the directory [~~directories~~] after 60 calendar days following the effective date of this section.[~~;~~] Subsequently [~~thereafter~~], the notice must appear in the white pages of each telephone directory published by or for the telecommunications utility.

(4) Any bill sent to a customer from a telecommunications utility must include a statement, prominently located on [~~in~~] the bill, that if the customer believes the bill includes unauthorized charges, the customer may contact: Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989 [~~with text telephones (TTY) may contact the commission at (512) 936-7136~~].

(5) Each billing telecommunications utility must, as necessary to adequately inform the customer, [~~shall~~] make available to its customers the notice as set out in paragraph (2) of this subsection in both plain English and Spanish. The [~~as necessary to adequately inform the customer; however, the~~] commission may exempt a billing telecommunications utility from the requirement that the information be provided in Spanish upon an application [~~and a~~] showing that:

(A) 10% or fewer of its customers are exclusively Spanish-speaking;[~~,~~] and

(B) a confirmation that the billing telecommunications utility will notify all customers through an addendum to the notice that states, in plain [~~a statement in both~~] English and Spanish, [~~as an addendum to the notice,~~] that the information is available in Spanish from the telecommunications utility, both by mail and at the utility's offices.

(6) The customer notice requirements in paragraphs (1) and (2) of this subsection may be combined with the notice requirements of §26.130(g)(3) of this title if [~~all of~~] the information required by each is in the combined notice.

(7) The customer notice requirements in paragraph (4) of this subsection may be combined with the notice requirements of §26.130(i)(4) of this title if [~~all of~~] the information required by each is in the combined notice.

(j) Complaints to the commission. A customer may file a complaint with the commission's Consumer [~~Customer~~] Protection Division (CPD) against a service provider, billing agent or billing telecommunications utility for any reason [~~reasons~~] related to the provisions of this section.

(1) Customer complaint information. CPD may request, at a minimum, the following information:

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

(D) a copy of the most recent phone bill and any prior phone bill that show [~~shows~~] the alleged unauthorized product or service.

(2) Service provider's, billing agent's or billing telecommunications utility's response to complaint. After review of a customer's complaint, CPD must [~~shall~~] forward the complaint to the service provider, billing agent or billing telecommunications utility named in that complaint. The service provider, billing agent or telecommunications utility must [~~shall~~] respond to CPD within 15 [~~21~~] calendar days after CPD forwards the complaint. The response must [~~shall~~] include, to the extent it is within the custody or control of the service provider, billing agent or billing telecommunications utility, the following:

(A) - (B) (No change.)

(k) Compliance and enforcement.

(1) Records of customer verifications. A service provider, billing agent or billing telecommunications utility must [~~shall~~] provide a copy of records maintained under the requirements of subsections (d) and (f) of this section to the commission staff within 21 calendar days of a request for such records.

(2) Records of disputed charges. A billing telecommunications utility or a service provider must [~~shall~~] provide a copy of records maintained under the requirements of subsection (h) of this section to the commission staff within 21 calendar days of a request for such records.

(3) Failure to provide thorough response. The proof of verified consent as required under [~~pursuant to~~] subsection (j)(2)(A) of this section must establish a verified [~~valid~~] authorized charge in the manner prescribed by [~~as defined by~~]subsection (f) of this section. Failure to timely submit a response that addresses the complainant's assertions within the time specified in subsections (j)(2), (k)(1), and (k)(2) of this section establishes a violation of this section.

(4) Administrative penalties. If the commission finds that a billing telecommunications utility has violated any provision of this section, the commission will [~~shall~~] order the utility to take corrective action, as necessary, and the utility may be subject to administrative penalties and other enforcement actions in accordance with [~~pursuant to~~] PURA, Chapter 15 and §22.246 of this title (relating to Administrative Penalties).

(5) Evidence. Evidence provided by the customer that meets the standards established by [~~set out in~~] Texas Government Code §2001.081, including, [~~but not limited to,~~] one or more affidavits from a customer challenging the charge, is admissible in a proceeding to enforce the provisions of this section.

(6) Additional Corrective Action. If the commission finds that any other service provider or billing agent subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D[~~,~~] has violated any provision of this section or has knowingly provided false information to the commission on matters subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission will [~~shall~~] order the service provider or billing agent to take corrective action, as appropriate, and the commission may enforce the provisions of PURA, Chapter 15 and §22.246 of this title, against the service provider or billing agent as if the service provider or billing agent were regulated by the commission.

(7) Certificate suspension, restriction or revocation. If the commission finds that a billing telecommunications utility or a service provider has repeatedly violated this section[~~,~~] and, if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the telecommunications service provider[~~, thereby~~] denying the service provider the right to provide service in this state. The commission may not revoke a certificate of convenience and necessity, certificate of operating authority, or service provider certifi-

cate of operating authority of a telecommunications utility except as provided by PURA §54.008.

(8) Termination of billing and collection services. If the commission finds that a service provider or billing agent has repeatedly violated any provision of PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission may order the billing telecommunications utility to terminate billing and collection services for that service provider or billing agent.

(9) Coordination with Office of Attorney General. The commission will [~~shall~~] coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General to [~~in order to~~] ensure consistent treatment of specific alleged violations.

§26.34. Telephone Prepaid Calling Services.

(a) Purpose. The provisions of this section are intended to prescribe standards for the information a prepaid calling services provider must [~~shall~~] disclose to customers regarding [~~about~~] the rates and terms of service for prepaid calling services offered in this state.

(b) Application. This section applies to any "telecommunications utility" as [~~that term is~~] defined by [~~in~~] §26.5 of this title, [~~(~~] relating to Definitions[~~)~~]. This section does not apply to a deregulated company holding a certificate of operating authority, or to an exempt carrier utility that meets the criteria of [~~under~~] Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to a credit calling card in which a customer pays for a service after use and receives a monthly bill for such use.

(c) Liability. A [~~The~~] prepaid calling services company is [~~shall be~~] responsible for ensuring, either through its contracts with its network provider, distributors and marketing agents or other means, that:

(1) end-user purchased prepaid calling service remains [~~services remain~~] usable in accordance with the requirements of this section; and

(2) (No change.)

(d) Definitions. The following terms used in this section [~~shall~~] have the following meanings, unless the context indicates otherwise:

(1) - (8) (No change.)

(9) Surcharge--any fee or cost charged against a prepaid calling services account in addition to a per-minute rate or billing increment[~~,~~] including [~~but not limited to~~] connection, payphone, and maintenance fees.

(e) Billing requirements for prepaid calling services.

(1) Billing increments must [~~shall~~] be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission, [~~and~~] on any display at the point of sale, [~~as well as~~] on any prepaid calling card, or on any prepaid calling card packaging.

(2) A prepaid calling services account may be decreased only for a completed call. Station busy signals and unanswered calls are [~~shall~~] not [~~be considered~~] completed calls and must [~~shall~~] not be charged against the account.

(3) A surcharge must [~~may~~] not be levied more than once on a given call.

(4) Prepaid calling services companies must [~~may~~] not reduce the value of a prepaid calling services account by more than the company's published domestic tariffs or price list on file with the commission and any surcharges filed at the commission. Domestic rates and surcharges must [~~shall~~] be disclosed at the time of purchase. Current international rates must [~~shall~~] be disclosed at the time of purchase with an explanation, if applicable, that these prices may be subject to change.

(5) The prepaid calling services account may be recharged by the customer at a different domestic rate from the original domestic rate or the last domestic recharge rate provided that [~~as long as~~] the new domestic rate and any domestic or international surcharges conform with the company's published tariff or price list on file with the commission at the time of recharge. The customer must be informed of the rates at the time of recharge. A prepaid calling services company must [~~shall~~] keep internal records of changes to its international rates and must [~~shall~~] provide customers with the appropriate international rate information through a toll-free telephone number. International prepaid calling services rates must [~~shall continue to~~] be updated annually in accordance with §26.89 of this title, [~~(~~] relating to Information Regarding Rates and Services of Nondominant Carriers[~~)~~].

(6) Upon verbal or written request, prepaid calling services companies must be capable of providing a customer [~~customers~~] the following call detail data information at no charge:

(A) - (E) (No change.)

(F) The PIN or [~~and/or~~] account number associated with the call.

(7) Prepaid calling services companies must [~~shall~~] maintain call detail data records for at least two years.

(f) Written disclosure requirements for all prepaid calling services.

(1) Information required on prepaid calling cards. Cards must be issued with all information required by subparagraphs (A) and (B) of this paragraph in at least the same language in which the card is marketed. Bilingual cards are permitted provided that [~~as long as all~~] the information required by [~~in~~] subparagraphs (A) and (B) of this paragraph is printed in both languages.

(A) At a minimum, a card must contain the following information printed in a legible font no smaller than eight-point:

(i) (No change.)

(ii) The maximum rate per minute must [~~shall~~] be shown for local, intrastate, and interstate calls. International call prices must [~~shall~~] be provided to the customer through a toll-free number printed on the card. If the cost for a one minute call is higher than the maximum rate per minute, it must be printed on the prepaid calling card; and

(iii) The words "VOID" or "SAMPLE" or sequential numbers, such as "999999999" on both sides of the card if the card was produced as a "non-active" card so that it is obvious to the customer that the card is not useable. If the card is not so labeled, the card is considered active and the issuing company must [~~shall~~] honor it.

(B) At a minimum, a card must contain the following information printed in legible font no smaller than five-point:

(i) The value of the card and any applicable surcharges must [~~shall~~] be expressed in the same format such as [~~(i.e.~~] a card whose value is expressed in minutes must [~~shall~~] express surcharges in minutes[~~)~~]. If the value of a card is expressed in minutes, the minutes must be identified as domestic or international and the identification must be printed on the same line or next line as the value of the card in minutes;

(ii) The prepaid calling services company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must [~~shall~~] clearly indicate that the company is providing the prepaid calling services;

(iii) - (iv) (No change.)

(2) Information required at a point of sale. All the following information must [~~shall~~] be legibly printed on or in any packaging in a minimum eight point font and displayed visibly in a prominent area at the point of sale so that the customer may make an informed decision before purchase. Bilingual information may be made available provided that [~~as long as all~~] the information in subparagraphs (A) - (I) of this paragraph [~~below~~] is printed in both languages.

(A) (No change.)

(B) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must [~~shall~~] clearly indicate that the company is providing the prepaid calling card services;

(C) - (I) (No change.)

(3) If a customer asks a prepaid calling services company how to file a complaint, the company must provide the following contact information: PUCT, Consumer Protection Division [~~Public Utility Commission of Texas, Office of Customer Protection~~], P.O. Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477; [~~fax: (512) 936-7003~~]; e-mail address: customer@puc.texas.gov; Internet address: www.puc.texas.gov; [~~TTY: (512) 936-7136;~~] and Relay Texas (toll-free): 1-800-735-2989.

(g) Verbal disclosure requirements for prepaid calling services. Prepaid calling services companies must [~~shall~~] provide an announcement:

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

(h) Registration requirements for prepaid calling services companies. All prepaid calling services companies must [~~shall~~] register with the commission in accordance with §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers.

(i) Business and technical assistance requirements for prepaid calling services companies. A prepaid calling services company must [~~shall~~] provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week or electronically voice record customer inquiries or complaints. A combination of live operators or recorders may be used. If a recorder is used, the prepaid calling services company must [~~shall~~] attempt to contact each customer no later than the next working [~~business~~] day following the date of the recording. Personnel must be sufficient in number and expertise to resolve customer inquiries and complaints. If an immediate resolution is not possible, the prepaid calling services company must [~~shall~~] resolve the inquiry or complaint by calling the customer or, if the customer [~~so~~] requests, in writing within ten working days of the original request. In the event a complaint cannot be resolved within ten [~~working~~] days of the request, the prepaid calling services provider must [~~shall~~] advise the complainant in writing of the status and subsequently complete the investigation within 21 [~~working~~] days of the original request.

(j) Requirements for refund of unused balances. If a prepaid calling services company fails to provide service [~~services~~] at the rates disclosed at the time of initial purchase or at the time an account is recharged, or fails to meet technical standards, the prepaid calling services company must [~~shall~~] either refund the customer for each [~~any~~] unused prepaid calling service [~~services~~] or provide equivalent service [~~services~~].

(k) Requirements when a prepaid calling services company terminates operations in this state.

(1) When a prepaid calling services company expects to terminate operations in this state for any reason, the company must [~~shall~~] at least 30 days prior to the termination of operations:

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

(2) Within 24 hours after ceasing operations, the prepaid calling services company must [~~shall~~] deliver to the commission a list of names, if known, and account numbers of all customers with unused balances. For each customer, the list must [~~shall~~] include the following:

(A) - (B) (No change.)

(l) Date of compliance for prepaid calling card services companies. Prepaid [~~All prepaid~~] calling service [~~services~~] offered for sale in the state of Texas and each [~~all~~] prepaid calling services company must [~~companies shall~~] be in compliance with this rule within six months of the effective date of this section.

(m) Compliance and enforcement.

(1) Administrative penalties. If the commission finds that a prepaid calling services company has violated any provision of this section, the commission will [~~shall~~] order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions in accordance with PURA [~~pursuant to the Public Utility Regulatory Act~~], Chapter 15.

(2) Enforcement. The commission will [~~shall~~] coordinate its enforcement efforts against a prepaid calling services company for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General [~~in order~~] to ensure consistent treatment of specific alleged violations.

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

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SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §§26.52 - 26.54

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.52. Emergency Operations.

(a) This section does not apply to the retail services of an electing company, as defined by the Public Utility Regulatory Act (PURA) §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) Emergency power requirements.

(1) Each dominant certificated telecommunications utility's (DCTU) central office not equipped with permanently installed standby generators must contain adequate provisions for emergency power, including [~~shall contain as a minimum~~] four hours of battery reserve without voltage falling below the level required for proper operation of all equipment. [~~It is also essential that all central offices have adequate provisions for emergency power.~~]

(2) In central offices without installed emergency power facilities, there must [~~shall~~] be a mobile power unit available that [~~which~~] can be delivered and connected on short notice.

(3) As applicable, each DCTU must comply with the backup power obligations prescribed by federal law or other applicable regulations, including the requirements of 47 Code of Federal Regulations §9.20.

(c) In exchanges exceeding 5,000 lines, a permanent auxiliary power unit must [~~shall~~] be installed.

§26.53. Inspections and Tests.

(a) This section does not apply to the retail services of an electing company, as defined by Public Utility Regulatory Act (PURA) §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) Each dominant certificated telecommunications utility (DCTU) must [~~shall~~] adopt a program of periodic tests, inspections, and preventive maintenance aimed at achieving efficient operation of its system and rendition of safe, adequate, and continuous service.

(c) Each DCTU must [~~shall~~] maintain or have access to test facilities enabling it to determine the operating and transmission capabilities of all equipment and facilities. The actual transmission performance of the network must [~~shall~~] be monitored to determine if the service objectives in this chapter are met. This monitoring function must include [~~shall include, but not be limited to,~~] circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and special transmission surveys of the network.

(d) Each central office serving more than 300 customer access lines must [~~shall~~] be equipped with a 1,000 +/- 20 hertz, one milliwatt test signal generator and a 900 Ohm balanced termination device wired to telephone numbers so that they may be accessed for dial test purposes. Upon commission request, each DCTU must provide the commission [~~Each DCTU shall advise the commission of~~] the numbers assigned for these test terminations.

§26.54. Service Objectives and Performance Benchmarks.

(a) Applicability. This section establishes service objectives for [~~that should be provided by~~] a dominant certificated telecommunications utility (DCTU), as applicable. A deregulated company that holds a certificate of operating authority or a transitioning company in a market that is deregulated, is exempt from complying with the retail quality of service standards and reporting requirements in this section.

(1) This [~~The~~] section outlines performance benchmark levels for each exchange. If service quality falls below the applicable performance benchmark for an exchange, that indicates a need for the utility to investigate, take appropriate corrective action, and provide a report of such action [~~activities~~] to the commission.

(2) The objective service levels are based on monthly averages, except for dial service and transmission requirements, which are based on specific samples. DCTUs must [~~shall~~] make measurements to determine the level of service quality for each item included in this section.

(3) Upon commission request, a DCTU must [~~Each DCTU shall~~] provide the commission with the measurements and summaries for any of the service or performance benchmarks provided by this section [~~items included herein on request of the commission~~]. Records of these measurements and summaries must [~~shall~~] be retained by the DCTU as specified by the commission.

(4) For purposes of this section, an "answer" means that the operator, interactive voice system, or representative, is ready to render assistance or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line does not constitute an answer.

[~~(b) One-party line service and voice band data.~~]

[~~(1) One-party line service will be made available to all subscribers of local exchange service upon request.~~]

[~~(2) All open wire transmission media shall be replaced with more reliable and better quality transmission media by the end of 1998, unless otherwise exempted by the commission. Any utility that obtained an exemption from this requirement shall file a report with the commission on the status of its open wire replacement program by June 1, 2000, and if all open wire replacement is not complete by that date, every three months thereafter until the replacement program is complete.~~]

[~~(3) All switched voice circuits shall be adequately designed and maintained to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent).~~]

(b) [~~(c)~~] Each DCTU must [~~The DCTU shall~~] comply with the service quality objectives established below in providing the basic telecommunications service to its end-use customers and must[~~. The DCTU shall~~] file its service quality performance report on a quarterly basis. The report must [~~shall~~] include its monthly performance for each category of performance objectives [~~objective~~] and provide a summary of its corrective action plan for each exchange in which the performance falls below the benchmark. Additionally, the corrective action plan must [~~shall~~] include, at a minimum, details outlining how the necessary [~~needed~~] improvements will be implemented within three months from the filing of the service quality performance report and will result in performance at or above the applicable benchmark.

(1) Installation of service. Unless otherwise provided by the commission:

(A) Ninety-five percent of the DCTU's service orders for installing primary service must [~~shall~~] be completed within five working days, excluding those orders where a later date was specifically requested by the customer. Performance Benchmark Applicable for Corrective Action: If the performance is below 95% in any exchange area for a period of three consecutive months, the DCTU must [~~shall~~] provide a detailed corrective action plan for such an exchange or wire center [~~exchanges or wire centers~~].

(B) Ninety percent of the DCTU's service orders for regular service installations must [~~shall~~] be completed within five working days, excluding those orders where a later date was specifically requested by the customer. This includes orders for any primary service, installation, move, change, or other service, except for any complex service [~~and other services, installations, moves, or changes, but not complex services~~]. Performance Benchmark for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months the DCTU must [~~shall~~] provide a detailed corrective action plan for such an exchange or wire center [~~exchanges or wire centers~~].

(C) Ninety-nine percent of the DCTU's service orders for service installations must [~~shall~~] be completed within 30 days. Performance Benchmark for Corrective Action: If the performance is below 99% in any exchange area for a period of three consecutive months, the DCTU must [~~shall~~] provide a detailed corrective action plan for such an exchange or wire center.

(D) One-hundred percent of the DCTU's service orders for service installations must [~~shall~~] be completed within 90 days.

(E) Each DCTU must [~~shall~~] establish and maintain installation time commitment guidelines for the various complex services contained in the DCTU's [~~its~~] tariff. Those guidelines should be available for public review and should be applied in a nondiscriminatory manner.

(F) The installation interval measurements outlined in subparagraphs (A) - (D) and (H) of this paragraph must [~~shall~~] commence by [~~with~~] either the date of application or the date on which the applicant qualifies for service, whichever is later.

(G) The DCTU must [~~shall~~] provide to the customer a commitment [~~due~~] date on which the requested installation or change will [~~shall~~] be made. If a customer requests that the installation or change be performed [~~work be done~~] on a regular working day later than the date proposed [~~that offered~~] by the DCTU, then the customer's requested date will [~~shall~~] be the commitment date. If a premises visit is required, the DCTU must [~~shall~~] schedule an appointment period with the customer for the morning or afternoon, not to exceed a four hour [~~four-hour-~~] time period, on the commitment [~~due~~] date. If the DCTU is unable to keep the appointment, the DCTU must [~~shall~~] attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the DCTU's [~~DCTU~~] carrier representative must [~~shall~~] leave a notice at the customer's premises advising the customer how to reschedule the work.

(H) Ninety percent of the DCTU's commitments to customers for the date of installation of service orders must [~~shall~~] be met, excepting customer-caused delays. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU must [~~shall~~] submit a list of missed commitments to the commission and provide a detailed corrective action plan for such an exchange or wire center.

(I) The installation interval and commitment requirements of subparagraphs (A) - (D) and (H) of this paragraph do not include service orders either to disconnect service or to make only record changes on a customer's account.

(J) A held regrade order means an order [~~is one~~] not filled within 30 days after the customer has submitted an [~~made~~] application for a different grade of service, except where the customer requests a later date. In the event of the DCTU's inability to so fill such an order, the customer must [~~should~~] be advised and told when the DCTU can fulfill the order. The number of held regrade orders must [~~shall~~] not exceed 1.0% of the total number of customer access lines served.

(2) Operator-handled calls. For each exchange, a DCTU must, on a monthly basis, [~~DCTUs shall~~] maintain adequate personnel to provide an average operator answering performance as follows [~~for each exchange on a monthly basis~~]:

(A) Eighty-five percent of toll and assistance operator calls answered within ten seconds, or average answer time must [~~shall~~] not exceed 3.3 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average exceeds 3.3 seconds at any answering location in any given month, the DCTU must [~~shall~~] provide a detailed corrective action plan for such an exchange or wire center.

(B) Ninety percent of repair service calls must [~~shall~~] be answered within 20 seconds or average answer time must [~~shall~~] not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is below 90% within 20 seconds or the average answer time exceeds 5.9 seconds at any answering location for a period of five days within any given month, the DCTU must [~~shall~~] provide a detailed corrective action plan for such an exchange or wire center.

(C) Eighty-five percent of directory assistance calls must [~~shall~~] be answered within ten seconds or the average answer time must [~~shall~~] not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average answer time exceeds 5.9 seconds at any answering location in any given month, the DCTU must [~~shall~~] provide a detailed corrective action plan for such an exchange or wire center.

[~~(D) An "answer" shall mean that the operator, interactive voice system, or representative, is ready to render assistance and/or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an "answer."~~]

(D) [~~(E)~~] DCTUs may measure answer time on a toll center or operating unit basis as an alternative to [~~in lieu of~~] measuring answer time in each exchange unless specifically requested by the commission.

(3) Local dial service. Sufficient central office capacity and equipment must [~~shall~~] be utilized [~~provided~~] to meet the following requirements:

(A) dial tone within three seconds on 98% of calls. For record-keeping and reporting purposes, 96% in three seconds during average busy season or [~~and/or~~] busy hour complies [~~shall be acceptable as complying~~] with this requirement;

(B) completion of 98% of [~~intraoffice calls (those~~] calls originating and terminating within the same central office building[~~)~~] (intraoffice calls) without encountering network congestion or blockage, [~~an equipment busy condition (blockage)~~] or equipment irregularities [~~failure~~];

(C) for every switch that serves a customer [~~customers~~], the availability factor for stored program controlled digital and analog switching facilities must [~~shall~~] be 99.99%, or the total unscheduled outage for each switch must [~~shall~~] not exceed 53 minutes per year.

(D) For any exchange that falls below the established performance objective level, a [~~A~~] report detailing the cause and proposed corrective action for the local dial service measures[~~, for any exchange that falls below the established performance objective level,~~] must be submitted to the commission.

(4) Local interoffice dial service.

(A) Each DCTU must [~~shall~~] provide and maintain interoffice trunks on its portion of the local exchange service network so that 97% of the interoffice local calls excluding calls between central offices in the same building are completed without encountering equipment busy conditions or equipment failures. For a DCTU's [~~DCTUs'~~] testing, record-keeping, and reporting purposes, the DCTU is [~~DCTUs are~~] not required to separate local dial service results from local interoffice dial service results unless specifically requested by the commission.

(B) The availability factor for stored program controlled digital and analog switching and interoffice transmission facilities for end-to-end transmission must [~~shall~~] be 99.93%, or the total unscheduled outage must [~~shall~~] not exceed 365 minutes per year.

(C) For any exchange that falls below the established performance objective level, a [~~A~~] report detailing the cause and proposed corrective action for the local dial service measures, [~~for any exchange that falls below the established performance objective level,~~] must be submitted to the commission.

(5) Direct distance dial service. Engineering and maintenance of the trunk and related switching components in the toll network must [~~shall~~] permit 97% completion on properly dialed calls, without encountering failure because of network congestion or blockages, or equipment irregularities. For any exchange that falls below the established performance objective level, the DCTU must submit to the commission a [~~A~~] report detailing the cause and proposed corrective action for the direct distance dial service measure [~~, for any exchange that falls below the established performance objective level, must be submitted to the commission~~].

(6) Customer trouble reports.

(A) A [~~The~~] DCTU that serves more than 10,000 access lines must [~~shall~~] maintain its network service in a manner that ensures the DCTU [~~it~~] receives no more than three customer trouble reports on a company-wide basis, excluding customer premises equipment (CPE) reports, per 100 customer access lines per month [~~(~~]on average[~~)~~]. Performance Benchmark Applicable for Corrective Action: If the customer trouble report exceeds 3.0%, or [~~(~~]three per 100 access lines, [~~)~~] for a large exchange or 6.0%, or [~~(~~]six per 100 access lines, [~~)~~] for a small [~~smaller~~] exchange for three consecutive months, the DCTU must [~~shall~~] provide a detailed corrective action plan for such an exchange or wire center. For purposes of this section, a large exchange is defined as an exchange serving 10,000 or more access lines and a small exchange is defined as an exchange serving less than 10,000 access lines.

(B) A [~~The~~] DCTU that serves 10,000 or less access lines must [~~shall~~] maintain its network service in a manner that ensures the DCTU [~~it~~] receives no more than six customer trouble reports on a company-wide basis, excluding CPE [~~customer premises equipment (CPE)~~] reports, per 100 customer access lines per month [~~(~~]on average[~~)~~]. Performance Benchmark Applicable for Corrective Action. If the customer trouble report exceeds 6.0%, or [~~(~~]six per 100 access lines[~~)~~] per exchange for three consecutive months, the DCTU must [~~shall~~] provide a detailed corrective action plan for such an exchange or wire center.

(C) The DCTU must [~~shall~~] provide to the customer a commitment date [~~time~~] by which the trouble will be cleared. If a premises visit is required, the DCTU must [~~shall~~] schedule an appointment period with the customer for the morning or afternoon, not to exceed a four hour [~~four-hour~~] time period, on the commitment date. If [~~When~~] the DCTU cannot keep an appointment, the DCTU must [~~shall~~] attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the DCTU representative must [~~shall~~] leave a notice at the premises advising the customer how to reschedule the work.

(D) At least 90% of out-of-service trouble reports on service provided by a DCTU must [~~shall~~] be cleared within eight [~~working~~] hours, except where access to the customer's premises is required but unavailable [~~not available~~] or where interruptions are caused by a force majeure [~~unavoidable casualties and acts of God~~] affecting large groups of customers. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU must [~~shall~~] provide a detailed corrective action plan for such anexchange or wire center.

(E) Each DCTU must [~~shall~~] establish procedures to ensure [~~insure~~] the prompt investigation and correction of trouble reports so that the percentage of repeated trouble reports on residence and single line business lines does not exceed 22% of the total customer trouble reports on those lines. Performance Benchmark Applicable for Corrective Action: If repeat reports exceed 22% of the total customer trouble report in any exchange for three consecutive months, the DCTU must [~~shall~~] provide a detailed corrective action plan for such an exchange or wire center.

(7) Transmission requirements. All voice-grade trunk facilities must [~~shall~~] conform to accepted transmission design factors and must [~~shall~~] be maintained to meet the following objectives when measured from line terminals of the originating central office to the line terminals of the terminating central office. A periodic report for central offices or exchanges as requested by the commission staff must [~~shall~~] be provided by the DCTU[~~, in order~~] to demonstrate compliance with the following objectives.

(A) Interoffice local exchange service calls. Excluding calls between central offices in the same building, 95% of the measurements on the network of a DCTU should have a C-message weighting between [~~from~~] two to ten decibels loss at 1000+20 hertz and no more than 30 decibels above reference noise level [~~("C" message weighting)~~].

(B) Direct distance dialing. Ninety-five percent of the transmission measurements should have a C-message weighting from three to 12 decibels loss at 1000+20 hertz and no more than 33 decibels above reference noise level [~~("C" message weighting)~~].

(C) Subscriber lines. All newly constructed and rebuilt subscriber lines must [~~shall~~] be designed for a transmission loss of no more than eight decibels from the serving central office to the customer premises network interface. All subscriber lines must [~~shall~~] be maintained so that transmission loss does not exceed ten decibels. Subscriber lines must [~~shall~~] in addition be constructed and maintained so that metallic noise does not exceed a C-message weighting of 30 decibels above reference noise level [~~("C" message weighting)~~] on 90% of the lines. Metallic noise must [~~shall~~] not exceed a C-message weighting

of 35 decibels above reference noise level [(~~"C" message weighting~~)] on any subscriber line.

(D) Private Branch Exchange (PBX) [~~PBX~~], key, and multiline trunk circuits. PBX, key, and multiline trunk circuits must [~~shall~~] be designed and maintained so that transmission loss at the subscriber station does not exceed eight decibels. If the PBX or other terminating equipment is customer-owned and, if transmission loss exceeds eight decibels, the DCTU's responsibility is [~~shall be~~] limited to providing a trunk circuit with no more than five decibels loss from the central office to the point of connection with the customer's [~~customer~~] facilities.

(E) Impulse Noise Limits. The requirements for impulse noise limits are [~~shall be~~] as follows:

(i) For switching offices, the noise level count must [~~shall~~] not exceed five pulses above the threshold in any continuous five minute period on 50% of test calls. The reference noise level threshold must [~~shall~~] be less than: 54 decibels above reference noise with C-message weighting (dBrnC) dBrnC for a Crossbar switch, 59 dBrnC for a step-by-step switch, and 47 dBrnC for a electronic or digital switch.

(ii) For trunks, the noise level count must [~~shall~~] not exceed five pulses above the threshold in any continuous five minute period on 50% of trunks in a group. The reference noise level threshold must [~~shall~~] be less than 54 dBrnC at a zero transmission level point (dBrnC0) dBrnCO for voice frequency trunks, and 62 dBrnC0 [~~dBrnCO~~] for digital trunks.

(iii) For loop facilities, the noise level count must [~~shall~~] not exceed 15 pulses above the threshold in any continuous 15 minute period on any loop. The reference noise level threshold must [~~shall~~] be less than 59 dBrnC when measured at the central office [(~~CO~~)], or referred to the central office [~~CO~~] through 1004 Hz 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.

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16 TAC §26.55

Statutory Authority

The proposed repeal is proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.55. Monitoring of Service.

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

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SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §§26.73, 26.79, 26.80, 26.85, 26.89

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.73. Annual Earnings Report.

(a) Each utility must [~~shall~~] file with the commission, on commission-prescribed forms available on the commission's website, an earnings report providing the information required to enable the commission to properly monitor public utilities within the state. A deregulated or transitioning company is not required to file an earnings report with the commission unless the company is receiving support from the Texas High Cost Universal Service Plan.

(1) Each utility must [shall] report information related to the most recent calendar year as specified in the instructions to the report.

(2) Each utility must [shall] file a copy [three copies] of the commission-prescribed earnings report with the commission [and shall electronically transmit one copy of the report] no later than May 15th of each year.

(3) (No change.)

(b) In addition to the utilities required to file under subsection (a) of this section, a telecommunications provider must [shall] file with the commission the provider's annual earnings report if the provider:

(1) - (3) (No change.)

(c) (No change.)

§26.79. Equal Opportunity Reports.

(a) (No change.)

(b) The term "minority group members," when used within this section, must [shall] include only members of the following groups:

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

(c) Each utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) must file a copy [shall file copies] of such completed forms [form] with the commission. If such a form submitted by a multi-jurisdictional utility does not indicate Texas-specific numbers, the utility must [shall] also prepare, and file with the commission, a form indicating Texas-specific numbers, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies. Each utility must [shall] also file with the commission copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the utility, and employment goals relating to them, if any.

(d) (No change.)

(e) Any utility filing with the commission any documents described in subsections (c) and (d) of this section must file a copy [shall file four copies] of such documents with the commission [commission's filing clerk] under the project number assigned [by the Public Utility Commission's Central Records Office] for that year's filings. Utilities may [shall] obtain the project number by contacting Central Records.

(f) A utility that files a report with local, state or federal governmental agencies and that is required by this section to file such a report with the commission, must file the report by December 30 of the same calendar year it is filed with the local, state or federal agencies.

(g) A utility that files a report in accordance with [pursuant to] §26.85(f)(1) of this title (relating to Report of Workforce Diversity and Other Business Practices) satisfies the requirements of subsection (c) of this section.

§26.80. Annual Report on Historically Underutilized Businesses.

(a) This section does not apply to a [deregulated] company that holds a certificate of operating authority, a company that holds a service provider certificate of operating authority, a registered interexchange carrier, or an exempt carrier that meets the criteria of [or to an exempt carrier under] Public Utility Regulatory Act (PURA) §52.154.

(b) In this section, "historically underutilized business" has the same meaning as defined by Title 10, Subtitle D, Chapter 2161 of the Texas Government Code [in Texas Government Code, §481.191, as it may be amended].

(c) Every utility must [shall] report its use of historically underutilized businesses (HUBs) to the commission on the form prescribed [a form approved] by the commission. A utility may submit the report physically or digitally in Microsoft Excel format [on paper, or on paper and on a diskette (in Lotus 1-2-3 (*utility name.wk*) or Microsoft Excel (*utility name.xl*) format)].

(1) Each small local exchange company and telephone cooperative utility must, [shall] on or before December 30 of each calendar year, submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the calendaryear the report is filed, using the form prescribed by the commission [Small Utilities HUB Report form].

(2) Every utility other than those specified in paragraph (1) of this subsection, must, [shall] on or before December 30 of each calendar year, submit to the commission a comprehensive annual report detailing its use of HUBs for the four prior quarters ending on September 30 of the calendar year the report is filed, using the form prescribed by the commission [Large Utilities HUB Report form].

(3) Each utility that reports [wishing to report] indirect HUB procurements or HUB procurements made by a contractor of the utility report such procurements separately on the form prescribed by the commission [may use the Supplemental HUB report form].

(4) Each utility must [shall] submit a text description of how it determined which of its vendors meets the criteria for [is] a HUB.

(5) Each utility that has more than 1,000 customers in a state other than Texas[,] or that purchases more than 10% of its goods and services from vendors not located in Texas[,] must [shall] separately report, by total and category, all utility purchases, all utility purchases from Texas vendors, and all utility purchases from Texas HUB vendors. A vendor is [considered] a Texas vendor if the vendor is physically located [its physical location is situated] within the boundaries of Texas.

(6) Each utility must [shall] also file any other information necessary to accurately assess the utility's [documents it believes appropriate to convey an accurate impression of its] use of HUBs.

(d) A utility is prohibited from utilizing information gathered to comply with this section [This section may not be used] to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(e) This section does not create a new private or public cause of action[, either public or private].

§26.85. Report of Workforce Diversity and Other Business Practices.

(a) Purpose. This section establishes annual reporting requirements for a telecommunications utility [telecommunications utilities] to report its progress and efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses from its five-year plan filed in accordance with [pursuant to] the Public Utility Regulatory Act (PURA) §52.256(b).

(b) Application. This section applies to a telecommunications utility [all telecommunications utilities], as defined in PURA §51.002(11), doing business in the State of Texas. This section does not apply to a [deregulated] company that holds a certificate of operating authority, a company that holds a service provider certificate of operating authority, a registered interexchange carrier, or an exempt carrier that meets the criteria of [or to an exempt carrier under] PURA §52.154.

(c) Terminology. In this section, "small business" and "historically underutilized business" have the meaning [~~meanings~~] assigned by the Texas Government Code §481.191.

(d) Annual progress report of workforce and supplier contracting diversity. An "Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity" must [~~shall~~] be filed annually with the commission. The report must [~~shall~~] be filed on or before December 30 of each year for the four prior quarters ending on September 30 of the year the report is filed. A telecommunication [~~telecommunications~~] utility that was not operational on January 1, 2000, and is required to file in accordance with [~~pursuant to~~] PURA §52.256(b), must [~~shall~~] file a plan in Project Number 21170 by December 30 of the year in which an annual report is due under this subsection.

(e) Filing requirements. Four copies of the Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity must [~~shall~~] be filed with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. A Telecommunications utility must [~~utilities shall~~] obtain the project number by contacting Central Records. A copy of the report must [~~shall~~] also be sent to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the African-American and Hispanic Caucus offices of the Texas Legislature.

(f) Contents of the report. The annual report filed with the commission in accordance with this [~~pursuant to this~~] section must [~~may~~] be filed using the Workforce and Supplier Contracting Diversity form or an alternative format prescribed by the commission and must contain [~~and shall contain at a minimum~~] the following information:

(1) An illustration of the diversity of the telecommunications utility's workforce in the State of Texas at the time of the report. If the telecommunications utility is required to file an Equal Opportunity Report in accordance with [~~pursuant to~~] §26.79 of this title (relating to Equal Opportunity Reports), a copy of that document may be attached to this report to satisfy the requirements of this paragraph.

(2) A description of the specific progress made under the workforce diversity plan filed in accordance with [~~pursuant to~~] PURA §52.256(b), including:

(A) - (B) (No change.)

(3) - (5) (No change.)

(g) - (i) (No change.)

§26.89. Nondominant Carriers' Obligations Regarding Information on Rates and Services.

(a) Filing of tariff by nondominant carrier. A nondominant carrier, including a nondominant carrier [~~All nondominant carriers, including those~~] holding a certificate of operating authority or a service provider certificate of operating authority[~~,~~] may, but is not required to file with the commission the information listed under paragraphs (1) - (3) of this subsection. If filed, such information must [~~are not required to file the information set forth in paragraphs (1) - (3) of this subsection. This information shall~~] be updated and kept current at all times.

(1) A description of each type of telecommunications [~~the type(s) of communications~~] service provided;

(2) For each service listed in response to paragraph (1) of this subsection, the locations in the state [~~(~~]by city[~~)~~] in which service is originated or [~~and/or~~] terminated. If a service is provided statewide, the carrier must specify either origination or termination [~~If service is provided statewide, either origination or termination, the carrier shall so state~~]; and

(3) A tariff, schedule, or list showing each rate for each service, product, or commodity offered by the nondominant carrier. A tariff must include each rule that relates to or affects a rate of the nondominant carrier, or a utility service, product, or commodity furnished by the nondominant carrier. [~~A tariff, schedule or list showing all recurring and nonrecurring rates for each service provided.~~]

(b) Annual tariff update. By June 30 of each calendar year, each nondominant carrier that, during the previous 12 months, has not filed changes to the information specified by [~~filed pursuant to~~] subsection (a) of this section must [~~shall~~] file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier that fails [~~failing~~] to file either this letter or the updates specified by subsection (a) of this section during the 12 month period ending on June 30 will no longer be [~~pursuant to subsection (a) of this section during the 12-month period ending June 30 may no longer be considered to be~~] registered with the commission.

(c) Filing of nondominant carrier tariff by affiliate or trade association. An affiliate of a nondominant carrier or trade association may file the information listed under subsection (a)(1) - (3) and (b) of this section on behalf of a nondominant carrier.

(1) For each filing, the nondominant carrier must authorize the affiliate of the nondominant carrier or trade association, via written affidavit filed with the commission, to file such information on its behalf.

(2) The authorization specified by paragraph (1) of this subsection may be included in the filing by the affiliate of the nondominant carrier or trade association.

(3) The filing by affiliate of the nondominant carrier or trade association must comply with the requirements of this section and other applicable law.

[~~(c) All nondominant carriers shall comply with the registration requirements in §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers).~~]

(d) Registration requirement for nondominant carriers. A nondominant carrier must comply with the registration requirements of §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers).

(e) [~~(d)~~]Exceptions. [~~A nondominant carrier:~~]

(1) may, but is not required to, maintain on file with the commission each tariff, price list, or customer service agreement that governs [~~tariffs, price lists, or customer service agreements governing~~] the terms of providing service;

(2) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate;

(3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the nondominant carrier [~~it~~]:

(A) files written notice of the withdrawal with the commission; and

(B) notifies each of its customers of the withdrawal and posts each [~~the~~] current and applicable tariff, price list, or customer service agreement [~~tariffs, price lists, or generic customer service agreements~~] on its Internet website.

(4) is not required to obtain advance approval for a filing with the commission or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the [~~service's~~] rates, terms, or conditions of such a service;

(5) is not subject to any rule or regulatory practice that is not imposed on:

(A) a holder of a certificate of convenience and necessity serving the same area; or

(B) a deregulated company that:

(i) has 500,000 or more access lines in service at the time it becomes a deregulated company; or

(ii) serves an area also served by the nondominant telecommunications utility.

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 October 6, 2023.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 936-7322

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16 TAC §26.78, §26.87

Statutory Authority

The proposed repeals are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.78. State Agency Utility Account Information.
§26.87. Infrastructure Reports.

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

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SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §26.111

Statutory Authority

The proposed amendments are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

(a) Scope and purpose. This section applies to the certification of a person or entity [~~persons and entities~~] to provide local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.

(b) Definitions.

(1) Affiliate--An affiliate of, or a person affiliated with, a specified person, is a person that directly[~~,~~] or indirectly through one or more intermediaries, controls, is controlled by, or is under [~~the~~] common control with[~~,~~] the person specified.

(2) Annual Report--A report that includes, at a minimum, [~~but is not limited to~~] the certificate holder's primary business telephone number, toll-free customer service number, email address, authorized company contact, regulatory contact, complaint contact, primary and secondary emergency contacts [~~(primary and secondary)~~] and operation and policy migration contacts [~~(operation and policy)~~] which is submitted to the commission every calendar year [~~on an annual basis~~]. Each provided contact must [~~shall~~] include the contact's company title.

(3) Application--An application for a new COA or SPCOA certificate or an amendment to an existing COA or SPCOA certificate.

(4) [~~(3)~~] Control--The term control,[~~(~~]including the terms controlling, controlled by and under common control with,[~~)~~] means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(5) [~~(4)~~] Executive officer--When used in [~~with~~] reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.

(6) [~~(5)~~] Facilities-based certification--Certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.

(7) [~~(6)~~] Permanent employee--An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.

(8) [~~(7)~~] Person--An[~~Includes an~~] individual and any business entity, including [~~and without limitation,~~] a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.

(9) [~~(8)~~] Principal--A person or member of a group of persons that controls the person in question.

(10) [~~(9)~~] Shareholder--As context indicates and the applicable business entity requires, [~~The term shareholder means~~] the legal or beneficial owner of any of the equity in a [~~any~~] business entity, including [~~without limitation and as the context and applicable business entity requires~~], stockholders of corporations, members of limited liability companies and partners of partnerships.

(c) Ineligibility for certification.

(1) (No change.)

(2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity, as required by PURA §54.102 [~~(relating to Application for Certificate)~~].

(3) An applicant is ineligible for an [~~a~~] SPCOA if the applicant, and affiliates of the applicant, in the aggregate have [~~together with its affiliates, has~~] more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.

(4) (No change.)

(d) Application for COA or SPCOA certification. A person is prohibited from providing local exchange telephone service, basic local telecommunications service, or switched access service unless the person obtains a certificate of convenience and necessity in accordance with §26.101 of this title (relating to Certificate of Convenience and Necessity Criteria), or a certificate of operating authority or a service provider certificate of operating authority in accordance with this section.

(1) An applicant [~~A person applying~~] for COA or SPCOA certification must demonstrate the [~~its~~] capability of complying with this section. An applicant who obtains [~~A person who operates as~~] a COA or SPCOA, or who receives a certificate under this section must [~~shall~~] maintain compliance with this section.

(2) An application must [~~for certification shall~~] be made on the form prescribed [~~a form approved~~] by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.

(3) Except where good cause exists to extend the time for review, the presiding officer must [~~shall~~] issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice [~~to the applicant's right to reapply~~].

(4) While an application [~~for a certificate or certification amendment~~] is pending, an applicant must [~~shall~~] inform the commission of any material change in the information provided in the application within five working days of any such change.

(5) Except where good cause exists to extend the time for review, the presiding officer [~~commission~~] will enter an order approving, rejecting, or approving with modifications, an [~~a new or amendment~~] application within 60 days of the filing of the application.

(6) While an application [~~for COA or SPCOA certification or certification amendment~~] is pending, an applicant must respond to any [~~a~~] request for information from commission staff within ten days after receipt of the request by the applicant.

(e) Standards for granting certification to COA and SPCOA applicants. The commission may grant a COA or SPCOA to an applicant that demonstrates eligibility in accordance with [~~that it is eligible under~~] subsection (c) of this section, has the technical and financial qualifications required by [~~specified in~~] this section, has the ability to meet the commission's quality of service requirements to the extent required by PURA and this title, and the applicant [~~it~~] and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission will [~~shall~~] consider whether the applicant has satisfactorily provided [~~all of~~] the information required under this section in the application [~~for a COA or SPCOA~~].

(f) Financial requirements. To obtain COA or SPCOA certification, an applicant must demonstrate [~~the~~] shareholders' equity as required by this subsection.

(1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than $100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than $25,000.

(2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder must [~~shall~~] not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the amount required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes[~~, but is not limited to,~~] dividend distributions, redemptions and repurchases of equity securities, [~~or~~] loans, or loan repayments to shareholders or affiliates.

(3) Shareholders' equity must [~~shall~~] be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet must [~~shall~~] include the independent auditor's report. The unaudited balance sheet must [~~shall~~] include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all material respects, of the information provided in the unaudited balance sheet.

(g) Technical and managerial requirements. To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.

(1) (No change.)

(2) To support technical qualification, an applicant [~~applicants~~] must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.

(3) An applicant must [~~shall~~] include the following in its initial application for COA or SPCOA certification:

(A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) The complaint history, disciplinary record, and compliance record must [~~shall~~] include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information includes [~~shall include~~] the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the complaint history, disciplinary record, and compliance record of the applicant [~~applicant's~~] and the principals and affiliates of the applicant [~~applicant's principals' and affiliates' complaint history, disciplinary record, and compliance record~~].

(iii) (No change.)

(B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 months immediately preceding the application;

(C) A statement indicating whether the applicant or the principals of the applicant [~~applicant's principals~~] are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and

(D) Disclosure of whether the applicant or principals of the applicant [~~applicant's principals~~] have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(4) Quality of service and customer protection.

(A) The applicant must affirm that it will meet the commission's applicable quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.

(B) The applicant must affirm that it is aware of and will comply with the applicable customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).

(5) Limited scope of COAs and SPCOAs. If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:

(A) Limit the geographic scope of the COA.

(B) Limit the scope of an SPCOA's service to facilities-based, resale-only, data-only, geographic scope, or some combination of the preceding list.

(h) Certificate Name. All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission will [~~shall~~] grant the COA or SPCOA certificate in only one name.

(1) The applicant must provide the following information from its registration with the Texas Secretary of State or registration with another state or county, as applicable:

(A) - (B) (No change.)

(C) Certification or file number [~~Certification/file number~~]; and

(D) (No change.)

(2) Business names must [~~shall~~] not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a certificated telecommunications provider (CTU) [~~Certificated Telecommunications Provider (CTP)~~].

(3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer must [~~shall~~] notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name [~~in order~~] to be certificated.

(i) Amendment of a COA or SPCOA Certificate.

(1) A person or entity granted a COA or SPCOA in accordance with this section must [~~by the commission shall~~] file an application to amend a [~~the~~] COA or an SPCOA certificate in a commission approved format [~~in order~~] to:

(A) Change the corporate name or assumed name of the certificate holder.

(i) Name change amendments may be granted via [~~on an~~] administrative approval [~~basis,~~] if the holder is in compliance with applicable commission rules and no hearing is requested.

(ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it must [~~shall~~] notify the applicant that the requested name is prohibited for use [~~may not be used~~] by the applicant. An [~~The~~] applicant is [~~will be~~] required to provide at least one suitable name or the amendment will [~~may~~] be denied by the presiding officer.

(B) Change the geographic scope of a [the] COA or an [and] SPCOA.

(C) (No change.)

(D) Change of type of provider [Type of Provider] from resale-only, facilities-based only or data-only [restrictions] on a SPCOA certificate.

(E) Discontinuation of service and relinquishment of certificate, or discontinuation of an optional service by a deregulated company holding a certificate of operating authority or an exempt carrier [optional services].

(i) A deregulated company holding a certificate of operating authority or an exempt carrier must [Exempt Carrier shall] provide the information in subclauses (I) - (III) of this clause for the discontinuation of [its] service and relinquishment of its certificate, or discontinuation of an optional service. The requirements for the discontinuation of optional services do not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier [Exempt Carrier].

(I) - (III) (No change.)

(ii) A carrier that does not meet the criteria of clause (i) of this subparagraph must comply with subsections (m) and (n) of this section to discontinue service, relinquish a certificate, or discontinue an optional service.

[(ii) For all other carriers, such an application is subject to subsections (m) and (n) of this section].

(2) If the application to amend the COA or SPCOA certificate is for a corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in management personnel, or changes to the underlying financial qualifications of the certificate holder that were previously approved by the commission [as previously approved]. If [the] commission staff cannot determine [make a determination of] continued compliance with [based on] the applicable substantive rules based on [from] the information provided on the abbreviated amendment application, then a full amendment application must [shall] be filed by the applicant.

(3) When a certificate holder acquires or merges with another certificate holder, [(]other than a CCN holder[)], the acquiring entity must file a notice within 30 calendar days of the closing of the acquisition or merger in a project established by staff. Staff will [shall] have ten working [10 business] days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within ten working [10 business] days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission must [shall] include but not be limited to:

(A) - (B) (No change.)

(C) An affidavit from each certificated entity attesting to compliance with [of] COA or SPCOA certification requirements, as applicable.

(4) No later than five working days after filing an [amendment] application or amendment [notice] with the commission, the applicant must provide a copy of the [amendment] application or amendment to the Commission on State Emergency Communications and, in accordance with paragraph (3) of this subsection, [or] notice to all affected 9-1-1 administrative entities[and the Commission on State Emergency Communications]. The applicant may provide the amendment application and notice via electronic mail.

(5) (No change.)

(j) Non-use of certificates. Applicants must [shall] use their COA or SPCOA certificates expeditiously.

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

(k) Renewal of certificates. Each COA and SPCOA holder must [is required to] file with the commission a renewal of its certification once every ten years. The commission may, prior to the ten year renewal requirement, require each COA and SPCOA holder to file[, the following year,] a renewal of its certification.

(1) The certification renewal must include [will consist of]:

(A) the certificate holder's name;

(B) the certificate holder's address; and

(C) the most recent version of the annual report the commission requires the certificate holder to submit to comply with subsection (l)(1) of this section, to the extent required by PURA and this title.

(2) A [The] certification renewal must [shall] be filed on or before June 1, 2014, and every ten years thereafter.

(3) COA or SPCOA holders will have an automatic extension of the filing deadline until October 1 [1st] of each reporting year to comply with paragraph (1) of this subsection. Commission [The commission] staff will send three notices to each COA and SPCOA holder that has not submitted its certification renewal by June 1 [1st]. The first notice will be sent on or before July 1 [1st], the second notice will be sent on or before August 1 [1st], and the third notice will be sent on or before September 1 [1st]. Failure to send any of these notices by commission staff [the commission] or failure to receive any of these notices by a COA or SPCOA holder must [shall] not affect the requirement to renew a certificate under this section by October 1 [1st] of the renewal period.

(4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before October 1 [1st] of each reporting year will automatically render the certificate of the COA or SPCOA invalid and therefore no longer in compliance with PURA §54.001.

[(5) COA or SPCOA holders that are found to be invalid are no longer in compliance with PURA §54.001.]

(5) [(6)] COA or SPCOA holders that continue to provide regulated telecommunications services under an invalid COA or SPCOA may be subject to administrative penalties and other enforcement actions.

(6) [(7)] A certificate holder whose COA or SPCOA certificate is invalid [no longer valid] may obtain a new certificate only by complying with the requirements prescribed for obtaining an original certificate.

(l) Reporting Requirements.

(1) Each COA or SPCOA holder must provide and maintain accurate contact information via [using] the annual report to the extent required by PURA and this title. At a minimum, the COA or SPCOA holder must [shall] maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address. The COA or SPCOA holder must

[shall] submit the required information in the manner established by the commission.

(2) (No change.)

(3) When terminating or disconnecting service to another CTU, a COA or an SPCOA holder must file a copy of the termination or disconnection notice with the commission not later than two working days after the notice is sent to the CTU. The service termination or disconnection notice must be filed in a project [CTP, COA and SPCOA holders shall file a copy of the termination/disconnection notice with the commission not later than two business days after the notice is sent to the CTP. The service termination/disconnection notice shall be filed under a project number] established for that purpose.

(4) COA and SPCOA holders must [shall] file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than five working days [the fifth business day] after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:

(A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy such as [(e.g.,] Chapter 7, 11, or 13, and whether the bankruptcy [it] is voluntary or involuntary [not)], the bankruptcy case number; and

(B) The number of affected customers, the type of service [being] provided to the affected customers, and the name of each provider [the provider(s)] of last resort associated with the affected customers.

(5) Reports.

(A) A certificate holder must [shall] file all reports to the extent required by PURA and this title, including [but not limited to:] §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

(B) An amendment for certification must include a copy of the applicant's most recent tariff that has been approved by the commission in accordance with §26.207 of this title (relating to Form and Filing of Tariffs), §26.208 of this title (relating to General Tariff Requirements), and other commission rules as applicable or specified by those provisions. A tariff that has not been approved but is currently under review by the commission may be used to satisfy this requirement.

(i) A control number for the project associated with the applicant's most recently approved tariff or tariff that is currently under review by the commission may be provided as an alternative to providing a copy.

(ii) An entity subject to §26.89 of this title (Relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services) may, but is not required to, comply with this paragraph.

(m) Standards for cessation of operations [discontinuation of service] and relinquishment of certification. A COA or SPCOA holder may cease operations in the state only if authorized by the commission in accordance with this subsection [commission authorization to cease operations has been obtained]. A COA or SPCOA holder that ceases operations and relinquishes its certification must [shall] comply with PURA §54.253 [(relating to Discontinuation of Service by Certain Certificate Holders)]. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier [Exempt Carrier].

(1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications (CSEC), each affected 9-1-1 administrative entity, the Office of Public Utility Counsel (OPUC), each wholesale provider of telecommunications facilities or services from which the certificate holder purchased facilities or services, the Texas Comptroller of Public Accounts, the Texas Secretary of State and the administrator of the Texas Universal Service Fund[, and the Office of Public Utility Counsel (OPC)].

(A) The notification letter must [shall] clearly state the intent of the certificate holder to cease providing service.

(B) The notification letter must provide each customer [shall give customers] a minimum of 61 days of notice of termination of service, and the date of the termination of service must [shall] be clearly stated in the notification letter.

(C) The notification letter must inform each customer [shall inform customers] of the carrier of last resort or make other arrangements to provide service as approved by each customer [the customers].

(2) A COA or SPCOA holder that intends to cease operations must [shall] file with the commission an application to cease operations and relinquish its certificate, and provide a copy of the application to CSEC. The application must [which shall] provide the following information:

(A) Name, address, and phone number of the certificate holder;

(B) (No change.)

(C) The commission control [docket] number in which the COA or SPCOA was granted;

(D) A description of the areas in which service will be discontinued and whether basic local telecommunications service is available from other certificate holders in these areas;

(E) - (F) (No change.)

(3) All customer deposits and credits must [shall] be returned within 60 days of notification to cease operations and relinquish certification.

(4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations must [shall] be paid by the certificate holder relinquishing the certificate.

(5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or other applicable law.

(n) Standards for discontinuing optional services. A COA or SPCOA holder discontinuing an optional service must [services shall] comply with PURA §54.253. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier [Exempt Carrier].

(1) The COA or SPCOA holder must [shall] file an application with the commission to discontinue optional services, which must [shall] provide the following information:

(A) Name, address, and phone number of the certificate holder;

(B) (No change.)

(C) The commission control [docket] number in which the COA or SPCOA was granted;

(D) - (F) (No change.)

(2) Notification to each customer receiving optional services is required, and must comply with the following requirements [consisting of the following information]:

(A) The notification letter must [shall] clearly state the intent of the certificate holder to cease an optional service and a copy of the letter must [shall] be provided to the commission and OPUC [OPC].

(B) The notification letter must [shall] give customers a minimum of 61 days of notice of the discontinuation of optional services.

(3) All customer deposits and credits associated [affiliated] with a [the] discontinued optional service must [services shall] be returned within 30 days of the discontinuation.

(4) The certificate holder must [shall] maintain the optional services until it has obtained commission authorization to cease the optional services.

(5) If the amendment application requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or an SPCOA.

[(5) Commission approval of the discontinuation of an optional service does not relieve the certificate holder of obligations to its customers under contract or law.]

(o) Revocation or suspension. A certificate granted in accordance with [pursuant to] this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the commission determines that holder of the certificate does not meet the requirements under this section to the extent required by PURA and this title [to operate as a COA or SPCOA]. A suspension of a COA or an SPCOA certificate requires the cessation of all [COA or SPCOA] activities associated with obtaining new customers in the state of Texas for a product or service that require a COA or an SPCOA. A revocation of a COA or SPCOA certificate requires the cessation of [all COA or SPCOA] activities in the state of Texas that require a COA or an SPCOA in accordance with [, pursuant to] commission order. The commission may also impose an administrative penalty on a person for a violation of PURA or commission substantive rules. Commission Staff [violations of law within its jurisdiction. The commission staff] or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or an SPCOA [SPCOA's] certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:

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

(3) Failure [Bankruptcy, insolvency, failure] to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;

(4) - (16) (No change.)

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

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Adriana Gonzales
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Public Utility Commission of Texas
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SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §§26.123, 26.127, 26.128, 26.130

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.123. Caller Identification Services.

(a) (No change.)

(b) Caller identification services ("caller ID").

(1) Application. This subsection does not [shall not be construed to] apply to:

(A) - (E) (No change.)

(2) Caller ID blocking.

(A) Per-call blocking. All providers of caller ID must [shall] provide per-call blocking at no charge to each telephone subscriber in the specific area in which caller ID is offered.

(B) Per-line blocking.

(i) (No change.)

(ii) All providers of caller ID, except [with the exception of] commercial mobile radio service providers, must [shall] provide per-line blocking at no charge to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking. Commercial mobile radio service providers must [shall] provide per-line blocking to a particular customer in the specific area in which caller ID is offered if the commis-

sion receives from the customer written certification that the customer has a compelling need for per-line blocking.

(I) When a customer requests per-line blocking through the commission, the provider of caller ID must [~~shall~~] notify the customer by mail of the effective date that per-line blocking will be instituted.

(II) - (III) (No change.)

(iii) (No change.)

(3) Blocking failures and provider responsibilities. When a provider of caller ID service to a customer originating a call becomes aware of a failure to block the delivery of calling party information from a line equipped with per-line blocking or per-call blocking, [~~(~~]and the caller had attempted to block the call[~~)~~], it must [~~shall~~] report such failure to the Caller ID Consumer Education Panel, the commission, and the affected customer if that customer did not report the failure. The provider must [~~shall~~] report such failure to the commission by contacting the commission liaison to the panel. A reasonable effort must [~~shall~~] be made to notify the affected customer within 24 hours after the provider becomes aware of such failure.

(4) Public policy statement. A provider of caller ID services must [~~shall~~] inform all of its telephone subscribers of how the subscriber can unblock a line equipped with per-line blocking.

(5) Filing of caller ID materials. A provider of caller ID services must file all caller ID materials in Project 14505.

[~~(5) Caller ID Consumer Education Panel. The Caller ID Consumer Education Panel shall consist of one person appointed by the Governor, one person appointed by the chair of the commission, after consultation with the Texas Council on Family Violence, and one person appointed by the Public Counsel of the Office of Public Utility Counsel. A commission staff member shall serve as liaison between the panel and the commission.~~]

[~~(A) Role of the Caller ID Consumer Education Panel. The panel shall meet at least quarterly to:~~]

~~(i)~~ ~~review the level of effort and effectiveness of consumer education materials;~~]

~~(ii)~~ ~~investigate whether educational materials are distributed in as effective a manner as marketing materials; and~~]

~~(iii)~~ ~~develop recommendations for the commission related to the safe use of caller ID services, promotion and preservation of privacy for both the called and calling customers, and efforts to decrease the likelihood of harm resulting from caller ID services.~~]

[~~(B) Reporting. The panel shall file an annual report with the commission detailing its findings and recommendations pursuant to subparagraph (A) of this paragraph. The commission may implement the recommendations of the panel, as well as those of any interested party, to the extent consistent with the public interest.~~]

[~~(C) Evaluation of the panel. The commission shall evaluate the panel annually. The evaluation shall be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, members of the panel, and any other commission employee who works either directly or indirectly with the panel shall not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:~~]

~~(i)~~ ~~the panel's work;~~]

~~(ii)~~ ~~the panel's usefulness; and~~]

~~(iii)~~ ~~if the panel is reimbursed for its costs by the state, the costs related to the panel's existence, including the cost of agency staff time spent in support of the panel's activities.~~]

[~~(D) Duration of the panel. The panel shall disband on September 1, 1999, unless reauthorized by statute.~~]

[~~(E) Filing of caller ID materials. A provider of caller ID services shall provide all existing caller ID materials used as well as all future materials (when they become available) as follows:~~]

~~(i)~~ ~~One copy of all such material shall be mailed to each member of the panel.~~]

~~(ii)~~ ~~Two copies of all such material shall be filed in Central Records under Project Number 14505.~~]

(c) (No change.)

§26.127. Abbreviated Dialing Codes.

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

(d) 211 service.

(1) Application [~~Scope and purpose~~]. This subsection applies to the assignment, provision, and termination of 211 service. [~~Through this subsection, the commission intends to enhance the ability of the public to access services that provide free information and referral to community resources in situations that are not immediately life-endangering, but still represent a serious but less urgent threat to basic human needs and individuals' health or welfare.~~]

(2) Definitions. The following words and terms, when used in this subsection, [~~shall~~] have the following meanings unless the context indicates otherwise:

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

(D) Information and referral service -- A service whose primary purpose is to maintain information about human service resources in the community and to link people who need assistance with appropriate service providers or [~~and/or~~] to supply descriptive information about the agencies or organizations which offer services.

(E) - (G) (No change.)

(H) 211 service -- A telecommunications service provided by a CTU to a designated area information center through which the end user of a public phone system can [~~has the ability to~~] access services providing free information and referrals regarding community service organizations.

(3) (No change.)

(4) Use of the 211 system.

(A) (No change.)

(B) The 211 network must [~~shall~~] not be used for commercial advertisements.

(5) Privacy policy. To preserve the privacy of callers who wish to use the 211 service anonymously, an AIC which uses Automatic Number Identification (ANI), Automatic Location Identification (ALI) service or other equivalent non-blockable information-gathering features for the provision of 211 service must establish an in-house procedure that is consistent with the AIRS national standards and the standards set forth by HHSC that allows access to the 211 service while honoring the caller's call and line-blocking preferences, or [~~and/or~~] caller anonymity.

(6) (No change.)

(e) 311 service.

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

(3) A CTU [~~certificated telecommunications utility~~] must have a commission-approved application to provide 311 service.

(4) Requirements of application by CTU [~~certificated telecommunications utility~~].

(A) Applications, tariffs, and notices filed under this subsection must [~~shall~~] be written in plain language, must [~~shall~~] contain sufficient detail to give customers, governmental entities, and other affected parties adequate notice of the filing, and must [~~shall~~] conform to the requirements of §26.209 of this title (relating to New and Experimental Services) or §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), whichever is applicable.

(B) A CTU must [~~shall~~] provide a copy of the text of the proposed notice to notify the public of the request for 311 service with the filing of an application for regulatory approval of the CTU's [~~certificated telecommunications utility's~~] provision of 311 service.

(C) No application for 311 service allowing the governmental entity to charge its citizens a fee on a per-call or per-use basis for using the 311 system must [~~shall~~] be approved.

(D) All applications for 311 service must [~~shall~~] include the governmental entity's plan to educate its populace about the use of 311 at the inception of 311 service and its plan to educate its populace at the termination of the governmental entity's provision of 311 service.

(5) Notice. The presiding officer will [~~shall~~] determine the appropriate level of notice to be provided and may require additional notice to the public.

(A) The CTU must [~~certificated telecommunications utility shall~~] file with the commission a copy of the text of the proposed notice to notify the public of the request for 311 service and the filing of an application for regulatory approval of the CTU's [~~certificated telecommunications utility's~~] provision of 311 service. This copy of the proposed notice must [~~shall~~] be filed with the commission not later than ten days after the CTU [~~certificated telecommunications utility~~] receives the 311 service request; and

(B) The proposed notice must [~~shall~~] include the identity of the governmental entity, the geographic area to be affected if the new 311 service is approved, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, 30 days after notice is published in the *Texas Register*). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer [~~Public Utility Commission's Customer~~] Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989 [~~with text telephones (TTY) may contact the commission at (512) 936-7136~~]."

(6) A CTU is authorized to [~~certificated telecommunications utility may~~] provide 311 service only to governmental entities.

(7) A 311 service request must initiate [~~shall start~~] the six-month deadline to "take any necessary steps to complete 311 calls" as required by the Federal Communications Commission's Order In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, 12 F.C.C.R. 5572 (February 19, 1997).

(8) 311 calls must [~~shall~~] not be completed over the 911 network or use the 911 database.

(9) The 311 network must [~~shall~~] not be used for commercial advertisements.

(10) To preserve the privacy of callers who wish to use the governmental entity's non-emergency service anonymously, a CTU [~~certificated telecommunications utility~~] which uses Automatic Number Identification (ANI) service, Automatic Location Identification (ALI) service or other equivalent non-blockable information-gathering features for the provision of 311 service must establish a non-abbreviated phone number that will access the same non-emergency police and governmental services as the 311 service while honoring callers' call- and line-blocking preference. When publicizing the availability of the 311 service, the governmental entity must inform the public if its 311 service has caller or number identification features, and must publicize the availability of the non-abbreviated phone number that offers the same service with caller anonymity. When a CTU uses a Caller Identification service [~~certificated telecommunications utility uses Caller Identification (Caller ID) services~~] or other equivalent features to provide 311 service, relevant provisions of the commission's substantive rules and of the Public Utility Regulatory Act apply.

(11) The commission has [~~shall have~~] the authority to limit the use of 311 abbreviated dialing codes to applications that are found to be in the public interest.

(12) The commission has [~~shall have~~] the authority to decide which governmental entity must [~~shall~~] provide 311 service when there are conflicting requests for concurrent 311 service for the same geographic area, to the extent that negotiations between or among the affected governmental entities fail. The commission will [~~shall~~] consider the following factors in determining conflicting requests for 311 service:

(A) the nature of the service [~~service(s)~~], including [~~but not limited to~~]the proposed public education portion[~~,~~] to be provided by the governmental entity; and

(B) the potential magnitude of use of the requested 311 service, such as [~~(i.e.,~~] the number of residents served by the governmental entity and their potential frequency of access to the governmental agencies wishing to use the 311 service[~~)~~].

(13) When termination of 311 service is desired, the CTU must [~~certificated telecommunications utility shall~~] file a notice of termination with the commission that contains:

(A) - (B) (No change.)

(14) The commission, after receiving the CTU's [~~certificated telecommunications utility's~~] proposed notice of termination of 311 service and approving the proposed notice through an administrative review, will cause the approved notice to be published in the *Texas Register.*

(f) 811 service.

(1) (No change.)

(2) Authority. Authority for One Call Excavation Notification resides with the Texas Underground Facility Notification Corporation (TUFNG), [~~(~~]doing business as One Call Board of Texas and in accordance with [~~referred to herein as TUFNG) pursuant to~~] Chapter 251 of the Texas Utilities Code.

(3) (No change.)

(4) Limitations of liability. Telecommunications providers whose 811 service is regulated by the commission may limit their liability for the provision of 811 service through the inclusion of liability limitations in their tariffs. Liability for gross negligence or willful misconduct cannot [~~shall not~~] be limited.

§26.128. Telephone Directories.

(a) Application. The provisions of this section applies [~~shall apply~~] to all telephone directory providers to the extent outlined by [~~in~~] this section. This section does not apply to a deregulated company holding a certificate of operating authority, or to an exempt carrier that meets the criteria of [~~under~~] Public Utility Regulatory Act (PURA) §52.154. For purposes of this section, the term "a private for-profit publisher" means [~~shall mean~~] a publisher, other than a telecommunications utility or its affiliate, of a telephone directory that contains residential listings and [~~that~~] is distributed to the public at minimal or no cost.

(b) Telephone directory requirements for all providers. A [~~Any~~] private, for-profit publisher, and a [~~any~~] telecommunications utility or affiliate of a telecommunications utility [~~its affiliate~~] that publishes a residential telephone directory must [~~shall~~] comply with the following requirements:

(1) A telephone directory must [~~shall~~] contain a listing of each toll-free and local telephone number for each of the following:

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

(2) The directory must [~~shall~~] include the information required in paragraph (1) of this subsection from the most current edition of the Capitol Complex Telephone System Directory [~~State of Texas Telephone Directory~~] prepared and issued by the Department of Information Resources [~~Services~~] and those modifications to the Capitol Complex Telephone System Directory [~~State of Texas Telephone Directory~~] that are available upon request from the Department of Information Resources.

(3) All publishers must [~~shall~~] contact the Department of Information Resources in writing to determine which issue of the Capitol Complex Telephone System Directory [~~State of Texas Telephone Directory~~] is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The Department of Information Resources will [~~shall~~] respond within 30 days of receiving the request.

(4) The listings required by paragraph (1) of this subsection:

(A) may be located at the front of the directory or, if not located at the front of the directory, must [~~shall~~] be referenced clearly on the inside page of the cover or on the first page following the cover before the main listing of residential and business telephone numbers;

(B) must [~~shall~~] be labeled "GOVERNMENT OFFICES-STATE" in 24 point type;

(C) must [~~shall~~] be bordered or shaded in such a way, [~~{~~]on the three unbound sides with a border,[~~}~~] that will distinguish the state listings from the other listings;

(D) must [~~shall~~] be included in the directory at no cost to the agency or official;

(E) must comply [~~shall be in compliance~~] with the categorization developed by the Records Management Interagency Coordinating Council. The categorization [~~shall~~] be available upon request from the Department of Information Resources. The listings must [~~shall~~] be arranged in the following manner [~~two ways~~]:

(i) alphabetically by subject matter of state agencies; or [~~and~~]

(ii) alphabetically by agency and public service name;

(F) must [~~shall~~] include the telephone number for state of Texas government information: (512) 463-4630.

(c) Private for-profit publisher. Any private for-profit publisher that publishes a residential telephone directory must [~~shall~~] include in the directory a prominently displayed toll-free number and Internet mail address, established by the commission, through which a person may order a form to request to be placed on the Texas no-call list in order to avoid unwanted telemarketing calls.

(d) Additional requirement for telecommunications utilities or affiliates that publish telephone directories.

(1) A telecommunications utility or an affiliate of that utility that publishes a business telephone directory that is distributed to the public must [~~shall~~] publish a listing of each toll-free and local telephone number of each elected official who represents all or part of the geographical area for which the directory contains listings.

(2) A telecommunications utility or an affiliate of that utility that publishes and causes to be distributed to the public a residential or business telephone directory must [~~shall~~] prominently list in the directory the following information: "The Specialized Telecommunications Assistance Program (STAP) provides financial assistance to help Texas residents with disabilities purchase basic specialized equipment or services needed to access the telephone network. For more information, contact the Texas Department of Health and Human Services at (512) 438-4880. Hearing and speech-impaired individuals may contact the Texas Department of Health and Human Services through Relay Texas at 1-800-735-2989 or https://www.hhs.texas.gov/services/disability/deaf-hard-hearing/stap-services [~~Assistive and Rehabilitative Services, the Office for Deaf and Hard of Hearing Services at (512) 407-3250 (Voice) or (512) 407-3251 (TTY), www.dars.state.tx.us/dhhs/~~]. This program is open to all individuals who are residents of Texas and have a disability."

(e) Requirements for telecommunications utilities found to be dominant. This subsection applies to a [~~any~~] telecommunications utility found to be dominant as to local exchange telephone service or affiliate of a telecommunications utility [~~its affiliate~~] that publishes a directory on behalf of the [~~such~~] telecommunications utility.

(1) Annual publication. Telephone directories must be published every calendar year [~~shall be published annually~~]. Except for customers who request that information be unlisted, directories must [~~shall~~] list the names, addresses, and telephone numbers of all customers receiving local phone service, including customers of other certificated telecommunications utilities (CTUs) in the geographic area covered by that directory. Numbers of pay telephones need not be listed.

(2) Distribution. Upon issuance, a copy of each directory must [~~shall~~] be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line must [~~shall~~] be provided at no charge. Notwithstanding any other law, a telecommunications provider or telecommunications utility may publish on its website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings. A provider or utility that publishes a telephone directory or directory listing electronically must [~~shall~~] provide a print or digital copy of the directory or listing to a customer on request. If a provider or utility chooses to publish its telephone directory or directory listings electronically, it must [~~shall~~] notify its customers that the first print or digital copy requested by a customer in each calendar year will be provided at no charge to the customer. A printed or digital copy of each directory must [~~shall~~] be furnished to the commission. A telecommunications utility must [~~shall~~] also distribute copies of di-

rectories in accordance with [~~pursuant to~~] any agreement reached with another CTU.

(3) - (4) (No change.)

[~~(5) Sample long distance rates. It shall also contain a section setting out sample long distance rates within the long distance service area, if any, on the network of the telecommunications utility for which the directory is issued, applicable at the time the directory is compiled for publication, with a clear statement that the published rates are effective as of the date of compilation.~~]

(5) [~~(6)~~] Customer addresses. At the customer's election [~~option~~] the directory must [~~shall~~] list either the customer's street address, a post office box number, or no address. A charge may [~~can~~] be imposed upon those customers who desire more than one address listing.

(f) References to other sections relating to directory notification. The requirements of this section are in addition to the requirements of the provisions referenced in paragraphs (1)-(4) of this subsection, and other law [~~or any other applicable section in this title. The applicability of each of the sections referenced in paragraphs (1)-(4) of this subsection is unaffected by the inclusion of the reference in this subsection.~~]

(1) - (4) (No change.)

(g) Additional requirements. The following requirements apply to telecommunications utilities found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) Directory assistance. Each telecommunications utility must [~~shall~~] list each customer with its directory assistance within 72 hours after service connection, [~~(~~]except those numbers excluded from listing in subsection (e)(1) of this section, to facilitate the provision of the requested telephone numbers based on customer names and addresses by [~~)~~ ~~in order that~~] the directory assistance operators[~~can provide the requested telephone numbers based on customer names and addresses~~].

(2) Non-assigned numbers. All non-assigned telephone numbers in central offices serving more than 300 customer access lines must [~~shall~~] be intercepted unless otherwise approved by the commission.

(3) Disconnected numbers. Disconnected residence telephone numbers must [~~shall~~] not be reassigned for 30 days and disconnected business numbers must [~~shall~~] not be reassigned, unless requested by the customer, for 30 days or the life of the directory, whichever is longer, unless no other numbers are available to provide service to new customers.

(4) Incorrect listings. If a customer's number is incorrectly listed in the directory and if the incorrect number is a working number and if the customer to whom the incorrect number is assigned requests, the number of the customer to whom the incorrect number is assigned must [~~shall~~] be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number must [~~shall~~] be changed to the listed number at no charge if requested.

(5) Changing telephone numbers to a group of customers. When additions or changes in plant or changes to any other CTU's operations necessitate changing telephone numbers to a group of customers, at least 30 days' written notice must [~~shall~~] be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

§26.130. Selection of Telecommunications Utilities.

(a) Purpose and Application.

(1) Purpose. The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.

(2) Application. This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) Subpart K (entitled "Changing Long Distance Service"), applies to a "telecommunications utility," [~~all "telecommunications utilities,"~~] as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility. Requirements related to proper authorization for a billing charge by a telecommunication utility are which is addressed by [~~which is addressed in~~] §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(b) Definitions. The following words and terms when used in this section [~~shall~~] have the following meanings unless the context indicates otherwise:

(1) (No change).

(2) Customer-Any person, including the person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to request a change in local service or [~~and/or~~] telecommunications utilities.

(3) - (5) (No change.)

(c) Changes in preferred telecommunications utility.

(1) Changes by a telecommunications utility. A telecommunications utility is prohibited from submitting or executing [~~No telecommunications utility shall submit or execute~~] a change on the behalf of a customer in the customer's selection of a provider of telecommunications service except in accordance with this section. Before a change order is processed by the executing telecommunications utility, the submitting telecommunications utility must obtain authorization from the customer that such change is desired for each affected telephone line [~~line(s)~~] and ensure that verification of the authorization is obtained in accordance with 47 C.F.R. Subpart K. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R. Subpart K, and subsection (d) of this section [~~, relating to "Letters of Agency."~~] A change order must be verified by one of the following methods:

(A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer must [~~shall~~] be provided the option of using another authorization method as an alternative to [~~in lieu of~~] an electronically signed authorization.

(B) Electronic authorization placed from the telephone number which is the subject of the change order, except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. To verify the electronic authorization, the [~~The~~] submitting telecommunications utility must:

(i) (No change.)

(ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number [~~number(s)~~] will reach a voice response unit or similar mechanism that records the required information re-

garding the change and automatically records the ANI from the local switching system.

(C) Oral authorization by the customer for the change that meets the following requirements:

(i) The customer's authorization must [~~shall~~] be given to an appropriately qualified and independent third party that obtains appropriate verification data including, at a minimum, [~~but not limited to,~~] the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide its federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative for the corporation or partnership to satisfy this subparagraph.

(ii) The entirety of the customer's authorization and the customer's verification of authorization must [~~shall~~] be electronically recorded [~~in their entirety~~] on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iii) The recordings must [~~shall~~] be dated and include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.

(iv) The third party verification must [~~shall~~] elicit, at a minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the name of each telecommunications utility affected by the change but not including the name of the displaced carrier, each telephone number [~~the name(s) of the telecommunications utilities affected by the change (not including the name of the displaced carrier), the telephone number(s)~~] to be switched, and the type of service involved. The third party verifier must [~~shall~~] not market or advertise the telecommunications utility's services by providing additional information, including information regarding preferred carrier freeze procedures.

(v) The third party verification must [~~shall~~] be conducted in the same language used in the sales transaction.

(vi) Automated systems must [~~shall~~] provide customers the option of speaking with a live person at any time during the call.

(vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system must [~~shall~~] drop off the call once a three-way connection with the third party verifier has been established unless:

(I) the telecommunications utility files sworn written certification with the commission that the sales representative is unable to drop off the sales call after initiating a third party verification. Such certification should provide sufficient information as to each reason [~~the reason(s)~~] for the inability of the sales agent to drop off the line after the third party verification is initiated. A [~~The~~] carrier is [~~shall be~~] exempt from this requirement for a period of two years from the date the carrier's certification was filed with the commission;

(II) a telecommunications utility that seeks to extend the exemption provided under subclause (I) of this clause [~~telecommunications utilities that wish to extend their exemption from this clause~~] must, before the end of the two-year period, and every two years thereafter, recertify to the commission the utility's continued inability to comply with this clause.

(viii) The third party verification must [~~shall~~] immediately terminate if the sales agent of a telecommunications utility that has filed a sworn written certification in accordance with clause (vii) of this subparagraph responds to a customer inquiry or speaks after third party verification has begun.

(ix) The independent third party must [~~shall~~]:

(I) - (III) (No change.)

(2) Changes by customer request directly to the local exchange company. If a customer requests a change in the customer's current preferred telecommunications utility by contacting the local exchange company directly, and that local exchange company is not the chosen carrier or affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The customer's current local exchange company must [~~shall~~] maintain a record of the customer's request for 24 months.

(d) Letters of Agency (LOA). A written or electronically signed authorization from a customer for a change of telecommunications utility must [~~shall~~] use a letter of agency (LOA) as specified in this subsection:

(1) The LOA must [~~shall~~] be a separate or easily separable document or located on a separate screen or webpage containing only the authorization and verification language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be fully completed, signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization must [~~shall~~] include the consumer disclosures required by the Electronic Signatures in Global and National Commerce Act 47 United States Code §7001(c) [~~§101(c)~~].

(2) The LOA must [~~shall~~] not be combined with inducements of any kind on the same document, screen, or webpage, except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) A check combined with an LOA must [~~shall~~] not contain any promotional language or material but must [~~shall~~] contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that will be provided)."

(3) LOA language.

(A) At a minimum, the LOA must [~~shall~~] be clearly legible, printed in a text not smaller than 12-point type, and must [~~shall~~] contain clear and unambiguous language that includes and confirms:

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

(iii) the name of the new telecommunications utility and that the customer designates [~~(insert name of ~~] the new telecommunications utility [~~)~~] to act as the customer's agent for the preferred carrier change;

(iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service, such as [~~(~~]local, intraLATA, and interLATA service,[~~)~~] for each telephone number. The LOA must [~~shall~~] contain separate statements regarding those choices, although a separate LOA for each service is not required;

(v) (No change.)

(vi) appropriate verification data, including, at a minimum, [~~but not limited to,~~] the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph.

(B) Any telecommunications utility designated in a LOA as the customer's preferred and authorized telecommunications utility must [~~shall~~] be the carrier directly setting rates for the customer.

(C) The following LOA form meets the requirements of this subsection. Other versions may be used, but must [~~shall~~] comply with all of the requirements of this subsection.

Figure: 16 TAC §26.130(d)(3)(C)

[~~Figure: 16 TAC §26.130(d)(3)(C)~~]

(4) The LOA must [~~shall~~] not require or suggest that a customer take some action [~~in order~~] to retain the customer's current telecommunications utility.

(5) If any portion of an LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.

(6) The submitting telecommunications utility must [~~shall~~] submit a change order on behalf of a customer within 60 days after obtaining a written or electronically signed LOA from the customer except LOAs relating to multi-line and/or multi-location business customers that have entered into negotiated agreements with a telecommunications utility to add presubscribed lines to their business locations during the course of a term agreement must [~~shall~~] be valid for the period specified in the term agreement.

(e) Notification of alleged unauthorized change.

(1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility must [~~shall~~] immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.

(2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change must [~~shall~~] direct the customer to contact the Public Utility Commission of Texas for resolution of the complaint.

(3) The alleged unauthorized telecommunications utility must [~~shall~~] remove all unpaid charges pending a determination of whether an unauthorized change occurred.

(4) (No change.)

(5) The alleged unauthorized telecommunications utility must [~~shall~~] take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three working [~~business~~] days of the customer's request.

(6) The alleged unauthorized telecommunications utility must [~~shall~~] also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.

(f) Unauthorized changes.

(1) Responsibilities of the telecommunications utility that initiated the change. If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change must [~~shall~~]:

(A) take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three working [~~business~~] days of the customer's request;

(B) pay all charges associated with returning the customer to the original telecommunications utility within five working [~~business~~] days of the customer's request;

(C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten working [~~business~~] days of the customer's request;

(D) pay, within 30 working [~~business~~] days of the customer's request, the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred;

(E) return to the customer within 30 working [~~business~~] days of the customer's request:

(i) any amount paid by the customer for charges incurred during the first 30 calendar days after the date of an unauthorized change; and

(ii) any amount paid by the customer after the first 30 calendar days in excess of the charges that would have been charged if the unauthorized change had not occurred;

(F) - (G) (No change.)

(2) Responsibilities of the original telecommunications utility. The original telecommunications utility must [~~shall~~]:

(A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten working [~~business~~] days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) where possible, provide to the customer all benefits associated with the service, such as frequent flyer miles, that would have been awarded had the unauthorized change not occurred, upon [~~on~~] receiving payment for service provided during the unauthorized change;

(C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) (No change.)

(ii) each [~~the~~] telephone number [~~number(s)~~] affected by the unauthorized change;

(iii) - (iv) (No change.)

(D) not bill the customer for any charges incurred during the first 30 calendar days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 calendar days based on what it would have charged if the unauthorized change had not occurred.

(g) Notice of customer rights.

(1) Each telecommunications utility must [~~shall~~] make available to its customers the notice set out in paragraph (3) of this subsection.

(2) Each notice provided under paragraph (5)(A) of this subsection must [~~shall~~] contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(3) Customer notice. The notice must [~~shall~~] state:

Figure: 16 TAC §26.130(g)(3)

[~~Figure: 16 TAC §26.130(g)(3)~~]

(4) (No change.)

(5) Language, distribution and timing of notice.

(A) Telecommunications utilities must [~~shall~~] send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility must [~~shall~~] print the notice in the white pages of its telephone directories, beginning with any directories published 30 calendar days after the effective date of this section and thereafter. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(C) The notice must [~~shall~~] be in plain [~~both~~] English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in plain [~~both~~] English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.

(h) Compliance and enforcement.

(1) Records of customer verifications and unauthorized changes.

(A) The submitting telecommunications utility must maintain records of all change orders, including verifications of customer authorizations, for a period of 24 months and must [~~shall~~] provide such records to the customer, if the customer challenges the change.

(B) A telecommunications utility must [~~shall~~] provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff 21 calendar days from the date the records were requested by commission staff [~~on or before the 21st calendar day of staff's request~~].

(C) The proof of authorization and verification of authorization as required from the alleged unauthorized telecommunications utility in accordance with [~~pursuant to~~] subparagraph (B) of this paragraph and paragraph (2)(A) of subsection (l) must establish a valid authorized telecommunications utility change as defined by subsections (c) and (d) of this section. Failure by the alleged unauthorized telecommunications utility to timely submit a response that addresses the complainant's assertions, relating to an unauthorized change, within the time specified in subparagraph (B) of this paragraph or paragraph (2) of subsection (l) establishes a violation of this section.

(2) Administrative penalties. If the commission finds that a telecommunications utility is in violation of this section, the commission will [~~shall~~] order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties in accordance with [~~pursuant to the~~] Public Utility Regulatory Act (PURA) §15.023 and §15.024.

(3) Evidence. Evidence supplied by the customer that meets the standards set out in Texas Government Code §2001.081, including[~~, but not limited to,~~] one or more affidavits from a customer challenging the change, is admissible in a proceeding to enforce the provisions of this section.

(4) Certificate revocation. The commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of a telecommunications utility, [~~thereby~~] denying the telecommunications utility the right to provide service in this state, in accordance with [~~pursuant to~~] the provisions of either PURA §17.052 or PURA §55.306.

(5) Coordination with the office of the attorney general. The commission will [~~shall~~] coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General [~~in order~~] to ensure consistent treatment of specific alleged violations.

(i) Notice of identity of a customer's telecommunications utility. Any bill for telecommunications services must contain the following information in clear [~~easily-read~~], bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this information must appear on the first page of the bill if possible, or be displayed prominently elsewhere in the bill:

(1) - (3) (No change.)

(4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, [~~fax: (512) 936-7003,~~] e-mail address: customer@puc.texas.gov [~~customer@puc.state.tx.us~~]. Hearing and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989 [~~with text telephones (TTY) may contact the commission at (512) 936-7136~~]. This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

(j) Preferred telecommunications utility freezes.

(1) Purpose. A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer consents [~~gives consent~~] to the local exchange company that implemented the freeze.

(2) Nondiscrimination. All local exchange companies that offer freezes must [~~shall~~] offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.

(3) Type of service. Customer information on freezes must [~~shall~~] clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze must [~~shall~~] obtain separate authorization for each service for which a freeze is requested.

(4) Freeze information. All information provided by a telecommunications utility about freezes [~~shall~~] have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and must [~~shall~~] not market or induce the customer to request a freeze. The freeze information provided to customers must [~~shall~~] include:

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

(5) Freeze verification. A local exchange company must [~~shall~~] not implement a freeze unless the customer's request is verified using one of the following procedures:

(A) (No change.)

(B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic

authorization must [~~shall~~] confirm appropriate verification data including[~~, but not limited to,~~] the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number and the information required in paragraph (6)(G) of this subsection. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph. The local exchange company must [~~shall~~] establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number [~~number(s)~~] will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.

(C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze that includes and confirms appropriate verification data as required by subparagraph (B) of this paragraph. This must [~~shall~~] include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party must [~~shall~~]:

(i) - (iii) (No change.)

(D) (No change.)

(6) Written authorization. A written freeze authorization must [~~shall~~]:

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

(G) contain clear and unambiguous language that confirms:

(i) the customer's name, address, and each telephone number [~~telephone number(s)~~] to be covered by the freeze;

(ii) the decision to impose a freeze on each [~~the~~] telephone number [~~number(s)~~] and the particular service with a separate statement for each service to be frozen;

(iii) - (iv) (No change.)

(7) Lifting freezes. A local exchange company that executes a freeze request must [~~shall~~] allow customers to lift a freeze by:

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

(8) No customer charge. The customer must [~~shall~~] not be charged for imposing or lifting a freeze.

(9) Local service freeze prohibition. A local exchange company must [~~shall~~] not impose a freeze on local telephone service.

(10) Marketing prohibition. A local exchange company must [~~shall~~] not initiate any marketing of its services during the process of implementing or lifting a freeze.

(11) Freeze records retention. A local exchange company must [~~shall~~] maintain records of all freezes and verifications for a period of 24 months and must [~~shall~~] provide these records to customers and to the commission staff upon request.

(12) Suggested freeze information language. A telecommunications utility that informs a customer [~~Telecommunications utilities that inform customers~~] about freezes may use the following language. Other versions may be used, but must [~~shall~~] comply with all of the requirements of paragraph (4) of this subsection.

(13) Suggested freeze authorization form. The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but must [~~shall~~] comply with all of the requirements of paragraph (6) of this subsection.
Figure: 16 TAC §26.130(j)(13) (No change.)

(14) Suggested freeze lift form. The following form is recommended for written authorization to lift a freeze. Other versions may be used, but must [~~shall~~] comply with all of the requirements of paragraph (7) of this subsection.
Figure: 16 TAC §26.130(j)(14) (No change.)

(k) Transferring customers from one telecommunications utility to another.

(1) A telecommunications utility may acquire, through a sale or transfer, either part or all of another telecommunications utility's customer base without obtaining each customer's authorization and verification in accordance with subsection (c)(1) of this section, provided that the acquiring utility complies with this section. Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, must [~~shall~~] provide notice to each [~~every~~] affected customer. The notice must [~~shall~~] be in a billing insert or separate mailing at least 30 calendar days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 calendar days prior to the transfer, the notice must [~~shall~~] be sent promptly after all legal and regulatory conditions are met. The notice must [~~shall~~]:

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

(2) The acquiring telecommunications utility must [~~shall~~] provide the commission [~~Customer Protection Division (CPD)~~] with a copy of the notice when it is sent to customers.

(l) Complaints to the commission. A customer may file a complaint with the commission's CPD against a telecommunications utility for any reasons related to the provisions of this section.

(1) (No change.)

(2) Telecommunications utility's response to complaint. After review of a customer's complaint, CPD must [~~shall~~] forward the complaint to the telecommunications utility. The telecommunications utility must [~~shall~~] respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response must [~~shall~~] include the following:

(A) - (B) (No change.)

(3) CPD investigation. CPD must [~~shall~~] review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section. CPD must [~~shall~~] inform the complainant and the alleged unauthorized telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required. CPD must [~~shall~~] also inform, if known, the authorized telecommunications utility if there was an unauthorized change in service.

(m) Additional requirements for changes involving certain telecommunications utilities.

(1) Definitions. The following words and terms, when used in this subsection, [~~shall~~] have the following meanings unless the context clearly indicates otherwise.

(A) - (G) (No change.)

(2) Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.

(A) Notice must [~~shall~~] contain at least:

(i) - (iii) (No change.)

(B) If an LSP does not otherwise have the appropriate contact information for notifying a PIC, then the LSP's notification to the PIC must [~~shall~~] be deemed complete upon delivery of the notice to the PIC's address, facsimile number or e-mail address listed in the appropriate utility directory [~~Utility Directory~~] maintained by the commission.

(3) Notification requirements for change in PIC only. The LSP must [~~shall~~] notify the old PIC and the new PIC of the PIC change within five working [~~business~~] days of the change execution.

(A) The new PIC must [~~shall~~] initiate billing the customer for presubscribed services within five working [~~business~~] days after receipt of such notice.

(B) The old PIC must [~~shall~~] discontinue billing the customer for presubscribed services within five working [~~business~~] days after receipt of such notice.

(4) Notification requirements for change in LSP.

(A) Requirement of the new LSP to notify the old LSP. Within five working [~~business~~] days of the change execution, the new LSP must [~~shall~~] notify the old LSP of the change in the customer's LSP.

(B) Requirement of the new LSP to notify the new PIC. Within five working [~~business~~] days of the change execution, the new LSP must [~~shall~~] notify the new PIC of the customer's selection of such PIC as the customer's PIC.

(C) Requirement of the old LSP to notify the old PIC. Within five working [~~business~~] days of the old LSP's receipt of notice in accordance with [~~pursuant to~~] subparagraph (A) of this paragraph, the old LSP must [~~shall~~] notify the old PIC that the old LSP is no longer the customer's LSP.

(5) Requirements of the new PIC to initiate billing customer. If the new PIC receives notice in accordance with [~~pursuant to~~] paragraph (4)(B) of this subsection, within five working [~~business~~] days after receipt of such notice, the new PIC must [~~shall~~] initiate billing the customer for presubscribed services.

(6) Requirements of the old PIC to discontinue billing customer. If the old PIC receives notice in accordance with [~~pursuant to~~] paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the old PIC must [~~shall~~] discontinue billing the customer for presubscribed services within seven working [~~business~~] days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC in accordance with [~~pursuant to~~] paragraph (4)(B) of this subsection.

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

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SUBCHAPTER G. ADVANCED SERVICES

16 TAC §26.142

Statutory Authority

The proposed repeal is proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.142. Integrated Services Digital Network (ISDN).

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 I. ALTERNATIVE REGULATION

16 TAC §26.171, §26.175

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308,

56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.171. Small Incumbent Local Exchange Company Regulatory Flexibility.

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

(c) Filing. By following procedures outlined in this section, a small ILEC may offer extended local calling service, a packaged service, a promotional service, or a new service on an optional basis or make a minor change in its rates or tariffs.

(1) Notice. At least ten [~~10~~] calendar days before the effective date of the proposed change, the small ILEC must file notice with the commission and [~~shall file six copies of a commission notice with the commission's Filing Clerk and shall serve a copy upon~~] the Office of Public Utility Counsel. Such notice must [~~shall~~] include:

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

(K) information required by §26.121 of this title (relating to Privacy Issues); and

(L) (No change.)

(2) Response to the commission notice. No later than ten calendar days after the small ILEC files the commission notice, the presiding officer assigned to the project will [~~shall~~] notify the small ILEC of any deficiencies in the commission notice, whether the notice to the customers is approved, and whether a waiver request, if any, is granted.

(d) Notice. A small ILEC satisfies the notice requirements in paragraphs (1) - (4) of this subsection by completing notice to the affected customers no later than 10 days before the proposed effective date of the tariff sheets. If notice is not completed as required, the proposed effective date will [~~shall~~] be postponed for as many days as completion of notice is delayed.

(1) Extended local calling service, packaged service, promotional service or new service. For extended local calling service, a packaged service, promotional service or a new service, notice must [~~shall~~] be provided to each affected customer.

(2) (No change.)

(3) Contents of notice. Each notice must include:

(A) a description of each service [~~the service(s)~~] affected by the proposed change;

(B) - (F) (No change.)

(4) Proof of customer notice. No later than seven calendar days following completion of notice, the small ILEC or a representative of the small ILEC must [~~shall~~] file one or more affidavits establishing proof of notice to customers as required by this subsection.

(e) New service availability. If the commission notice concerns a new service, as defined in §26.5 of this title, that will not be offered system-wide, the small ILEC must [~~shall~~] explain separately for each telephone exchange why the new service cannot be offered system-wide.

(f) Rates and revenues. The following requirements apply to a commission notice filed under this section:

(1) (No change.)

(2) Limitation on rate increases. Except for good cause shown, a rate will [~~shall~~] not be increased more than once in any 12-month period.

(3) (No change.)

(g) Review.

(1) Effective date. A proposed tariff filed under this section is [~~shall be~~] effective on the date proposed by the small ILEC, unless the effective date is suspended.

(2) Suspension of tariff. The proposed tariff may be suspended up to 150 calendar days to provide the commission an opportunity to review the commission notice. Additionally the presiding officer will [~~shall~~] suspend the tariff if within 30 calendar days following the completion of the customer notice:

(A) the commission receives a complaint relating to the proposed change signed by the lesser of 5.0% or 1,500 of the affected local service customers to which the proposed change applies. Five percent will [~~shall~~] be calculated based upon the total number of affected customers of record as of the calendar month preceding receipt of the complaint; or

(B) - (E) (No change.)

(h) Docketing. Following suspension of the effective date of the proposed tariff, the presiding officer will [~~shall~~] provide a small ILEC a reasonable opportunity to modify its commission notice to address conditions that exist, if any, under subsection (g)(2) of this section. If conditions under subsection (g)(2) of this section are not resolved during the suspension period, the presiding officer may docket the project. If the project is docketed, the effective date of the proposed tariff will [~~shall~~] be automatically suspended and the commission will [~~shall~~] review the commission notice in accordance with the commission's procedural rules applicable to docketed cases.

§26.175. Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs).

(a) Purpose. The provisions of this section:

(1) establish the minimum criteria and standards for reclassifying a basic network service as a discretionary service or competitive service; or a discretionary service as a competitive service, in accordance with [~~pursuant to~~] the Public Utility Regulatory Act (PURA) §58.024; and

(2) (No change.)

(b) (No change.)

(c) General standards for reclassification of a service. The following conditions must be satisfied [~~in order~~] to reclassify a service.

(1) Prerequisite for reclassification of a service. The commission may [~~not~~] reclassify a service only if [~~until~~] each competitive safeguard prescribed by PURA Chapter 60, Subchapters B through H, is fully implemented.

(2) (No change.)

(3) Identification of services to be reclassified. An electing ILEC must identify each service which it is seeking to reclassify and must specify[~~,~~] for each service[~~,~~] whether the service is for residential lines, business lines, or both.

(4) (No change.)

(5) Rate changes. Rate changes must [~~shall~~] be contemplated by the commission, in a separate proceeding, after reclassification has occurred.

(d) Standards for reclassification of a basic network service as a discretionary service. In addition to meeting the requirements of [~~in~~] subsection (c) of this section, the following conditions must be satisfied [~~in order~~] to reclassify a basic network service as a discretionary service:

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

(e) Standards for reclassification of a basic network service or discretionary service as a competitive service. In addition to meeting the requirements of [~~in~~] subsection (c), the following conditions must be satisfied [~~in order~~] to reclassify a basic network service as a competitive service, or to reclassify a discretionary service as a competitive service:

(1) - (4) (No change.)

(5) The electing ILEC does not have market power sufficient to control the price of the service in the reclassification area[~~,~~] in a manner that is adverse to the public interest[~~, the price of the service in the reclassification area~~].

(f) Requirements for notice and contents of the application in compliance with this section.

(1) Notice of Application. The electing ILEC must [~~shall~~] provide direct notice to all certificate of convenience and necessity, service provider certificate of operating authority, and certificate of operating authority [~~Certificate of Convenience and Necessity, Service Provider Certificate of Operating Authority and Certificate of Operating Authority~~] holders offering service in the reclassification area and issue direct notice to each customer of the ILEC [~~direct notice to all the ILEC's customers~~] in the reclassification area. The notice must [~~shall~~] include a description of the requested reclassification, the service, the proposed rates, the reclassification area, other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date), and (any other item required by the presiding officer). Requests for further information should be mailed to the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer Division [~~Public Utility Commission's Office of Customer Protection~~] at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals [~~with text telephones (TTY)~~] may contact the commission through Relay Texas at 1-800-735-2989 [~~at (512) 936-7136~~]."

(2) Contents of application for each electing ILEC seeking a service reclassification. In addition to the commission's filing requirements, one copy of the application must [~~shall~~] be delivered to commission staff [~~the Office of Regulatory Affairs~~] and one copy must [~~shall~~] be delivered to the Office of Public Utility Counsel (OPUC). The application must [~~shall~~] contain the following:

(A) (No change.)

(B) For each exchange in the reclassification area, a description of the reclassification sought, each service, [~~the service(s) and~~] the rates, terms, and conditions under which each service [~~the service(s)~~] is currently provided, [~~and~~] how the proposed reclassification of each service [~~the service(s)~~] is just and reasonable and is not unreasonably preferential, prejudicial, [~~or~~] discriminatory, [~~or~~] predatory or anti-competitive;

(C) - (H) (No change.)

(g) Commission processing of application.

(1) Administrative review. An application considered under this section is eligible for administrative review [~~may be reviewed administratively~~] unless the electing ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the reclassification [~~application~~]. The effective date must [~~shall~~] be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.

(B) The application must be reviewed [~~shall be examined~~] for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant must [~~shall~~] be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the reclassification will [~~application shall~~] be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines will be determined 30 days from the 30th [~~time deadlines shall be determined from the 30th~~] day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is under administrative review [~~being administratively reviewed~~], the commission staff and the staff of OPUC [~~the Office of Public Utility Counsel~~] may submit requests for information to the electing ILEC. A copy [~~Six copies~~] of all answers to such requests for information must [~~shall~~] be filed with central records and must [~~one copy shall~~] be provided to OPUC [~~the Office of Public Utility Counsel~~] within ten days after receipt of the request by the electing ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. Commission staff will and OPUC [~~The commission staff shall and the Office of Public Utility Counsel~~] may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the reclassification [~~application~~], the presiding officer will [~~shall~~] issue an order approving, denying, or docketing the electing ILEC's application.

(2) Approval or denial of application. The application will [~~shall~~] be approved by the presiding officer if the proposed reclassification complies with each requirement of this section. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer must [~~shall~~] docket the application.

(3) Standards for docketing. The application may be docketed in accordance with [~~pursuant to the commission's Procedural Rules~~] §22.33(b) of this title (relating to Tariff Filings).

(4) Review of the application after docketing. If the application is docketed, the deadline is automatically suspended to [~~a date~~] 120 days after the applicant has filed all [~~of its~~] direct testimony and exhibits, or 155 days after the effective date of the reclassification, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application must [~~shall~~] be processed in accordance with the commission's rules applicable to docketed cases.

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 J. COSTS, RATES AND TARIFFS

16 TAC §§26.207 - 26.211, 26.214, 26.215; 26.217; 26.221; 26.224

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.207. Form and Filing of Tariffs

(a) Application. Unless the context clearly indicates otherwise, in this section the term "utility" or "public utility" refers to a dominant carrier [~~insofar as it relates to telecommunications utilities, shall refer to dominant carriers~~].

(b) Purpose. This section establishes [~~The purpose of this section is to establish and~~] standards for the form, filing and review of a dominant certificated telecommunications utility's (DCTU's) tariff [~~dominant certificated telecommunications utilities' (DCTUs) tariffs~~].

(c) Effective tariff. A utility is prohibited from directly or indirectly demanding, charging, or collecting [~~No utility shall directly or indirectly demand, charge, or collect~~] any rate or charge, or imposing [~~impose~~] any classifications, practices, rules, or regulations different from those prescribed in its currently effective tariff filed with and approved by the commission.

(d) Tariff required. [~~Requirements as to size, form, identification and filing of tariffs.~~]

(1) A public utility, or an affiliate of the public utility or a trade association on behalf of the public utility, must file with the commission a tariff showing each rate that is subject to the commission's jurisdiction and is in effect for a utility service, product, or commodity offered by the utility. A current or proposed tariff must: [~~Every public utility shall file with the commission filing clerk five copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility. It shall also file five copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.~~]

(A) include each rule that relates to or affects a rate of the utility, or a utility service, product, or commodity furnished by the utility;

(B) be filed prior to or concurrently with an application for certification, including a certificate amendment, under §26.111 (relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria); and

(C) as applicable, comply with the requirements of this section and §26.208 of this title (relating to General Tariff Procedures), §26.209 of this title (relating to New and Experimental Services), or §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges).

(2) A public utility must also file each subsequent tariff revision with the commission. Each revision must be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, the effect of the change if it revises an existing rate, and a statement describing the impact on rates of the change for each customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class, then the commission may require that notice be given.

[~~(2) All tariffs shall be in loose-leaf form of size 8 1/2 inches by 11 inches and shall be plainly printed or reproduced on paper of good quality. The front page of the tariff shall contain the name of the utility and location of its principal office and the type of service rendered (telephone, electric, etc.).~~]

(3) A telecommunications utility, upon the issuance of a commission order determining that the telecommunications utility is a dominant carrier, must file a tariff complying with the requirements of this subsection. Such a tariff must be filed within the time specified in the commission order, or within 60 days in the absence of such a specification.

[~~(3) Each rate schedule must clearly state the territory, city, county, or exchange wherein said schedule is applicable.~~]

[~~(4) Tariff sheets are to be numbered consecutively per schedule. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.~~]

[~~(5) Any telecommunications utility, after a declaration by the commission that it is a dominant carrier, shall file tariffs complying with the above requirements. These tariffs shall be filed within the time specified in the commission order finding the telecommunications utility a dominant carrier, or within 60 days in the absence of such a specification.~~]

(e) Filing of public utility tariff by affiliate or trade association. An affiliate of a public utility or trade association may file a tariff or tariff revision under this section or other applicable law, on behalf of a public utility.

(1) For each filing, the public utility must authorize the affiliate of the nondominant carrier or trade association, via written affidavit filed with the commission, to file such information on its behalf.

(2) The authorization specified by paragraph (1) of this subsection may be included in the filing by the affiliate of the public utility or trade association.

(3) The filing by affiliate of the public utility or trade association must comply with the requirements of this section and other applicable law.

(f) Tariff filing requirements.

(1) The front page of the tariff must include the name of the utility and location of its principal office and the type of service rendered.

(2) Each rate schedule must clearly state the territory, city, county, or exchange where the rate schedule applies.

(3) Tariff sheets must be numbered consecutively per schedule. Each sheet must show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers must be designated as original sheets. Sheets being revised must show the number of the revision, and the sheet numbers be the same.

(g) [~~(e)~~] Composition of tariffs. A tariff must [~~The tariff shall~~] contain sections setting forth:

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

(h) [~~(f)~~] Tariff filings in response to commission orders. A tariff filed in response to a commission order must include a transmittal letter affirming that the tariff is in compliance with the order, provide the control number [~~Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket number~~], date of the order, a list of tariff sheets filed, and any other necessary information. The tariff sheets must [~~shall~~] comply with all other rules of this title [~~in this chapter~~] and must [~~shall~~] include only the changes ordered. The effective date or [~~and/or~~] wording of the tariffs must [~~shall~~] comply with the provisions of the order.

(i) [~~(g)~~] Symbols for changes. Each proposed tariff sheet must [~~shall~~] contain notations in the right-hand margin indicating each change made[~~ on these sheets~~]. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision, such as [~~(~~]the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision[~~)~~]; (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. Each [~~In addition to symbols for changes, each~~] changed provision in the tariff must [~~shall~~] contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(j) [~~(h)~~] Availability of tariffs. Each utility must [~~shall~~] make available to the public electronically and at each of its business offices or designated sales offices within Texas, each tariff that is [~~all of its tariffs~~] currently on file with the commission. The utility must assist [~~, and its employees shall lend assistance to~~] persons seeking information on its tariffs and permit such persons the [~~afford inquirers an~~]opportunity to examine any tariff upon request. The utility must also [~~shall~~] provide copies of each of [~~any portion of~~] its tariffs at a reasonable cost.

[~~(i) Effective date of tariff change. No jurisdictional tariff change may take effect prior to 35 days after filing without commission approval. The requested date will be assumed to be 35 days after filing unless a different date is requested in the application. The commission may suspend the effective date of the tariff change for 120 days after the requested effective date and may extend that suspension another 30 days if required for final determination. In the case of an actual hearing on the merits of a case that exceeds 15 days, the suspension date is extended two days for each one day of actual hearing in excess of 15 actual hearing days.~~]

§26.208. General Tariff Procedures.

(a) Application. This section establishes the process for commission review of a dominant certificated telecommunications utility (DCTU) tariff and tariff amendments. A DCTU must meet the requirements of this section to file a new tariff or amend an existing tariff to which this section applies, including changes to a rate or service, the types of service provided, jurisdiction or service area, or for the withdrawal of a service. For purposes of this section, the term "trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(1) This section applies to a DCTU and to an affiliate of a DCTU or a trade association that elects to file or amend a tariff on a DCTU's behalf, and to each tariff filed by those entities in accordance with §26.207 of this title (relating to Form and Filing of Tariffs) and the following provisions, as applicable:

(A) section 26.209 of this title (relating to New and Experimental Services) or §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services), if determined to be necessary by the presiding officer; or

(B) section 26.211 of this title (relating to Rate Setting Flexibility for Services Subject to Significant Competitive Challenges).

(2) This section does not apply to a person, or a tariff submitted by a person, to which §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services) or §26.171 of this title (relating to Small Incumbent Local Exchange Company Regulatory Flexibility) applies.

(3) For purposes of this section, "major rate change" means an increase in rates that would increase the aggregate revenues of an applicant more than $100,000 or two and a half percent, whichever is greater. The term does not include an increase in rates approved by the commission, or otherwise ordered by the commission after hearings are held with public notice.

(b) General tariff requirements.

(1) New DCTU tariffs. An applicant must file a new DCTU tariff prior to or concurrently with an application for certification under §26.111 of this title (relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria)) and must meet the requirements of paragraphs (2)(A) and (B) of this subsection.

(2) DCTU tariff amendments involving a rate change. For a tariff amendment involving a rate change, including a major rate change, an applicant must meet the following requirements prior to amending its tariff.

(A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU's tariff;

(B) Provide notice to affected persons, including each municipality and customer affected by the change, in the manner prescribed by subsection (c) of this section, or as otherwise required by the presiding officer; and

(C) If applicable, publish notice of the DCTU's intent to change rates in accordance with PURA §53.103, as provided under subsection (c)(1)(C)(i) and (ii) of this section. Notice under this subparagraph is waived if the rate change only involves a rate reduction.

(3) Other DCTU tariff amendments. For a tariff amendment that does not involve a rate change under paragraph (1) of this subsection, a DCTU must meet the following requirements prior to amending its tariff:

(A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU's tariff; and

(B) Provide notice to affected persons, including each municipality and customer affected by the change, in the manner prescribed by subsection (c) of this section or as otherwise required by the presiding officer.

(c) Public notice. An application must include plans to provide public notice of the tariff filing.

(1) General requirements for public notice.

(A) Prior to the issuance of notice, an applicant may request, or the presiding officer may require, the contents of the notice to be reviewed and approved by the presiding officer.

(B) Notice must be written in plain language and must contain sufficient detail to provide each affected person, including each affected municipality, adequate notice of the filing.

(C) Notice may be provided electronically unless otherwise required by the presiding officer or, if the application involves a rate increase, in accordance with PURA §53.103, which requires the applicant to:

(i) publish, in a conspicuous form and place, notice to the public of the proposed change once each week for four successive weeks before the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change; and

(ii) mail notice of the proposed change to any other affected person as required by the commission's rules.

(D) The presiding officer may require notice to be provided to the public in addition to that proposed by the DCTU.

(2) Content of public notice. Public notice of the application must include at a minimum:

(A) a description of each service or proposed service and each applicable rate;

(B) the proposed effective date of the service or, if the service is promotional or experimental, the time period during which the promotional rates are proposed to be in effect;

(C) each customer class likely to be affected if the application is approved

(D) the probable effect on the DCTU's revenues if the service is approved; and

(E) the following language: "Persons with questions or who want more information on this application may contact (DCTU name) at (DCTU address) or call (DCTU toll-free telephone number) during normal business hours. A complete copy of the application is available for inspection at the address listed above. The commission has assigned Control Number (provided by DCTU) to this application, located at (hyperlink to application). Persons who wish to formally participate in the commission's proceedings concerning this application, or who wish to express their comments concerning this application should contact the Public Utility Commission of Texas, Office of Customer Protection, PO Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's Office of Consumer Protection at (512) 936-7120 or, toll free, at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989. Requests to participate in the proceedings and comments should reach the commission no later than (date, 20 days after the application was filed)."

(d) Proof of notice. An application must include a statement indicating the date public notice was completed in accordance with subsection (c) of this section and a copy of the issued notice.

(e) Effective date of tariff amendment.

(1) General standard.

(A) The effective date of an applicant's tariff must be no earlier than 35 days after the date a sufficient application is approved by the presiding officer.

(B) On the presiding officer's own motion or at the request of the applicant, an alternative effective date may be established unless a specific effective date is required under this section or other law.

(2) Early effective date. Upon a showing of good cause by the applicant, the presiding officer may approve a sufficient application, other than an application involving a major rate change, to take effect prior to the 35-day period prescribed by paragraph (1) of this subsection.

(A) The presiding officer may establish additional conditions, such as notice, that an applicant must meet prior to granting an early effective date. Any additional conditions prescribed by the presiding officer are subject to suspension of the effective date under paragraph (4) of this subsection.

(B) Upon approval of an early effective date by the presiding officer, the applicant must immediately revise the tariff to include the change.

(3) Recalculation of effective date upon cure of an insufficient application. Upon the filing of an application curing each deficiency specified by the presiding officer, any deadlines must be determined from the date the application is deemed sufficient or from the effective date if the presiding officer extends that date.

(4) Suspension of effective date. For an application involving a rate change, the commission may suspend the effective date of the tariff change for 150 days after the requested effective date.

(A) In the event that a hearing on the merits exceeds 15 working days, the suspended effective date is extended two calendar days for each working day the hearing exceeds 15 working days.

(B) If the presiding officer does not make a final determination concerning the effective date of a rate change before the expiration of the suspension period, the effective date is automatically approved unless a hearing is already in progress.

(f) Administrative review. An application filed in accordance with this section will be reviewed administratively.

(1) Review of sufficiency.

(A) The presiding officer will deem an application to be sufficient if it, at a minimum:

(i) includes an effective date and, as applicable, meets the requirements of subsection (b)(2)(A) or (3)(A) of this section;

(ii) meets the requirements of §26.207 of this title and the applicable provision specified by subsection (a)(1) of this section under which the application was filed;

(iii) includes proof that notice of the application was provided in compliance with subsection (d) of this section; and

(iv) if the application involves the withdrawal of a service, that the requirements of subsection (i) of this section have been met.

(B) No later than 20 days after the date an application is filed:

(i) an interested person, including the Office of Public Utility Counsel (OPUC), may file written comments or recommendations concerning the sufficiency of the application; and

(ii) commission staff must file a recommendation regarding the sufficiency of the application.

(C) If the presiding officer concludes that the application is insufficient, the presiding officer will notify the applicant of the insufficiency in the relevant portions of the application and cite the particular requirement with which the application does not comply. The presiding officer will grant the applicant an opportunity to cure each specific deficiency within a specified time period, and change the effective date in accordance with subsection (e)(3) of this section.

(2) Substantive review of application. The presiding officer must approve or deny an application not later than 60 days after a complete application is filed. An application is complete if the presiding officer has deemed that the application is sufficient under paragraph (1) of this subsection.

(A) The presiding officer will substantively review the application to determine whether the application fulfills the requirements of this subparagraph and other applicable law. To approve an application, the presiding officer must, at a minimum, determine that:

(i) the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(ii) provision of the service is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and of subsidization of new and experimental services with revenues from regulated monopoly services.

(B) Commission staff must file a recommendation regarding whether the application meets the substantive requirements of this paragraph. Commission staff's recommendation on whether an application meets the substantive requirements for administrative approval may be provided with its recommendation on the sufficiency of the application in accordance with paragraph (1) of this subsection, or in a subsequent filing.

(C) While the application is under substantive review by the presiding officer, commission staff and OPUC may submit requests for information to the applicant.

(i) Notwithstanding the requirements of §22.144 of this title (relating to Requests for Information and Requests for Admission of Facts), the applicant must file the requested information with the commission within 15 days after receipt of such a request for information.

(ii) If an applicant does not respond to a request for information within the time period specified by clause (i) of this subparagraph, the presiding officer will reject the application without prejudice and notify the applicant of the rejection.

(iii) If the presiding officer does not approve or deny the application within 30 days from the date the requested information is filed with the commission, the application is automatically approved.

(3) Automatic approval. A complete application is automatically approved 60 days from the date it is filed if:

(A) the presiding officer does not approve or deny the complete application; and

(B) commission staff or the presiding officer do not request supplemental information from the applicant.

(4) Docketing prohibited. An application, except for an application involving a rate increase as provided by subsection (h) of this section, cannot be docketed.

(g) Approval or denial of applications. For an application to be approved, the applicant must meet the requirements of the applicable provisions of this section and other applicable law, unless such requirements are modified or waived by the presiding officer. If, based on the administrative review, the presiding officer determines that:

(1) all requirements not waived have been met, the application will be approved in the manner specified by the presiding officer.

(2) one or more of the requirements not waived have not been met, the presiding officer will:

(A) dismiss the application without prejudice; or

(B) docket the application in accordance with subsection (h) of this section if the application involves a rate change, except for a rate change covered by §26.171 of this title.

(h) Docketing and of an application involving a rate change. The presiding officer may docket an application involving a rate change, except for a rate change covered by §26.171 of this title, in accordance with this section.

(1) If an application is docketed, the presiding officer may suspend the effective date of a rate change in the manner provided by subsection (e)(4) of this section via order.

(1) A copy of all answers to requests for information issued after docketing must be filed with the commission within 15 days after receipt of the request.

(2) An affected person may move to intervene in the docket, and a hearing on the merits will be scheduled.

(3) The application will be processed in accordance with the commission's rules applicable to docketed proceedings.

(i) Withdrawal of a service. When an applicant seeks to withdraw a tariffed service, the application must be filed in accordance with this subsection. An applicant must provide the following in its application before withdrawing a service.

(1) The control number for the project where the tariff was filed, including a hyperlink to the project;

(2) Proof of notice by the applicant, as required by subsection (d), or as otherwise required by the presiding officer.

(3) The number of current customers in each exchange, by customer class;

(4) The reason for withdrawing the service;

(5) Provisions for grandfathering each current customer or for competitive alternatives available within the exchange locations, including each alternative provided by the DCTU;

(6) Annual revenues for the last three years for the service; and

(7) If the service has no current customers, the applicant must provide an affidavit to this effect.

§26.209. New and Experimental Services.

(a) Application. This section applies to dominant certificated telecommunications utilities (DCTUs), as that term is defined by §26.5 of this title (relating to Definitions). [~~In addition, the services to which this section applies are those that are a subset of a service for which the utility is dominant.~~]

(1) The services to which this section applies are those that are a subset of a service for which the utility is dominant.

(2) A DCTU may alternatively seek approval for an application for a new or experimental service in accordance with §26.208 of this title (relating to General Tariff Procedures), however the presiding officer may require any application for a new or experimental service to also comply with the requirements of this section.

(3) If an application for a new or experimental service is reviewed under this section, each rate established for such a service must comply with the requirements of §26.208 of this title.

(b) Purpose. The procedures in this section establish the process by which a DCTU obtains [~~DCTUs obtain~~] approval to offer new and experimental services.

(c) Filings requesting approval of new and experimental services. A DCTU may request approval of a new or experimental service by following the procedures outlined in this section. [~~In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy to the Office of Public Utility Counsel. Nothing in this section precludes a DCTU from utilizing other provisions of this title to seek approval to offer such services, however, the commission or the presiding officer, in its discretion, may require any application for a new or experimental service to comply with the requirements of this section.~~] Not later than 35 [~~30~~] days prior to the proposed effective date of the new or experimental service, the DCTU must [~~shall~~] file with the commission [~~and the Office of Public Utility Counsel~~]an application containing the following information:

(1) - (3) (No change.)

(4) a statement detailing the type of notice, [~~if any,~~]the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and in compliance with §26.208 [~~§26.208(c)~~] of this title[~~(relating to General Tariff Procedures)~~];

(5) a copy [~~of the text~~]of the notice, if any;

(6) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service. The commission will [~~shall~~] allow an incumbent local exchange carrier (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application must [~~shall~~] also include projections of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint or [~~and/or~~] common costs. Capital costs related to providing the service must [~~shall~~] be separately identified in these projections. The application must [~~shall~~] also include all workpapers and supporting documentation relating to computations or assumptions contained in the application.

(7) If the application concerns a service which will not initially be offered system-wide, the application must [~~shall~~] separately explain for each exchange in which the service will not be offered why the DCTU's facilities in that exchange do not have the technical capability to handle the service. [~~The application shall also include an implementation plan which shall specify the DCTU's plans for making the service available in such exchanges within a reasonable time after receipt by the LEC of a bona fide request for the service. The DCTU shall also specify in its plan what requirements must be met for a request for service to be considered bona fide. This requirement does not apply to experimental services, but the DCTU shall specify the exchanges in which it proposes to offer the experimental service.~~]

(8) The application must also include:

(A) an implementation plan which must specify the DCTU's plans for making the service available in such exchanges within a reasonable time after receipt by the LEC of a bona fide request for the service.

(B) what requirements must be met for a request for service to be considered bona fide. This requirement does not apply to experimental services, but the DCTU must specify the exchanges in which it proposes to offer the experimental service.

(9) [~~(8)~~] If the application concerns an experimental service for which a range of rates is proposed, the application must [~~shall~~] state the range of rates requested and show in detail how the upper and lower rates in that range relate to the long run incremental cost of the service.

(10) [~~(9)~~] Any other information which the DCTU wants considered in connection with the commission's review of its application.

(d) Modifications and waivers of requirements. [~~In its application a DCTU may request and the commission or the presiding officer may grant for good cause the modification or waiver of requirements set forth in this section concerning system-wide rates; system- wide provision of service; the one-year maximum period for offering an experimental service; the one-year, cost-related prove-in period; or long run incremental cost support. Subsequent to the introduction of an experimental service, a DCTU may also apply for modification of the period initially approved for offering the service. However, no experimental service shall be approved for more than two years, no prove-in period shall be extended beyond two years and, in lieu of incremental cost information, the DCTU must provide other cost support demonstrating that the proposed rates for the service will recover its costs plus a contribution within the required period. A waiver of the incremental cost standard shall only be granted if the presiding officer determines that such a standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet that standard and if the presiding officer determines that an appropriate alternative cost standard is available. Any request for modification~~

or waiver of these requirements shall include a complete statement of the DCTU's arguments supporting that request. The presiding officer shall rule on the waiver request within 15 days of the filing of the request. A copy of the presiding officer's ruling shall be provided to the commission, and the commission may overrule any waiver granted by a presiding officer within 15 days of the presiding officer's ruling.]

(1) In its application a DCTU may request:

(A) the modification or waiver of requirements set forth in this section concerning system-wide rates;

(B) system-wide provision of service;

(C) the one-year maximum period for offering an experimental service; the one-year, cost-related prove-in period;

(D) or long run incremental cost support.

(2) Subsequent to the introduction of an experimental service, a DCTU may also apply for modification of the period initially approved for offering the service, provided that:

(A) An experimental service will not be approved for more than two years;

(B) A prove-in period will not be extended beyond two years and;

(C) As an alternative to providing incremental cost information, the DCTU must provide other cost support demonstrating that the proposed rates for the service will recover its costs plus a contribution within the required period.

(3) A waiver of the incremental cost standard must only be granted if the presiding officer determines that such a standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet that standard and if the presiding officer determines that an appropriate alternative cost standard is available.

(4) Any request for modification or waiver of these requirements must include a complete statement of the DCTU's arguments supporting that request. The presiding officer will rule on the waiver request within 15 days of the filing of the request.

(e) Requirements for proposed new and experimental services. Unless waived or modified by the presiding officer as provided under subsection (d) of this section, the following requirements must [shall] apply to any new service approved under this section:

(1) Such new service must [shall] be offered at the same price throughout the DCTU's system.

(2) The service must [shall] also be offered in every exchange served by the DCTU, except exchanges in which the DCTU's facilities do not have the technical capability to handle the service.

(3) The rates for a new service must [shall] be designed to generate sufficient annual revenues to recover the annual long run incremental cost of the service, including a contribution for joint or [and/or] common costs, in the second year after it is first offered. Requirements related to system-wide pricing and system-wide provision of service do not apply to a proposed experimental service.

(4) An experimental service approved under this section may be flexibly priced provided that the minimum rate in the range of rates must [shall] be above the long run incremental cost of providing the service. The DCTU may make a change in rates within an approved range of rates upon such notice to customers and the commission as the presiding officer may require. In addition, before discontinuing provision of an experimental service, the DCTU must [shall] give such notice of the discontinuation as the presiding officer may require.

[(f) Interim rates. For good cause, interim rates may be approved after docketing. However, interim rates shall not be approved if the new service requires substantial initial investment by customers before they may receive the service unless the commission requires the DCTU to notify every customer prior to purchasing the service that this investment is at risk due to the interim nature of the service and the rates for the service and unless the DCTU makes appropriate provisions to protect its customers from the risks of the DCTU's failure to notify.]

(f) [(g)] Reporting requirements. [If a new service is approved based on either an administrative review or a docketed proceeding, the DCTU shall file with the commission tracking reports showing the actual revenues; demand and related expenses for the service; its progress on the implementation plan, if any such plan was approved by the commission; and such other information as may be required by the commission (or, in connection with an administrative review, by the presiding officer) or requested by the commission staff. One such report shall be due nine months after the service is first offered and shall contain information for at least the first six months the service was offered. The second such report shall be filed 12 months after the service is first offered and shall contain information for at least the first nine months the service was offered. The third such report shall be filed no later than 15 months after the service is first offered and shall contain information for at least the first 12 months the service was offered. Such reporting requirements shall be waived for experimental services of one year's duration or less, but the DCTU shall retain in its record such information related to revenues, demand and expenses and shall submit such information with any subsequent request to make a formerly experimental service a permanent new service.]

(1) If a new service is approved, the DCTU must file with the commission

(A) tracking reports showing the actual revenues;

(B) demand and related expenses for the service;

(C) its progress on the implementation plan, if any such plan was approved by the commission;

(D) and such other information as may be required by the presiding officer or requested by the commission staff.

(2) Reports filed under this section must be filed as specified by this paragraph, unless otherwise excepted by paragraph (3) of this subsection.

(A) The initial report is due nine months after the service is first offered and must contain information for at least the first six months the service was offered.

(B) The second such report must be filed 12 months after the service is first offered and must contain information for at least the first nine months the service was offered.

(C) The third such report must be filed no later than 15 months after the service is first offered and must contain information for at least the first 12 months the service was offered.

(3) Such reporting requirements are waived for experimental services of one year's duration or less, but the DCTU must retain in its record such information related to revenues, demand and expenses and must submit such information with any subsequent request to make a formerly experimental service a permanent new service.

(g) [(h)] Subsequent review of the service. Except as prohibited by [the Public Utility Regulatory Act] Chapters 58 or 59 of the Public Utility Regulatory Act, if a new or experimental service is ap-

proved [~~under the procedures set forth in this section, the~~] commission staff or any affected person may file with the commission a petition seeking modification of the rates or terms under which the service is offered or withdrawal of the service.

(h) [~~(i)~~] Provisions for SLECs. Notwithstanding §26.208 [~~§26.208(e)~~] of this title and subsections (c), (d), and (e) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to Definitions). If the presiding officer [~~examiner~~] determines that the SLEC is seeking to adopt as its rates for its new or experimental services the rates for the same or substantially similar services offered by an ILEC [~~a incumbent local exchange company~~]:

(1) the SLEC's proposed rates and terms of the service will be deemed not to be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(2) a waiver of the incremental cost standard will [~~shall~~] be granted.

§26.210. Promotional Rates for Local Exchange Company Services.

(a) Application. This section applies to dominant certificated telecommunications utilities (DCTUs) as that term is defined by §26.5 of this title (relating to Definitions) which are subject to the ratemaking jurisdiction of the commission for any service or market.

(1) A DCTU may alternatively seek approval for an application for a promotional rate in accordance with §26.208 of this title (relating to General Tariff Procedures), however the presiding officer may require any application for a promotional rate to also comply with the requirements of this section.

(2) If an application for a promotional rate is reviewed under this section, each promotional rate must comply with the requirements of §26.208 of this title.

(b) Purpose. The procedures outlined in this section are intended to establish a process by which DCTUs may obtain authorization for offering promotional rates for the purpose of increasing long term demand for a service or [~~and/or~~] utilizing unused capacity of the DCTU's network.

(c) Filings requesting approval of promotional rates. After the effective date of this section, a DCTU may request approval of promotional rates for a service by following the procedures outlined in this section. [~~In addition to copies required by other commission rules, one copy of the application shall be delivered to the Regulatory Division. Nothing in this section precludes a DCTU from utilizing other provisions of this title to offer such promotional rates.~~] Not later than 35 [~~30~~] days prior to the proposed effective date of the promotional rate, the DCTU must [~~shall~~] file with the commission [~~and the Office of Public Utility Counsel~~] an application containing the following information:

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

(6) a statement detailing the type of notice, if any, the DCTU has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and in compliance with §26.208 of this title [~~§26.208(c) of this title (relating to General Tariff Procedures)~~];

(7) a copy [~~of the text~~] of the notice [~~, if any~~];

(8) detailed documentation showing the long run incremental cost of the service for which promotional rates are requested, including projections of revenues, demand and expenses of the service for the period during which the promotional rates are proposed to be offered. The commission will [~~shall~~] allow an incumbent local exchange company (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application must [~~shall~~] include projections of the effect of the promotional rate on the service's revenues and cost and its impact on the service's contribution during the promotional period and over the remaining life of the service. The application must [~~shall~~] also include all workpapers and supporting documentation relating to computations or assumptions contained in the application; and

(9) (No change.)

(d) Modification and waivers of requirements. In its application a DCTU may request the waiver of the long run incremental cost requirements set forth in this section. Such a waiver will [~~shall~~] only be granted if the presiding officer determines that the long run incremental cost standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet the standard and if the presiding officer determines that an appropriate alternative cost standard is available. If the long run incremental cost standard is waived, the DCTU must provide other cost information showing the relationship between its proposed promotional rates and the costs of providing the service. A DCTU may also request a waiver of the requirement that promotional rates be offered in every exchange when such rates are proposed to be offered for a tariffed service which is being expanded into central offices which previously did not provide the service. Any request for waiver of the long run incremental cost information requirement or the system-wide application of the promotional rates requirement must [~~shall~~] include a complete statement of the DCTU' arguments supporting that request.

(e) Notice of intent to file. At least ten days before any application under this section may be filed by a DCTU, the DCTU must [~~shall~~] file a statement of intent to file such an application and the expected filing date. Such notice must [~~shall~~] also include a statement of the DCTU's intent to use the expedited procedures of this section, a description of the service, and a description of the proposed promotional rates and the proposed promotional period. The commission must [~~shall~~] then publish notice of the DCTU's intent to file such application in the *Texas Register.*

(f) Requirements for promotional rates. Unless waived or modified by the presiding officer as provided in subsection (d) of this section, the following requirements must [~~shall~~] apply to promotional rates approved under this section:

(1) the promotional rates must [~~shall~~] be offered in every exchange in which the service is offered throughout the DCTU's system;

(2) promotional rates for any particular service in any specific exchange must [~~shall~~] not be offered for more than six months during any five-year period, and no customer must [~~shall~~] be charged promotional rates for more than three consecutive months;

(3) promotional rates must [~~shall~~] be offered only to new customers of a service or to new and existing customers, provided that, for existing customers, the promotional rates must [~~shall~~] only apply to additional units of service ordered during the promotional rate period; and

(4) the promotional rate must [~~shall~~] be designed to generate sufficient revenue to recover the long run incremental cost of providing the service (or, if the long run incremental cost standard is waived, such other costs as are approved by the commission) within one year of introduction of the promotional rate. If the proposed promotional rate is for the reduction or elimination of an installation charge or service connection charge, the revenue and costs related to provision

of the entire service must [shall] be used in determining whether the cost standard for the service is met. If the proposed promotional rate is for a service whose tariffed rate does not recover the costs of providing the service, a promotional rate may be approved if the DCTU can demonstrate that the promotional rate will move the service closer to full cost recovery. However, no promotional rate must [shall] be approved for a service whose tariffed rate does not recover the cost of the service if such service has been found to be subject to significant competition under §26.211 of this title (related to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges) or if the service is enumerated in the Public Utility Regulatory Act §52.057. The commission may approve a promotional rate even if it does not provide a contribution to joint and common costs.

(g) Notification to the public of services to be offered at promotional rates. If promotional rates for a service are approved under this section, all advertising related to such service and its promotional rates must [shall] clearly describe the temporary nature of the rate, the date on which the promotional rate will expire, and the rate which will apply after expiration of the promotional rate. The DCTU must [shall] provide the same information to all customers requesting rate information for such service or ordering the service during the period the promotional rates are in effect.

(h) Reporting requirements. If promotional rates are approved[based on either an administrative review or a docketed proceeding], the DCTU must [shall] file with the commission a report showing the actual revenues, demand and related expenses and investment for the service over each period promotional rates are in effect. This report must [shall] be filed with the commission within three months after each authorized period for offering promotional rates has expired.

(i) Treatment of revenues and expenses related to promotional rates in subsequent rate cases. In any subsequent rate case in which a service was offered at promotional rates during the test year, the revenues attributed to such service must [shall] be adjusted upward to reflect the revenues which would have been collected if all customers who were charged the promotional rate had been charged the permanent tariffed rate over the promotional period.

(j) Subsequent review of the promotional rates. If promotional rates for a service are approved under the procedures set forth in this section, the commission's Office of Regulatory Affairs, the Office of Public Utility Counsel, or any affected person may file with the commission a petition seeking modification of the rates or terms under which the promotional rate is offered or withdrawal of the promotional rate. If multiple promotional rate periods are approved for a service under the provisions of this section and if the reports filed in accordance with subsection (h) of this section indicate that the rates for the service did not recover the costs of the service as required in subsection (f) of this section, the commission must [shall] initiate an inquiry into the reasonableness of such promotional rates and must [shall] suspend those rates pending the completion of the inquiry.

(k) Provisions for SLECs. Notwithstanding §26.208 of this title [§26.208(e) of this title (relating to General Tariff Procedures)] and subsections (c), (d), and (f) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to Definitions [definitions]). If the presiding officer [examiner] determines that the SLEC is seeking to adopt as its promotional rates for its services the rates for the same or similar services offered by an incumbent local exchange carrier:

(1) (No change.)

(2) a waiver of the incremental cost standard will [shall] be granted.

§26.211. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.

(a) Application. The provisions of this section apply to an incumbent local exchange company (ILEC) [companies (ILECs), as defined by §26.5 of this title (relating to Definitions)]. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(b) Purpose. The purpose of this section is to establish procedures for pricing flexibility for services subject to competition and a process for commission [the] review of pricing flexibility applications.

(c) Pricing flexibility.

(1) Eligible services. An ILEC [The types of pricing flexibility that an incumbent local exchange company (ILEC)] may request the types of pricing flexibility established by this subsection [are set forth in subparagraphs (A)-(C) of this paragraph].

(A) Banded rates. If an ILEC is granted the authority to charge banded rates, the minimum rates must [shall] yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided.

(i) When an ILEC is granted the authority to charge banded rates, the ILEC must [shall] file a tariff showing the minimum and maximum rates and specifying its current rate. The current rate[, as] specified in the ILEC's tariff must [, shall] be applied uniformly to all customers of the service in each exchange for which the commission has approved banded rates.

(ii) If the ILEC desires to charge a rate different from its current rate, but between the minimum and maximum rates, it must [shall] file a revised tariff on or before the effective date of the rate change.

(iii) The minimum and maximum rates may only be changed as provided for in the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(B) Detariffing. If an ILEC is granted the authority to detariff a service, the ILEC must [shall] maintain at the commission a current price list for the service, and the commission must [shall] retain authority to regulate the quality, terms and conditions of the detariffed service, other than rates. The commission may determine the appropriate ratemaking treatment of any revenues from or costs of providing a detariffed service in a proceeding under the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(C) Other types of pricing flexibility. If an ILEC is granted the authority to engage in a type of pricing flexibility that the commission finds to be in the public interest other than those specified in subparagraphs (A)-(B) of this paragraph, that pricing flexibility must [shall] be offered under such terms and conditions as the commission orders.

(2) Other services. ILECs have the authority to enter into customer-specific contracts for those services specified in subsection (d) of this section. For those services, ILECs may apply for [to the commission pursuant to this subsection to obtain a type of] pricing flexibility for the services specified in paragraph (1) of this subsection, other than customer-specific contracts. For other services, ILECs may apply to the commission in accordance with [pursuant to] this subsection to obtain any type of pricing flexibility specified in paragraph (1) of this subsection. Nothing [However, nothing] in this subsection permits [shall permit] an ILEC to:

(A) obtain pricing flexibility for basic local telecommunications service, including local measured service, or for any service

that includes as a component a service not subject to significant competitive challenge; or [. ~~Additionally, nothing in this subsection shall permit an ILEC to~~]

(B) enter into customer-specific contracts or to obtain detariffing with respect to message telecommunications services, switched access services, or wide area telecommunications service.

(3) Requirements for application. An application for pricing flexibility filed under this paragraph must [~~shall~~]:

(A) include a statement of the ILEC's intention to use the procedures established in this subsection;

(B) specify the type of pricing flexibility requested and, if the type of pricing flexibility requested is either banded rates or some other type of pricing flexibility in accordance with [~~pursuant to~~] paragraph (1)(C) of this subsection that involves rate-setting;

(i) - (iii) (No change.)

(iv) demonstrate that the rates are such that the service identified in accordance with [~~pursuant to~~] subparagraph (C) of this paragraph will not be subsidized directly or indirectly by regulated monopoly services; and

(v) (No change.)

(C) identify the service for which the ILEC is requesting pricing flexibility, including each component of the service [~~thereof~~], and provide functional and technical descriptions of the service, including:

(i) - (iv) (No change.)

(D) identify each service that is not subject to significant competitive challenge but that, at the time the ILEC files its application for pricing flexibility, the ILEC intends to provide as a tariffed adjunct to the service identified in subparagraph (C) of this paragraph and, for each such service, provide:

(i) (No change.)

(ii) citations to the tariff provisions under [~~pursuant to~~] which each such service will be provided;

(E) designate each exchange [~~the exchange(s)~~] as to which the ILEC is seeking pricing flexibility;

(F) include a map or maps of each exchange [~~the exchange(s)~~] designated in accordance with [~~pursuant to~~] subparagraph (E) of this paragraph that can be coordinated with the official commission boundary maps;

(G) describe the products or services known to the ILEC that are currently available in each exchange [~~the exchange(s)~~] designated in accordance with [~~pursuant to~~] subparagraph (E) of this paragraph, and that are the same, equivalent, or substitutable for the service identified in accordance with [~~pursuant to~~] subparagraph (C) of this paragraph, and identify the providers of those products or services;

(H) with respect to the products or services described in accordance with [~~pursuant to~~] subparagraph (G) of this paragraph, discuss:

(i) - (v) (No change.)

(I) demonstrate that the level of competition with respect to all components of the ILEC's service identified in accordance with [~~pursuant to~~] subparagraph (C) of this paragraph represents a significant competitive challenge within each exchange [~~the exchange(s)~~] designated in accordance with [~~pursuant to~~] subparagraph (E) of this paragraph that warrants the pricing flexibility specified in accordance with [~~pursuant to~~] subparagraph (B) of this paragraph;

(J) demonstrate that the service identified in accordance with [~~pursuant to~~] subparagraph (C) of this paragraph is not basic local telecommunications service, including local measured service;

(K) if the type of pricing flexibility requested in accordance with [~~pursuant to~~] subparagraph (B) of this paragraph is customer-specific pricing or detariffing, demonstrate that the service identified in accordance with [~~pursuant to~~] subparagraph (C) of this paragraph is not message telecommunications service, switched access service, or wide area telecommunications service;

(L) to prevent the subsidization of the service identified in accordance with [~~pursuant to~~] subparagraph (C) of this paragraph with revenues from regulated monopoly services, propose mechanisms to recover costs that may not be identified and recovered in a long run incremental cost study, including but not limited to costs associated with advertising, unsuccessful bids, and all items of plant used in the provision of the service;

(M) (No change.)

(N) for any type of pricing flexibility other than detariffing, include proposed tariffs and identify any tariff language that restricts the resale, sharing, or joint use of the service identified in accordance with [~~pursuant to~~] subparagraph (C) of this paragraph and any component of the service [~~thereof~~] and demonstrate why such restrictive tariff language is consistent with the policy established in the Public Utility Regulatory Act §52.001; and

(O) (No change.)

(4) Tier 1 LECs. The commission will [~~shall~~] allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC.

(5) Notice filing. An ILEC may, in accordance with §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.), submit an informational notice filing to introduce a service or exercise pricing flexibility to which this section applies. An informational notice filing must also comply with §26.228 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies) or §26.229 of this title (relating to Requirements Applicable to Chapter 52 Companies) as applicable. [~~An application for pricing flexibility shall be docketed and assigned to a presiding officer. No later than ten working days after the filing of an application for pricing flexibility, the presiding officer shall issue an order scheduling a prehearing conference for the purposes of determining notice requirements, establishing a procedural schedule, and addressing other matters as may be appropriate. The commission shall make a final decision no later than 180 days after the completion of notice, as ordered by the presiding officer. However, this 180-day period shall be extended two days for each one day of actual hearing on the merits of the case that exceeds 15 days. The presiding officer or commission, upon a showing of good cause relating to the applicant's failure or refusal to prosecute, including but not limited to the applicant's unreasonable resistance to discovery, may further extend the timeline, provided that the order shall specifically identify the facts found to constitute good cause. This deadline may be expressly waived by the applicant.~~]

(6) Review of competition outside exchange. For ILECs with less than 31,000 access lines, the presiding officer will [~~commission shall~~] not be limited under paragraph (7)(D)(i)-(x) of this subsection to considering only competition within each exchange [~~the~~

~~exchange(s)~~] where the ILEC will provide the service. In accordance with [~~pursuant to~~] paragraph (3)(O) of this subsection, an ILEC with less than 31,000 access lines may provide information that addresses the criteria of paragraph (3)(G)-(I) of this subsection with respect to products or services available outside each exchange [~~the exchange(s)~~] designated in paragraph (3)(E) of this subsection.

(7) Application requirements. An application for pricing flexibility will [~~shall~~] be approved if, after commission review [~~an evidentiary hearing,~~] the commission determines [~~finds, based on the evidence,~~] that:

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

(D) the grant of pricing flexibility for the service identified in accordance with [~~pursuant to~~] paragraph (3)(C) of this subsection within each [~~the exchange(s)~~] designated in accordance with [~~pursuant to~~] paragraph (3)(E) of this subsection is appropriate to allow the ILEC to respond to a significant competitive challenge, based upon consideration of the following:

(i) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service within each exchange [~~the exchange(s)~~] designated in accordance with [~~pursuant to~~] paragraph (3)(E) of this subsection;

(ii) the extent to which the same, equivalent, or substitutable service is available within each exchange [~~the exchange(s)~~] designated in accordance with [~~pursuant to~~] paragraph (3)(E) of this subsection;

(iii) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions within each exchange [~~the exchange(s)~~] designated in accordance with [~~pursuant to~~] paragraph (3)(E) of this subsection;

(iv) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions within each exchange [~~the exchange(s)~~] designated in accordance with [~~pursuant to~~] paragraph (3)(E) of this subsection;

(v) the existence of any significant barrier to the entry or exit of a provider of the same, equivalent or substitutable services within each [~~the exchange(s)~~] designated in accordance with [~~pursuant to~~] paragraph (3)(E) of this subsection;

(vi) - (vii) (No change.)

(viii) whether the ability of the ILEC to flexibly price the service within each [~~the~~] designated exchange [~~exchange(s)~~] would have any significant impact on universal service;

(ix) whether the type of pricing flexibility requested is appropriate in light of the level and nature of competition within each exchange [~~the exchange(s)~~] where the ILEC will provide the service; and

(x) any other relevant information contained in the record;

(E) the rates, if the type of pricing flexibility granted is either banded rates or some other type of pricing flexibility in accordance with [~~pursuant to~~] paragraph (1)(C) of this subsection that involves rate-setting, are just and reasonable and:

(i) - (iv) (No change.)

(8) Alternative relief. Nothing in this subsection prevents the presiding officer from approving [~~is intended to prevent the presiding officer from recommending, or the commission from approving based on the record evidence,~~]relief other than that requested in the application.

(d) Customer-specific contracts. An ILEC may [~~shall have the authority to~~] enter into customer-specific contracts for:

(1) - (3) (No change.)

(4) customized services that are unique because of size or configuration, provided that such customized services do [~~shall~~] not include basic local telecommunications service, including local measured service, or message telecommunications services, switched access services, or wide area telecommunications service; and

(5) any other service for which the commission has authorized the ILEC to enter into customer- specific contracts in accordance with [~~pursuant to~~] this section.

(e) Subsequent review. The commission may modify, or revoke, upon notice and hearing, the authorization of any type or types of pricing flexibility granted in accordance with [~~pursuant to~~] this section.

~~[(f) Severability. If any provision of this section or the application thereof to any person or any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.]~~

§26.214. Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs).

(a) Application. This section applies [~~shall apply~~] to ILECs with annual revenues from regulated telecommunications operations in Texas of less than $100 million for five consecutive years.

(b) Purpose. This section will [~~shall~~] be used to determine the long run incremental costs incurred by ILECs in the provision of telecommunications services in those instances in which the ILEC chooses to establish LRIC studies.

(c) (No change.)

(d) Procedures for review of LRIC studies filed under subsection (c) of this section. A LRIC study considered under this section will [~~shall~~] be reviewed administratively to determine whether the ILECs LRIC study is consistent with the requirements of this section.

(1) Notice. At least ten days before an ILEC files any LRIC study [~~pursuant to~~] this section, the ILEC must [~~shall~~] file with the commission and the Office of Public Utility Counsel (OPUC) [~~(OPC)~~] a notice of its intent to file such LRIC study and the expected filing date. The ILEC's notice must [~~shall~~] indicate that the filing is being made [~~pursuant to~~] this section. The commission will [~~shall~~] then publish notice of the ILEC's intent to file the LRIC study in the *Texas Register.*

(2) Sufficiency. The LRIC study will [~~shall~~] be examined for sufficiency. To be sufficient, the LRIC study must [~~shall~~] conform to the requirements of this section.

(A) Except as required under subparagraph (B) of this paragraph, if [~~the~~]commission staff concludes that material deficiencies exist in the LRIC study, the ILEC must [~~shall~~] be notified by [~~the~~]commission staff of the specific deficiency within three working days after the filing date of the LRIC study. The ILEC will [~~shall~~] have two working days after the date it is notified of the deficiency to file a corrected LRIC study. On or before five working days after the date of the ILEC response, the presiding officer will [~~shall~~] issue an order with regard to the sufficiency.

(B) If the LRIC study filed for approval in accordance with [~~pursuant to~~] this section is also filed simultaneously as part of an informational notice filing and a contested case arises as a result of the dispute regarding sufficiency of the LRIC study filed as part of the informational notice filing, the review of the LRIC study in accordance with [~~pursuant to~~] this section will [~~shall~~] be abated pending the resolution of the contested case.

(3) Time schedule.

(A) (No change.)

(B) No later than 55 days after the filing date of the sufficient LRIC study, OPUC [~~OPC~~] may file with the presiding officer written comments or recommendations concerning the LRIC study.

(C) No later than 65 days after the filing date of the sufficient LRIC study, [~~the~~] commission staff must [~~shall~~] file with the presiding officer written comments or recommendations concerning the LRIC study.

(D) No later than 75 days after the filing date of the sufficient LRIC study, any party that demonstrates justiciable interest, OPUC [~~OPC~~], or the ILEC may file with the presiding officer a written response to the commission staff's recommendation.

(E) No later than 85 days after the filing date of the sufficient LRIC study, the presiding officer will [~~shall~~] issue a notice stating whether the ILEC's LRIC study is consistent with the requirements of this section. In this notice, the presiding officer may either [~~shall~~] approve the LRIC study or order the ILEC to refile the LRIC study incorporating all modifications recommended by the presiding officer.

(F) Any party may appeal to the commission an administrative notice by a presiding officer within seven days after the date the notice is issued. The commission will [~~shall~~] rule on any appeal added to an open meeting agenda, within 30 days after the date the appeal is filed. If the commission or a presiding officer orders a cost study to be changed, the ILEC will [~~shall~~] be ordered to make those changes within a period that is commensurate with the complexity of the LRIC study.

(G) Requests for information. While the LRIC study is being administratively reviewed, the commission staff, OPUC [~~OPC~~], and any party that demonstrates a justiciable interest may submit requests for information to the ILEC. Answers [~~Copies of all answers~~] to such requests for information must [~~shall~~] be provided within ten days after receipt of the request by the ILEC to [~~the~~]commission staff, OPUC [~~OPC~~], and any party that demonstrates a justiciable interest.

(H) Suspension. At any point within the first 45 days of the review process, the presiding officer, the commission staff, OPUC [~~OPC~~], the ILEC, or any party that demonstrates a justiciable interest may request that the review process be suspended for 30 days. The presiding officer may grant a request for suspension only upon determination that the party has demonstrated a good cause exists for the suspension.

(I) Effective date of the LRIC study. The effective date of the LRIC study is [~~shall be~~] the date it is approved by the presiding officer.

§26.215. Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services.

(a) - (j) (No change.)

(k) Review process for LRIC studies. A LRIC study considered under this section will [~~shall~~] be reviewed administratively to determine whether the DCTU's LRIC study is consistent with the principles, instructions and requirements set forth in this section.

(1) Sufficiency. The LRIC study will [~~shall~~] be examined for sufficiency. To be sufficient, the LRIC study must [~~shall~~] conform to the prototype studies developed under the workplan approved by the commission. If the presiding officer or the commission staff concludes that material deficiencies exist in the LRIC study, the DCTU will [~~shall~~] be notified within 15 days of the filing date of the specific deficiency in its LRIC study. The DCTU will [~~shall~~] have 15 days from the date it is notified of the deficiency to file a corrected LRIC study.

(2) Time schedule.

(A) - (B) (No change.)

(C) No later than 65 days after the filing date of the sufficient LRIC study, [~~the~~]commission staff must [~~shall~~] file with the presiding officer written comments or recommendations concerning the LRIC study.

(D) (No change.)

(E) No later than 85 days after the filing date of the sufficient LRIC study, the presiding officer must [~~shall~~] complete an administrative review to determine whether the DCTU's LRIC study is consistent with the principles, instructions and requirements set forth in this section. The presiding officer must [~~shall~~] approve the LRIC study or order the DCTU to refile the LRIC study incorporating all modifications recommended by the presiding officer.

(F) Any party may appeal to the commission an administrative determination by a presiding officer within five days after the date of notification of the determination. The commission will [~~shall~~] rule on the appeal within 30 days after the date it receives the appeal. If the commission or a presiding officer orders a cost study to be changed, the dominant certificated telecommunications utility must [~~shall~~] be ordered to make those changes within a period that is commensurate with the complexity of the LRIC study.

(3) Requests for information. While the LRIC study is being administratively reviewed, the commission staff, OPUC, and any party that demonstrates a justiciable interest may submit requests for information to the DCTU. Answers [~~Three copies of all answers~~] to such requests for information must [~~shall~~] be provided within ten days after receipt of the request by the DCTU to [~~the~~]commission staff, OPUC and any party that demonstrates a justiciable interest.

(4) (No change.)

(l) (No change.)

§26.217. Administration of Extended Area Service (EAS) Requests.

(a) Purpose. This section establishes procedures for processing requests for extended area service (EAS) in accordance with [~~pursuant to the~~] Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B. On or after September 1, 2011, the commission will [~~may~~] not require a telecommunications provider to provide mandatory or optional extended area service to additional metropolitan areas or calling areas.

(b) Extended Area Service. The term "utility [~~utility(ies)~~] " in this section refers to a dominant certificated telecommunications utility [~~utility(ies)~~].

(1) Filing requirements.

(A) In order to be considered by the commission, a request for EAS must be initiated by at least one of the following actions:

(i) - (iii) (No change.)

(iv) an application filed by one or more of each affected utility [~~the affected utility(ies)~~].

(B) A request for establishment of a particular EAS arrangement in accordance with [~~pursuant to~~] subparagraph (A)(i), (ii), or (iii) of this paragraph must not be considered sooner than three years after either a determination of the failure of a previous request to meet eligibility requirements, or final commission action on a previously docketed request. An exception to this requirement may be granted to any petitioning exchange which demonstrates that a change of circumstances may have materially affected traffic levels between the petitioning exchange and the exchange to which EAS is desired.

(C) A request for EAS must [~~shall~~] state the name of each exchange [~~the exchange(s)~~] to which EAS is sought.

(D) The petition must [~~shall~~] set forth the name and telephone number of each signatory and the name of the exchange from which the subscribers receive service.

(E) (No change.)

(F) Requests for EAS into metropolitan exchanges will be grouped by relevant metropolitan exchange. For each metropolitan exchange, [~~the~~]commission staff will file a motion to docket a proceeding for the determination of uniform EAS rate additives as directed by paragraphs (3), (4), and (5) of this subsection for all pending EAS requests to that metropolitan exchange. Upon the docketing of such a proceeding, the petitioned utility must publish [~~two weeks~~] notice in a newspaper of general circulation in the metropolitan area for two consecutive calendar weeks [~~must be published~~]. The notice must [~~shall~~] contain such information as deemed reasonable by the presiding officer in the proceeding. The demand studies required by paragraph (3) of this subsection must be initiated no earlier than 60 days from the date of final publication of notice [~~No earlier than 60 days from the date of final publication of notice, the demand studies required by paragraph (3) of this subsection shall be initiated~~]. New petitions for EAS into the metropolitan exchange may be accepted prior to the initiation of the demand studies.

(2) Community of interest.

(A) Upon receipt of a proper filing under the provisions set out in paragraph (1) of this subsection, the utility [~~utility(ies)~~] involved will be directed by the commission staff to initiate appropriate calling usage studies. Within 90 days of receipt of such direction, the utility must [~~utility(ies) shall~~] provide the results of such studies to the commission staff and to a representative of each petitioning exchange [~~the petitioning exchange(s)~~]. The message distribution and revenue distribution detail from the studies must [~~shall~~] be considered proprietary unless the parties agree otherwise and must [~~shall~~] not be released for use outside the context of the commission's proceedings. The data to be provided must [~~shall~~] be based upon a minimum 60 day study of representative calling patterns, must [~~shall~~] be in such form, detail, and content as the commission staff may reasonably require and must [~~shall~~] include at least the following information:

(i) - (v) (No change.)

(vi) a listing of known interexchange carriers providing service between the petitioning exchange and each exchange [~~the exchange(s)~~] to which EAS is desired.

(B) A community of interest between exchanges must [~~shall~~] be considered to exist from one exchange to the other when:

(i) there is an average[~~(arithmetic mean)~~] of no less than ten calls per subscriber account per month from one exchange to the other, and

(ii) (No change.)

(C) A request for EAS must [~~shall~~] be assigned a project number and notice must [~~shall~~] be provided, in accordance with [~~pursuant to~~] paragraph (7) of this subsection, when a community of interest is found to exist as described in subparagraph (B) of this paragraph:

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

(D) The project must [~~shall~~] be established as a formal docket upon the motion of the commission staff.

(E) Following the docketing of a request, a prehearing conference must [~~shall~~] be scheduled to establish each exchange [~~the exchange(s)~~] to which EAS is sought, and to report any agreements reached by the parties. The utility [~~utility(ies)~~] involved must [~~shall~~] conduct appropriate demand and costing analyses according to paragraphs (3) and (4) of this subsection.

(3) Demand analysis.

(A) The utility [~~utility(ies)~~] involved must [~~shall~~] conduct analyses of anticipated demand for the requested EAS. The data must [~~shall~~] be in such form, detail, and content as the commission staff may reasonably require and must [~~shall~~] include, at a minimum, the following information:

(i) the number of subscribers who are expected to take the requested service at the estimated rates recommended in accordance with [~~pursuant to~~] paragraph (5) of this subsection and the associated probability of that level of subscribership;

(ii) - (iii) (No change.)

(B) Unless the utility [~~utility(ies)~~] demonstrates good cause to expand the time schedule, the utility must [~~utility(ies) shall~~] provide to the commission staff and to other parties to the proceeding, no later than 120 days after the prehearing conference, the results of these analyses, together with supporting schedules and detailed documentation needed to understand and verify the study results.

(4) Determination of costs.

(A) The utility [~~utility(ies)~~] involved must [~~shall~~] conduct studies necessary to determine the changes in costs and revenues which may reasonably be expected to result from establishment of the requested EAS. These studies must [~~shall~~] consider and develop the long run incremental costs as follows:

(i) - (iii) (No change.)

(B) (No change.)

(C) The utility must [~~utility(ies) shall~~] file with the commission's [~~Filing Clerk and serve copies on commission staff and other parties to~~]the proceeding the results of these studies, together with supporting schedules and detailed documentation needed to understand and verify the study results according to the following schedule, unless the utility [~~utility(ies)~~] can demonstrate that good cause exists to expand the time schedule for a particular study:

(i) incremental costs identified in this paragraph must [~~shall~~] be filed no later than 90 days from the filing of the results of the demand analysis conducted [~~pursuant to~~] paragraph (3) of this subsection; and

(ii) toll revenue effects, if analyzed [~~pursuant to~~] subparagraph (B) of this paragraph, must [~~shall~~] be filed no later than 90 days from the filing of the results of the incremental costs, [~~pursuant to~~] clause (i) of this subparagraph.

(5) EAS rate additives.

(A) Coincident with the filing of cost study results, or coincident with the toll revenue effect results, if filed, the utility must [~~utility(ies)~~ ~~shall~~] file recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of the added service, as well as to support the toll revenue effect, if such effect is filed.

(i) EAS rate additives to be assessed on EAS subscribers in each [~~the~~]petitioning exchange [~~exchange(s)~~] are to recover the incremental cost of providing the service according to paragraph (4)(A) of this subsection plus 10% of the incremental cost.

(ii) The rate additives to be assessed on subscribers in the metropolitan exchange for which EAS has been requested are to recover revenues determined by the following formula: net lost toll multiplied by percent outbound toll, and multiplied by the estimated EAS take rate. The terms in the formula are defined as follows:

(I) (No change.)

(II) percent outbound toll-this factor is calculated by dividing toll minutes of use originating in the metropolitan exchange and terminating in the petitioning exchanges by the total number of toll minutes of use between the metropolitan exchange and each [~~the~~] petitioning exchange [~~exchange(s)~~]; and

(III) estimated EAS take rate-the estimated number of EAS subscribers in the petitioning exchanges divided by the total number of subscribers in each [~~the~~] petitioning exchange [~~exchange(s)~~].

(B) (No change.)

(C) A non-recurring charge to defray the direct incremental costs of the demand analyses identified in paragraph (4)(A)(iii) of this subsection must [~~shall~~] be charged to subscribers who order the service within 12 months from the time it is first offered. The non-recurring charge must [~~shall~~] not exceed $5.00 per access line.

(D) The EAS rate additive to be used in each affected exchange [~~the affected exchange(s)~~] must meet the following standards.

(i) No increase in rates must [~~shall~~] be incurred by the subscribers of non-benefiting exchanges, that is, by subscribers whose calling scopes are not affected by the requested EAS service.

(ii) If the petitioning exchange demonstrated a unilateral but not a bilateral community of interest through the requirements of paragraph (2)(C)(ii) of this subsection, the EAS arrangements must [~~shall~~] be priced using those rate increments designed to recover the added costs for each route, plus the toll revenue effect, if reasonably substantiated. The total increment chargeable to subscribers within an exchange must [~~shall~~] be the sum of the increments of all new EAS routes established for that exchange.

(iii) If the petitioning exchange demonstrated a bilateral community of interest through the requirements of paragraph (2)(C)(i) of this subsection and requested that the costs be borne on a bilateral basis, the additional cost for the new EAS route must [~~shall~~] be divided between the two participating exchanges according to the ratio of calling volumes between the two exchanges.

(iv) In establishing a flat rate EAS increment, all classes of customer access line rates within each exchange must [~~shall~~] be increased by equal percentages.

(6) Subscription threshold.

(A) A threshold demand level must [~~shall~~] be established by the commission's order in the docketed proceeding prior to the design or construction of facilities for the service. A reasonable pre-subscription process must [~~shall~~] then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS must [~~shall~~] be provided in accordance with the commission's order. If the threshold demand level is not met, the affected utility[~~utility(ies)~~] is not required to provide the EAS approved by the commission.

(B) The cost of pre-subscription must [~~shall~~] be divided between the utility and the petitioners. The petitioners must [~~shall~~] pay for the printing of bill inserts and ballots and the utility must [~~shall~~] insert them in bills free of charge. In the alternative, upon the agreement of the parties, the utility must [~~shall~~] provide, free of charge, and under protective order, the mailing labels of the subscribers in the petitioning exchange, and the petitioners must [~~shall~~] pay the cost of printing and mailing the bill inserts and ballots.

(7) Notice.

(A) Notice of the filing of an EAS application must be provided to all subscribers within each [~~the~~] petitioning exchange [~~exchange(s)~~], by publication for two consecutive weeks in a newspaper of general circulation in the area. Notice must also be given to individual subscribers either through inserts in customer bills, or through a separate mailing to each subscriber. The notice must state: the project number, the nature of the request, and the commission's mailing address and telephone number to contact in the event an individual wishes to protest or intervene. The commission must [~~shall~~] also publish notice in the *Texas Register*.

(B) Written notice containing the information described above must be provided to each governing official of all incorporated areas within the affected exchanges and each county commission, or each [~~shall be provided to the governing official(s) of all incorporated areas within the affected exchanges and the county commission(s) or the~~] board of directors or trustees of a community association representing any unincorporated areas within the affected exchanges.

(C) The cost of notice must [~~shall~~] be borne by the petitioners.

(8) Joint filings.

(A) EAS agreements. The commission may approve agreements for EAS or EAS substitute services filed jointly by the representatives of petitioning exchanges and the affected utility [~~utility(ies)~~ ~~(joint filings)~~] so long as the agreements are in accordance with subparagraph (C)(i)-(x) of this paragraph. Notwithstanding any other provisions of this paragraph, if more than one political subdivision is affected by a proposed optional calling plan under PURA §55.023, the agreement of each political subdivision is not required.

(B) Multiple exchange common calling plans. Joint filing agreements for EAS or EAS substitute services among three or more exchanges must [~~shall~~] be permitted in accordance with [~~pursuant to~~] subparagraph (C)(i)-(x) of this paragraph.

(C) Standards for joint filings. Joint filings must [~~shall~~] be permitted subject to the following:

(i) The parties to joint filings must [~~shall~~] include the name of each utility which provides service in the affected exchanges and one duly appointed representative for each affected exchange. Each exchange representative must [~~shall~~] be designated jointly by the governing officials of all incorporated areas within the affected exchange and each [~~the~~] county commission [~~commission(s)~~] representing any unincorporated areas within the affected exchange.

(ii) (No change.)

(iii) Joint filings may include rate proposals which are flat rate, usage sensitive, block rates, or other pricing mechanisms. If usage-sensitive rates are proposed, joint applicants must [~~shall~~] include the commission staff in their negotiations.

(iv) - (v) (No change.)

(vi) Joint filings must [~~shall~~] specify all non-recurring and recurring rate additives to be paid by the various classes and grades of service in the affected exchanges.

(vii) Joint filings must [~~shall~~] demonstrate that the proposed rate additives:

(I) are in the public interest, and in the case of non-optional joint filings which include flat rate additives, the filing must [~~shall~~] demonstrate that more than 50% of the total subscribers who will experience a rate change are in favor of this joint filing at the proposed rates; and

(II) (No change.)

(viii) The notice requirements of paragraph (7) of this subsection are applicable to joint filings. In addition, the commission must [~~shall~~] publish notice of the proposed joint filing in the *Texas Register* and must [~~shall~~] provide notice to the Office of Public Utility Counsel upon receipt of the joint filing.

(ix) If intervenor status is not granted within 60 days of completion of notice, the joint filing must [~~shall~~] be handled administratively, with the commission determining whether the service meets the criteria listed in clause (vii) of this subparagraph. If requested by an intervenor or the commission staff, the joint filing must [~~shall~~] be docketed for hearing and final order. Any of the parties to the joint filing may withdraw the joint filing without prejudice at any time prior to the rendition of the final order. Any alteration or modification of the joint filing by the commission may only be made upon the agreement of all parties to the proceeding.

(x) The exchanges to be included within the proposed common calling plan area must [~~shall~~] be contained within a continuous boundary and all exchanges within that boundary must [~~shall~~] be included in the common calling plan.

§26.221. Applications to Establish or Increase Expanded Local Calling Service Surcharges.

(a) Purpose. The purpose of this section is to provide the standard for review of an incumbent local exchange company (ILEC) application, filed in accordance with [~~pursuant to~~] the Public Utility Regulatory Act (PURA) §55.048(c), to recover all costs incurred and all loss of revenue from an expansion of a toll-free local calling area.

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

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

(3) Expanded local calling service (ELCS) -- A two-way toll-free local calling service provided by an ILEC to telephone service subscribers in accordance with [~~pursuant to~~] §26.219 of this title (relating to Administration of Expanded Local Calling Service Requests).

(4) Expanded local calling service (ELCS) fee -- A fee billed by an ILEC, in accordance with [~~pursuant to~~] PURA §55.048(b), to subscribers in a petitioning telephone exchange.

(5) (No change.)

(6) Expanded local calling service (ELCS) surcharge -- A fee billed by an ILEC, in accordance with PURA §55.048(c) to each subscriber of the ILEC [~~pursuant to PURA §55.048(c), to all of its Texas subscribers~~], unless an exception is granted by the commission. ELCS surcharges are designed to recover the residual in paragraph (8) of this subsection.

(7) - (8) (No change.)

(c) General Principles. The commission will [~~shall~~] consider these general principles when establishing or increasing ELCS surcharges.

(1) The commission may, at any time, initiate a show cause investigation or a compliance investigation of ELCS surcharges in accordance with [~~pursuant to~~] Procedural Rule §22.241 of this title (relating to Investigations) to determine whether ELCS surcharges comply with the requirements in PURA §55.048.

(2) - (3) (No change.)

(4) An application to establish an ELCS surcharge must [~~shall~~] contain information that enables commission staff [~~the Office of Regulatory Affairs~~] to validate and replicate the method used by the ILEC to develop a proposed ELCS surcharge.

(5) When established, ELCS surcharges must [~~shall~~] be based upon the most current count of local exchange access lines billed by an ILEC.

(6) The commission will [~~shall~~] pursue the goal of revenue neutrality in designing ELCS surcharges.

(7) Except as provided under subsection (i)(1) of this section, an ILEC has no continuing right to bill an ELCS surcharge for an indefinite period.

(8) ELCS surcharges must [~~shall~~] be designed so that business subscribers are billed twice the monthly per line charge billed to residential subscribers.

(d) Confidentiality. Before filing an application regarding an ELCS surcharge, an ILEC must [~~shall~~] obtain agreement from commission staff [~~the Office of Regulatory Affairs~~] on a method for securing the confidentiality of information the ILEC deems confidential. An application filed in accordance with [~~pursuant to~~] subsection (e) of this section must [~~shall~~] not exclude information deemed confidential by the ILEC.

(e) Filing an application. An application to establish or increase an ELCS surcharge must [~~shall~~] be assigned a control [~~project~~] number and a presiding officer must [~~shall~~] be assigned to the project. An ILEC's application must [~~shall~~] be reviewed administratively unless the presiding officer dockets the project. An application must [~~shall~~], at a minimum, include:

(1) twelve consecutive months of actual toll revenue data collected as near the ELCS implementation date as is practicable but no [~~possible and, in no event,~~] earlier than 18 months before the ELCS implementation date. Data provided by an ILEC must [~~shall~~] show actual toll revenue billed by the ILEC for each direction of each pre-ELCS toll route for each of the 12 consecutive months collected;

(2) twelve consecutive months of actual access revenue data collected as near the ELCS implementation date as is practicable but no [~~possible and, in no event,~~] earlier than 18 months before the ELCS implementation date. Data provided by an ILEC must [~~shall~~] show access revenue billed by the ILEC for each direction of each pre-ELCS access route for each of the 12 consecutive months collected;

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

(9) a copy of the confidentiality agreement, if such an agreement is necessary, signed by a representative of commission staff [~~the Office of Regulatory Affairs~~];

(10) - (11) (No change.)

(f) Administrative response to an application.

(1) Notice. The presiding officer will [~~shall~~] approve or modify the notice proposed under subsection (e)(10) of this section within 20 days after the filing of an application to establish or increase ELCS surcharges. The ILEC must [~~shall~~] arrange for publication of notice at least once each week for four consecutive weeks, in newspapers having general circulation in each of the ILEC's affected telephone exchanges. Published notice must [~~shall~~] identify the assigned control [~~project~~] number, must [~~shall~~] include the language provided by [~~in Procedural Rule~~] §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E, Proceedings) modified to reflect the appropriate intervention deadline, must [~~shall~~] describe the application and must [~~shall~~] be written in plain [~~both~~] English and Spanish. Notice must [~~shall~~] be published within 40 days of the date the presiding officer files an order approving the notice format. The ILEC must [~~shall~~] file an affidavit of completion of published notice within ten days following such completion. The presiding officer will [~~shall~~] cause notice to be published in the *Texas Register* within 30 days of the date an order of approval of the notice format is filed. Additionally, the ILEC must [~~shall~~] provide a copy of its application to the Office of Public Utility Counsel on the same day the application is filed with the commission [~~commission's Filing Clerk~~].

(2) Intervention. The intervention deadline must [~~shall~~] be no sooner than ten days after the last date notice is published. On or before the intervention deadline, any interested person may file a request to intervene in the project. The presiding officer will [~~shall~~] rule on a request to intervene, in accordance with [~~Procedural Rule~~] §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request for intervention is filed with the commission [~~commission's Filing Clerk~~]. Intervention by an interested person does not by itself require that the project be docketed.

(3) Discovery. Discovery may commence on the date the application is filed in accordance with [~~the commission's Procedural Rules,~~] Chapter 22, Subchapter H of this title (relating to Discovery Procedures).

(4) Interim surcharges. No later [~~Not more~~] than 30 days after the intervention deadline, the presiding officer will [~~shall~~] grant or deny, in whole or in part, a request for interim relief and may approve or modify a proposed interim ELC surcharge in accordance with [~~Procedural Rule~~] §22.125 of this title (relating to Interim Relief).

(5) Sufficiency review and requests for exemption. Within 30 days after the filing of an ILEC application, commission staff must [~~the Office of Regulatory Affairs shall~~] file comments on the sufficiency of the application and on any request for exemption filed by the ILEC under subsection (e)(8) of this section. No later [~~Not more~~] than 30 days after commission staff's [~~Office of Regulatory Affairs'~~] comments are filed, the ILEC must [~~shall~~] file a response and may amend or supplement its application. No later [~~Not more~~] than ten days after the ILEC's response is filed, commission staff must [~~the Office of Regulatory Affairs shall~~] file a recommendation to the presiding officer addressing whether the application is sufficient and whether any requests for exemption should be granted.

(6) Docketing. If commission staff [~~the Office of Regulatory Affairs~~] or any intervenor files, within 30 days after the intervention deadline, a request to docket the project, the presiding officer will [~~shall~~] docket the project. Upon docketing, the presiding officer will [~~shall~~] ascertain whether the parties prefer to pursue settlement negotiations or alternative dispute resolution. If so, the presiding officer will [~~shall~~] abate the docket for a reasonable period. If the parties prefer to establish a procedural schedule, the presiding officer may refer the docket to the State Office of Administrative Hearings or may take other appropriate action. If neither commission staff [~~the Office of Regulatory Affairs~~] nor an intervenor requests docketing, the presiding officer must [~~shall~~] administratively approve or modify the application within 40 days after the intervention deadline.

(g) Calculation of initial ELCS surcharges. An initial ELCS surcharge must [~~shall~~] be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula.

(1) - (3) (No change.)

(h) Adjustments to ELCS surcharges. ELCS surcharges must [~~shall~~] be adjusted using the formula described in subsection (g) of this section, except that:

(1) the numerator established in a previous application may be modified to consider new information relevant to development of the residual:

(A) for any ELCS surcharge approved before February 1, 2000, if the commission reserved the right to subsequently review the costs incurred and lost revenues associated with the ELCS surcharge; or

(B) for any ELCS surcharge approved after February 1, 2000; and

(2) the denominator must [~~shall~~] be modified to reflect the most current count of local exchange access lines at the time of the adjustment. For ELCS surcharges approved before February 1, 2000, if the number of access lines in the denominator initially included only non-petitioning exchanges, an adjustment in the number of access lines must [~~shall~~] include only non-petitioning exchanges.

(i) Duration. An ILEC must [~~shall~~] select a preferred duration of applicability of its proposed ELCS surcharges from alternatives listed in this subsection. The commission may establish ELCS surcharges for any duration.

(1) Permanent. An ILEC may initiate a review of [~~all of~~] its rates and charges by filing a rate filing package. Following a review of the ILEC's cost of service in accordance with [~~pursuant to Substantive Rule~~] §26.201 of this title (relating to Cost of Service), any resulting ELCS surcharge must [~~shall~~] be considered permanent unless modified, for good cause, by the commission.

(2) Phase-down. If an ILEC's application to establish or increase an ELCS surcharge contains all information required in subsection (e)(1)-(6) of this section, the ILEC may propose a phase-down of its ELCS surcharge for a duration of five years. The phase-down must [~~shall~~] be implemented by reducing each ELCS surcharge by 20% at the end of each year of the phase-down period. At the end of the five-year phase-down period, the ELCS surcharge must [~~shall~~] be zero. A tariff sheet [~~Tariff sheet(s)~~] filed by the ILEC must [~~shall~~] contain ELCS surcharges for each of the five years of the phase-down period.

(3) Phase-out. An ILEC that files an application to establish or increase an ELCS surcharge may propose a phase-out of its ELCS surcharge. A proposed phase-out must [~~shall~~] be for a duration not to exceed two years. At the end of the phase-out period, the ELCS surcharge must [~~shall~~] be zero. A tariff sheet [~~Tariff sheet(s)~~] filed by the ILEC must [~~shall~~] contain ELCS surcharges for the two-year pe-

riod and must [~~shall~~] state the two-year duration of applicability of the ELCS surcharges.

§26.224. Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.

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

(j) Proprietary or confidential information.

(1) Information filed in accordance with [~~pursuant to~~] this section [~~rule~~] is presumed to be public information. An electing company has [~~shall have~~] the burden of establishing that information filed in accordance with [~~pursuant to~~] this section [~~rule~~] is proprietary or confidential.

(2) Nothing in this subsection must [~~shall~~] be construed to change the presumption that information filed in accordance with [~~pursuant to~~] this rule is public information. An electing company that intends to rely upon data it purports is proprietary or confidential in support of an application made in accordance with [~~pursuant to~~] this section must file such [~~shall submit two copies of the proprietary or confidential~~] data confidentially [~~to Central Records for use by the commission staff subject to a commission-approved protective agreement~~]. An electing company that intends to rely upon proprietary or confidential data has the burden of providing such data on the same date the associated tariff sheets are filed. In the event an electing company's proprietary or confidential data is not provided with the associated tariff sheets, the procedural schedule will [~~shall~~] be adjusted day-for-day to reflect the number of days the proprietary or confidential data is delayed.

(l) (No change.)

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

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16 TAC §26.208

The proposed repeal is proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.208. General Tariff Procedures.

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 L. WHOLESALE MARKET PROVISIONS

16 TAC §26.272, §26.276

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.272. Interconnection.

(a) Purpose. The purpose of this section is to ensure that a telecommunications service provider that is certificated provides [~~all providers of telecommunications services which are certificated to provide~~] local exchange service, basic local telecommunications service, or switched access service within the state interconnect and maintains [~~maintain~~] interoperable networks such that the benefits of local exchange competition are realized as envisioned under the provisions of the Public Utility Regulatory Act (PURA). The commission finds that interconnection is necessary to achieve competition in the local exchange market and is[~~,~~] therefore[~~,~~] in the public interest.

(b) Definition. The term "customer" when used in this section, means [~~shall mean~~] an end-user customer.

(c) Application and Exceptions.

(1) Application. This section applies to a [~~all~~] certificated telecommunications utility (CTU) that provides [~~utilities (CTUs) providing~~] local exchange service.

(2) Exceptions. Except as provided under this paragraph, a CTU [~~herein provided, all CTUs~~] providing local exchange service must comply with the requirements of this section.

(A) Holders of a service provider certificate of operating authority (SPCOA).

(i) The holder of an SPCOA that does not provide dial tone and only resells the telephone services of another CTU is [~~shall be~~] subject only to the requirements of subsection (e)(1)(B)(ii) and (D)(i) - (vii) of this section and subsection (i)(1) - (3) of this section.

(ii) The underlying CTU providing service to the holder of an SPCOA referenced in clause (i) of this subparagraph must [~~shall~~] comply with the requirements of this section with respect to the customers of the SPCOA holder.

(B) Small incumbent local exchange companies (ILECs).

(i) This section applies [~~shall apply~~] to small ILECs to the extent required by 47 United States Code (U.S.C.) §251(f) (1996).

(ii) Notwithstanding the requirement in clause (i) of this subparagraph, small ILECs must [~~shall~~] terminate traffic of a CTU which originates and terminates within the small ILEC's extended local calling service (ELCS) or extended area service (EAS) calling scope, where the small ILEC has an ELCS or EAS arrangement with another DCTU. The termination of this traffic must [~~shall~~] be at rates, terms, and conditions prescribed by [~~as described in~~] subsection (d)(4)(A) of this section.

(C) Rural telephone companies.

(i) This section also applies [~~shall also apply~~] to rural telephone companies as defined in 47 U.S.C. [~~United States Code~~] §153 (1996) to the extent required by 47 U.S.C. [~~United States Code~~] §251(f) (1996).

(ii) Rural telephone companies must [~~shall~~] terminate traffic of a CTU that [~~which~~] originates and terminates within the rural telephone company's ELCS or EAS calling scope, where the rural telephone company has an ELCS or EAS arrangement with another DCTU. The termination of this traffic must [~~shall~~] be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(D) Small CTUs.

(i) A small CTU may petition for a suspension or modification of the application of this section in accordance with [~~pursuant to~~] 47 U.S.C. [~~United States Code~~] §251(f)(2) (1996).

(ii) Small CTUs must [~~shall~~] terminate traffic of a CTU that [~~which~~] originates and terminates within the small CTU's ELCS or EAS calling scope, where the small CTU has an ELCS or EAS arrangement with another DCTU. The termination of this traffic must [~~shall~~] be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(E) Deregulated companies and nondominant telecommunications utilities. Subsection (i)(2) and (3) of this section does not apply to deregulated companies holding a certificate of operating authority or to exempt carriers that meets the criteria of [~~under~~] PURA §52.154.

(d) Principles of interconnection.

(1) General principles.

(A) Interconnection between CTUs must [~~shall~~] be established in a manner that is seamless, interoperable, technically and economically efficient, and transparent to the customer.

(B) Interconnection between CTUs must [~~shall~~] utilize nationally accepted telecommunications industry standards or [~~and/or~~] mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.

(C) (No change.)

(D) An interconnecting CTU must [~~Interconnecting CTUs shall~~] negotiate rates, terms, and conditions for facilities, services, or any other interconnection arrangements required in accordance with [~~pursuant to~~] this section.

(E) This section does not authorize [~~should not be construed to allow~~] an interconnecting CTU access to another CTU's network proprietary information or customer proprietary network information, customer-specific as defined in §26.5 of this title (relating to Definitions) unless otherwise permitted in this section.

(2) Technical interconnection principles. An interconnecting CTU must [~~Interconnecting CTUs shall~~] make a good-faith effort to accommodate each interconnecting CTU's [~~other's~~] technical requests, provided that the technical requests are consistent with national industry standards and are in compliance with §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), §26.54 of this title (relating to Service Objectives and Performance Benchmarks), [~~§26.55 of this title (relating to Monitoring of Service),~~] §26.57 of this title (relating to Requirements for a Certificate Holder's Use of an Alternate Technology to Meet its Provider of Last Resort Obligation), §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services [~~Information Regarding Rates and Services of Nondominant Carriers~~]), §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers), §26.128 of this title (relating to Telephone Directories), §26.206 of this title (relating to Depreciation Rates), and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the CTU receiving the requests.

(A) An interconnecting CTU must ensure that each customer of other interconnecting CTUs are not required [~~Interconnecting CTUs shall ensure that customers of CTUs shall not have~~] to dial additional digits or incur dialing delays that exceed industry standards [~~in order~~] to complete local calls as a result of interconnection.

(B) An interconnecting CTU must provide other interconnecting CTUs [~~Interconnecting CTUs shall provide each other~~] non-discriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.

(C) An interconnecting CTU must provide other interconnecting CTUs [~~Interconnecting CTUs shall provide each other~~] Common Channel Signaling System Seven [~~(SS7)~~] connectivity where technically available.

(D) An interconnecting CTU is [~~Interconnecting CTUs shall~~] be permitted a minimum of one point of interconnection in each exchange area or group of contiguous exchange areas within a single local access and transport area (LATA), as requested by the intercon-

necting CTU, and may negotiate with the other CTU for additional interconnection points. An interconnecting CTU must [~~Interconnecting CTUs shall~~] agree to construct, [~~and/or~~] lease, and maintain the facilities necessary to connect [~~their~~]networks, either by having one CTU provide the entire facility or by sharing the construction and maintenance of the facilities necessary to connect [~~their~~] networks. The financial responsibility for construction and maintenance of such facilities is [~~shall be~~] borne by the party who constructs and maintains the facility, unless the parties involved agree to other financial arrangements. Each interconnecting CTU is [~~shall be~~] responsible for delivering its originating traffic to the mutually agreed upon [~~mutually-agreed-upon~~] point of interconnection or points of interconnection. Nothing in this subparagraph [~~herein~~] precludes a CTU from recovering the costs of construction and maintenance of facilities if such facilities are utilized [~~used~~] by other CTUs.

(E) An interconnecting CTU must [~~Interconnecting CTUs shall~~] establish joint procedures for troubleshooting the portions of jointly used [~~their~~] networks [~~that are jointly used~~]. Each CTU is [~~shall be~~] responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and is in compliance with §26.53 of this title.

(F) If an interconnecting [~~a~~] CTU has sufficient facilities in place, it must [~~shall~~] provide intermediate transport arrangements between other interconnecting CTUs, upon request. A CTU providing intermediate transport must [~~shall~~] not negotiate termination on behalf of another CTU, unless the terminating CTU agrees to such an arrangement. Upon request, DCTUs within major metropolitan areas must [~~will~~] contact other CTUs and arrange meetings, within 15 days of such request, [~~in an effort~~] to facilitate negotiations and provide a forum for discussion of network efficiencies and inter-company billing arrangements.

(G) Each interconnecting CTU is [~~shall be~~] responsible for ensuring that traffic is properly routed to the connected CTU and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting CTUs.

(H) An interconnecting CTU must [~~Interconnecting CTUs shall~~] allow other interconnecting CTUs [~~each other~~] non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting CTU has obtained all required authorizations from the property owner or [~~and/or~~] appropriate governmental authority.

(I) An interconnecting CTU must [~~Interconnecting CTUs shall~~] provide other interconnecting CTUs [~~each other~~] physical interconnection in a non-discriminatory manner. Physical collocation for the transmission of local exchange traffic must [~~shall~~] be provided to a CTU upon request, unless the CTU from which collocation is sought demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic must [~~shall~~] be implemented at the option of the CTU requesting the interconnection.

(J) Each interconnecting CTU is [~~shall~~] be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.

(3) Principles regarding billing arrangements.

(A) An interconnecting CTU must [~~Interconnecting CTUs shall~~] cooperatively provide [~~each~~] other interconnecting CTUs with both answer and disconnect supervision as well as accurate and timely exchange of information on billing records to facilitate billing to customers, to determine intercompany settlements for local and non-local traffic, and to validate the jurisdictional nature of traffic, as necessary. Such billing records must [~~shall~~] be provided in accordance with national industry standards. For a billing interexchange carrier [~~carriers~~] for jointly provided switched access services, such billing records [~~shall~~] include meet point billing records, interexchange carrier (IXC) billing name, IXC billing address, and Carrier Identification Codes (CICs). If exchange of CIC codes is not technically feasible, an interconnecting CTU must [~~CTUs shall~~] negotiate a mutually acceptable settlement process for billing IXCs for jointly provided switched access services.

(B) A CTU must [~~CTUs shall~~] enter into mutual billing and collection arrangements with other CTUs that are comparable to those existing between or [~~and/or~~] among DCTUs, to ensure acceptance of each other's non-proprietary calling cards and operator-assisted calls.

(C) Upon a customer's selection of a CTU for [~~his or her~~] local exchange service, that CTU must [~~shall~~] provide notification to the primary IXC through the Customer Account Record Exchange (CARE) database, or comparable means if CARE is unavailable, of all information necessary for billing that customer. At a minimum, this information must [~~should~~] include the name and contact person for the new CTU and the customer's name, telephone number, and billing number. In the event a customer's local exchange service is disconnected at the option of the customer or the CTU, the disconnecting CTU must [~~shall~~] provide notification to the primary IXC of such disconnection.

(D) A CTU must [~~All CTUs shall~~] cooperate with IXCs to ensure that customers are properly billed for IXC services.

(4) Principles regarding interconnection rates, terms, and conditions.

(A) Criteria for setting interconnection rates, terms, and conditions. Interconnection rates, terms, and conditions must [~~shall~~] not be unreasonably preferential, discriminatory, or prejudicial, and must [~~shall~~] be non-discriminatory. The following criteria must [~~shall~~] be used to establish interconnection rates, terms, and conditions.

(i) Local traffic of a CTU that [~~which~~] originates and terminates within the mandatory single or multiexchange local calling area available under the basic local exchange rate of a single DCTU [~~shall~~] be terminated by the CTU at local interconnection rates. The local interconnection rates under this clause also apply with respect to mandatory EAS traffic originated and terminated within the local calling area of a DCTU if such traffic is between exchanges served by that single DCTU.

(ii) If a non-dominant certificated telecommunications utility (NCTU) offers, on a mandatory basis, the same minimum ELCS calling scope that a DCTU offers under its ELCS arrangement, a NCTU must [~~shall~~] receive arrangements for its ELCS traffic that are not less favorable than the DCTU provides for terminating mandatory ELCS traffic.

(iii) With respect to local traffic originated and terminated within the local calling area of a DCTU but between exchanges of two or more DCTUs governed by mandatory EAS arrangements, DCTUs must [~~shall~~] terminate local traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar mandatory EAS traffic for the affected area. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar mandatory EAS traffic. The rates applicable to the NCTU for such traffic must [~~shall~~] reflect the difference in costs to the DCTU caused by the different terms and conditions.

(iv) With respect to traffic that originates and terminates within an optional flat rate calling area, whether between exchanges of one DCTU or between exchanges of two or more DCTUs, a DCTU must [~~DCTUs shall~~] terminate such traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar traffic. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar optional EAS traffic. The rates applicable to the NCTU for such traffic must [~~shall~~] reflect the difference in costs to the DCTU caused by the different terms and conditions.

(v) A DCTU with more than one million access lines and a NCTU must [~~shall~~] negotiate new EAS arrangements in accordance with the following requirements.

(I) For traffic between an exchange and a contiguous metropolitan exchange local calling area, as defined in §26.5 of this title, the DCTU must [~~shall~~] negotiate with a NCTU for termination of such traffic if the NCTU includes such traffic as part of its customers' local calling area. These interconnection arrangements must [~~shall be~~] not less favorable than the arrangements between DCTUs for similar EAS traffic.

(II) For traffic that does not originate or terminate within a metropolitan exchange local calling area, the DCTU must [~~shall~~] negotiate with a NCTU for the termination of traffic between the contiguous service areas of the DCTU and the NCTU if the NCTU includes such traffic as part of its customers' local calling area and such traffic originates in an exchange served by the DCTU. These interconnection arrangements must [~~shall~~] be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(III) A NCTU must [~~shall~~] have the same obligation to negotiate similar EAS interconnection arrangements with respect to traffic between its service area and a contiguous exchange of the DCTU if the DCTU includes such traffic as part of its customers' local calling area

(vi) (No change.)

(B) Establishment of rates, terms, and conditions.

(i) A CTU [~~CTUs~~] involved in interconnection negotiations must [~~shall~~] ensure that all reasonable negotiation opportunities are completed prior to the termination of the first commercial call. The date upon which the first commercial call between CTUs is terminated signifies the beginning of a nine-month period in which each CTU must [~~shall~~] reciprocally terminate the other CTU's traffic at no charge, in the absence of mutually negotiated interconnection rates. Reciprocal interconnection rates, terms, and conditions must [~~shall~~] be established in accordance with [~~pursuant to~~] the compulsory arbitration process in subsection (g) of this section. In establishing these initial rates and three years from termination of the first commercial call, no cost studies [~~shall~~] be required from a new CTU.

(ii) An ILEC may adopt the tariffed interconnection rates approved for a larger ILEC or interconnection rates of a larger ILEC resulting from negotiations without providing the commission any additional cost justification for the adopted rates. If an ILEC adopts the tariffed interconnection rates approved for a larger ILEC, it must [~~shall~~] file tariffs referencing the appropriate larger ILEC's rates. If an ILEC adopts the interconnection rates of a larger ILEC, the new CTU may adopt those rates as its own rates by filing tariffs referencing the appropriate larger ILEC's rates. If an ILEC chooses to file its own interconnection tariff, the new CTU must also file its own interconnection tariff.

(C) Public disclosure of interconnection rates, terms, and conditions. Interconnection rates, terms, or [~~and/or~~] conditions must [~~shall~~] be made publicly available as provided in subsection (h) of this section.

(e) Minimum interconnection arrangements.

(1) In accordance with [~~pursuant to~~] mutual agreements, interconnecting CTUs must [~~shall~~] provide each other non-discriminatory access to ancillary services such as repair services, E9-1-1, operator services, white pages telephone directory listing, publication and distribution, and directory assistance. The following minimum terms and conditions [~~shall~~] apply:

(A) Repair services. For purposes of this section, a CTU must [~~shall~~] be required to provide repair services for its own facilities regardless of whether such facilities are used by the CTU for retail purposes, [~~or~~] provided by the CTU for resale purposes, or whether the facilities are ordered by another CTU for purposes of collocation.

(B) E-9-1-1 services. E-9-1-1 services include automatic number identification (ANI), ANI and automatic location identification (ALI) selective routing, or [~~and/or~~] any combination of 9-1-1 features required by the 9-1-1 administrative entity or entities responsible for the geographic area involved.

(i) A CTU must meet the requirements of this clause before [~~As a prerequisite to~~] providing local exchange telephone service to any customer or any other service by which [~~whereby~~] a customer may dial 9-1-1 [~~and thereafter, a CTU must meet the following requirements~~].

(I) A [~~The~~] CTU is responsible for ordering the dedicated 9-1-1 trunk groups necessary to provide E9-1-1 service as approved by the appropriate 9-1-1 administrative entity or entities in the relevant 9-1-1 service agreement [~~agreement(s)~~], and subject to the written process for documenting "unnecessary dedicated 9-1-1 trunks" in clause (vi)(I) of this subparagraph. Connection with the appropriate CTU in the provision of 9-1-1 service may be either directly or indirectly in a manner approved by the appropriate 9-1-1 administrative entity or entities.

(II) A [~~The~~] CTU is responsible for enabling each customer of the CTU [~~all its customers~~] to dial the three digits 9,1,1 to access 9-1-1 service.

(III) A [~~The~~] CTU is responsible for providing the ANI to the appropriate CTU operating the E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or appropriate PSAPs, as applicable. The ANI must include both the NPA or numbering plan digit (NPD), a component of the traditional 9-1-1 signaling protocol that identifies 1 of 4 possible NPAs, as appropriate, and the local telephone number of the 9-1-1 calling customer that can be used to successfully complete a return call to the customer.

(IV) A [~~The~~] CTU is responsible for routing a 9-1-1 customer call, as well as interconnecting traffic on its network, to the appropriate E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or PSAPs, as applicable, based on the ANI or [~~and/or~~] ALI. The appropriate 9-1-1 administrative entity or entities or the 9-1-1 network services provider, as applicable, must [~~shall~~] provide specifications to the CTU for routing purposes.

(V) The CTU is responsible for providing the ALI for each of its customers. The ALI must [~~shall~~] consist of the calling customer name, physical location, appropriate emergency service providers, and other similar standard ALI location data specified by the appropriate 9-1-1 administrative entity. For purposes of this subclause, other similar standard ALI data does not include supplemental data that is not part of the standard ALI location record.

(ii) A CTU must [~~Each CTU shall~~] timely provide to the appropriate 911 administrative entity and the appropriate 9-1-1 database management services provider accurate and timely current information for all published, unpublished or[~~(~~]nonpublished[~~)~~], and unlisted or [~~(~~]nonlisted[~~)~~] information associated with its customers for the purposes of emergency or E-911 services.

(I) For purposes of this clause, a CTU timely provides the information if, within 24 hours of receipt, it delivers the information to the appropriate 9-1-1 database management services provider, or if the CTU is the appropriate 9-1-1 database management services provider, it places the information in the 9-1-1 database.

(II) For purposes of this clause, the information sent by a CTU to the 9-1-1 database management services provider and the information used by the 9-1-1 database management services provider must [~~shall~~] be maintained in a fashion to ensure that the information [~~it~~] is accurate at a percentage as close to 100% as possible. For purposes of this clause, the term "accurate" [~~"Accurate"~~] means a record that correctly routes a 9-1-1 call and provides correct location information relating to the origination of such call. For purposes of this clause, the term "percentage" [~~"Percentage"~~] means the total number of accurate records in that database divided by the total number of records in that database. In determining the accuracy of records, a CTU is not [~~shall not be held~~] responsible for erroneous information provided to it by a customer or another CTU.

(III) An interconnecting CTU must [~~Interconnecting CTUs shall~~] execute confidentiality agreements with [~~each~~] other interconnecting CTUs, as necessary, to prevent the unauthorized disclosure of unpublished or unlisted [~~unpublished/unlisted~~] numbers. An interconnecting CTU must [~~Interconnecting CTUs shall~~] be allowed access to the ALI database or its equivalent by the appropriate 9-1-1 database management services provider for verification purposes. The appropriate 9-1-1 administrative entity must [~~shall~~] provide non-discriminatory access to the master street address guide.

(iii) A [~~Each~~] CTU is responsible for developing a 9-1-1 disaster recovery service restoration plan with input from the appropriate 9-1-1 administrative entity [~~entities~~]. This plan must [~~shall~~] identify the actions to be taken in the event of a network-based 9-1-1 service failure. The goal of such actions is [~~shall be~~] the efficient and timely restoration of 9-1-1 service. Each CTU must [~~shall~~] notify the appropriate 9-1-1 administrative entity or entities of any changes in the CTU's network-based services and other services that may require changes to the plan.

(iv) An interconnecting CTU must provide other interconnecting CTUs [~~Interconnecting CTUs shall provide each other~~] and the appropriate 9-1-1 administrative [~~entity or~~] entities notification of scheduled outages for direct dedicated 9-1-1 trunks at least 48 hours prior to such outages. In the event of unscheduled outages for direct dedicated 9-1-1 trunks, each interconnecting CTU must provide other interconnecting CTUs [~~interconnecting CTUs shall provide each other~~] and the appropriate 9-1-1 administrative [~~entity or~~] entities immediate notification of such outages.

(v) Each NCTU's rates for 9-1-1 service to a public safety answering point is [~~shall be~~] presumed to be reasonable if they do not exceed the rates charged by the ILEC for similar service.

(vi) Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to supersede the appropriate 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems or NG9-1-1 systems or the 9-1-1 administrative entity's authority to require the removal of unnecessary direct dedicated 9-1-1 trunks, circuits, databases, or functions.

(I) For purposes of this clause, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative [~~entity or~~] entities; and written approval from the appropriate 9-1-1 administrative [~~entity or~~] entities accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative [~~entity or~~] entities must [~~shall~~] rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(II) (No change.)

(C) Operator services. An interconnecting CTU must [~~Interconnecting CTUs shall~~] negotiate to ensure the interoperability of operator services between networks, including [~~but not limited to~~] the ability of operators on each network to perform such operator functions as reverse billing, line verification, call screening, and call interrupt.

(D) White pages telephone directory and directory assistance. An interconnecting CTU must [~~Interconnecting CTUs shall~~] negotiate to ensure provision of white pages telephone directory and directory assistance services.

(i) Appropriate information of each customer of an NCTU, including telephone numbers, must [~~The telephone numbers and other appropriate information of the customers of NCTUs shall~~] be included on a non-discriminatory basis in each [~~the~~] DCTU's white pages directory associated with the geographic area covered by the white pages telephone directory published by the DCTUs. Similarly, any white pages telephone directory provided to a customer of an NCTU by a NCTU must have each corresponding DCTU listings [~~by a NCTU to its customers shall have corresponding DCTU listings~~] available on a non-discriminatory basis. Each entry [~~The entries~~] of NCTU customers in the DCTU white pages telephone directory must [~~shall~~] be interspersed in correct alphabetical sequence among the entries of the DCTU customers and must [~~shall~~] be no different in style, size, or format than the entries of the DCTU customers, unless requested otherwise by the NCTU. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU must [~~shall~~] not directly charge the customer of another CTU located in the geographic areas covered by the white pages telephone directory for white pages listings or directory.

(ii) Each customer listing [~~Listings of all customers~~] located within the local calling area of a NCTU, but not located within the local calling area of the DCTU publishing the white pages telephone directory, must [~~shall~~] be included in a separate section of the DCTU's white pages telephone directory at the option of the NCTU.

(iii) A CTU must [~~CTUs shall~~] provide directory listings and related updates to the CTU or affiliate of the CTU that publishes [~~its affiliate publishing~~] a white pages telephone directory on behalf of the CTU, or to any CTU providing directory assistance, in a timely manner to ensure inclusion in the annual white page listings and provision of directory assistance service that complies with §26.128 of this title. A CTU or affiliate of the CTU that publishes [~~The CTU or its affiliate publishing~~] a white pages telephone directory on behalf of the CTU must [~~shall~~] be responsible for providing all other CTUs with timely information regarding deadlines associated with its published white pages telephone directory.

(iv) A CTU must [~~CTUs shall~~], upon request, provide accurate and current subscriber listings (name, address, telephone number) and updates in a readily usable format and in a timely manner, on a non-discriminatory basis, to publishers of yellow pages telephone directory. A CTU must [~~CTUs shall~~] not provide listings of subscribers desiring non-listed status for publication purposes.

(v) White pages telephone directories must [~~shall~~] be distributed to each customer [~~all customers~~] located within the geographic area covered by the white pages telephone directory on non-discriminatory terms and conditions by the CTU or affiliate of the CTU that publishes [~~its affiliate publishing~~] the white pages telephone directory.

(vi) A CTU or affiliate of the CTU [~~its affiliate~~] that publishes a white pages telephone directory on behalf of the CTU must [~~shall~~] provide every other CTU a single page [~~per CTU~~] in the information section of the white pages telephone directory[~~,~~] for each [~~the~~] CTU to convey critical customer contact information regarding emergency services, billing and service information, repair services and other pertinent information. The CTU's pages must [~~shall~~] be arranged in alphabetical order. Additional access to the information section of the white pages telephone directory are [~~shall be~~] subject to negotiations.

(vii) A CTU [~~CTUs~~] must provide information that identifies customers desiring non-listed or [~~and/or~~] non-published telephone numbers or [~~and/or~~] non-published addresses to the CTU or affiliate of the CTU that publishes [~~its affiliate publishing~~] a white pages telephone directory on behalf of the CTU and to the CTU maintaining the directory assistance database. A [~~The~~] CTU or affiliate of the CTU that publishes [~~its affiliate publishing~~] a white pages telephone directory on behalf of the CTU must [~~shall~~] not divulge such non-listed or [~~and/or~~] non-published telephone numbers or addresses and the CTU maintaining the directory assistance database must [~~shall~~] not divulge such non-published telephone numbers or addresses.

(viii) CTUs must [~~shall~~] provide each other non-discriminatory access to directory assistance databases.

(2) At a minimum, interconnecting CTUs must [~~shall~~] negotiate to ensure the following:

(A) - (E) (No change.)

(F) non-discriminatory handling, including billing, of mass announcement/audiotext calls including[~~, but not limited to,~~] 900 and 976 calls;

(G) - (I) (No change.)

(f) Negotiations.

(1) A negotiating party, including a CTU, must [~~CTUs and other negotiating parties shall~~] engage in good-faith negotiations and cooperative planning as necessary to achieve mutually agreeable interconnection arrangements.

(2) Before terminating its first commercial telephone call, a [~~each~~] CTU requesting interconnection must [~~shall~~] negotiate with each CTU or other negotiating party that is necessary to complete all telephone calls, including local service calls and EAS or ELCS calls, made by or placed to a customer [~~the customers~~] of the requesting CTU. Upon request, DCTUs within major metropolitan calling areas will contact other CTUs and arrange meetings, within 15 days of such request, [~~in an effort~~] to facilitate negotiations and provide a forum for discussions of network efficiencies and intercompany billing arrangements.

(3) Unless the negotiating parties establish a mutually agreeable date, negotiations are deemed to begin on the date when the CTU or other negotiating party from which interconnection is being requested receives the request for interconnection from the CTU seeking interconnection. The request must [~~shall~~]:

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

(4) (No change.)

(5) The CTU or negotiating party from which interconnection is sought must [~~shall~~] respond to the interconnection request no later than 14 working days from the date the request is received. The response shall:

(A) be in writing and hand-delivered,[~~;~~] sent by certified mail, or by facsimile;

(B) - (D) (No change.)

(6) At any point during the negotiations required under this subsection, a [~~any~~] CTU or negotiating party may request the commission designee [~~designee(s)~~] to participate in the negotiations and to mediate any differences arising in the course of the negotiation.

(7) An interconnecting CTU may [~~Interconnecting CTUs may~~], by written agreement, accelerate the requirements of this subsection with respect to a particular interconnection agreement except that the requirements of subsection (g)(1)(A) of this section must [~~shall~~] not be accelerated.

(8) Any disputes arising under or pertaining to negotiated interconnection agreements must [~~may~~] be resolved in accordance with [~~pursuant to~~] Chapter 21, Subchapter E, of this title (relating to Post-Interconnection Agreement Dispute Resolution).

(g) Compulsory arbitration process.

(1) A negotiating CTU that is unable to reach mutually agreeable terms, rates, or [~~and/or~~] conditions for interconnection with any CTU or negotiating party may petition the commission to arbitrate any unresolved issues. To [~~In order to~~] initiate the arbitration procedure, a negotiating CTU:

(A) must [~~shall~~] file its petition with the commission on or between 135 and 160 days [~~during the period from the 135th to the 160th day (inclusive)~~] after the date on which its request for negotiation under subsection (f) of this section was received by the other CTU involved in the negotiation;

(B) must [~~shall~~] provide the identity of each CTU or [~~and/or~~] negotiating party with which agreement cannot be reached but whose cooperation is necessary to complete all telephone calls made by or placed to the customers of the requesting CTU;

(C) must [~~shall~~] provide all relevant documentation concerning the unresolved issues;

(D) must [~~shall~~] provide all relevant documentation concerning the position of each of the negotiating parties with respect to those issues;

(E) must [~~shall~~] provide all relevant documentation concerning any other issue discussed and resolved by the negotiating parties; and

(F) must [~~shall~~] send a copy of the petition and any documentation to the CTU or negotiating party with which agreement cannot be reached, not later than the day on which the commission receives the petition.

(2) A non-petitioning party to a negotiation under subsection (f) of this section may respond to the other party's petition and provide such additional information [~~as it wishes~~] within 25 days after the commission receives the petition.

(3) The compulsory arbitration process must be completed no [shall be completed not] later than nine months after the date on which a CTU receives a request for interconnection under subsection (f) of this section.

(4) Any disputes arising under or pertaining to arbitrated interconnection agreements must [may] be resolved in accordance with [pursuant to] Chapter 21, Subchapter E of this title.

(h) Filing of rates, terms, and conditions.

(1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.

(A) A CTU from which interconnection is requested must file each agreement [shall file any agreement,] adopted by negotiation or by compulsory arbitration[,] with the commission. The commission will [shall] make such an agreement available for public inspection and copying within ten days after the agreement is approved by the commission in accordance with [pursuant to] subparagraphs (C) and (D) of this paragraph.

(B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that the ILEC [it] generally offers within the state in accordance with 47 U.S.C. [pursuant to 47 United States Code] §252(f) (1996). The commission will [shall] make such a statement available for public inspection and copying within ten days after the statement is approved by the commission in accordance with [pursuant to] subparagraph (E) of this paragraph.

(C) The commission will [shall] reject an agreement, in whole or in part, [(or any portion thereof)] adopted by negotiation if it finds that:

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

(D) The commission will [shall] reject an agreement, in whole or in part, [(or any portion thereof)] adopted by compulsory arbitration[,] under subsection (g) of this section, in accordance with [pursuant to] guidelines found in 47 U.S.C. [United States Code] §252(e)(2)(B) (1996).

(E) The commission will [shall] review the statement of generally available terms filed under subparagraph (B) of this paragraph, [pursuant to] guidelines found in 47 United States Code §252(f) (1996). The submission or approval of a statement under this paragraph does [shall] not relieve an ILEC serving greater than five million access lines of its duty to negotiate the terms and conditions of an agreement in accordance with 47 U.S.C. §251(c)(1) [pursuant to 47 United States Code §251] (1996).

(2) Rates, terms or [and/or] conditions among DCTUs. Within 15 days of a request from a CTU negotiating interconnection arrangements with a DCTU, a non-redacted version of any agreement reflecting the rates, terms, and conditions between or [and/or] among DCTUs which relate to interconnection arrangements for similar traffic must [shall] be disclosed to the CTU, subject to commission-approved non-disclosure or protective agreement. A non-redacted version of the same agreement must [shall] be disclosed to commission staff at the same time if requested, subject to commission-approved non-disclosure or protective agreement.

(i) Customer safeguards.

(1) Requirements for provision of service to customers. Nothing in this section or in a [the] CTU's tariffs precludes a customer of a [shall be interpreted as precluding a customer of any] CTU from purchasing local exchange service from more than one CTU at a time. A CTU is prohibited from connecting, disconnecting, or moving [No CTU shall connect, disconnect, or move] any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §26.130 of this title, (relating to Selection of Telecommunications Utilities).

(2) Requirements for CTUs ceasing operations. If a CTU ceases operations, the CTU is responsible for notifying the commission and each customer of the CTU [In the event that a CTU ceases its operations, it is the responsibility of the CTU to notify the commission and all of the CTU's customers] at least 61 working days in advance that each customer's [their] service will be terminated. The notification must [shall] include a listing of all alternative service providers available to customers in the exchange and [shall] specify the date on which service will be terminated.

(3) Requirements for service installations. A DCTU [DCTUs] that interconnect with an NCTU is [NCTUs shall be] responsible for meeting the installation of service requirements under §26.54 of this title in providing service to the NCTU. NCTUs must [shall] make a good-faith effort to meet the requirements for installation in §26.54 of this title, and may negotiate with the DCTU to establish a procedure to meet this goal.

(A) For those customers for whom the NCTU provides dial tone but not the local loop, 95% of the NCTU's service orders must [shall] be completed in no more than ten working days from request for service, unless a later date is agreed to by the customer.

(B) For those customers for whom the NCTU does not provide dial tone and resells the telephone services of a DCTU, 95% of the NCTU's service orders must [shall] be completed [in] no more than seven working days from request for service, unless the customer agrees to a later date.

(C) For those customers where the NCTU uses facilities other than a DCTU's [DCTUs'] resale facilities obtained through Public Utility Regulatory Act §60.041, the NCTU must [shall] complete service orders within 30 calendar days from the request for [of] service, unless a later date is agreed to by the customer.

(D) A DCTU must [The DCTU shall] not discriminate between the DCTU's customers and the customers of an NCTU [its customers and NCTUs] if the DCTU is able to install service in less than the time permitted under §26.54 of this title.

§26.276. Unbundling.

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

(c) Unbundling requirements.

(1) Unbundling in accordance with [pursuant to] current FCC requirements. Each ILEC that is subject to this section must [shall] unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect must [shall] unbundle its network or services [network/services] under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must [shall] also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements. Nothing in this paragraph [herein] precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled in accordance with [pursuant to] this paragraph.

(A) The ILEC's network must [shall] be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and

(B) Signaling for tandem switching must [shall] be unbundled to the extent ordered by the FCC in compliance with CC

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(2) Unbundling in accordance with [~~pursuant to~~] future FCC requirements. An ILEC must [~~shall~~] unbundle its network services [~~network/services as defined in the term "unbundling" in §26.5 of this title (relating to Definitions)~~] for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect must [~~shall~~] unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must [~~shall~~] also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing in this paragraph [~~herein~~] precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled in accordance with [~~pursuant to~~] this paragraph.

(d) Costing and pricing of services in compliance with this section.

(1) Cost standard. Services unbundled in compliance with this section must [~~shall~~] be subject to the following cost standard.

(A) The cost standard for unbundled services must [~~shall~~] be the long run incremental costs (LRIC) of providing the service.

(B) Any ILEC subject to §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs)) or §26.215 [~~§23.91~~] of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services), as applicable, must [~~shall~~] file LRIC studies in accordance with [~~pursuant to~~] that rule for unbundled components specified in subsection (c)(1) of this section.

(C) For any ILEC that is subject to §26.214 or §26.215 [~~§23.91~~] of this title, the cost standard for unbundled services required under subsection (c)(2) of this section must [~~shall~~] be the long run incremental costs as prescribed by §26.214 or §26.215 of this title, as applicable [~~pursuant to §23.91 of this title~~].

(D) The long run incremental cost standard does [~~shall~~] not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or if the ILEC adopts rates of another ILEC in accordance with [~~pursuant to~~] paragraph (2)(B) of this subsection.

(2) Pricing standard. Services unbundled in compliance with this section must [~~shall~~] be subject to the following pricing standard.

(A) Any ILEC may propose rates, without cost justification, that are at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service. The ILEC must [~~shall~~] amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling in accordance with the [~~pursuant to~~] filing requirements established in subsection (f)(4) of this section.

(B) In addition to the provision in subparagraph (A) of this paragraph, ILECs that are not subject to §26.214 or §26.215 [~~§23.91~~] of this title may adopt the rates of another ILEC that are developed in accordance with [~~pursuant to~~] the requirements of this section.

(C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or does not adopt the rates of another ILEC in accordance with [~~pursuant to~~] subparagraph (B) of this paragraph, the following requirements [~~shall~~] apply to any service approved under this section:

(i) Unless waived or modified by the presiding officer, the service must [~~shall~~] be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.

(ii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there is [~~shall be~~] a rebuttable presumption that the rate of an unbundled component is reasonable.

(iii) The proposed rates and terms of the service must [~~shall~~] not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(D) Rates based upon the new LRIC cost studies required under paragraph (1)(B) of this subsection are [~~shall be~~] subject to §26.214 or §26.215 [~~the pricing rulemaking referred to in §23.91(p)~~] of this title, as applicable, to the same extent as any other service offered by an ILEC subject to the applicable provision [~~the pricing rule~~].

(e) Basket assignment. An ILEC electing for incentive regulation under PURA Chapter 58 must [~~shall~~], in its compliance tariff filed in accordance with [~~pursuant to~~] subsection (f) of this section, include a proposal and rationale for designating the unbundled components as basic services or non-basic services.

(f) Filing requirements.

(1) Initial filing to implement subsection (c)(1) of this section in effect for ILECs serving one million or more access lines. An ILEC serving one million or more access lines must [~~shall~~] file initial tariff amendments to implement the provisions of subsection (c)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings must [~~shall~~] be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must [~~pursuant to this subsection shall~~] not be combined in a single application with any other tariff revision.

(2) Filings to comply with subsection (c)(2) of this section for ILECs serving one million or more access lines. An ILEC serving one million or more access lines must [~~shall~~] file tariff amendments to implement the provisions of subsection (c)(2) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings must [~~shall~~] be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must [~~pursuant to this subsection shall~~] not be combined in a single application with any other tariff revision.

(3) Filings to implement subsections (c)(1) and (2) of this section for ILECs serving fewer than one million access lines. If an ILEC serving fewer than one million access lines receives a bona fide request, the ILEC must unbundle its network or services in accordance with [~~shall unbundle its network/services pursuant to~~] the bona fide request within 90 days from the date of receipt of the bona fide request or has [~~shall have~~]the burden of demonstrating the reasons for not unbundling in accordance with [~~pursuant to~~] the bona fide request.

(4) Filings to comply with subsection (d)(2)(A) of this section. An ILEC proposing rates [~~pursuant to~~] subsection (d)(2)(A) of this section must [~~shall~~] file tariff amendments to implement the revisions in its interstate tariffs providing for unbundling, within 30 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings must [~~shall~~] be not later than

30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must [~~pursuant to this shall~~] not be combined in a single application with any other tariff revision.

(g) Requirements for notice and contents of application in compliance with this section.

(1) Notice of Application. The presiding officer may require notice to be provided to the public as required by Chapter 22, Subchapter D of this title (relating to Notice). The notice must [~~shall~~] include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. [~~PO~~] Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals [~~with text telephones (TTY)~~] may contact the commission through Relay Texas at (800) 735-2989 [~~at (512) 936-7136 or may reach the commission's toll free number by calling Relay Texas at (800) 735-2988~~]."

(2) Contents of application for an ILEC serving one million or more access lines that is required to comply with subsection (f)(1), (2), and (4) of this section. An ILEC must [~~shall~~] request approval of an unbundled service by filing an application that complies with the requirements of this section. A copy of the application must be delivered [~~In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy~~] to the Office of Public Utility Counsel. The application must [~~shall~~] contain the following information:

(A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions comply [~~are in conformity~~] with the requirements in subsections (c), (d), and (e) of this section, as applicable;

(B) - (E) (No change.)

(F) projection of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint or [~~and/or~~] common costs, if the rates are not at parity with the carrier's interstate rates;

(G) - (I) (No change.)

(3) Contents of application for an ILEC serving fewer than one million access lines that is required to comply with subsection (f)(3) and (4) of this section. An ILEC must [~~shall~~] file with the commission an application complying with the requirements of this section. A copy of the application must [~~In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy shall~~] be delivered to the Office of Public Utility Counsel. The application must [~~shall~~] contain the following:

(A) contents of the application required by paragraph (2)(A), (B), (C), (H), and (I) of this subsection;

(B) contents of the application required by paragraph (2)(D), (E), (F), and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;

(C) a description of the proposed service [~~service(s)~~] and the rates, terms, and conditions under which the service is [~~service(s) are~~] proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;

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

(h) Commission processing of application.

(1) Administrative review. An application considered under this section is eligible for administrative review [~~may be reviewed administratively~~] unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date must [~~shall~~] be according to the requirements in subsection (f) of this section.

(B) The application will be reviewed [~~shall be examined~~] for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will [~~shall~~] be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application will [~~shall~~] be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines will be 30 days from the [~~shall be determined from the 30th~~] day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is under administrative review [~~being administratively reviewed, the~~] commission staff and the staff of the Office of the Public Utility Counsel (OPUC) may submit requests for information to the ILEC. Answers to such requests for information must be filed with the commission and a copy must be provided to OPUC [~~Six copies of all answers to such requests for information shall be filed with Central Records and one copy shall be provided to the Office of Public Utility Counsel~~] within ten days after receipt of the request by the ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. Commission staff must and OPC [~~The commission staff shall and the Office of Public Utility Counsel~~] may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer will [~~shall~~] issue an order approving, denying, or docketing the ILEC's application.

(2) Approval or denial of application. The application will [~~shall~~] be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the administrative review, the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer will [~~shall~~] docket the application.

(3) Standards for docketing. The application may be docketed in accordance with [~~pursuant to~~] §22.33(b) of this title (relating to Tariff Filings).

(4) Review of the application after docketing. If the application is docketed, the operation of the proposed rate schedule will [~~shall~~] be automatically suspended to a date 120 days after the applicant has filed [~~all of~~] its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing

on the merits. The application will [~~shall~~] be processed in accordance with the commission's rules applicable to docketed cases.

(5) Interim rates. For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates will [~~shall~~] be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(i) Commission processing of waivers. Any request for modification or waiver of the requirements of this section must [~~shall~~] include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer will [~~shall~~] rule on the request expeditiously.

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 October 6, 2023.

TRD-202303752
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.403 - 26.405, 26.407, 26.409, 26.414, 26.417 - 26.419

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.403. Texas High Cost Universal Service Plan (THCUSP).

(a) (No change.)

(b) Application. This section applies to telecommunications providers that have been designated ETPs by the commission in accordance with [~~pursuant to~~] §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(c) Definitions. The following words and terms when used in this section [~~shall~~] have the following meaning unless the context clearly indicates otherwise:

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served in accordance with [~~pursuant to~~] the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC in accordance with [~~pursuant to~~] a customer specific contract or that is otherwise not served in accordance with [~~pursuant to~~] a tariff, to qualify as a business line, the service must be provided in accordance with [~~pursuant to~~] a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided in accordance with [~~pursuant to~~] a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but cannot [~~shall not~~] be both.

(3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission in accordance with [~~pursuant to~~] §26.417 of this title.

(4) (No change.)

(5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line does [~~shall~~] not qualify as a residential line.

(6) Service Address--For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i) - (ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address must [~~shall~~] be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address must [~~shall~~] be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which must [~~shall~~] be described by an ETP using GPS coordinates. Multiple buildings within a single area of

land under common operation or use must [~~shall~~] not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) (No change.)

(d) Service to be supported by the THCUSP. The THCUSP must [~~shall~~] support basic local telecommunications services provided by an ETP in high cost rural areas of the state. Local measured residential service, if chosen by the customer and offered by the ETP, must [~~shall~~] also be supported.

(1) Initial determination of the definition of basic local telecommunications service. Basic local telecommunications service must [~~shall~~] consist of the following:

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

(2) (No change.)

(e) Criteria for determining amount of support under THCUSP. The commission will [~~shall~~] determine the amount of per-line support to be made available to ETPs in each eligible wire center in accordance with this section. The amount of support available to each ETP must [~~shall~~] be calculated using the base support amount as of the effective date of this section and applying the annual reductions as described in this subsection. As used in this subsection, "basic local telecommunications service" refers to services available to residential customers only, and "exchange" or "wire center" refer to regulated exchanges or wire centers only.

(1) Determining base support amount available to ILEC ETPs. The initial annual base support amount for an ILEC ETP must [~~shall~~] be the annualized monthly THCUSP support amount for the month preceding the effective date of this section, less the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support as determined by the Universal Service Administration Company in accordance with [~~pursuant to~~] 47 C.F.R. §54.312(a). The initial per-line monthly support amount for a wire center must [~~shall~~] be the per-line support amount for the wire center for the month preceding the effective date of this section, less each wire center's pro rata share of one-twelfth of the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support determined by the Universal Service Administration Company in accordance with [~~pursuant to~~] 47 C.F.R §54.312(a). The initial annual base support amount must [~~shall~~] be reduced annually as described in paragraph (3) of this subsection.

(2) Determination of the reasonable rate. The reasonable rate for basic local telecommunications service will [~~shall~~] be determined by the commission in a contested case proceeding. To the extent that an ILEC ETP's existing rate for basic local telecommunications service in any wire center is less than the reasonable rate, the ILEC ETP may, over time, increase its rates for basic local telecommunications service to an amount not to exceed the reasonable rate. The increase to the existing rate must [~~shall~~] not in any one year exceed an amount to be determined by the commission in the contested case proceeding. An ILEC ETP may, in its sole discretion, accelerate its THCUSP reduction in any year by as much as 10% and offset such reduction with a corresponding local rate increase in order to produce rounded rates. In no event will [~~shall~~] any such acceleration obligate the ETP to reduce its THCUSP support in excess of the total reduction obligation initially calculated under paragraph (3) of this subsection.

(3) Annual reductions to THCUSP base support and per-line support recalculation. As part of the contested case proceeding referenced in paragraph (2) of this subsection, each ILEC ETP must [~~shall~~], using line counts as of the end of the month preceding the effective date of this rule, calculate the amount of additional revenue that would result if the ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers for those services where the price, or imputed price, are below the reasonable rate. Lines in exchanges for which an application for deregulation is pending as of June 1, 2012 must [~~shall~~] not be included in this calculation. If the application for deregulation for any such exchanges subsequently is denied by the commission, the ILEC ETP must [~~shall~~], within 20 days of the final order denying such application, submit revised calculations including the lines in those exchanges for which the application for deregulation was denied. Without regard to whether an ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the ILEC ETP's annual base support must [~~shall~~] be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2013. The ETP's annual base support amount must [~~shall~~] be reduced by 25% of the additional revenue calculated in accordance with [~~pursuant to~~] this paragraph in each year of the transition period. This reduction must [~~shall~~] be accomplished by reducing support for each wire center served by the ETP proportionally.

(4) Portability. The support amounts established in accordance with [~~pursuant to~~] this section are applicable to all ETPs and are portable with the customer.

(5) Limitation on availability of THCUSP support.

(A) THCUSP support must [~~shall~~] not be provided in a wire center in a deregulated market that has a population of at least 30,000.

(B) (No change.)

(6) Total Support Reduction Plan. Within 10 days of the effective date of this section, an ILEC may elect to participate in a Total Support Reduction Plan (TSRP) as prescribed in this subsection, by filing a notification of such participation with the commission. The TSRP would serve as an alternative to the reduction plan prescribed in paragraph (3) of this subsection. The TSRP will be implemented as follows:

(A) For an ILEC making this election, the ILEC must [~~shall~~] reduce its THCUSP funding in accordance with paragraph (3) of this subsection with the exception that THCUSP reductions due to exchange deregulation may be credited against the electing ILEC's annual reduction obligation in the calendar year immediately following such deregulation.

(B) In no event will [~~shall~~] an electing ILEC seek or receive THCUSP funding after January 1, 2017 even if the electing ILEC [~~it~~] would otherwise be entitled to such funding as of this date.

(f) Support Reduction. Subject to the provisions of §26.405(f)(3) of this title (relating to Financial Need for Continued Support), the commission will [~~shall~~] adjust the support to be made available from the THCUSP according to the following criteria.

(1) For each ILEC that is not electing under subsection (e)(6) of this section and that served greater than 31,000 access lines in this state on September 1, 2022 [~~2013~~], or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC is eligible to receive for each exchange on December 31, 2023, [~~2016~~] from the THCUSP is reduced:

(A) on January 1, 2024 [~~2017~~], to 75 percent of the level of support the ILEC was [~~is~~] eligible to receive on December 31, 2023 [~~2016~~];

(B) on January 1, 2025 [~~2018~~], to 50 percent of the level of support the ILEC was [~~is~~] eligible to receive on December 31, 2023; [~~2016; and~~]

(C) on January 1, 2026 [~~2019~~], to 25 percent of the level of support the ILEC was [~~is~~] eligible to receive on December 31, 2023; and [~~2016.~~]

(D) on January 1, 2027, to zero percent of the level of support the ILEC was eligible to receive on December 31, 2023.

(2) An ILEC subject to this subsection may file a petition to show financial need for continued support, in accordance with [~~pursuant to~~] §26.405(f)(1) of this title, [~~on or~~] before January 1, 2027 [~~2019~~].

(g) Reporting requirements. An ETP that receives support in accordance with [~~pursuant to~~] this section must [~~shall~~] report the following information:

(1) Monthly reporting requirement. An ETP must [~~shall~~] report the following to the TUSF administrator on a monthly basis:

(A) - (B) (No change.)

(2) Quarterly filing requirements. An ETP must [~~shall~~] file quarterly reports with the commission showing actual THCUSP receipts by study area.

(A) Reports must [~~shall~~] be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports must [~~shall~~] be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed in accordance with [~~pursuant to~~] paragraph (3) of this subsection must [~~shall~~] be publicly available.

(3) Annual reporting requirements. An ETP must [~~shall~~] report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(4) Other reporting requirements. An ETP must [~~shall~~] report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements from the TUSF.

§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.

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

(c) Definitions. The following words and terms when used in this section [~~shall~~] have the following meaning unless the context clearly indicates otherwise:

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served in accordance with [~~pursuant to~~] the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC in accordance with [~~pursuant to~~] a customer specific contract or that is otherwise not served in accordance with [~~pursuant to~~] a tariff, to qualify as a business line, the service must be provided in accordance with [~~pursuant to~~] a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided in accordance with [~~pursuant to~~] a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan (SRILEC USP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but cannot [~~shall not~~] be both.

(3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission in accordance with [~~pursuant to~~] §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) (No change.)

(5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line does [~~shall~~] not qualify as a residential line.

(6) Service Address--For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i) - (ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address must [~~shall~~] be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address must [~~shall~~] be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which must [~~shall~~] be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use do [~~shall~~] not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) (No change.)

(7) (No change.)

(d) Service to be supported by the SRILEC USP [~~Small and Rural ILEC Universal Service Plan~~]. The SRILEC USP must [~~Small and Rural ILEC Universal Service Plan shall~~] support the provision by ETPs of basic local telecommunications service as defined in §26.403(d) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) and is limited to those services carried on all residential lines and the first five single-line business lines at a business customer's service address for which a flat rate plan is an available option.

(e) Criteria for determining amount of support under SRILEC USP [~~Small and Rural ILEC Universal Service Plan~~]. The commission will [~~shall~~] determine the amount of per-line support to be made available to ETPs in each eligible study area in accordance with this section.

The amount of support available to each ETP must [~~shall~~] be calculated using the small and rural ILEC ETP base support amount and applying the annual reductions as described in this subsection.

(1) Determining base support amount available to ETPs. The initial per-line monthly base support amount for a small or rural ILEC ETP must [~~shall~~] be the per-line monthly support amount for each small or rural ILEC ETP study area as specified in Docket Number 18516, annualized by using the small or rural ILEC ETP access line count as of January 1, 2012. The initial per-line monthly base support amount must [~~shall~~] be reduced as described in paragraph (3) of this subsection.

(2) Determination of the reasonable rate.

(A) The reasonable rate for basic local telecommunications service must [~~shall~~] be determined by the commission in a contested case proceeding. An increase to an existing rate must [~~shall~~] not in any one year exceed an amount to be determined by the commission in the contested case proceeding.

(B) The length of the transition period applicable to the reduction in support calculated under paragraph (3) of this subsection must [~~shall~~] be determined in the contested case proceeding.

(3) Annual reductions to the SRILEC USP [~~Small and Rural ILEC Universal Service Plan per-line support~~]. As part of the contested case proceeding referenced in paragraph (2) of this subsection, for each small or rural ILEC ETP, the commission will [~~shall~~] calculate the amount of additional revenue, using the basic telecommunications service rate (the tariffed local service rate plus any additional charges for tone dialing services, mandatory expanded local calling service and mandatory extended area service) and the access line count as of September 1, 2013, would result if the small and rural ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers. Without regard to whether a small or rural ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the small or rural ILEC ETP's annual base support amount for each study area will [~~shall~~] be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2014. The small or rural ILEC ETP's annual base support amount must [~~shall~~] be reduced by 25% of the additional revenue calculated in accordance with [~~pursuant to~~] this paragraph in each year of the transition period, unless specified otherwise in accordance with [~~pursuant to~~] paragraph (2)(B) of this subsection. This reduction must [~~shall~~] be accomplished by reducing support for each study area proportionally. An ILEC ETP may, in its sole discretion, accelerate its SRILEC USP reduction in any year by as much as 10% and offset such reductions with a corresponding local rate increase in order to produce rounded rates.

(f) SRILEC USP [~~Small and Rural ILEC Universal Service Plan~~] support payments to ETPs. The TUSF administrator must [~~shall~~] disburse monthly support payments to ETPs qualified to receive support in accordance with [~~pursuant to~~] this section.

(1) Payments to small or rural ILEC ETPs. The payment to each small or rural ILEC ETP must [~~shall~~] be computed by multiplying the per-line amount established in subsection (e) of this section by the number of eligible lines served by the small or rural ILEC ETP for the month.

(2) Payments to ETPs other than small or rural ILECs. The payment to each ETP other than a small or rural ILEC must [~~shall~~] be computed by multiplying the per-line amount established in subsection (e) of this section for a given small or rural ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

(g) Support Reduction. Subject to the provisions of §26.405(f)(3) of this title (relating to Financial Need for Continued Support), the commission will [~~shall~~] adjust the support to be made available from the SRILEC USP according to the following criteria.

(1) For each ILEC ETP that is electing under PURA, Chapter 58 or 59 or a cooperative that served greater than 31,000 access lines in this state on September 1, 2022 [~~2013~~], or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC ETP is eligible to receive for each exchange on December 31, 2024 [~~2017~~] from the SRILEC USP is reduced:

(A) on January 1, 2025 [~~2018~~], to 75 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2024 [~~2017~~];

(B) on January 1, 2026 [~~2019~~], to 50 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2024; [~~2017; and~~]

(C) on January 1, 2027 [~~2020~~], to 25 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2024; or [~~2017.~~]

(D) on January 1, 2028, to zero percent of the level of support the ILEC ETP is eligible to receive on December 31, 2024.

(2) An ILEC ETP subject to this subsection may file a petition to show financial need for continued support, in accordance with [~~pursuant to~~] §26.405(f)(1) of this title, on or before January 1, 2028 [~~2020~~].

(h) Reporting requirements. An ETP eligible to receive support under this section must [~~shall~~] report information as required by the commission and the TUSF administrator.

(1) Monthly reporting requirement. An ETP must [~~shall~~] report the following to the TUSF administrator on a monthly basis:

(A) - (B) (No change.)

(2) Quarterly filing requirements. An ETP must [~~shall~~] file quarterly reports with the commission showing actual SRILEC USP receipts by study area.

(A) Reports must [~~shall~~] be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports must [~~shall~~] be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed in accordance with [~~pursuant to~~] paragraph (3) of this subsection must [~~shall~~] be publicly available.

(3) Annual reporting requirements. An ETP must [~~shall~~] report annually to the TUSF administrator that it is qualified to participate in the SRILEC USP [~~Small and Rural ILEC Universal Service Plan~~].

(4) Other reporting requirements. An ETP must [~~shall~~] report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements from the TUSF.

§26.405. Financial Need for Continued Support.

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

(c) Definitions. The following words and terms when used in this section [~~shall~~] have the following meaning unless the context clearly indicates otherwise:

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served in accordance with [~~pursuant to~~] the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC in accordance with [~~pursuant to~~] a customer specific contract or that is otherwise not served in accordance with [~~pursuant to~~] a tariff, to qualify as a business line, the service must be provided in accordance with [~~pursuant to~~] a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided in accordance with [~~pursuant to~~] a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but cannot [~~shall not~~] be both.

(3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission in accordance with [~~pursuant to~~] §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) (No change.)

(5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line does [~~shall~~] not qualify as a residential line.

(6) Service Address--For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i) - (ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address must [~~shall~~] be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address must [~~shall~~] be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which must [~~shall~~] be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use must [~~shall~~] not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) (No change.)

(d) Determination of financial need.

(1) Criteria to determine financial need. For each exchange that is served by an ILEC ETP filing a petition in accordance with [~~pursuant to~~] subsection (f)(1) of this section, the commission will [~~shall~~] determine whether an ILEC ETP has a financial need for continued support. An ILEC ETP has a financial need for continued support within an exchange if the exchange does not contain an unsubsidized wireline voice provider competitor as set forth in paragraph (2) of this subsection.

(2) Establishing the existence of an unsubsidized wireline voice provider competitor. For the purposes of this section, an exchange contains an unsubsidized wireline voice provider competitor if the percentage of square miles served by an unsubsidized wireline voice provider competitor exceeds 75% of the square miles within the exchange. The commission will [~~shall~~] determine whether an exchange contains an unsubsidized wireline voice provider competitor using the following criteria.

(A) For the purposes of this section, an entity is an unsubsidized wireline voice provider competitor within an exchange if it:

(i) does not receive THCUSP support, SRILEC USP support, Federal Communications Commission (FCC) Connect America Fund (CAF) support or successor federal programs, or FCC Legacy High Cost support for service provided within that exchange; and

(ii) (No change.)

(B) Using the current version of [~~Version 7 of~~] the National Broadband Map, the commission will [~~shall~~] determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange and the total number of square miles represented by those census blocks using the following criteria.

(i) The number of square miles served by an unsubsidized wireline voice provider competitor within an exchange must [~~shall~~] be equal to the total square mileage covered by census blocks in the exchange in which an unsubsidized wireline voice provider competitor offers service to any customer or customers.

(ii) The commission will [~~shall~~] determine the percentage of square miles served by an unsubsidized wireline voice provider competitor within an exchange by dividing the number of square miles served by an unsubsidized wireline voice provider competitor within the exchange by the number of square miles within the exchange.

(C) The data provided by the FCC's Broadband Data Collection [~~National Broadband Map~~] creates a rebuttable presumption regarding the presence of an unsubsidized wireline voice provider competitor within a specific census block. However, nothing in this rule is intended to preclude a party from providing evidence as to the accuracy of individual census block data within the FCC's Broadband Data Collection [~~National Broadband Map~~] with regard to whether an unsubsidized wireline voice provider competitor offers service within a particular census block.

(3) Periodic review of criteria to demonstrate financial need for continued support. Beginning September 1, 2024, and every four years thereafter, the commission will review and may adjust the standards and criteria to demonstrate financial need for continued support under this subsection.

(e) Criteria for determining amount of continued support. In a proceeding conducted in accordance with [~~pursuant to~~] subsection (f) of this section, the commission will [~~shall~~] set new monthly per-line

support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts must [~~shall~~] be effective beginning with the first disbursement following a commission order entered in accordance with [~~pursuant to~~] subsection (f)(2) of this section, except that the new amounts must [~~they shall~~] not be effective earlier than January 1, 2024 [~~2017~~] for an exchange with service supported by the THCUSP or earlier than January 1, 2025 [~~2018~~] for an exchange with service supported by the SRILEC USP.

(1) Exchanges in which the ILEC ETP does not have a financial need for continued support.

(A) For each exchange that is served by an ILEC ETP that has filed a petition in accordance with [~~pursuant to~~] subsection (f)(1) of this section and for which the commission has not determined that the ILEC ETP has a financial need for continued support, the commission will [~~shall~~] reduce the monthly per-line support amount to zero.

(B) For each exchange that is served by an ILEC ETP that has filed a petition in accordance with [~~pursuant to~~] subsection (f)(1) of this section and which is not included in the petition, the commission will [~~shall~~] reduce the monthly per-line support amount to zero.

(2) Exchanges in which the ILEC ETP has a financial need for continued support. For each exchange that is served by an ILEC ETP that has filed a petition in accordance with [~~pursuant to~~] subsection (f)(1) of this section and for which the commission has determined the ILEC ETP has a financial need for continued support, the commission will [~~shall~~] set a monthly per-line support amount according to the following criteria.

(A) The initial monthly per-line support amounts for each exchange must [~~shall~~] be equal to:

(i) the amount that the ILEC ETP was eligible to receive on December 31, 2023, [~~2016~~] for an ILEC ETP that receives support from the THCUSP;

(ii) the amount that the ILEC ETP was eligible to receive on December 31, 2024, [~~2017~~] for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request in accordance with [~~pursuant to~~] subsection (g) of this section; or

(iii) the new monthly per-line support amounts calculated in accordance with [~~pursuant to~~] subsection (g) of this section for an ILEC ETP that has filed a request in accordance with [~~pursuant to~~] subsection (g) of this section.

(B) Initial monthly per-line support amounts for each exchange must [~~shall~~] be reduced by the extent to which the disbursements received by an ILEC ETP from the THCUSP or SRILEC USP in the twelve month period ending with the most recently completed calendar quarter prior to the filing of a petition in accordance with [~~pursuant to~~] subsection (f)(1) of this section are greater than 80% of the total amount of expenses reflected in the summary of expenses filed in accordance with [~~pursuant to~~] subsection (f)(1)(C) of this section. In establishing any reductions to the initial monthly per-line support amounts, the commission may consider any appropriate factor, including the residential line density per square mile of any affected exchanges.

(C) For each exchange with service supported by the THCUSP, monthly per-line support must [~~shall~~] not exceed:

(i) the monthly per-line support that the ILEC ETP is [~~was~~] eligible to receive on December 31, 2023 [~~2016~~], if the petition is [~~was~~] filed before January 1, 2024 [~~2016~~];

(ii) 75 percent of the monthly per-line support that the ILEC ETP is [~~was~~] eligible to receive on December 31, 2023 [~~2016~~], if the petition is [~~was~~] filed on or after January 1, 2024 [~~2016~~], and before January 1, 2025 [~~2017~~];

(iii) 50 percent of the monthly per-line support the ILEC ETP is [~~was~~] eligible to receive on December 31, 2023 [~~2016~~], if the petition is [~~was~~] filed on or after January 1, 2025 [~~2017~~], and before January 1, 2026 2018; [~~or~~]

(iv) 25 percent of the monthly per-line support that the ILEC ETP is [~~was~~] eligible to receive on December 31, 2023 [~~2016~~], if the petition is [~~was~~] filed on or after January 1, 2026 [~~2018~~], and before January 1, 2027; or [~~2019.~~]

(v) zero percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2027, and before January 1, 2028.

(D) For each exchange with service supported by the SRILEC USP, monthly per-line support must [~~shall~~] not exceed:

(i) the monthly per-line support that the ILEC ETP is [~~was~~] eligible to receive on December 31, 2024 [~~2017~~], if the petition is [~~was~~] filed before January 1, 2025 [~~2017~~];

(ii) 75 percent of the monthly per-line support that the ILEC ETP is [~~was~~] eligible to receive on December 31, 2024 [~~2017~~], if the petition is [~~was~~] filed on or after January 1, 2025 [~~2017~~], and before January 1, 2026 [~~2018~~];

(iii) 50 percent of the monthly per-line support the ILEC ETP is [~~was~~] eligible to receive on December 31, 2024 [~~2017~~], if the petition is [~~was~~] filed on or after January 1, 2026 [~~2018~~], and before January 1, 2027 [~~2019; or~~]

(iv) 25 percent of the monthly per-line support that the ILEC ETP is [~~was~~] eligible to receive on December 31, 2024 [~~2017~~], if the petition is [~~was~~] filed on or after January 1, 2027 [~~2019~~], and before January 1, 2028; or [~~2020.~~]

(v) zero percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2028, and before January 1, 2029.

(E) An ILEC ETP may only be awarded continued support for the provision of service in exchanges with service that is eligible for support from the THCUSP or SRILEC USP at the time of filing of a petition in accordance with [~~pursuant to~~] subsection (f)(1) of this section.

(F) Portability of support. The support amounts established in accordance with [~~pursuant to~~] this section are applicable to all ETPs and are portable with the customer.

(f) Proceeding to Determine Financial Need and Amount of Support.

(1) Petition to determine financial need. An ILEC ETP that is subject to §26.403(f) or §26.404(g) of this title may petition the commission to initiate a contested case proceeding to demonstrate that it has a financial need for continued support for the provision of basic local telecommunications service.

(A) An ILEC ETP that is subject to either §26.403(f) or §26.404(g) of this title may only file one petition in accordance with [~~pursuant to~~] this subsection. A petition filed in accordance with [~~pursuant to~~] this subsection must [~~shall~~] include the information necessary to reach the determinations specified in this subsection.

(B) An ILEC ETP filing a petition in accordance with [~~pursuant to~~] this subsection must [~~shall~~] provide notice as required by the presiding officer in accordance with [~~pursuant to~~] §22.55 of this

title (relating to Notice in Other Proceedings). At a minimum, notice must [~~shall~~] be published in the *Texas Register.*

(C) A petition filed in accordance with [~~pursuant to~~] this subsection must [~~shall~~] include a summary of the following total Texas regulated expenses and property categories, including supporting workpapers, attributable to the ILEC ETP's exchanges with service supported by the THCUSP or SRILEC USP during the twelve month period ending with the most recently completed calendar quarter prior to the filing of the petition:

(i) - (ix) (No change.)

(D) A summary filed in accordance with [~~pursuant to~~] this subsection must [~~shall~~] be filed publicly. Workpapers filed in accordance with [~~pursuant to~~] this subsection may be filed publicly or confidentially [~~under seal~~].

(E) Upon receipt of a petition in accordance with [~~pursuant to~~] this section, the commission will [~~shall~~] initiate a contested case proceeding to determine whether the ILEC ETP has a financial need for continued support under this section for the exchanges identified in the petition. In the same proceeding, the commission will [~~shall~~] set a new monthly per-line support amount for all exchanges served by the ILEC ETP.

(2) Issuance of final order on petition. The commission will [~~shall~~] issue a final order in the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the ILEC ETP must [~~shall~~] continue to receive the total amount of support it was eligible to receive on the date the ILEC ETP filed a petition under this subsection.

(3) Effect of final order. An ILEC ETP is [~~shall~~] not be subject to §26.403(f) or §26.404(g) of this title after the commission issues a final order on the petition.

(4) Burden of proof. The ILEC ETP filing a petition in accordance with [~~pursuant to~~] this subsection must [~~shall~~] bear the burden of proof with respect to all issues that are in the scope of the proceeding.

(g) De-averaging of the support received by ILEC ETPs from the SRILEC USP. On or before January 1, 2017, an ILEC ETP filing a petition in accordance with [~~pursuant to~~] subsection (f)(1) of this section and that receives support from the SRILEC USP may include in its petition a request that the commission determine for each exchange served by the ILEC ETP new monthly per-line support amounts that the ILEC ETP will be eligible to receive on December 31, 2017. The new monthly per-line support amounts will be calculated using the following methodology.

(1) The commission will [~~shall~~] use per-line proxy support levels based on the following ranges of average residential line density per square mile within an individual exchange. These proxies are used specifically for the purpose of de-averaging and do not indicate a preference that support at these levels be provided from the SRILEC USP.
Figure: 16 TAC §26.405(g)(1)
[~~Figure: 16 TAC §26.405(g)(1)~~]

(2) Using the per-line proxy support amount levels set forth in this subsection, the commission will [~~shall~~] create a benchmark support amount for each exchange of a requesting ILEC ETP. The benchmark support amount for each individual supported exchange of a company or cooperative is calculated by multiplying the number of total eligible lines as of December 31, 2016 served by the ILEC ETP within each exchange by the corresponding proxy support amount for that individual exchange based on the average residential line density per square mile of the exchange as of December 31, 2016.

(3) To the extent that the total sum of the benchmark support amounts for all of the supported exchanges of a company or cooperative is greater than or less than the targeted total support amount a company or cooperative would be eligible to receive on December 31, 2017 as a result of the final order in Docket No. 41097, the benchmark per-line support amount for each exchange must [~~shall~~] be proportionally reduced or increased by the same percentage amount so that the total support amount a company or cooperative is eligible to receive on December 31, 2017, as a result of the final order in Docket No. 41097, is unaffected by the de-averaging process.

(4) The per-line support amount that a company or cooperative is eligible to receive in a specific exchange on December 31, 2017, for purposes of a petition filed in accordance with [~~pursuant to~~] subsection (f)(1) of this section, is the per-line support amount for each exchange determined through the de-averaging process set forth in this subsection.

(h) Reporting requirements. An ILEC ETP that receives support in accordance with [~~pursuant to~~] this section is [~~shall remain~~] subject to the reporting requirements prescribed by [~~of~~] §26.403(g) or §26.404(h) of this title.

(i) Additional Financial Assistance. Nothing in this section prohibits [~~shall be interpreted to prohibit~~] an ILEC or a cooperative that is not an electing company under Chapter 58, 59, or 65 of PURA to apply for Additional Financial Assistance in accordance with [~~pursuant to~~] §26.408 of this title (relating to Additional Financial Assistance (AFA)).

(j) Service to be supported. The services to be supported in accordance with [~~pursuant to~~] the section are subject to the same definitions and limitations as those prescribed by [~~set out in~~] §26.403(d) and §26.404(d) of this title, in addition to any limitation ordered by the commission in a contested case proceeding.

(k) Expiration of support to an ILEC ETP. On December 31, 2024, support to an ILEC ETP or cooperative must be reduced to zero percent of the amount of support that the company is eligible to receive on that date if the following conditions are met:

(1) The support to the ILEC ETP or cooperative has been reduced to 25 percent of the amount of support the ILEC ETP or cooperative was eligible to receive before December 31, 2022; and

(2) The ILEC ETP or cooperative has not submitted a petition under subsection (f)(1) of this section.

(l) Relinquishment of support. An ETP may file a notice with the commission of the ETP's relinquishment of the support it is entitled to receive under this subchapter.

(1) After notice by the provider, the commission will notify the TUSF administrator of the relinquishment and require the TUSF administrator to terminate support to the provider.

(2) If the commission does not notify the TUSF administrator before 90 days of the date the ETP filed the notice with the commission, the ETP may stop receiving support 90 days from the date the ETP filed notice with the commission.

§26.407. Small and Rural Incumbent Local Exchange Company Universal Service Plan Support Adjustments.

(a) (No change.)

(b) Application. This section applies to a small ILEC that has been designated as an eligible telecommunications provider (ETP) by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

[(1) Small ILECs. This section applies to a small ILEC that has been designated as an eligible telecommunications provider (ETP) by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).]

[(2) Other ETPs providing service in small or rural ILEC study areas. This section applies to a telecommunications provider other than a small ILEC that provides service in small ILEC study areas that have been designated as an ETP by the commission in accordance with §26.417 of this title.]

(c) Definitions. The following words and terms, when used in this section[, will] have the following meaning[,] unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(d) Notification to the commission that a small ILEC seeks to participate in this section. A small ILEC that is not an electing company under Chapters 58 or 59 may file a written notice to the commission to participate in this section to have the commission determine the amount of Small and Rural Incumbent Local Exchange Company Universal Service Plan support it receives, so that such support, combined with regulated revenues, provides the small ILEC an opportunity to earn a reasonable rate of return if the reported rate of return of such small ILEC is based on expenses that it believes are reasonable and necessary. When adjusting monthly support, the commission will consider, among other factors [things] described in this section, the adequacy of basic rates to support universal service. A small ILEC that submits a written notice to participate in this section will continue to receive the same level of Small and Rural Incumbent Local Exchange Company Universal Service Plan support it was receiving on the date of the written notice until the commission makes a determination or adjustment under this section.

(e) Annual report of a requesting small ILEC.

(1) Deadlines for annual reports. A small ILEC that submits a written notice under subsection (d) of this section must file an annual report each year with the commission, using the form prescribed by the commission that is [commission-prescribed forms that are] available on the commission's website. The initial annual report for a small ILEC that files a written notice under subsection (d) of this section must be filed within two months after a small ILEC elects to participate in this section. Subsequent annual reports must be filed no later than September 15 [15th] of each year. All annual reports must be related to the most recent calendar year prior to the filing of the annual report.

(2) Contents of annual report. The annual report filed by a small ILEC under this subsection must include information on the following:

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

(K) all detail and supporting documentation necessary to support each of the items in subsection (e)(2); and

(L) an authorized official's signature.

(3) Cost allocation manual. The small ILEC must [also] provide its full and complete cost allocation manual as part of the annual report specified by paragraph (2) of this subsection.

(4) Operational information. By September 15, 2024, and on an annual basis thereafter, a small ILEC must file with the commission the following information regarding the provider's operations that are regulated by the commission:

(A) total operating revenues;

(B) total operating expenses;

(C) total operating tax expense;

(D) rate of return;

(E) total invested capital; and

(F) network access revenue.

(5) The operational information specified by paragraph (4) of this subsection must be filed as part of a small ILEC's annual report specified by paragraph (2) of this subsection.

(A) A copy of the operational information specified by paragraph (4) of this subsection must be filed publicly with the commission. The public filing is prohibited from being filed confidentially in accordance with PURA §56.032(k).

(B) A small ILEC must provide reconciled information to the extent the operational information specified by paragraph (4) of this subsection is deficient or, where applicable, does not match the information provided in a small ILEC's annual report.

(C) To the extent that commission staff determines the operational information is deficient, the small ILEC must provide the reconciled information to the commission in a public filing prior to the deadline prescribed by the presiding officer.

(f) Commission staff's review of annual reports. An annual report [Annual reports] submitted under this section will be reviewed by commission staff to determine whether a small ILEC's support, when combined with regulated revenues, provide the small ILEC an opportunity to earn a reasonable rate of return and whether the reported rate of return of the small ILEC is based on expenses that the commission staff determines are reasonable and necessary.

(1) Timeline for review of the annual reports.

(A) (No change.)

(B) Within 90 days after an annual report has been filed, commission staff will complete its review of the annual report and file a memorandum for the commission's consideration regarding a final recommendation on the reported or commission staff [commission-staff] adjusted rate of return.

(2) Commission staff's review of an annual report.

(A) (No change.)

(B) Commission staff will recalculate the small ILEC's reported rate of return and provide an adjusted rate of return if any adjustments were made in paragraph (2)(A) of this subsection.

(3) Separation of small ILECs into rate of return categories. Upon completion of commission staff's review of a small ILEC's annual report, commission staff will determine the appropriate category for the small ILEC within the following three categories based on the small ILEC's reported or commission staff [commission-staff] adjusted rate of return:

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

(4) Commission staff will file a memorandum for the commission's consideration of the categorization of each small ILEC in accordance with paragraph (1)(B) of this subsection.

(g) Treatment of small ILECs based on rate of return categories. Each category of ILEC will be processed as set forth below.

(1) Category 1-A small ILEC that has a reported or commission staff [commission-staff] adjusted rate of return in Category 1 may file an application for an adjustment to have its annual

Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates increased to a level that would allow the small ILEC to earn an amount that would be considered a reasonable rate of return, except that the adjustment may not set a small ILEC's support level at more than 140 percent of the annualized support the provider received in the 12-month period before the date of the adjustment. Any rate adjustments may not adversely affect universal service.

(2) Category 2-A small ILEC that has a reported or commission staff [~~commission-staff~~] adjusted rate of return in Category 2 will be considered to be earning a reasonable rate of return and will not be eligible to file for an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support, except as described in subsection (h)(2)(B) of this section. The commission may not initiate a proceeding against a small ILEC that has a reported or commission staff [~~commission-staff~~] adjusted rate of return within Category 2.

(3) Category 3-For a small ILEC that has a reported or commission staff [~~commission-staff~~] adjusted rate of return in Category 3, the commission staff may initiate a proceeding to review and adjust the small ILEC's Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates to adjust the small ILEC's rate of return into the reasonable rate of return range. A small ILEC that has a commission staff [~~commission-staff~~] adjusted rate of return in Category 3 is not eligible to file for an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support, except as described in subsection (h)(2)(B) of this section.

(h) Contested case procedures.

(1) Documents to be submitted. At a minimum, the following information must be provided by a small ILEC in a contested case proceeding, regardless [~~irrespective~~] of whether such case is initiated by a small ILEC or commission staff. Any proceeding filed under this section in which a party has intervened and requested a hearing is a case initiated by a small ILEC or commission staff and the filing requirements listed below apply to such cases.

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

(2) Qualification for contested case proceeding.

(A) Category 1 small ILECs. A small ILEC in Category 1, as identified in subsection (f)(3) of this section, may file an application that is eligible for administrative review or informal disposition to request an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan or basic rates to allow the company to earn a reasonable rate of return.

(B) Category 2 or Category 3 small ILECs subsequent to rate of return adjustment by commission staff. A small ILEC that has a reported rate of return in Category 1 or Category 2, as identified in subsection (f)(3) of this section, but that has a commission staff [~~commission-staff~~] adjusted rate of return in Category 2 or Category 3, may file a petition to contest the commission staff [~~commission-staff~~] adjusted rate of return and may also request an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates in the same proceeding. A small ILEC that has a reported rate of return in Category 2 but because of commission staff [~~commission-staff~~] adjustments the small ILEC is in Category 3, may file a petition to contest the commission staff [~~commission-staff~~] adjustments. However, the small ILEC may not request an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates. Any proceeding that is initiated by a small ILEC to protest a reclassification and in which a party has intervened and requested a hearing is a case initiated by a small ILEC and the filing requirements listed below apply to these cases.

(C) Category 3 small ILECs. A small ILEC in Category 3, as identified in subsection (f)(3) of this section, is subject to a commission staff initiated [~~staff-initiated~~] proceeding to review the company's annual report and reported rate of return, must submit the information listed in paragraph (1) of this subsection.

(3) - (4) (No change.)

(5) Timing for contested cases. The commission will [~~must~~] grant or deny an application filed under subsection not later than 120 days [~~the 120th day~~] after the date a sufficient application is filed. The commission may extend the deadline upon a showing of good cause. The application will be processed in accordance with the commission's rules applicable to docketed cases.

(6) (No change.)

(i) Confidentiality of information.

(1) (No change.)

(2) A third party may only access confidential information filed according to subsection (h) of this section, or a proceeding [~~proceedings~~] related to that filing, if the third party is subject to an appropriate protective order.

(3) (No change.)

(j) Commission adjustment of the small ILEC's revenue requirement and Small and Rural Incumbent Local Exchange Company Universal Service Plan support.

(1) (No change.)

(2) Small and Rural Incumbent Local Exchange Company Universal Service Plan(SRIUSP) support payments to small ILECs. The commission will determine the amount of adjustment to the annual SRIUSP [~~Small and Rural Incumbent Local Exchange Company Universal Service Plan~~] support or basic rates for the small ILEC that will be needed to meet the new revenue requirement identified in this paragraph. The commission will determine the fixed monthly support payment for a small ILEC by dividing the SRIUSP [~~Small and Rural Incumbent Local Exchange Company Universal Service Plan~~] support by 12. Each small ILEC that has SRIUSP [~~Small and Rural Incumbent Local Exchange Company Universal Service Plan~~] support adjusted under this section must provide the TUSF administrator with a copy of the final order indicating the adjusted amount of SRIUSP [~~Small and Rural Incumbent Local Exchange Company Universal Service Plan~~] support.

[~~(3) Small and Rural Incumbent Local Exchange Company Universal Service Plan support payments to ETPs other than small ILECs. The Small and Rural Incumbent Local Exchange Company Universal Service Plan support for ETPs other than a small ILEC will be determined by calculating the per-line support for each small ILEC's study area based on the most recent monthly support using December line counts for the small ILEC. The payment to each ETP other than a small ILEC will be calculated by multiplying the computed per-line amount for the given small ILEC study area by the number of eligible lines served by the ETP in such study area for the month.~~]

(k) - (l) (No change.)

§26.409. Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers.

(a) Purpose. This section implements PURA §56.023(p) and (r) and establishes the criteria and process for determining whether Texas Universal Service Fund (TUSF) support under [~~16 TAC~~]

§26.403of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) to a competitive Eligible Telecommunications Provider (ETP) should be eliminated.

(b) Application. This section applies to exchanges in which an incumbent local exchange company or cooperative is ineligible for support under PURA §56.021(1) and a competitive ETP receives TUSF support under [~~16 TAC~~] §26.403of this title. This section expires on December 31, 2023.

(c) (No change.)

(d) Identification of exchanges for review.

(1) No later than April 30 of each year, commission staff must report:

(A) Each exchange [~~The exchanges~~] in which the number of access lines served by competitive ETPs has decreased by at least 50% from the number of access lines that were served in that exchange by competitive ETPs on December 31, 2016; and

(B) The number of access lines served by those competitive ETPs identified in subparagraph (A) of this paragraph on December 31 of the prior calendar [~~previous~~] year.

(2) (No change.)

(e) (No change.)

(f) Competitive ETP's response to commission staff's application.

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

(3) The response must be in writing, supported by affidavit, and filed with the commission as prescribed by 16 TAC §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials).

(g) - (j) (No change.)

§26.414. Telecommunications Relay Service (TRS).

(a) Purpose. The provisions of this section are intended to establish a statewide telecommunications relay service for individuals who are hearing-impaired or speech-impaired using specialized telecommunications devices and operator translations. Telecommunications relay service must [~~shall~~] be provided on a statewide basis by one telecommunications carrier, except that the commission may contract with another vendor for a special feature in certain circumstances. Certain aspects of telecommunications relay service operations are applicable to local exchange companies and other telecommunications providers.

(b) Provision of TRS. TRS must [~~shall~~] provide individuals who are hearing-impaired or speech-impaired with access to the telecommunications network in Texas equal to that provided to other customers.

(1) Components of TRS. TRS must [~~shall~~] meet the mandatory minimum standards defined in §26.5 of this title (relating to Definitions) and must include [~~further shall consist of~~] the following:

(A) - (E) (No change.)

(F) the capability of providing sufficient information to allow calls to be accurately billed;

(G) the capability of providing for technologies such as hearing carryover or voice carryover;

(H) - (I) (No change.)

(J) the capability for callers to place calls through TRS from locations other than their primary location and to utilize alternate billing arrangements;

(K) the capability of providing both inbound and outbound intrastate and interstate service;

(L) the capability for carrier of choice; and

(M) (No change.)

(2) Conditions for interstate service. The TRS carrier must [~~shall~~] not be reimbursed from the Texas Universal Service Fund (TUSF) for the cost of providing interstate TRS. Interstate TRS must [~~shall~~] be funded through the interstate jurisdiction as mandated by the Federal Communications Commission. Separate funds and records must [~~shall~~] be maintained by the TRS carrier for intrastate TRS and interstate TRS.

(3) Rates and charges. The following rates and charges [~~shall~~] apply to TRS:

(A) Local calls. The calling and called parties must [~~shall~~] bear no charges for calls originating and terminating within the same toll-free local calling scope.

(B) Intrastate long distance calls. The TRS carrier must [~~shall~~] discount its tariffed intrastate rates by 50% for TRS users.

(C) Access charges. A telecommunication provider must [~~Telecommunications providers shall~~] not impose access charges on calls that make use of this service or on calls that [~~and which~~] originate and terminate within the same toll-free local calling scope.

(D) Billing and collection services. Upon request by the TRS carrier, a telecommunications provider must [~~providers shall~~] provide billing and collection services in support of this service at just and reasonable rates.

(c) Contract for the TRS carrier.

(1) Selection. On or before April 1, 2000, the commission will [~~shall~~] issue a request for proposal and select a carrier to provide statewide TRS based on the following criteria: price, the interests of individuals who are hearing-impaired and speech-impaired in having access to a high quality and technologically advanced [~~technologically advanced~~] telecommunications system, and all other factors listed in the commission's request for proposals. The commission will [~~shall~~] consider each proposal in a manner that does not disclose the contents of the proposal to competing offerors [~~offerers~~]. The commission's determination will [~~shall~~] include evaluations of charges for the service, service enhancements proposed by the offerors [~~offerers~~], and technological sophistication of the network proposed by the offerors [~~offerers~~]. The commission will [~~shall~~] make a written award of the contract to the offeror [~~offerer~~] whose proposal is the most advantageous to the state.

~~[(2) Location. The operator centers used to provide statewide TRS shall be located in Texas.]~~

(2) [~~(3)~~] Contract administration.

(A) Contract amendments. All recommendations for amendments to the contract must [~~shall~~] be filed with the executive director of the commission on June 1 of each year. The executive director is authorized to approve or deny all amendments to the contract between the TRS carrier and the commission, provided, however, that the commission specifically will [~~shall~~] approve any amendment that will increase the cost of TRS.

(B) Reports. Each TRS carrier [~~The TRS carrier(s)~~] and telecommunications provider must [~~providers shall~~] submit reports of

their activities relating to the provision of TRS upon request of the commission or the Relay Texas administrator.

(C) Compensation. Each TRS carrier must [~~The TRS carrier(s) shall~~] be compensated by the TUSF for providing TRS at the rates, terms, and conditions established in its contract with the commission, subject to the following conditions:

(i) Reimbursement must [~~shall~~] include the TRS costs that are not paid by the calling or the called party, except the TRS carrier must [~~shall~~] not be reimbursed for the 50% discount set forth in subsection (b)(3)(B) of this section.

(ii) Reimbursement may include a return on the investment required to provide the service and the cost of unbillable and uncollectible calls placed through the service, provided that the cost of unbillable and uncollectible calls must [~~shall~~] be subject to a reasonable limitation as determined by the commission.

(iii) The TRS carrier must [~~shall~~] submit a monthly report to the commission justifying its claims for reimbursement under the contract. Upon approval by the commission, the TUSF must [~~shall~~] make a disbursement in the approved amount.

(d) Special features for TRS.

(1) (No change.)

(2) If the carrier selected to provide the telecommunications relay access service is unable to provide the special feature at the best value to the state, the commission may make a written award of a contract for a different carrier to provide the special feature to the telecommunications carrier whose proposal is most advantageous to the state, considering;

(A) factors stated in subsection (c)(1) of this section;

(B) (No change.)

(3) The commission will [~~shall~~] consider each proposal in a manner that does not disclose the contents of the proposal to a telecommunications carrier making a competing proposal.

(4) The commission's evaluation of a telecommunications carrier's proposal must [~~shall~~] include the considerations listed in subsection (c)(1) of this section.

(e) Advisory Committee. The commission will [~~shall~~] appoint an Advisory Committee, to be known as the Relay Texas Advisory Committee (RTAC) to assist the commission in administering TRS and the specialized telecommunications assistance program, as specified by the Public Utility Regulatory Act (PURA) §56.111. The Relay Texas administrator must [~~shall~~] serve as a liaison between [~~the~~] RTAC and the commission. The Relay Texas administrator must [~~shall~~] ensure that [~~the~~] RTAC receives clerical and staff support, including a secretary or court reporter to document RTAC meetings.

(1) Composition. The commission will [~~shall~~] appoint RTAC members based on recommended lists of candidates submitted by the organizations named as follows. RTAC must [~~The RTAC shall~~] be composed of:

(A) - (E) (No change.)

(F) one deaf and blind person recommended by the Texas Deaf or Blind Association [~~Texas Deaf/Blind Association~~];

(G) - (J) (No change.)

(2) Conditions of membership. The term of office of each RTAC member must [~~shall~~] be two years. A member whose term has expired must [~~shall~~] continue to serve until a qualified replacement is appointed. In the event a member cannot complete his or her term, the commission will [~~shall~~] appoint a qualified replacement to serve the remainder of the term. RTAC members must [~~shall~~] serve without compensation but must [~~shall~~] be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties, provided such reimbursement is authorized by the Texas Legislature in the General Appropriations Act.

(3) Responsibilities. The RTAC must [~~shall~~] undertake the following responsibilities:

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

(4) Committee activities report. After each RTAC meeting, the Relay Texas administrator must [~~shall~~] prepare a report to the commission regarding [~~the~~] RTAC activities and recommendations.

(A) The Relay Texas administrator must [~~shall~~] file in Central Records under Project Number 13928, and provide to each commissioner, a report containing:

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

(iii) a list of items, recommended by [~~the~~] RTAC, for the Relay Texas administrator to discuss with the TRS carrier, including issues related to the provisioning of the service that do not require amendments to the contract.

(B) (No change.)

(5) Evaluation of RTAC costs and effectiveness. The commission will [~~shall~~] evaluate the advisory committee annually. The evaluation will [~~shall~~] be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, RTAC members, and other commission employees who work directly or indirectly with [~~the~~] RTAC, TRS, or the equipment distribution program are [~~shall~~] not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:

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

§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

(a) Purpose. This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications providers designated by the commission as ETPs [~~shall~~] qualify to receive universal service support under these programs.

(b) Requirements for establishing ETP service areas.

(1) THCUSP service area. A THCUSP service area is [~~shall be~~] based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC, or other geographic area as determined appropriate by the commission.

(2) Small and Rural ILEC Universal Service Plan service area. A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or rural ILEC's territory must [~~shall~~] include the entire study area of such small or rural ILEC.

(c) Criteria for designation of ETPs.

(1) Telecommunications providers. A telecommunications provider, as defined in the Public Utility Regulatory Act (PURA) §51.002(10), is [shall] be eligible to receive TUSF support in accordance with [pursuant to] §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

(A) the telecommunications provider has been designated an eligible telecommunications carrier, in accordance with [pursuant to] §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;

(B) the telecommunications provider defines its ETP service area in accordance with [pursuant to] subsection (b) of this section and assumes the obligation to offer any customer within an exchange in its ETP service area[,] for which the provider receives support under this section, basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;

(C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, or [and] resale of another carrier's services;

(D) the telecommunications provider renders continuous and adequate service within an exchange in its ETP service area for which the provider receives support under this section, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);

(E) - (F) (No change.)

(2) ILECs. If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it must [shall] be eligible to receive TUSF support [pursuant to] §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

(A) If the ILEC is regulated under [pursuant to the] Public Utility Regulatory Act (PURA) Chapter 58 or 59 it must [shall] either:

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

(B) If the ILEC is not regulated under [pursuant to] PURA Chapter 58 or 59 it must [shall] reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.

(C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section must [shall] be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions must [shall] be offset by equal disbursements from the universal service fund under PURA §56.021(1). This subparagraph expires August 31, 2007.

(d) (No change.)

(e) Proceedings to designate telecommunications providers as ETPs.

(1) (No change.)

(2) To [In order to] receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP must [shall] file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.

(3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it must [shall] file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude those exchanges for which it was receiving support, from its designated service area[, those exchanges for which it was receiving support].

(f) Requirements for application for ETP designation and commission processing of application.

(1) Requirements for notice and contents of application for ETP designation.

(A) Notice of application. Notice must [shall] be published in the *Texas Register.* The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice must [shall] include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer [Public Utility Commission's Customer] Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989 [with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477]."

(B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state must [shall] file with the commission an application complying with the requirements of this section. A copy of the application must be delivered to [In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to] the Office of Public Utility Counsel.

(i) Telecommunications providers. The application must [shall]:

(I) - (VII) (No change.)

(VIII) provide a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;

(IX) - (XI) (No change.)

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application must [shall] show compliance with the requirements of subsection (c)(2) of this section.

(2) Commission processing of application.

(A) Administrative review. An application considered under this section is eligible for administrative review [may be reviewed administratively] unless the telecommunications provider re-

quests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation must [~~shall~~] be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application will be reviewed [~~shall be examined~~] for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will [~~shall~~] be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application will [~~shall~~] be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will [~~shall~~] be determined 30 days from the [~~30th~~] day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is under administrative review [~~being administratively reviewed, the~~] commission staff and OPUC [~~the staff of the Office of Public Utility Counsel~~] may submit requests for information to the applicant. Answers [~~Three copies of all answers~~] to such requests for information must [~~shall~~] be provided to [~~the~~] commission staff and OPUC [~~the Office of Public Utility Counsel~~] within ten days after receipt of the request by the applicant.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. Commission staff must and OPUC [~~The commission staff shall and the Office of Public Utility Counsel~~] may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer will [~~shall~~] issue an order approving, denying, or docketing the application.

(B) Approval or denial of application. The application will [~~shall~~] be approved by the presiding officer if it meets the following requirements.

(i) - (iv) (No change.)

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer will [~~shall~~] docket the application. The requirements of subsection (c) of this section may not be waived.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application will [~~shall~~] be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Answers [~~Three copies of all answers~~] to requests for information must [~~shall~~] be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits will [~~shall~~] be scheduled. A hearing on the merits will [~~shall~~] be limited to issues of eligibility. The application will [~~shall~~] be processed in accordance with the commission's rules applicable to docketed cases.

(g) Relinquishment of ETP designation. A telecommunications provider may seek to relinquish its ETP designation.

(1) Area served by more than one ETP. The commission will [~~shall~~] permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

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

(2) (No change.)

(3) Relinquishment for non-compliance. The TUSF administrator must [~~shall~~] notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.

(A) The commission will [~~shall~~] revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.

(B) (No change.)

(h) Auction procedure for replacing the sole ETP in an area. In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission will [~~shall~~] initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.

(1) Announcement of auction. Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission will [~~shall~~] provide notice in the *Texas Register* of the auction. The announcement must [~~shall~~] at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed in accordance with [~~pursuant to~~] §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

(2) Bidding procedure. Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register.*

(A) Every bid must contain:

(i) (No change.)

(ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and

(iii) (No change.)

(B) The TUSF administrator must [~~shall~~] collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.

(C) (No change.)

(i) Requirements for annual affidavit of compliance to receive TUSF support. An ETP serving a rural or non-rural study area must [~~shall~~] comply with the following requirements for annual compliance for the receipt of TUSF support.

(1) Annual Affidavit of Compliance. On or before September 1 of each year, an ETP that receives disbursements from the TUSF must [~~shall~~] file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.

(2) Filing Affidavit. The affidavit used must [~~shall~~] be the annual compliance affidavit approved by the commission.

§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

(a) Purpose. This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) in accordance with [~~pursuant to~~] 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.

(b) (No change.)

(c) Service areas. The commission may designate ETC service areas according to the following criteria.

(1) Non-rural service area. To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services in accordance with [~~pursuant to~~] 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

(2) Rural service area. In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services in accordance with [~~pursuant to~~] 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

(d) Criteria for determination of ETCs. A common carrier must [~~shall~~] be designated as eligible to receive federal universal service support if it:

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

(e) (No change.)

(f) Designation of more than one ETC.

(1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission will [~~shall~~] designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsections (c)(1) and (d) of this section.

(2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsections (c)(2) and (d) of this section if the commission finds that the designation is in the public interest.

(g) Proceedings to designate ETCs.

(1) (No change.)

(2) To [~~In order to~~] receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC must [~~shall~~] file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.

(3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it must [~~shall~~] file an application, within 30 days after the date of the sale, to amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(h) Application requirements and commission processing of applications.

(1) Requirements for notice and contents of application.

(A) Notice of application. Notice must [~~shall~~] be published in the *Texas Register.* The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice must [~~shall~~] include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer [~~Public Utility Commission's Customer~~] Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989 [~~with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477~~]."

(B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC must [~~shall~~] file with the commission an application complying with the requirements of this section. A copy of the application must [~~In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall~~] be delivered to the Office of Public Utility Counsel (OPUC). The application must [~~shall~~]:

(i) - (viii) (No change.)

(C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support must [~~shall~~] file with the commission an application complying with the requirements of this section. A copy of the application must [~~In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall~~] be delivered to the Office of Public Utility Counsel. The application must [~~shall~~]:

(i) - (iii) (No change.)

(2) Commission processing of application.

(A) Administrative review. An application considered under this section is eligible for administrative review [~~may be reviewed administratively~~] unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date will [~~shall~~] be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application will be reviewed [~~shall be examined~~] for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will [~~shall~~] be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application will [~~shall~~] be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will [~~shall~~] be determined 30 days from the [~~30th~~] day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is under administrative review [~~being administratively reviewed, the~~] commission staff and the staff of OPUC [~~the Office of Public Utility Counsel~~] may submit requests for information to the telecommunications carrier. Three

copies of all answers to such requests for information must [~~shall~~] be provided to [~~the~~] commission staff and OPUC [~~the Office of Public Utility Counsel~~] within ten days after receipt of the request by the telecommunications carrier.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide [~~the~~] commission staff with written comments or recommendations concerning the application. Commission staff must and OPUC [~~The commission staff shall and the Office of Public Utility Counsel~~] may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer will [~~shall~~] issue an order approving, denying, or docketing the application.

(B) Approval or denial of application.

(i) An application filed in accordance with [~~pursuant to~~] paragraph (1)(B) of this subsection will [~~shall~~] be approved by the presiding officer if the application meets the following requirements:

(I) - (VI) (No change.)

(ii) An application filed in accordance with [~~pursuant to~~] paragraph (1)(C) of this subsection will [~~shall~~] be approved by the presiding officer if the application meets the following requirements:

(I) - (III) (No change.)

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer will [~~shall~~] docket the application.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application will [~~shall~~] be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information must [~~shall~~] be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits will [~~shall~~] be scheduled. A hearing on the merits will [~~shall~~] be limited to issues of eligibility. The application will [~~shall~~] be processed in accordance with the commission's rules applicable to docketed cases.

(E) Waiver. In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver must [~~shall~~] not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

(i) Designation of ETC for unserved areas. If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, will [~~shall~~] determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and will [~~shall~~] order such carrier or carriers to provide such service for that unserved community or portion thereof.

(j) Relinquishment of ETC designation. A common carrier may seek to relinquish its ETC designation.

(1) Area served by more than one ETC. The commission will [~~shall~~] permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:

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

(2) (No change.)

(k) Rural and non-rural carriers' requirements for annual certification to receive FUSF support. A common carrier serving a rural or non-rural study area must [~~shall~~] comply with the following requirements for annual certification for the receipt of FUSF support.

(1) Annual certification. Common carriers must provide the commission with an affidavit annually, on or before September 1 [~~1st~~] of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1 [~~1st~~] each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1 of [~~1st~~] each year.

(2) Failure to file. Common carriers failing to file an affidavit by September 1 [~~1st~~] may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.

(3) Supplemental certification. For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications applies [~~shall apply~~].

(4) Recommendation for Revocation of FUSF support certification. The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements in accordance with [~~pursuant to~~] 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF support certification and make an appropriate recommendation as a result of any such review.

(l) Disaggregation of rural carriers' FUSF support. Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.

(1) Abstain from filing. If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier is prohibited from disaggregating [~~will not be permitted to disaggregate~~] its FUSF support unless it is ordered to do so by the commission in accordance with [~~pursuant to~~] the terms of paragraph (5) of this subsection.

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

(2) Abstain from filing. If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier is prohibited from disaggregating [~~will not be permitted to disaggregate~~] its FUSF support unless it is ordered to do so by the commission in accordance with [~~pursuant to~~] the terms of paragraph (5) of this subsection.

(3) Requirements for rural ILECs' disaggregation plans. In accordance with [~~pursuant to the~~] federal requirements, [~~in 47 C.F.R. §54.315(e)~~] a rural ILEC's disaggregation plan, whether submitted in accordance with [~~pursuant to~~] paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:

(A) (No change.)

(B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support must [~~shall~~] remain fixed over time, except as changes are required [~~pursuant to~~] paragraph (5) of this subsection;

(C) the ratio of per line FUSF support must [~~shall~~] be publicly available;

(D) the per line FUSF support amount for each disaggregated zone or wire center must [~~shall~~] be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts must [~~shall~~] then be applied using the changed FUSF support amount and updated access line counts applicable at that point;

(E) each support category complies with subparagraphs (A) and (B) of this paragraph;

(F) monthly payments of FUSF support must [~~shall~~] be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and

(G) (No change.)

(4) Additional requirements for self-certification of a disaggregation plan. In accordance with federal requirements [~~pursuant to 47 C.F.R. §54.315(d)(2)~~], a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:

(A) - (B) (No change.)

(C) a clearly specified per-line level of FUSF support for each category [~~pursuant to 47 C.F.R. §54.315(d)(2)(iii)~~];

(D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that the benchmark is generally consistent with how the level of support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and

(E) (No change.)

(5) (No change.)

(6) Effective dates of disaggregation plans. The effective date of a rural ILEC's disaggregation plan must [~~shall~~] be as specified by federal law [~~in 47 C.F.R. §54.315~~].

§26.419. Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service.

(a) Scope and Purpose. This section provides the requirements for the commission to designate certificated providers of local exchange telephone service that provide this service solely through the resale of an incumbent local exchange carrier's (ILEC) services as an eligible telecommunications provider (ETP) for the specific purpose of receiving funds for Lifeline Service from the Texas Universal Service Fund (TUSF) under §26.412 of this title (relating to the Lifeline Service Program). Only resale [~~Resale~~] ETPs as defined by §26.412(b)(2) of this title must [~~shall~~] qualify to receive universal service support under this program.

(b) Requirements for establishing ETP service areas.

(1) Texas High Cost Universal Service Plan (THCUSP) service area. A THCUSP service area must [~~shall~~] be based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs contained within its certificated service area. An ETP must serve an entire WC or other geographic area as determined appropriate by the commission.

(2) Small and Rural ILEC Universal Service Plan (SRIUSP) service area. A SRIUSP service area for an ETP serving in a small or rural ILEC's territory must [~~shall~~] include the entire study area of such small or rural ILEC.

(c) Criteria for designation of ETPs. A resale [~~Resale~~] ETP as defined by §26.412(b)(2) of this title must [~~shall~~] be eligible to receive TUSF support in accordance with [~~pursuant to~~] §26.412 of this title for Lifeline Service only in each service area of a large company (THCUSP) or the study area of a small company (SRIUSP) for which it seeks ETP designation if it meets the following requirements:

(1) - (3) (No change.)

(d) Requirements for application for Resale ETP designation and commission processing of application.

(1) Requirements for notice and contents of application for Resale ETP designation.

(A) Notice of application. Notice must [~~shall~~] be published in the *Texas Register.* The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice must [~~shall~~] include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer [~~Public Utility Commission's Customer~~] Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989 [~~with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477~~]."

(B) Contents of application. A certificated provider of local exchange telephone service seeking to be designated as a resale must [~~Resale ETP shall~~] file with the commission an application complying with the requirements of this section. A [~~In addition to copies required by other commission rules, one~~] copy of the application must [~~shall~~] be delivered to [~~the commission staff and one copy shall be delivered to~~] the Office of Public Utility Counsel (OPUC). The application must [~~shall~~]:

(i) - (vii) (No change.)

(2) Commission processing of application.

(A) Administrative review. An application considered under this section is eligible for administrative review [~~may be reviewed administratively~~] unless the certificated provider of local exchange telephone service requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the Resale ETP designation must [~~shall~~] be no earlier than 30 days after notice is published in the *Texas Register.*

(ii) The application will be reviewed [~~shall be examined~~] for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will [~~shall~~] be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application

will [~~shall~~] be no earlier than 30 days after notice is published in the *Texas Register*.

(iii) While the application is being administratively reviewed, [~~the~~] commission staff and OPUC [~~the staff of the Office of Public Utility Counsel~~] may submit requests for information to the applicant. Three copies of all answers to such requests for information must [~~shall~~] be provided to [~~the~~] commission staff and OPUC [~~the Office of Public Utility Counsel~~] within ten days after receipt of the request by the applicant.

(iv) No later than 20 days after the completion of notice, interested persons may provide written comments or recommendations concerning the application to the commission staff. Commission staff must and OPUC may [~~The commission staff shall, and the Office of Public Utility Counsel may,~~] file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer must [~~shall~~] issue an order approving, denying, or docketing the application.

(B) Approval of application. The application will be approved by the presiding officer if it meets all the following requirements:

(i) - (iv) (No change.)

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements has not been met, the presiding officer will [~~shall~~] docket the application. The requirements of this subsection may not be waived.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application will [~~shall~~] be automatically suspended until an order is issued in the proceeding granting the application. Three copies of all answers to requests for information must [~~shall~~] be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits will [~~shall~~] be scheduled. A hearing on the merits will [~~shall~~] be limited to issues of eligibility. The application will [~~shall~~] be processed in accordance with the commission's rules applicable to docketed cases.

(e) Relinquishment of ETP designation. A certificated provider of local exchange telephone service may seek to relinquish its ETP designation. The relinquishment of an ETP designation does not relieve the certificated provider from its obligation to provide Lifeline Service.

(f) Relinquishment for non-compliance. The TUSF administrator must [~~shall~~] notify the commission when the TUSF administrator is aware that a resale [~~Resale~~] ETP is not in compliance with the requirements of subsection (c) of this section. The commission will [~~shall~~] revoke the ETP designation of any resale [~~Resale~~] ETP determined not to be in compliance with subsection (c) of this section.

(g) Requirements for annual affidavit of compliance to receive TUSF support. A resale [~~Resale~~] ETP serving a rural or non-rural study area must [~~shall~~] comply with the following requirements for annual compliance for the receipt of TUSF support for Lifeline Services:

(1) Annual Affidavit of Compliance. On or before September 1 of each year, a resale [~~Resale~~] ETP that receives disbursements from the TUSF must [~~shall~~] file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.

(2) Filing Affidavit. The affidavit used must [~~shall~~] be the annual compliance affidavit approved by the commission.

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

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SUBCHAPTER Q. 9-1-1 ISSUES

16 TAC §26.433

Statutory Authority

The proposed amendments and new rule are proposed for publication generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063, 58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.433. Roles and Responsibilities of 9-1-1 Service Providers.

(a) (No change.)

(b) Application. This section applies to a [~~all~~] certificated telecommunications utility (CTU) [~~utilities (CTUs)~~].

(c) (No change.)

(d) Requirement to prepare plan and reporting and notification requirements.

(1) Network Services Plan. Before providing service, a 9-1-1 network services provider must [~~shall~~] prepare and file with the commission a network services plan. The plan must [~~shall~~] be updated upon a change affecting a 9-1-1 administrative entity [~~or entities~~], a 9-1-1 database management services provider, or the 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission in accordance with [~~pursuant to~~] this section believed to contain proprietary or confidential information must [~~shall~~] be identified as such, and the commission may enter an

appropriate protective order. The network services plan must [~~shall~~] include:

(A) a description of the network services and infrastructure for equipment and software being used predominantly for the purpose of providing 9-1-1 services[~~,~~] including [~~but not limited to,~~] alternate routing, default routing, central office identification, and selective routing, ESN, and transfer information;

(B) a schematic drawing and maps illustrating current 9-1-1 network service arrangements specific to each 9-1-1 administrative entity's jurisdiction for each applicable rate center, city, and county. The maps must [~~shall~~] show the overlay of rate center, county, and city boundaries; and

(C) (No change.)

(2) Database Services Plan. Before providing service, a 9-1-1 database management services provider must [~~shall~~] prepare and file with the commission a database services plan. The plan must [~~shall~~] be updated upon a change affecting a 9-1-1 administrative entity [~~or entities~~], a 9-1-1 database management services provider, or the 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission in accordance with [~~pursuant to~~] this section believed to contain proprietary or confidential information must [~~shall~~] be identified as such, and the commission may enter an appropriate protective order. The database services plan must [~~shall~~] include:

(A) (No change.)

(B) a schematic drawing and maps of current 9-1-1 database service arrangements specific to the applicable agency's jurisdiction for each applicable rate center, city, and county. The maps must [~~shall~~] show the overlay of rate center, county, and city boundaries;

(C) - (E) (No change.)

(3) Other notification requirements. A CTU must [~~shall~~] notify each [~~all~~] affected 9-1-1 administrative entity [~~entities~~] at least 30 days prior to activating or using a new NXX in a rate center or upon the commencement of providing local telephone service in any rate center.

(e) Network interoperability and service quality requirements. To [~~In order to~~] ensure network interoperability and a consistent level of service quality the following standards [~~shall~~] apply.

(1) A CTU operating in the state of Texas must [~~shall~~]:

(A) - (B) (No change.)

(C) Provide a P.01 grade of service, or its equivalent as applicable, on the direct dedicated 9-1-1 trunk groups. If a CTU is a 9-1-1 network services provider, the CTU must provide a P.01 grade of service, or its equivalent as applicable, to the PSAP.

~~[(D) The 9-1-1 network services provider shall provide a P.01 grade of service, or its equivalent as applicable, to the PSAP.]~~

(D) [~~(E)~~] Apprise all affected 9-1-1 administrative entities of any failure to meet the P.01 grade of service, or its equivalent as applicable, in writing and correct any degradation within 60 days.

(2) A telecommunications provider operating in the state of Texas must [~~shall~~]:

(A) Provide to each [~~all~~] applicable 9-1-1 administrative entity [~~entities~~] the name, title, address, and telephone number of the telecommunications provider's 9-1-1 contacts including [~~but not limited to,~~] a designated contact person to be available at all times to work with the appropriate 9-1-1 administrative entity or entities, CSEC and the commission to resolve 9-1-1-related emergencies. CSEC must [~~shall~~] be notified of any change to a telecommunications provider's designated 9-1-1 contact personnel within five working [~~business~~] days.

(B) Develop a 9-1-1 disaster recovery and service restoration plan with input from the applicable 9-1-1 administrative entity [~~or entities~~], CSEC, and the commission.

(f) Database integrity. To [~~In order to~~] ensure the consistent quality of database information required for fixed-location 9-1-1 services, the following standards apply.

(1) A CTU operating in the state of Texas must [~~shall~~]:

(A) Utilize a copy of the 9-1-1 administrative entity's MSAG or other appropriate governmental source, such as post offices and local governments, to confirm that valid addresses are available for 9-1-1 calls for areas where the 9-1-1 service includes selective routing, or automatic location identification, or both, in order to confirm that valid addresses are available for 9-1-1 calls. This requirement is applicable where the 9-1-1 administrative entity has submitted an MSAG for the service area to the designated 9-1-1 database management services provider. The MSAG must be made available to the CTU at no charge and must be in a mechanized format that is compatible with the CTU's systems. This requirement must [~~shall~~] not be construed as a basis for denying installation of basic telephone service, but as a process to minimize entry of erroneous records into the 9-1-1 system.

(B) - (D) No change.

(2) A 9-1-1 database management services provider operating in the state of Texas must [~~shall~~]:

(A) Provide copies of the MSAG for each 9-1-1 administrative entity the 9-1-1 database management services provider [~~MSAG(s) for the 9-1-1 administrative entities it~~] serves to any CTU authorized to provide local exchange service within the jurisdiction of those 9-1-1 administrative entities. The 9-1-1 database management services provider must [~~shall~~] make all updates to the MSAG electronically available to CTUs within 24 hours of the update by the 9-1-1 administrative entity.

(B) Upon receipt of written confirmation from the appropriate CTU, delete inaccurate subscriber information within 24 hours for deletions of fewer than 100 records. For deletions of 100 records or more, the database management service provider must [~~shall~~] delete the records as expeditiously as possible within a maximum time frame of 30 calendar days.

(g) Cost recovery. A CTU is prohibited from charging [~~may not charge~~] a 9-1-1 administrative entity for, through tariffed or non-tariffed charges, [~~for~~] the preparation and transfer of files from the CTU's service order system to be used in the creation of 9-1-1 call routing data and 9-1-1 ALI data.

(h) (No change.)

(i) Migration of 9-1-1 Service. Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to impair a 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems or [~~and/or~~] NG9-1-1 systems, or to require the removal of unnecessary direct 9-1-1 dedicated trunks, circuits, databases, or functions.

(1) For purposes of this subsection, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for:

the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entity [~~or entities~~]; and written approval from the appropriate 9-1-1 administrative entity [~~or entities~~] accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative entity must [~~or entities shall~~] rely on the warrant of the CTU and the appropriate 9-1-1 administrative entities.

(2) Paragraph (1) of this subsection is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Paragraph (1) of this subsection does not [~~is not intended to~~] require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation include [~~would be~~] points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

(j) 9-1-1 Service Agreement.

(1) A CTU that provides local exchange service to end users must execute a separate 9-1-1 service agreement with each appropriate 9-1-1 administrative entity and collect and remit required 9-1-1 emergency service fees to the appropriate authority in accordance with [~~pursuant to~~] such a 9-1-1 service agreement.

(2) A CTU that provides resold local exchange service to end users must execute a separate 9-1-1 service agreement with each appropriate 9-1-1 administrative entity and collect and remit required 9-1-1 emergency service fees to the appropriate authority in accordance with [~~pursuant to~~] such a 9-1-1 service agreement.

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

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TITLE 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

SUBCHAPTER E. MISCELLANEOUS BOARD PROCEDURES AND REQUIREMENTS

22 TAC §850.221

Texas Board of Professional Geoscientists (TBPG) proposes new Subchapter E and new rule §850.221 Procurement and Procurement Bid Protest Procedures to 22 Texas Administrative Code Chapter 850.

PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed new Subchapter E and new rule §850.221 is to align TBPG rules with the following sections of the Texas Government Code which require state agencies to adopt rules regarding contracting and purchasing:

According to Texas Government Code §2155.076, each state agency, by rule, "shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the [Comptroller's] rules."

TBPG has procedures in place, and staff has ensured that its procedures regarding bid protest are consistent with the agency's proposed rule.

FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the rules are in effect, these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Truan has determined for each year of the first five years that the rule will be in effect that the public benefit expected because of the adoption of the proposed rule is broader access by interested persons to the purchasing procedures of the agency as they relate to bid protests. The proposed rule potentially poses minimal economic cost to persons required to comply with the rule because the rule provides a simple procedure to handle bid protests and because the rule incorporates the procedures of the Office of the Comptroller of Public Accounts, which are familiar to the state bidders.

SMALL, MICRO-BUSINESS, RURAL COMMUNITIES, AND LOCAL ENCONOMY

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, rural communities, or local economy. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

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

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals that are subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by

Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

Mr. Truan 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

Comments on the proposed amendment may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 1801 Congress, Suite 7.800, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpg.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties. The proposed rule is adopted pursuant to Texas Government Code section 2155.075, which requires the agency to adopt rules relating to bid protest procedures in purchasing.

No other statutes, codes, or articles are affected by the proposed Rule.

§850.221 Procurement and Procurement Bid Protest Procedures.

(a) An actual bidder who considers him or herself aggrieved in connection with the award of a contract by the Board may file a formal protest with the Board's procurement director. A formal protest must be in writing and received by the procurement director within ten (10) business days after the protesting party knows or should have known of the occurrence of the action which is protested.

(b) Procedures:

(1) Within ten (10) business days after the bid award, the bidder must submit in writing to the procurement director the reasons why TBPG should not have awarded the bid to the successful bidder.

(2) If the unsuccessful bidder does not agree with the response of the procurement director, the bidder may appeal the decision to the Executive Director on or before the seventh day after receiving the denial.

(3) Protests and appeals that are not timely filed will not be considered, unless good cause is established, or the procurement director determines that the protest or appeal raises issues significant to the agency's procurement practices or procedures.

(c) A decision by the Executive Director shall be the final administrative action of the agency.

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

Filed with the Office of the Secretary of State on October 2, 2023.

TRD-202303668
Rene Truan
Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 936-4428

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.54

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §133.54, concerning Hospital at Home Program Application and Operational Requirements.

BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 1890, 88th Legislature, Regular Session, 2023. H.B. 1890 amended Texas Health and Safety Code (HSC) Chapter 241 by adding new Subchapter M to allow a licensed hospital to operate a hospital at home program with approval from the Centers for Medicare & Medicaid Services (CMS) and HHSC.

HSC §241.403(a), as added by H.B. 1890, requires HHSC to adopt rules establishing minimum standards for the operation of a hospital at home program by a hospital.

In March of 2020, CMS created the Acute Hospital Care at Home program, originally called the Hospitals Without Walls program, to increase hospital capacity during the COVID-19 pandemic.

In response to state and federal state of disaster declarations relating to COVID-19, HHSC adopted an emergency rule in the Texas Administrative Code, Title 26, Chapter 500, §500.4, relating to Participating in the Centers for Medicare and Medicaid Services Acute Hospital Care at Home Program During the COVID-19 Pandemic. This emergency rule expired July 28, 2023.

SECTION-BY-SECTION SUMMARY

Proposed new §133.54 implements the provisions in HSC Chapter 241, Subchapter M.

Proposed new §133.54(a) defines "acute hospital care at home waiver program" and "hospital at home program" to establish their meaning when used in the new rule. These definitions are based on their meaning in HSC §241.401.

Proposed new §133.54(b) establishes conditions for which a hospital may operate a hospital at home program.

Proposed new §133.54(c) establishes the application process for a licensed hospital to seek HHSC approval to operate a hospital at home program and establishes an application fee.

Proposed new §133.54(d) requires hospitals to reapply for approval when applying to renew the hospital's license.

Proposed new §133.54(e) establishes the renewal application fee.

Proposed new §133.54(f) requires hospitals operating a hospital at home program to comply with CMS requirements and maintain CMS approval to participate in the acute hospital care at home waiver program and adopt policies and procedures to ensure hospital patient and staff safety.

Proposed new §133.54(g) clarifies HHSC may withdraw its approval for a hospital to operate a hospital at home program at any time if HHSC finds a threat to patient health or safety.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed to pay for six full-time employee positions HHSC received to implement the hospital at home program.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $832,650 in fiscal year (FY) 2024, $780,103 in FY 2025, $780,103 in FY 2026, $780,103 in FY 2027, and $780,103 in FY 2028.

Trey Wood has also determined that for each year of the first five years that the rule will be in effect, there will be an estimated increase in revenue to state government as a result of enforcing and administering the rule as proposed. A hospital that chooses to operate a hospital at home program must pay a $350 initial application fee and then a renewal application fee of $390 per 10 at-home beds every two years when the hospital renews its license. HHSC cannot estimate the increase in revenue because HHSC is unable to anticipate how many hospitals will seek HHSC approval to operate a hospital at home program or how many beds a hospital may choose to include in its hospital at home program.

Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rule will affect the number of HHSC employee positions;

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

(4) the proposed rule will require an increase in fees paid to HHSC;

(5) the proposed rule will create a new rule;

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because it is optional for a hospital to operate a hospital at home program.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from patients being able to access hospital services from their homes, which will also increase a hospital's capacity to treat patients at the hospital.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs because a hospital must pay a $350 initial application fee and then a renewal application fee of $390 per 10 at-home beds every two years when the hospital renews its license.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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

business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R064" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals; and HSC §241.403, which requires HHSC to adopt rules establishing minimum standards for the operation of a hospital at home program by a hospital.

The new section implements Texas Government Code §531.0055 and HSC §241.403.

§133.54. Hospital at Home Program Application and Operational Requirements.

(a) As defined by Texas Health and Safety Code §241.401, and when used in this subchapter, the following words and terms have the following meanings.

(1) "Acute hospital care at home waiver program" means:

(A) the program established by the Centers for Medicare and Medicaid Services under United States Code Title 42 Section 1320b-5 that waives the requirements of 42 CFR Sections 482.23(b) and (b)(1); and

(B) a successor program to the program described by subparagraph (A) of this paragraph that is established by the United States Congress or the Centers for Medicare & Medicaid Services.

(2) "Hospital at home program" means a program operated by a hospital to provide in a home setting health care services that are considered to be acute hospital care for purposes of the acute hospital care at home waiver program.

(b) Notwithstanding hospital functions and services requirements in §133.41 of this subchapter (relating to Hospital Functions and Services) and hospital physical plant and construction requirements in Subchapter I of this chapter (relating to Physical Plant and Construction Requirements), a hospital may operate a hospital at home program and treat an eligible patient at that patient's home if the hospital:

(1) obtains approval from the Centers for Medicare & Medicaid Services (CMS) to participate in the acute hospital care at home waiver program; and

(2) receives written approval from the Texas Health and Human Services Commission (HHSC) to operate a hospital at home program.

(c) To apply for HHSC approval to operate a hospital at home program, an applicant shall submit the following to HHSC:

(1) a complete application to operate the program as indicated on the HHSC website;

(2) a nonrefundable application fee of $350;

(3) a copy of the CMS approval to participate in the acute hospital care at home waiver program; and

(4) any additional information requested by HHSC.

(d) A hospital shall reapply for HHSC approval to operate the hospital's hospital at home program when applying to renew the hospital's license under §133.23 of this chapter (relating to Application and Issuance of Renewal License).

(e) A hospital shall pay a nonrefundable renewal application fee of $390 per 10 beds designated for the hospital at home program in addition to the hospital's license renewal fee.

(f) A hospital that is approved by HHSC to operate a hospital at home program shall:

(1) maintain CMS approval to participate in the acute hospital care at home waiver program;

(2) comply with the CMS acute hospital care at home waiver program requirements and all other applicable statutes and regulations;

(3) develop, implement, and enforce policies and procedures to ensure:

(A) the patient's health and safety;

(B) the safety of hospital staff entering the patient's home; and

(C) the safety of the patient's home;

(4) ensure the hospital's policies and procedures adopted under paragraph (3) of this subsection require the patient's home to:

(A) be located at a physical residential address;

(B) maintain electricity service;

(C) maintain water service;

(D) maintain wastewater service;

(E) allow hospital staff entry into the home at designated times;

(F) have animals separated securely away from the patient care area while hospital staff is on site, except for service animals as allowed by the Americans with Disabilities Act of 1990; and

(G) maintain a safe route from the entrance and exit to the patient area within in the home;

(5) ensure the hospital's policies and procedures adopted under paragraph (3) of this subsection require the patient maintain access to telephone service;

(6) obtain a patient's written and informed consent to participate before the patient participates in the hospital's hospital at home program, including consent to allow HHSC staff to enter the patient's home at reasonable times during a complaint investigation or survey to perform their regulatory duties; and

(7) notify HHSC in writing no later than five business days if the hospital:

(A) chooses to no longer operate a hospital at home program; or

(B) loses CMS approval to participate in the acute hospital care at home waiver program.

(g) At any time, HHSC may withdraw its approval for a hospital to operate a hospital at home program if HHSC finds a threat to patient health or safety. Any patient being treated under the hospital at home program at the time HHSC withdraws its approval shall be safely relocated as soon as practicable and according to the hospital's policies and procedures.

(h) To the extent this section may conflict with a requirement in §133.21(c)(4)(B) or (C) of this chapter (relating to General), this section controls.

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 October 5, 2023.

TRD-202303712
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 834-4591

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 303. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC), Title 26, Part 1, Chapter 303, concerning Preadmission Screening and Resident Review (PASRR), amendments to §§303.102, 303.201, 303.302, 303.303, 303.502, 303.503, 303.601, 303.602, 303.701, 303.703, 303.905, 303.907, 303.909, 303.910, and 303.912. HHSC also proposes new §303.901, §303.914 and new Subchapter J, concerning Disaster Rule Flexibilities, comprised of §303.1000; and the repeal of §303.901.

BACKGROUND AND PURPOSE

House Bill 4, 87th Legislature, Regular Session, 2021 added §531.02161 to the Texas Government Code which requires HHSC to ensure that Medicaid recipients have the option to receive services through telecommunications to the extent it is cost effective and clinically appropriate. A purpose of the proposed rules is to implement Texas Government Code §531.02161 as it applies to the preadmission screening and resident review (PASRR) process. Another purpose of the proposed rules is to define terms used in the revised PASRR rule for clarification. The proposed revisions to the training requirements for the habilitation coordinator, service coordinator, qualified mental health professional-community services (QMHP-CS), and staff involved in the PASRR process ensures training requirements are similar for all staff across all local intellectual and developmental disability authorities (LIDDAs), local mental health authorities (LMHAs), and local behavioral health authorities (LBHAs). The proposed revisions also address documentation requirements related to the PASRR process, including the new requirement to obtain written or oral consent for the use of audio-visual or audio-only communication methods. The proposed rules also require adjustments to the frequency of follow-up visits for residents with mental illness (MI), which mirrors the requirements of the habilitation coordinator related to the PASRR process. The proposed rules also require the MI specialized services team to agree the resident with MI no longer benefits from the MI specialized services when one or more specialized service is terminated.

The proposed rules provide that HHSC may allow LIDDAs, LMHAs, and LBHAs to use one or more of the exceptions specified in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. This provision is added to ensure that LIDDAs, LMHAs, LBHAs are able to operate and provide services effectively during a disaster.

The proposed rules repeal §303.901, Description of MI Specialized Services, and replace it with proposed new §303.901, Description of MI Specialized Services.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §303.102, Definitions, adds definitions for the following new terms: "audio-only," "audio-visual," "extenuating circumstances," "HHSC instructor-led training," and "in-person." The proposed amendment makes a minor change to the definition of "PCRP--Person-centered recovery plan" for clarity and references §303.302(a)(2) in the definitions of "PE--PASRR level II evaluation" and "Resident review" for clarity. The proposed amendment revises the definition of "SPT--Service planning team" to require that the person who develops a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form and performs other permanency planning activities for a designated resident under 22 years of age must be included on the SPT if the designated resident is at least 21 years of age but younger than 22 years of age. Further, the definition of "SPT" is amended to clarify that the following persons are required participants of an SPT: (1) a concerned person whose inclusion is requested by the designated resident or the LAR; and (2) at the discretion of the LIDDA, an individual who is directly involved in the delivery of services for people with ID or DD. The proposed amendment renumbers the definitions to account for the new definitions and changes made to existing definitions.

The proposed amendment to §303.201, Preadmission Process, clarifies that the LIDDA, LMHA, or LBHA, if provided a copy of a PL1 in accordance with subsection (a)(1)(B) of the section, must comply with §303.302(a)(1).

The proposed amendment to §303.302, LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process allows a LIDDA, LMHA, or LBHA to meet with the individual or resident at the referring entity or nursing facility to gather information to complete a PASRR Level II evaluation (PE) resident review by audio-visual communication in extenuating circumstances if the LIDDA, LMHA, or LBHA obtains the written informed consent or oral consent of the individual, designated resident, or LAR and documents in the individual's or designated resident's record a description of the extenuating circumstances that prevented meeting in person with the individual or the designated resident. Further, the proposed amendment requires the LIDDA, LMHA, or LBHA to, if written or oral consent is not obtained to conduct this meeting, to instead meet with the LAR and NF staff most familiar with the individual or designated resident to review and gather all necessary information to complete the PE and enter the PE in the LTC online portal. The proposed amendment also allows a LIDDA, LMHA, or LBHA to complete the PE or resident review by meeting with the individual's LAR or resident's LAR in-person, via audio-visual communication, or via audio-only communication according to the LAR's preference. The proposed amendment requires a LIDDA, LMHA, or LBHA to ensure a habilitation coordinator or QMHP-CS or both, as applicable, participates in person, or via audio-visual communication in extenuating circumstances, in the resident's IDT meeting required by §303.302(c)(1). The proposed amendment replaces the term

"face-to-face" with "in person" and makes minor changes for clarity.

The proposed amendment to §303.303, Qualifications and Requirements for Staff Person Conducting a PE or Resident Review, requires an LMHA or LBHA to ensure that before a staff person conducts a PE or resident review, the staff person receives "HHSC instructor-led" training, instead of "HHSC-developed training," about how to conduct a PE and resident review.

The proposed amendment to §303.502, Required Training for a Habilitation Coordinator, provides that a LIDDA must ensure a habilitation coordinator completes "HHSC approved computer-based person-centered planning and practices training" within the first 60 days of performing habilitation coordination duties; all "HHSC instructor-led," instead of "HHSC-developed" training, related to PASRR habilitation coordination within the first 60 days of performing habilitation coordination duties; and person-centered thinking training approved by HHSC within the first year of performing habilitation coordination duties. The proposed amendment makes minor changes for clarity.

The proposed amendment to §303.503, Documenting Habilitation Coordination Contacts, substitutes the phrase "in person, via audio-visual communication, or via audio-only communication" for "face-to-face or by telephone."

The proposed amendment to §303.601, Habilitation Coordination for a Designated Resident, requires a LIDDA to assign a habilitation coordinator to each designated resident within two days after a PE is completed, if the PE is positive for intellectual disability (ID) or development disability (DD). The proposed amendment clarifies that the habilitation coordinator must meet with the designated resident to provide habilitation coordination at least monthly if the designated resident is receiving a specialized service in addition to habilitation coordination and requires the habilitation coordinator to meet in person at least quarterly or more frequently as determined by the SPT using the findings of the HHSC Habilitative Assessment form and meet via audio-visual communication in a month when a meeting is not conducted in person if the designated resident or LAR consents orally or in writing to meeting via audio-visual communication. The proposed amendment also requires the habilitation coordinator to document the designated resident's or LAR's refusal in the designated resident's record if written or oral consent to meet via audio-visual communication is not obtained. The proposed amendment also makes minor edits and formatting changes for clarity.

The proposed amendment to §303.602, Service Planning Team Responsibilities Related to Specialized Services, substitutes the phrase "via audio-visual communication, or via audio-only communication," for "by phone." The proposed amendment also allows a habilitation coordinator to facilitate a quarterly SPT meeting via audio-visual communication in extenuating circumstances if the habilitation coordinator obtains written or oral consent to meet via audio-visual communication from the designated resident, or LAR and documents a description of the extenuating circumstances prior to convening the meeting. The proposed amendment also requires the habilitation coordinator to document the designated resident's or LAR's refusal in the designated resident's record if written or oral consent to meet via audio-visual communication is not obtained. In addition, the proposed amendment requires a SPT member who is a provider of a specialized service to participate, instead of "actively participate," in an SPT meeting, in person, via audio-visual communication, or via audio-only communication, unless the habilitation coordinator determines "participation," instead of "active participation" by the provider is not necessary. Further, the proposed amendment requires a habilitation coordinator to take certain action if the habilitation coordinator determines that "participation," instead of "active participation" by a provider is not necessary.

The proposed amendment to §303.701, Transition Planning for a Designated Resident, substitutes the phrase "via audio-visual communication, or via audio-only communication," for "by phone." The proposed amendment also allows a service coordinator to facilitate an SPT meeting convened by the service coordinator via audio-visual communication in extenuating circumstances if the service coordinator obtains written or oral consent to meet via audio-visual communication from the designated resident or LAR and documents a description of the extenuating circumstances prior to convening the meeting. The proposed amendment also requires the service coordinator to document the designated resident's or LAR's refusal in the designated resident's record if written or oral consent to meet via audio-visual communication is not obtained. In addition, the proposed amendment requires an SPT member who is a provider of a specialized service to participate, instead of "actively participate," in an SPT meeting, in person, via audio-visual communication, or via audio-only communication, unless the service coordinator determines that the provider's "participation," instead of "active participation" is not necessary. Further, the proposed amendment requires a service coordinator to take certain action if the service coordinator determines that the provider's "participation," instead of the provider's "active participation" is not necessary.

The proposed amendment to §303.703, Requirements for Service Coordinators Conducting Transition Planning, requires a service coordinator to complete "HHSC approved computer-based person-centered planning and practices" training instead of "person-center thinking" training. The proposed amendment substitutes the term "HHSC instructor-led" training for "HHSC-developed" training. A proposed amendment to add "person-centered thinking training approved by HHSC to be completed by the habilitation coordinator within the first year of performing habilitation coordination duties. The proposed amendment also corrects a rule reference and makes a minor change for clarity.

Proposed new §303.901, Description of MI Specialized Services, requires an LMHA or LBHA staff to conduct the uniform assessment to determine which level of care the resident with MI will receive and describes the specialized services available for a resident with MI. This new section reorders and reformats the content in repealed §303.901, Description of MI Specialized Services, to be consistent with the Texas Resiliency and Recovery (TRR) offered services, a service delivery system in Texas for community mental health services.

The proposed repeal of §303.901, Description of MI Specialized Services deletes the rule as no longer necessary, and replaces it with proposed new §303.901, Description of MI Specialized Services.

Proposed amendment to §303.905, Process for Service Initiation, requires an LMHA or LBHA to convene the meeting described in subsection (c)(3) in person or in extenuating circumstances via audio-visual communication. To conduct the meeting via audio-visual communication, a LMHA or LBHA must obtain written or oral consent to meet via audio-visual communication from the resident with MI or LAR and document a description

of the extenuating circumstances prior to the meeting. The proposed amendment also requires the LMHA or LBHA to document the refusal of the resident with MI or LAR in the resident's record if written or oral consent to meet via audio-visual communication is not obtained. The proposed amendment also makes minor changes for clarity.

Proposed amendment to §303.907, Renewal and Revision of Person-Centered Recovery Plan, requires the QMHP-CS to convene an MI quarterly meeting in person, or in extenuating circumstances via audio-visual communication. To conduct the meeting via audio-visual communication, a QMHP-CS must obtain written or oral consent to meet via audio-visual communication from the resident with MI or LAR and document a description of the extenuating circumstances prior to the meeting. The proposed amendment also requires the QMHP-CS to document the refusal of the resident with MI or LAR in the resident's record if written or oral consent to meet via audio-visual communication is not obtained. The proposed amendment also makes minor changes for clarity.

Proposed amendment to §303.909, Refusal of the Uniform Assessment or MI Specialized Services, requires the LMHA or LBHA to inform the resident with MI who refuses to complete the uniform assessment or participate in MI specialized services that a follow-up visit will be conducted at the first MI quarterly meeting and removes the requirement for visits every 30 days for 90 days after the initial IDT meeting. The proposed amendment also requires the LMHA or LBHA to, if the resident with MI or the LAR refuses the uniform assessment or MI specialized services "at the first MI quarterly meeting," (instead of "after 90 days") inform the resident and the LAR that an annual IDT meeting is required and will be conducted, at which time the uniform assessment and MI specialized services will be offered again. The proposed amendment also makes minor changes for clarity.

Proposed amendment to §303.910, Suspension and Termination of MI Specialized Services, removes the requirement that an LMHA or LBHA suspend MI specialized services for a resident with MI if the resident or LAR requests that MI specialized services be suspended when transferring from one NF to another NF without an intervening hospital stay. The proposed amendment allows the LMHA or LBHA to terminate one or more MI specialized services if the MI specialized services team agrees that the resident with MI no longer benefits from the services. The proposed amendment also makes minor changes for clarity.

Proposed amendment to §303.912, Documentation, removes the reference to the required 30, 60, and 90 day follow-up meetings held after the initial IDT meeting for a resident with MI who refuses MI specialized services and makes minor changes for clarity.

Proposed new §303.914, Required Training for an LMHA or LBHA Staff Responsible for Coordinating MI Specialized Services, requires the LMHA and LBHA to ensure that an LMHA or LBHA staff responsible for coordinating MI specialized services completes specified training before coordinating MI specialized services and completes HHSC approved computer-based person-centered planning and practices training within the first 60 days of coordinating MI specialized services. The proposed new rule also requires that the LMHA or LBHA ensure that a supervisor, team lead, or quality monitoring staff person who has successfully completed the HHSC approved computer-based person-centered planning and practices training reviews and signs off on work completed by an LMHA or LBHA staff until such staff completes the training. The proposed new rule further requires the LMHA and LBHA to ensure that staff responsible for coordinating MI specialized services completes HHSC approved person-centered thinking training within the first year of coordinating MI specialized services and that staff responsible for coordinating MI specialized services demonstrate competency in the coordination of MI specialized services and maintain documentation of the training received by the staff.

Proposed new Subchapter J, Disaster Rule Flexibilities.

Proposed new §303.1000, Flexibilities to Certain Requirements During Declaration of Disaster, provides that HHSC may allow LIDDAs, LMHAs, and LBHAs to use one or more of the exceptions described in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. The rule provides that HHSC notifies LIDDAs, LMHAs, and LBHAs if it allows an exception to be used and the date an allowed exception must no longer be used.

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 do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create new rules;

(6) the proposed rules will repeal and expand existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The amendments do not require small businesses, micro-businesses, or rural communities to change current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Haley Turner, Deputy Executive Commissioner for Community Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be the improved facilitation of PASRR-related services because of more opportunities for interactions with Medicaid recipients to be conducted through telecommunications as required by state law. Another public benefit is the enhanced skills and knowledge of LMHA and LBHA staff who provide PASRR-related services because of additional training requirements Finally, a public benefit is the greater assurance that LIDDAs, LMHAs, LBHAs will be able to operate and provide PASRR-related services effectively during a disaster.

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. The proposal does not impose new costs or fees 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 IDD Services, Lisa Habbit, Mail Code 354, P.O. Box 149030, Austin, Texas 78714-9030, or by email to IDDServicesPolicyandRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R121" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §303.102

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The amendment implements Texas Government Code §531.02161.

§303.102. Definitions.

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

(1) Actively involved person--An individual who has significant, ongoing, and supportive involvement with a designated resident, as determined by the SPT based on the individual's:

(A) observed interactions with the designated resident;

(B) availability to the designated resident for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the designated resident's needs, preferences, values, and beliefs.

(2) Acute care hospital--A health care facility in which an individual receives short-term treatment for a severe physical injury or episode of physical illness, an urgent medical condition, or recovery from surgery and:

(A) may include a long-term acute care hospital, an emergency room within an acute care hospital, or an inpatient rehabilitation hospital; and

(B) does not include a stand-alone psychiatric hospital or a psychiatric hospital within an acute care hospital.

(3) Alternate placement assistance--Assistance provided to a resident to locate and secure services chosen by the resident or LAR that meets the resident's needs in a setting other than a NF. Alternate placement assistance includes transition planning, pre-move site review, and post-move monitoring.

(4) APRN--Advance practice registered nurse. An individual licensed to practice professional nursing as an advance practice registered nurse in accordance with Texas Occupations Code Chapter 301.

(5) Audio-only--An interactive, two-way audio communication that uses only sound and that meets the privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication. Audio-only does not include audio-visual or in-person communication.

(6) Audio-visual--An interactive, two-way audio and video communication that conforms to privacy requirements under the Health Insurance Portability and Accountability Act. Audio-visual does not include audio-only or in-person communication.

(7) [~~(5)~~] Behavioral support--An IHSS that:

(A) is assistance provided for a designated resident to increase adaptive behaviors and to replace or modify maladaptive behaviors that prevent or interfere with the designated resident's interpersonal relationships across all service and social settings;

(B) is delivered in the NF or in a community setting; and

(C) consists of:

(i) assessing the behaviors to be targeted in an appropriate behavior support plan and analyzing those assessment findings;

(ii) developing an individualized behavior support plan that reduces or eliminates the target behaviors, assisting the designated resident in achieving the outcomes identified in the HSP;

(iii) training and consulting with the LAR, family members, NF staff, other support providers, and the designated resident about the purpose, objectives, and methods of the behavior support plan;

(iv) implementing the behavior support plan or revisions to the behavior support plan and documenting service delivery in accordance with the IDD Habilitative Specialized Services Billing Guidelines;

(v) monitoring and evaluating the success of the behavior support plan implementation;

(vi) revising the behavior support plan as necessary; and

(vii) participating in SPT and IDT meetings.

(8) [~~(6)~~] CMWC--Customized manual wheelchair. In accordance with §554.2703(5) of this title (relating to Definitions) and consistent with the requirements of Texas Human Resources Code §32.0425, a wheelchair that consists of a manual mobility base and customized seating system and is adapted and fabricated to meet the individualized needs of a designated resident.

(9) [~~(7)~~] Collateral contact--A person who is knowledgeable about the individual seeking admission to a NF or the resident, such as family members, previous providers or caregivers, and who may support or corroborate information provided by the individual or resident.

(10) [~~(8)~~] Coma--A state of unconsciousness characterized by the inability to respond to sensory stimuli as documented by a physician.

(11) [~~(9)~~] Convalescent care--A type of care provided after an individual's release from an acute care hospital that is part of a medically prescribed period of recovery.

(12) [~~(10)~~] Day habilitation--An IHSS that:

(A) is assistance provided for a designated resident to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to successfully and actively participate in all service and social settings;

(B) is delivered in a setting other than the designated resident's NF;

(C) does not include services provided under the Day Activity and Health Services program;

(D) includes expanded interactions, skills training activities, and programs of greater intensity or frequency beyond those a NF is required to provide by 42 Code of Federal Regulations (CFR) §483.24; and

(E) consists of:

(i) individualized activities consistent with achieving the outcomes identified in a designated resident's HSP to attain, learn, maintain, or improve skills;

(ii) activities necessary to reinforce therapeutic outcomes targeted by other support providers and other specialized services;

(iii) services in a group setting at a location other than a designated resident's NF for up to five days per week, six hours per day, on a regularly scheduled basis;

(iv) personal assistance for a designated resident who cannot manage personal care needs during the day habilitation activity;

(v) transportation between the NF and the day habilitation site, as well as during the day habilitation activity necessary for a designated resident's participation in day habilitation activities; and

(vi) participating in SPT and IDT meetings.

(13) [~~(11)~~] DD--Developmental disability. A disability that meets the criteria described in the definition of "persons with related conditions" in 42 CFR §435.1010.

(14) [~~(12)~~] Delirium--A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(15) [~~(13)~~] Designated resident--An individual:

(A) whose PE or resident review is positive for ID or DD;

(B) who is 21 years of age or older;

(C) who is a Medicaid recipient; and

(D) who is a resident or has transitioned to the community from a NF within the previous 365 days.

(16) [~~(14)~~] DME--Durable medical equipment. The items described in §554.2703(10) of this title.

(17) [~~(15)~~] Emergency protective services--Services furnished by the Department of Family and Protective Services to an elderly or disabled individual who has been determined to be in a state of abuse, neglect, or exploitation.

(18) [~~(16)~~] Employment assistance--An IHSS that:

(A) is assistance provided for a designated resident who requires intensive help locating competitive employment in the community; and

(B) consists of:

(i) identifying a designated resident's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with a designated resident's identified preferences, skills, and requirements;

(iii) contacting prospective employers on a designated resident's behalf and negotiating the designated resident's employment;

(iv) transporting a designated resident between the NF and the site where employment assistance services are provided and as necessary to help the designated resident locate competitive employment in the community; and

(v) participating in SPT and IDT meetings.

(19) [~~(17)~~] Essential supports--Those supports identified in a transition plan that are critical to a designated resident's health and safety and that are directly related to a designated resident's successful transition to living in the community from residing in a NF.

(20) [~~(18)~~] Exempted hospital discharge--A category of NF admission that occurs when a physician has certified that an individual who is being discharged from an acute care hospital is likely to require less than 30 days of NF services for the condition for which the individual was hospitalized.

(21) [~~(19)~~] Expedited admission--A category of NF admission that occurs when an individual meets the criteria for one of the following categories: convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma.

(22) Extenuating circumstances--Circumstances beyond the LIDDA's, LMHA's or LBHA's control that preclude meeting in person. A disaster declared by the governor is excluded from this definition.

(23) [~~(20)~~] Habilitation coordination--Assistance for a designated resident residing in a NF to access appropriate specialized ser-

vices necessary to achieve a quality of life and level of community participation acceptable to the designated resident and LAR on the designated resident's behalf.

(24) [~~(21)~~] Habilitation coordinator--An employee of a LIDDA who provides habilitation coordination.

(25) [~~(22)~~] HHSC--The Texas Health and Human Services Commission.

(26) HHSC instructor-led training--Training delivered by an HHSC employee.

(27) [~~(23)~~] HSP--Habilitation service plan. A plan developed by the SPT while a designated resident is residing in a NF that:

(A) is individualized and developed through a person-centered approach;

(B) identifies the designated resident's:

(i) strengths;

(ii) preferences;

(iii) desired outcomes; and

(iv) psychiatric, behavioral, nutritional management, and support needs as described in the NF comprehensive care plan or MDS assessment; and

(C) identifies the specialized services that will accomplish the desired outcomes of the designated resident, or the LAR's on behalf of the designated resident, including amount, frequency, and duration of each service.

(28) [~~(24)~~] ID--Intellectual disability, as defined in 42 CFR §483.102(b)(3)(i).

(29) [~~(25)~~] IDD--Intellectual and developmental disability.

(30) [~~(26)~~] IDT--Interdisciplinary team. A team consisting of:

(A) a resident with MI, ID, or DD;

(B) the resident's LAR, if any;

(C) an RN from the NF with responsibility for the resident;

(D) a representative of:

(i) the LIDDA, if the resident has ID or DD;

(ii) the LMHA or LBHA, if the resident has MI; or

(iii) the LIDDA and the LMHA or LBHA, if the resident has MI and DD, or MI and ID; and

(E) others as follows:

(i) a concerned person whose inclusion is requested by the resident or LAR;

(ii) an individual specified by the resident, LAR, NF, LIDDA, LMHA, or LBHA, as applicable, who is professionally qualified, certified, or licensed with special training and experience in the diagnosis, management, needs, and treatment of people with MI, ID, or DD; and

(iii) a representative of the appropriate school district if the resident is school age and inclusion of the district representative is requested by the resident or LAR.

(31) [~~(27)~~] IHSS--IDD habilitative specialized services. IHSS are:

(A) behavioral support;

(B) day habilitation;

(C) employment assistance;

(D) independent living skills training; and

(E) supported employment.

(32) [~~(28)~~] ILST--Independent living skills training. An IHSS that:

(A) is assistance provided for a designated resident that is consistent with the designated resident's HSP;

(B) is provided in the designated resident's NF or in a community setting;

(C) includes expanded interactions, skills training activities, and programs of greater intensity or frequency beyond those a NF is required to provide by 42 CFR §483.24; and

(D) consists of:

(i) habilitation and support activities that foster improvement of or facilitate a designated resident's ability to attain, learn, maintain, or improve functional living skills and other daily living activities;

(ii) activities that help preserve the designated resident's bond with family members;

(iii) activities that foster inclusion in community activities generally attended by people without disabilities;

(iv) transportation to facilitate a designated resident's employment opportunities and participation in community activities, and between the designated resident's NF and a community setting; and

(v) participating in SPT and IDT meetings.

(33) [~~(29)~~] Implementation plan--A plan for each IHSS on the designated resident's plan of care that includes:

(A) a list of the designated resident's outcomes identified in the HSP that will be addressed using IHSS;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments;

(C) a target date for completion of each objective;

(D) the frequency, amount, and duration of IHSS needed to complete each objective; and

(E) the signature and date of the designated resident, LAR, and service provider agency.

(34) In-person (or in person)--Within the physical presence of another person. In-person or in person does not include audio-visual or audio-only communication.

(35) [~~(30)~~] LAR--Legally authorized representative. An individual authorized by law to act on behalf of an individual seeking admission to a NF or resident with regard to a matter described by this chapter, and who may be the parent of a minor child, the legal guardian, or the surrogate decision maker.

(36) [~~(31)~~] LBHA--Local behavioral health authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533.0356.

(37) [~~(32)~~] LCSW--Licensed clinical social worker. An individual who is licensed as a licensed clinical social worker in accordance with Texas Occupations Code Chapter 505.

(38) [~~(33)~~] Licensed psychologist--An individual who is licensed as a psychologist in accordance with Texas Occupations Code Chapter 501.

(39) [~~(34)~~] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533A.035.

(40) [~~(35)~~] LMFT--Licensed marriage and family therapist. An individual who is licensed as a marriage and family therapist in accordance with Texas Occupations Code Chapter 502.

(41) [~~(36)~~] LMHA--Local mental health authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533.035.

(42) [~~(37)~~] LPC--Licensed professional counselor. An individual who is licensed as a professional counselor in accordance with Texas Occupations Code Chapter 503.

(43) [~~(38)~~] LTC online portal--Long term care online portal. A web-based application used by Medicaid providers to submit forms, screenings, evaluations, and other information.

(44) [~~(39)~~] MCO service coordinator--Managed care organization service coordinator. The staff person assigned by a resident's Medicaid managed care organization to ensure access to and coordination of needed services.

(45) [~~(40)~~] MDS assessment--Minimum data set assessment. A standardized collection of demographic and clinical information that describes a resident's overall condition, which a licensed NF in Texas is required to submit for a resident admitted into the facility.

(46) [~~(41)~~] MI--Mental illness. Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(47) [~~(42)~~] MI quarterly meeting--A quarterly meeting that is convened by the LMHA or LBHA for a resident with MI to develop, review, or revise the PCRP and the transition plan, if the resident is transitioning to the community.

(48) [~~(43)~~] MI specialized services--Specialized services for a resident with MI, if eligible, as described in the Texas Resilience and Recovery Utilization Management Guidelines, including:

(A) crisis intervention services;

(B) day programs for acute needs;

(C) medication training and support services;

(D) psychiatric diagnostic interview examination;

(E) psychosocial rehabilitation services;

(F) routine case management; and

(G) skills training and development.

(49) [~~(44)~~] NF--Nursing facility. A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code Chapter 242.

(50) [~~(45)~~] NF comprehensive care plan--A comprehensive care plan, defined in §554.2703(3) of this title.

(51) [~~(46)~~] NF PASRR support activities--Actions a NF takes in coordination with a LIDDA, LMHA, or LBHA to facilitate the successful provision of an IHSS or MI specialized service, including:

(A) arranging transportation for a NF resident to participate in an IHSS or a MI specialized service outside the facility;

(B) sending a resident to a scheduled IHSS or MI specialized service with food and medications required by the resident; and

(C) stating in the NF comprehensive care plan an agreement to avoid, when possible, scheduling NF services at times that conflict with IHSS or MI specialized services.

(52) [~~(47)~~] NF specialized services--The following specialized services available to a resident with ID or DD:

(A) therapy services;

(B) CMWC; and

(C) DME.

(53) [~~(48)~~] PA--Physician assistant. An individual who is licensed as a physician assistant in accordance with Texas Occupations Code Chapter 204.

(54) [~~(49)~~] PASRR--Preadmission screening and resident review. A federal requirement in 42 CFR Part 483, Subpart C that requires states to prescreen all individuals seeking admission to a Medicaid-certified NF for ID, DD, and MI.

(55) [~~(50)~~] PCRP--Person-centered recovery plan. For a resident with MI, the PCRP identifies the services and supports that are needed to:

(A) meet the needs of the resident with MI [~~MI's needs~~];

(B) achieve the desired outcomes; and

(C) maximize the [~~resident with MI's~~] ability for the resident with MI to live successfully in the most integrated setting possible.

(56) [~~(51)~~] PE--PASRR level II evaluation. An [~~A face-to-face~~] evaluation as described in §303.302(a)(2) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process):

(A) of an individual seeking admission to a NF who is suspected of having MI, ID, or DD; and

(B) performed by a LIDDA, LMHA, or LBHA to determine if the individual has MI, ID, or DD and, if so, to:

(i) assess the individual's need for care in a NF;

(ii) assess the individual's need for specialized services; and

(iii) identify alternate placement options.

(57) [~~(52)~~] Physician--An individual who is licensed to practice medicine in accordance with Texas Occupations Code Chapter 155.

(58) [~~(53)~~] PL1--PASRR level I screening. The process of screening an individual seeking admission to a NF to identify whether the individual is suspected of having MI, ID, or DD.

(59) [~~(54)~~] Plan of care--A written plan that includes:

(A) the IHSS required by the NF baseline care plan or NF comprehensive care plan;

(B) the frequency, amount, and duration of each IHSS to be provided for the designated resident during a plan year; and

(C) the services and supports to be provided for the designated resident through resources other than PASRR.

(60) [~~(55)~~] Preadmission process--A category of NF admission:

(A) from a community setting, such as a private home, an assisted living facility, a group home, a psychiatric hospital, or jail, but not an acute care hospital or another NF; and

(B) that is not an expedited admission or an exempted hospital discharge.

(61) [~~(56)~~] QIDP--Qualified intellectual disability professional. An individual who meets the qualifications described in 42 CFR §483.430(a).

(62) [~~(57)~~] QMHP-CS--Qualified mental health professional-community services. An individual who meets the qualifications of a QMHP-CS as defined in §301.303 of this title (relating to Definitions).

(63) [~~(58)~~] Referring entity--The entity that refers an individual to a NF, such as a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source, such as law enforcement.

(64) [~~(59)~~] Relocation specialist--An employee or contractor of an MCO who provides outreach and relocation activities to individuals in NFs who express a desire to transition to the community.

(65) [~~(60)~~] Resident--An individual who resides in a NF.

(66) [~~(61)~~] Resident review--An [~~A face-to-face~~] evaluation of a resident performed by a LIDDA, LMHA, or LBHA as described in §303.302(a)(2) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process):

(A) for a resident whose PE is positive for MI, ID, or DD who experienced a significant change in condition, to:

(i) assess the resident's need for continued care in a NF;

(ii) assess the resident's need for specialized services; and

(iii) identify alternate placement options; and

(B) for a resident suspected of having MI, ID, or DD, to determine whether the resident has MI, ID, or DD and, if so:

(i) assess the resident's need for continued care in a NF;

(ii) assess the resident's need for specialized services; and

(iii) identify alternate placement options.

(67) [~~(62)~~] Resident with MI--An individual:

(A) who is a resident of a NF;

(B) whose PE or resident review is positive for MI;

(C) who is at least 18 years of age; and

(D) who is a Medicaid recipient.

(68) [~~(63)~~] Respite--Services provided on a short-term basis to an individual because of the absence of or the need for relief by the individual's unpaid caregiver for a period not to exceed 14 days.

(69) [~~(64)~~] RN--Registered nurse. An individual licensed to practice professional nursing as a registered nurse in accordance with Texas Occupations Code Chapter 301.

(70) [~~(65)~~] Service coordination--Assistance in accessing medical, social, educational, and other appropriate services and supports, including alternate placement assistance, that will help an individual to achieve a quality of life and community participation acceptable to the individual and LAR on the individual's behalf.

(71) [~~(66)~~] Service coordinator--An employee of a LIDDA who provides service coordination.

(72) [~~(67)~~] Service provider agency--An entity that has a contract with HHSC to provide IHSS for a designated resident.

(73) [~~(68)~~] Severe physical illness--An illness resulting in ventilator dependence or a diagnosis, such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from specialized services.

(74) [~~(69)~~] Significant change in condition--Consistent with §554.801(2)(C)(ii) of this title (relating to Resident Assessment), when a resident experiences a major decline or improvement in the resident's status that:

(A) will not normally resolve itself without further intervention by NF staff or by implementing standard disease-related clinical interventions;

(B) has an impact on more than one area of the resident's health status; and

(C) requires review or revision of the NF comprehensive care plan, or both.

(75) [~~(70)~~] Specialized services--The following support services, other than NF services, that are identified through the PE or resident review and may be provided to a resident who has a PE or resident review that is positive for MI, ID, or DD:

(A) NF specialized services;

(B) IHSS; and

(C) MI specialized services.

(76) [~~(71)~~] SPT--Service planning team. A team convened by a LIDDA staff person that develops, reviews, and revises the HSP and the transition plan for a designated resident. The team must include:

[~~(A) The team must include:~~]

(A) [~~(i)~~] the designated resident;

(B) [~~(ii)~~] the designated resident's LAR, if any;

(C) [~~(iii)~~] the habilitation coordinator for discussions and service planning related to specialized services or the service coordinator for discussions related to transition planning if the designated resident is transitioning to the community;

(D) [~~(iv)~~] the MCO service coordinator, if the designated resident does not object;

(E) the person who develops a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22

Years of Age form and performs other permanency planning activities for a designated resident under 22 years of age, if the designated resident is at least 21 years of age but younger than 22 years of age;

(F) [~~(v)~~] while the designated resident is in a NF:

(i) [~~(I)~~] a NF staff person familiar with the designated resident's needs; and

(ii) [~~(II)~~] an individual providing a specialized service for the designated resident or a representative of a provider agency that is providing specialized services for the designated resident;

(G) [~~(vi)~~] if the designated resident is transitioning to the community:

(i) [~~(I)~~] a representative from the community program provider, if one has been selected; and

(ii) [~~(II)~~] a relocation specialist; and

(H) [~~(vii)~~] a representative from the LMHA or LBHA, if the designated resident's PE is positive for MI.

~~[(B) Other participants on the SPT may include:]~~

(I) [~~(i)~~] a concerned person whose inclusion is requested by the designated resident or the LAR; and

(J) [~~(ii)~~] at the discretion of the LIDDA, an individual who is directly involved in the delivery of services for people with ID or DD.

(77) [~~(72)~~] Supported employment--An IHSS that:

(A) is assistance provided for a designated resident:

(i) who requires intensive, ongoing support to be self-employed, work from the designated resident's residence, or work in an integrated community setting at which people without disabilities are employed; and

(ii) to sustain competitive employment in an integrated community setting; and

(B) consists of:

(i) making employment adaptations, supervising, and providing training related to the designated resident's assessed needs;

(ii) transporting the designated resident between the NF and the site where the supported employment services are provided and as necessary to support the designated resident to be self-employed, work from the designated resident's residence, or work in an integrated community setting; and

(iii) participating in SPT and IDT meetings.

(78) [~~(73)~~] Surrogate decision maker--An actively involved family member of a resident who has been identified by an IDT in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent to medical treatment on behalf of the resident.

(79) [~~(74)~~] Terminal illness--A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course and that is documented by a physician's certification in the individual's medical record maintained by a NF.

(80) [~~(75)~~] Therapy services--In accordance with §554.2703(46) of this title, assessment and treatment to help a designated resident learn, keep, or improve skills and functioning of daily living affected by a disabling condition. Therapy services are referred to as habilitative therapy services. Therapy services are limited to:

(A) physical therapy;

(B) occupational therapy; and

(C) speech therapy.

(81) [~~(76)~~] Transition plan--A plan developed by the SPT or MI quarterly meeting attendees that describes the activities, timetable, responsibilities, services, and essential supports involved in assisting a designated resident or resident with MI to transition from residing in a NF to living in the community.

(82) [~~(77)~~] Uniform assessment--The HHSC-approved uniform assessment tool for adult mental health services.

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

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SUBCHAPTER B. PASRR SCREENING AND EVALUATION PROCESS

26 TAC §303.201

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The amendment implements Texas Government Code §531.02161.

§303.201. Preadmission Process.

(a) A referring entity must complete a PL1 when an individual is seeking admission into a NF through the preadmission process, and:

(1) if the PL1 indicates the individual is suspected of having MI, ID, or DD:

(A) must notify the LIDDA, LMHA, or LBHA, as applicable; and

(B) must provide a copy of the PL1 to the LIDDA, LMHA, or LBHA, as applicable; and

(2) if the PL1 indicates the individual is not suspected of having MI, ID, or DD, must provide a copy of the completed PL1 to the NF.

(b) If a LIDDA, LMHA, or LBHA is provided a copy of a PL1 in accordance with subsection (a)(1)(B) of this section, the LIDDA, LMHA, or LBHA must:

(1) comply with §303.302(a)(1) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process);

(2) [~~(1)~~] complete a PE in accordance with §303.302(a)(2) of this chapter [~~(relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process)~~];

(3) [~~(2)~~] comply with §303.302(b) and (c) of this chapter; and

(4) [~~(3)~~] make reasonable efforts to arrange for available community services and supports in the least restrictive setting to avoid NF admission, if the individual seeking admission to a NF, or the individual's LAR on the individual's behalf, wants to remain in the community.

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

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SUBCHAPTER C. RESPONSIBILITIES

26 TAC §303.302, §303.303

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The amendments implement Texas Government Code §531.02161.

§303.302. LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process.

(a) A LIDDA, LMHA, or LBHA, as applicable, must:

(1) enter in the LTC online portal the data from a PL1 completed by a referring entity in accordance with §303.201(a)(1) of this chapter (relating to Preadmission Process) for an individual who is suspected of having MI, ID, or DD and who is seeking admission to a NF through the preadmission process;

(2) complete a PE or resident review as follows:

(A) within 72 hours after receiving a copy of the PL1 from the referring entity in accordance with §303.201(a)(1)(B) of this chapter or notification from the LTC online portal in accordance with §303.202 or §303.204(a) of this chapter (relating to Expedited Admission Process and Resident Review Process, respectively):

(i) call the referring entity or NF to schedule the PE or resident review; and

(ii) meet in person, or in extenuating circumstances meet via audio-visual communication, [~~face-to-face~~] with the individual or resident at the referring entity or NF to gather information to complete the PE or resident review; and

(B) within seven days after receiving a copy of the PL1 from the referring entity or notification from the LTC online portal:

(i) complete the PE or resident review by:

(I) reviewing the individual's or resident's:

(-a-) medical records;

(-b-) relevant service records, including those available in online databases, such as the Client Assignment and Registration (CARE) system, Clinical Management for Behavioral Health Services (CMBHS), and LTC online portal; and

(-c-) previous PEs, service plans, and assessments from other LIDDAs, LMHAs, or LBHAs;

(II) meeting [~~face-to-face~~] with the individual's LAR or resident's LAR in person, via audio-visual communication, or via audio-only communication according to the LAR's preference [~~or communicating with the LAR by telephone if the LAR is not able to meet face-to-face~~];

(III) communicating with a collateral contact as necessary;

(IV) providing information to the individual seeking admission or resident and the individual's LAR or resident's LAR, if any, about community services, supports, and programs for which the individual or resident may be eligible; and

(V) obtaining additional information as needed; and

(ii) enter the data from the PE or resident review in the LTC online portal; and

(3) within three business days after entering the data from the PE or resident review in the LTC online portal:

(A) if the PE or resident review is positive for MI, ID, or DD, provide the individual seeking admission or resident or the individual's LAR or resident's LAR with a summary of the results of the PE or resident review, using HHSC forms; or

(B) if the PE or resident review is negative for MI, ID, or DD, provide the individual seeking admission or resident or the individual's LAR or resident's LAR notice of the right to a fair hearing, using HHSC forms.

(b) If an individual seeking admission to a NF or a resident has a PE or resident review that is positive for ID, DD, or MI and a NF certifies in the LTC online portal that it cannot meet the needs of the individual or resident, then the LIDDA, LMHA, or LBHA, as applicable, must assist the individual, resident, or LAR in choosing another NF that will certify it can meet the needs of the individual or resident.

(c) If an individual seeking admission to a NF or a resident has a PE or resident review that is positive for ID, DD, or MI and a NF certifies in the LTC online portal that it can meet the needs of the resident or certifies in the LTC online portal that it can meet the needs of the individual and admits the individual, the LIDDA, LMHA or LBHA, as applicable, must:

(1) coordinate with the NF to schedule an IDT meeting to discuss specialized services;

(2) ensure a habilitation coordinator or QMHP-CS or both, as applicable, participates in person, or via audio-visual communication in extenuating circumstances, [~~participate~~] in the resident's IDT

meeting as scheduled by the NF and collaborate [~~to, in collaboration~~] with the other members of the IDT to:

(A) identify which of the specialized services recommended for the resident that the resident, or LAR on the resident's behalf, wants to receive;

(B) identify the NF PASRR support activities for the resident; and

(C) determine whether the resident is best served in a facility or community setting;

(3) within five business days after receiving notification from the LTC online portal that the NF entered information from the IDT meeting, confirm the LIDDA's, LMHA's, or LBHA's participation in the meeting and the specialized services recommended in the LTC online portal; and

(4) if Medicaid or other funding is available:

(A) initiate MI specialized services within 20 business days after the date of the IDT meeting; and

(B) provide the MI specialized services agreed upon in the IDT meeting to the resident.

(d) The LIDDA, LMHA, or LBHA must develop a written policy that describes the process the LIDDA, LMHA, or LBHA will follow to address challenges related to the participation in receiving IHSS or MI specialized services by the designated resident [~~resident's~~], resident with MI [~~MI's~~], or LAR [~~LAR's participation in receiving IHSS or MI specialized services~~].

(e) The LIDDA must ensure that a designated resident or LAR is informed orally and in writing of the processes for filing complaints as follows:

(1) the telephone number of the LIDDA to file a complaint;

(2) the telephone number of the IDD Ombudsman to file a complaint about the LIDDA;

(3) the telephone number of Complaint and Incident Intake to file a complaint about IHSS or the NF;

(4) the telephone number of DFPS Statewide Intake to report an allegation of abuse, neglect, or exploitation; and

(5) the telephone number of the Long-Term Care Ombudsman to file a complaint that relates to action, inaction, or a decision by any individual or entity who provides care or makes decisions related to a designated resident, that may adversely affect the health, safety, welfare, or rights of the designated resident.

(f) The LMHA or LBHA must ensure that a resident with MI or LAR is informed orally and in writing of the processes for filing complaints as follows:

(1) the telephone number of the LMHA or LBHA to file a complaint;

(2) the telephone number of the Ombudsman for Behavioral Health to file a complaint about MI specialized services or about an LMHA or LBHA;

(3) the telephone number of Complaint and Incident Intake to file a complaint about the NF;

(4) the telephone number of DFPS Statewide Intake to report an allegation of abuse, neglect, or exploitation; and

(5) the telephone number of the Long-Term Care Ombudsman to file a complaint that relates to action, inaction, or a decision by any individual or entity who provides care or makes decisions related to a resident with MI, that may adversely affect the health, safety, welfare, or rights of the resident with MI.

(g) If an individual seeking admission to a NF or a resident has a PE or resident review that is positive for MI and ID or MI and DD, the LIDDA is responsible for coordinating with the NF to schedule the IDT meeting to discuss specialized services.

(h) Before the LIDDA, LMHA, or LBHA staff conducts the meeting required in subsection (a)(2)(A)(ii) of this section via audio-visual communication, they must:

(1) do one of the following:

(A) obtain the written informed consent of the individual, designated resident, or LAR; or

(B) obtain the individual's, designated resident's, or LAR's oral consent and document the oral consent in the individual's or designated resident's record; and

(2) document in the individual's or designated resident's record a description of the extenuating circumstances that prevented meeting in person with the individual or the designated resident.

(i) If the LIDDA, LMHA, or LBHA does not obtain the written or oral consent required by subsection (h) of this section, the LIDDA, LMHA, or LBHA must conduct the meeting required in subsection (a)(2)(A)(ii) of this section by meeting with the LAR and NF staff most familiar with the individual or designated resident, to:

(1) review and gather all necessary information to complete the PE; and

(2) enter the PE in the LTC online portal.

§303.303. Qualifications and Requirements for Staff Person Conducting a PE or Resident Review.

(a) A LIDDA must ensure a PE or resident review is conducted by an individual who:

(1) is a QIDP; or

(2) has one of the following qualifications and at least one year of experience working directly with individuals with ID or DD:

(A) RN;

(B) LCSW;

(C) LPC;

(D) LMFT;

(E) Licensed Psychologist;

(F) APRN; or

(G) Physician.

(b) An LMHA or LBHA must ensure a PE or resident review is conducted by an individual who is a:

(1) QMHP-CS;

(2) RN;

(3) LCSW;

(4) LPC;

(5) LMFT;

(6) Licensed Psychologist;

(7) APRN;

(8) Physician; or

(9) PA.

(c) A LIDDA, LMHA, and LBHA must:

(1) before a staff person conducts a PE or resident review, ensure the staff person:

(A) receives HHSC instructor-led [~~HHSC-developed~~] training about how to conduct a PE and resident review; and

(B) demonstrates competency in completing a PE and resident review; and

(2) maintain documentation of the training received by a staff person who conducts a PE or resident review.

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SUBCHAPTER E. HABILITATION COORDINATION

26 TAC §303.502, §303.503

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The amendments implement Texas Government Code §531.02161.

§303.502. Required Training for a Habilitation Coordinator.

(a) A LIDDA must ensure:

(1) a habilitation coordinator completes the following training before providing habilitation coordination:

(A) training that addresses:

(i) appropriate LIDDA policies, procedures, and standards;

(ii) this chapter, other HHSC rules relating to the provision of specialized services, and other HHSC rules affecting the LIDDA;

(iii) HHSC's IDD PASRR Handbook;

(iv) developing and implementing an HSP;

(v) conducting assessments, service planning, coordination, and monitoring;

(vi) providing crisis prevention and management;

(vii) community support services;

(viii) presenting community living options using HHSC-developed materials and forms, and offering educational opportunities and informational activities about community living options;

(ix) arranging visits to community providers;

(x) accessing specialized services for a designated resident;

(xi) the rights of an individual with an ID, including the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, as described in the Persons with an Intellectual Disability Act, Texas Health and Safety Code Chapter 592 and in an HHSC-developed rights handbook; and

(xii) advocacy for individuals with ID or DD;

(B) the HHSC computer-based training, "An Overview of the PASRR Process;" and

(C) additional trainings designated by HHSC through the IDD-PASRR Handbook, broadcasts, or other communications;

(2) a habilitation coordinator completes HHSC approved computer-based person-centered planning and practices [~~the following~~] training within the first 60 days of performing habilitation coordination duties;[~~:~~]

(3) [~~(A)~~] a habilitation coordinator completes all HHSC instructor-led [~~HHSC-developed~~] training related to PASRR habilitation coordination within the first 60 days of performing habilitation coordination duties; [~~and~~]

[~~(B) person-centered thinking training; and~~]

(4) [~~(3)~~] a supervisor, team lead, or quality monitoring staff person who has successfully completed the trainings in paragraphs [~~paragraph~~] (2) and (3) of this subsection reviews and signs off on work completed by a habilitation coordinator until the habilitation coordinator completes the trainings required in paragraphs [~~paragraph~~] (2) and (3) of this subsection; and[~~.~~]

(5) a habilitation coordinator completes person-centered thinking training approved by HHSC within the first year of performing habilitation coordination duties.

(b) A LIDDA must:

(1) ensure a habilitation coordinator demonstrates competency in providing habilitation coordination; and

(2) maintain documentation of the training received by habilitation coordinators.

§303.503. Documenting Habilitation Coordination Contacts.

(a) A LIDDA must ensure a habilitation coordinator documents all contacts, including:

(1) whether the contact was in person, via audio-visual communication, or via audio-only communication [~~face-to-face or by telephone~~];

(2) the date of contact;

(3) the description of the habilitation coordination activities provided;

(4) the name of the person with whom the contact occurred and the person's relationship to the designated resident; and

(5) the habilitation coordinator's name and title.

(b) A LIDDA must retain documentation in compliance with applicable federal and state laws, rules, and regulations unless instructed by HHSC to retain documentation for a longer period of time.

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SUBCHAPTER F. HABILITATIVE SERVICE PLANNING FOR A DESIGNATED RESIDENT

26 TAC §303.601, §303.602

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The amendments implement Texas Government Code §531.02161.

§303.601. Habilitation Coordination for a Designated Resident.

(a) A LIDDA must assign a habilitation coordinator to each designated resident within two days after a PE is completed if the PE is positive for ID or DD.

(1) The habilitation coordinator must [~~to~~] attend the initial IDT and provide habilitation coordination while the designated resident is residing in the NF.

(2) A designated resident may refuse habilitation coordination.

(b) Unless a designated resident has refused habilitation coordination, the assigned habilitation coordinator must:

(1) assess and reassess quarterly, and as needed, the designated resident's habilitative service needs by gathering information from the designated resident and other appropriate sources, such as the LAR, family members, social workers, and service providers, to determine the designated resident's habilitative needs and preferences and the specialized services that will address those needs and preferences;

(2) develop and revise, as needed, an individualized HSP in accordance with HHSC's rules and IDD PASRR Handbook, and using HHSC forms;

(3) assist the designated resident to access needed specialized services agreed upon in an IDT or SPT meeting, including:

(A) monitoring to determine if a specialized service agreed upon in an IDT or SPT meeting is requested within required timeframes in accordance with the IDD PASRR Handbook or documenting delays and the habilitation coordinator's follow-up activities; and

(B) ensuring the delivery of all specialized services agreed upon in an IDT or SPT meeting or documenting delays and the habilitation coordinator's follow-up activities;

(4) coordinate other habilitative programs and services that can address needs and achieve outcomes identified in the HSP;

(5) facilitate the coordination of the designated resident's HSP and NF comprehensive care plan, including ensuring the HSP is shared with members of the SPT within 10 calendar days after the HSP is updated or renewed;

(6) monitor and provide follow-up activities that consist of:

(A) monitoring the initiation and delivery of all specialized services agreed upon in an IDT or SPT meeting and following up when delays occur;

(B) monitoring the designated resident's and LAR's satisfaction with all specialized services; and

(C) determining the designated resident's progress or lack of progress toward achieving goals and outcomes identified in the HSP from the designated resident's and LAR's perspectives;

(7) [~~unless waived by HHSC,~~] meet [~~face-to-face~~] with the designated resident to provide habilitation coordination:

(A) at least monthly if the designated resident is receiving a specialized service in addition to habilitation coordination; and [~~or more frequently if needed; or~~]

(i) meet in person at least quarterly or more frequently as determined by the SPT using the findings of the HHSC Habilitative Assessment form; and

(ii) subject to subsection (d) of this section, meet via audio-visual communication in a month when a meeting is not conducted in person; or

(B) at least quarterly in person, if the [~~only specialized service the~~] designated resident is receiving only [~~is~~] habilitation coordination, unless the designated resident or the designated resident's LAR requests more frequent meetings;

(8) convene and facilitate an SPT meeting:

(A) at least quarterly; and

(B) between quarterly SPT meetings if:

(i) there is a change in the designated resident's service needs or medical condition; or

(ii) requested by the designated resident or LAR;

(9) coordinate with the NF in accessing medical, social, educational, and other appropriate services and supports that will help the designated resident achieve a quality of life acceptable to the designated resident and LAR on the resident's behalf;

(10) initially and annually thereafter:

(A) provide the designated resident and LAR an oral and written explanation of the designated resident's rights in accordance with the IDD PASRR Handbook; and

(B) inform the designated resident and LAR both orally and in writing of all the services available and requirements pertaining to the designated resident's participation;

(11) for a designated resident who has a guardian, determine at least annually if the letters of guardianship are current; and

(12) if appropriate, for a designated resident who does not have a guardian, ensure the SPT discusses whether the designated resident would benefit from a less restrictive alternative to guardianship or from guardianship and make appropriate referrals.

(c) Regardless of whether the designated resident is receiving or has refused habilitation coordination, the habilitation coordinator must:

(1) address community living options with the designated resident and LAR by:

(A) offering the educational opportunities and informational activities about community living options that are periodically scheduled by the LIDDA;

(B) providing information about the range of community living services, supports, and alternatives, identifying the services and supports the designated resident will need to live in the community, and identifying and addressing barriers to community living in accordance with HHSC's IDD PASRR Handbook and using HHSC materials at the following times:

(i) six months after the initial presentation of community living options during the PE described in §303.302(a)(2)(B)(i) of this Chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process) and at least every six months thereafter;

(ii) when requested by the designated resident or LAR;

(iii) when the habilitation coordinator is notified or becomes aware that the designated resident, or the LAR on the designated resident's behalf, is interested in speaking with someone about transitioning to the community; and

(iv) when notified by HHSC that the designated resident's response in Section Q of the MDS Assessment indicates the resident is interested in speaking with someone about transitioning to the community; and

(C) arranging visits to community providers and addressing concerns about community living; and

(2) annually assess the designated resident's habilitative service needs by gathering information from the designated resident and other appropriate sources, such as the LAR, family members, social workers, and service providers, to determine the designated resident's habilitative needs and preferences.

(d) Before the habilitation coordinator conducts the meeting described in subsection (b)(7)(A)(ii) of this section via audio-visual communication, the habilitation coordinator must:

(1) obtain the written informed consent of the designated resident or LAR; or

(2) obtain the designated resident's or LAR's oral consent and document the oral consent in the designated resident's record.

(e) If the habilitation coordinator does not obtain the written or oral consent required by subsection (d) of this section, the habilitation coordinator must document the designated resident's or LAR's refusal in the designated resident's record.

§303.602. Service Planning Team Responsibilities Related to Specialized Services.

(a) The SPT for a designated resident must:

(1) meet at least quarterly, as convened by the habilitation coordinator;

(2) ensure that the designated resident, regardless of whether he or she has an LAR, participates in the SPT to the fullest extent possible and receives the support necessary to do so, including communication supports;

(3) develop an HSP for the designated resident;

(4) review and monitor identified risk factors, such as choking, falling, and skin breakdown, and report to the proper authority if they are not addressed;

(5) make timely referrals, service changes, and revisions to the HSP as needed;

(6) considering the designated resident's preferences, monitor to determine if the designated resident is provided opportunities for engaging in integrated activities:

(A) with residents who do not have ID or DD; and

(B) in community settings with people who do not have a disability; and

(7) develop the plan of care for a designated resident who receives IHSS.

(b) Each member of the SPT for a designated resident must:

(1) consistent with the SPT member's role, assist the habilitation coordinator in ensuring the designated resident's needs are being met; and

(2) participate in an SPT meeting in person, via audio-visual communication, or via audio-only communication [~~or by phone~~], except as described in subsection [~~subsections~~] (c)(3) or (e) of this section;

(c) An SPT member who is a provider of a specialized service must:

(1) submit to the habilitation coordinator a copy of all assessments of the designated resident that were completed by the provider or provider agency;

(2) submit a written report describing the designated resident's progress or lack of progress to the habilitation coordinator at least five days before a quarterly SPT meeting; and

(3) [~~actively~~] participate in an SPT meeting, in person, via audio-visual communication, or via audio-only communication [~~or by phone~~], unless the habilitation coordinator determines [~~active~~] participation by the provider is not necessary.

(d) If a habilitation coordinator determines [~~active~~] participation by a provider is not necessary as described in subsection (c)(3) of this section, the habilitation coordinator must:

(1) base the determination:

(A) on the information in the written report submitted in accordance with subsection (c)(2) of this section; and

(B) on the needs of the SPT; and

(2) document the reasons for exempting participation.

(e) A habilitation coordinator must facilitate a quarterly SPT meeting in person, or in extenuating circumstances via audio-visual communication.

(f) Before the habilitation coordinator conducts the meeting described in subsection (e) of this section via audio-visual communication, the habilitation coordinator must:

(1) do one of the following:

(A) obtain the written informed consent of the designated resident or LAR; or

(B) obtain the oral consent of the designated resident or LAR and document the oral consent in the designated resident's record; and

(2) document in the designated resident's record a description of the extenuating circumstances which required the use of audio-visual communication.

(g) If the habilitation coordinator does not obtain the written or oral consent required by subsection (f) of this section, the habilitation coordinator must document the designated resident's or LAR's refusal in the designated resident's record.

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SUBCHAPTER G. TRANSITION PLANNING

26 TAC §303.701, §303.703

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The amendments implement Texas Government Code §531.02161.

§303.701. Transition Planning for a Designated Resident.

(a) A LIDDA must assign a service coordinator for a designated resident if the designated resident, or the LAR on the designated resident's behalf, expresses an interest in moving to the community and has selected a community program.

(b) A service coordinator must facilitate the development, revisions, implementation, and monitoring of a transition plan in accordance with HHSC's IDD PASRR Handbook and using HHSC forms. A transition plan must identify the services and supports a designated resident needs to live in the community, including those essential supports that are critical to the designated resident's health and safety.

(c) The SPT for a designated resident must:

(1) meet as convened by the service coordinator;

(2) ensure that the designated resident, regardless of whether he or she has an LAR, participates in the SPT to the fullest extent possible and receives the support necessary to do so, including communication supports; and

(3) conduct transition planning activities and develop a transition plan for the designated resident.

(d) Consistent with an SPT member's role, each SPT member must:

(1) assist the service coordinator in developing, revising, implementing, and monitoring a designated resident's transition plan to ensure a successful transition to the community for the designated resident; and

(2) participate in an SPT meeting in person, via audio-visual communication, or via audio-only communication [~~or by phone~~], except as described in subsection [~~subsections~~] (e) or (g) of this section.

(e) An SPT member who is a provider of a specialized service must [~~actively~~] participate in an SPT meeting, in person, via audio-visual communication, or via audio-only communication [~~or by phone~~], unless the service coordinator determines [~~active~~] participation by the provider is not necessary.

(f) If a service coordinator determines [~~active~~] participation by a provider is not necessary as described in subsection (e) of this section, the service coordinator must:

(1) base the determination on the needs of the SPT; and

(2) document the reasons for exempting participation.

(g) At an SPT meeting convened by a service coordinator, the service coordinator must facilitate the SPT meeting in person, or in extenuating circumstances via audio-visual communication.

(h) For a designated resident who is transitioning to the community, a service coordinator must, in accordance with HHSC's IDD PASRR Handbook and using HHSC forms, conduct and document a pre-move site review of the designated resident's proposed residence in the community to determine whether all essential supports in the designated resident's transition plan are in place before the designated resident's transition to the community.

(i) If the SPT makes a recommendation that a designated resident continue to reside in a NF, the SPT must:

(1) document the reasons for the recommendation; and

(2) include in the designated resident's transition plan:

(A) the barriers to moving to a more integrated setting; and

(B) the steps the SPT will take to address those barriers.

(j) Before the service coordinator conducts the meetings described in subsection (g) of this section via audio-visual communication, the service coordinator must:

(1) do one of the following:

(A) obtain the written informed consent of the designated resident or LAR; or

(B) obtain the oral consent of the designated resident or LAR and document the oral consent in the designated resident's record; and

(2) document in the designated resident's record a description of the extenuating circumstances which required the use of audio-visual communication.

(k) If the service coordinator does not obtain the written or oral consent required by subsection (j) of this section, the service coordinator must document the designated resident's or LAR's refusal in the designated resident's record.

§303.703. Requirements for Service Coordinators Conducting Transition Planning.

(a) A LIDDA must ensure that a service coordinator complies with [~~40 TAC~~] Chapter 331 of this title [~~2, Subchapter L~~] (relating to LIDDA Service Coordination [~~Service Coordination for Individuals with an Intellectual Disability~~]), including documenting in the transition plan the frequency and duration of service coordination while the designated resident is in the NF.

(b) A LIDDA must ensure:

(1) a service coordinator who conducts transition planning completes the following training before providing service coordination for a designated resident:

(A) training that addresses:

(i) this chapter;

(ii) HHSC's IDD PASRR Handbook;

(iii) the role of a relocation specialist and MCO service coordinator for a NF resident who wants to transition to the community;

(iv) services available through Texas Medicaid State Plan and all home and community-based services programs for individuals with ID or DD, such as [~~including but not limited to~~], access to nursing, durable medical equipment and supplies, and transition assistance supports;

(v) developing and implementing a transition plan for a designated resident;

(vi) an overview of community living options, educational opportunities, and informational activities about community living options; and

(vii) the rights of an individual with ID, including the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, as described in the Persons with an Intellectual Disability Act, Texas Health and Safety Code Chapter 592 and an HHSC-developed rights handbook;

(B) the HHSC computer-based training, "An Overview of the PASRR Process;" and

(C) additional trainings designated by HHSC through the IDD-PASRR Handbook, broadcasts, or other communications;

(2) a service coordinator who conducts transition planning completes HHSC approved computer-based person-centered planning and practices [~~the following~~] training within the first 60 days of performing service coordination duties;[~~:~~]

[~~(A) person-centered thinking training; and~~]

(3) [~~(B)~~] a service coordinator who conducts transition planning completes all HHSC instructor-led [~~HHSC-developed~~] training related to PASRR service coordination for transition planning within the first 60 days of performing transition planning duties; [~~and~~]

(4) [~~(3)~~] a supervisor, team lead, or quality monitoring staff person who has successfully completed the trainings in paragraphs [~~paragraph~~] (2) and (3) of this subsection reviews and signs off on work completed by a service coordinator until the service coordinator completes the trainings required in paragraphs [~~paragraph~~] (2) and (3) of this subsection; and[~~.~~]

(5) a service coordinator who conducts transition planning completes HHSC approved person-centered thinking training within the first year of performing transition planning duties.

(c) A LIDDA must:

(1) ensure a service coordinator who conducts transition planning demonstrates competency in conducting transition planning; and

(2) maintain documentation of the training received by service coordinators who conduct transition planning.

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

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Karen Ray
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SUBCHAPTER I. MI SPECIALIZED SERVICES

26 TAC §303.901

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The repeal implements Texas Government Code §531.02161.

§303.901. Description of MI Specialized Services.

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

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26 TAC §§303.901, 303.905, 303.907, 303.909, 303.910, 303.912, 303.914

STATUTORY AUTHORITY

The new sections and amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The new sections and amendments implement Texas Government Code §531.02161.

§303.901. Description of MI Specialized Services.

(a) An LMHA or LBHA staff must conduct the uniform assessment to determine which level of care the resident with MI will receive.

(b) Specialized services for a resident with MI include the following.

(1) Skills training and development. Training provided to a resident with MI that:

(A) addresses the severe and persistent MI and symptom-related problems that interfere with the functioning of the resident with MI;

(B) provides opportunities for the resident with MI to acquire and improve skills needed to function as appropriately and independently as possible in the community; and

(C) facilitates community integration for the resident with MI and increases the length of community residency for the resident with MI.

(2) Medication training and support services. Education and guidance provided to a resident with MI and family members about the medications of the resident with MI and their possible side effects as described in §306.315 of this title (relating to Medication Training and Support Services).

(3) Psychosocial rehabilitation services. Social, educational, vocational, behavioral, and cognitive interventions provided by the therapeutic team members of a resident with MI that address deficits in their ability to develop and maintain social relationships, occupational or educational achievement, independent living skills, or housing. Psychosocial rehabilitative services include the following component services:

(A) coordination services;

(B) crisis related services;

(C) employment related services;

(D) housing related services;

(E) independent living services; and

(F) medication related services.

(4) Case management. A primarily site-based service to assist a resident with MI or LAR in gaining and coordinating access to necessary care and services appropriate to the needs of the resident with MI.

(5) Psychiatric diagnostic interview examination. An assessment of a resident with MI that includes relevant past and current medical and psychiatric information and a documented diagnosis by a licensed professional practicing within the scope of his or her license.

§303.905. Process for Service Initiation.

(a) The LMHA or LBHA must comply with §303.302 of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process).

(b) At the initial IDT meeting, an [~~the~~] LMHA or LBHA staff [~~participating in the meeting, in conjunction with the IDT,~~] must:

(1) review the MI specialized services recommended on the PE;

(2) explain the uniform assessment;

(3) ensure the resident with MI, or LAR on behalf of the resident with MI [~~MI's behalf~~], understands the purpose of the uniform assessment; and

(4) have the resident with MI, or LAR on behalf of the resident with MI [~~MI's behalf~~], agree or decline to receive the uniform assessment and MI specialized services.

(c) Within 20 business days after the IDT meeting, if the resident with MI or LAR agrees, the LMHA or LBHA must:

(1) complete the uniform assessment;

(2) develop the PCRP; and

(3) for a resident with MI only, convene a meeting in person, or in extenuating circumstances via audio-visual communication, to discuss the results of the uniform assessment and PCRP, and to determine the MI specialized services the resident with MI will receive.

(d) Attendees at the meeting convened in accordance with subsection (c)(3) of this section must include:

(1) the QMHP-CS who is familiar with the needs of the resident with MI [~~completed the uniform assessment and PCRP~~];

(2) the resident with MI;

(3) the LAR for the resident with MI [~~MI's LAR~~], if any; and

(4) a NF staff person familiar with the needs of the resident with MI [~~MI's needs~~].

(e) At the meeting convened in accordance with subsection (c)(3) of this section, the QMHP-CS must ensure the resident with MI, regardless of whether he or she has an LAR, participates in the meeting to the fullest extent possible and receives the support necessary to do so, including communication supports.

(f) The LMHA or LBHA must provide a copy of the completed uniform assessment and PCRP to the NF for inclusion in the NF comprehensive care plan for the resident with MI [~~MI's NF comprehensive care plan~~] within 10 calendar days after the meeting convened in accordance with subsection (c)(3) of this section.

(g) Before the LMHA or LBHA conducts the meeting described in subsection (c)(3) of this section via audio-visual communication, the LMHA or LBHA must:

(1) do one of the following:

(A) obtain the written informed consent of the resident with MI or LAR; or

(B) obtain oral consent from the resident with MI or LAR and document the oral consent in the record of the resident with MI; and

(2) document in the record of the resident with MI a description of the extenuating circumstances which required the use of audio-visual communication.

(h) If the LMHA or LBHA does not obtain the written or oral consent required by subsection (g) of this section, the LMHA or LBHA must document the resident with MI's or LAR's refusal in the record of the resident with MI.

§303.907. Renewal and Revision of Person-Centered Recovery Plan.

(a) At least quarterly, the QMHP-CS must convene an MI quarterly meeting, in person, or in extenuating circumstances via audio-visual communication, to:

(1) review the PCRP to determine whether the MI specialized services previously identified remain relevant; and

(2) determine whether the current uniform assessment accurately reflects the need for MI specialized services in the identified frequency for the resident with MI [~~MI's need for MI specialized services in the identified frequency~~], in the amount, and duration, or if an updated uniform assessment is required.

(b) The MI specialized services team initiates revisions to the PCRP in response to changes to the needs of the resident with MI.

(1) Any MI specialized services team member may ask the QMHP-CS to convene a meeting at any time to discuss whether the PCRP for the [~~a~~] resident with MI [~~MI's PCRP~~] needs to be revised to add a new MI specialized service or change the frequency, amount, or duration of an existing MI specialized service.

(2) The QMHP-CS must convene a meeting within seven calendar days after learning of the need to revise the PCRP for the resident with MI [~~MI's PCRP~~].

(c) If the MI specialized services team agrees to add a new MI specialized service to the PCRP or determines an updated uniform assessment is required, a QMHP-CS must, within seven calendar days after the meeting is held, update the uniform assessment and provide it to the MI specialized services team.

(d) The QMHP-CS must:

(1) document revisions on the PCRP within five calendar days after a team meeting; and

(2) retain the revised PCRP documentation in the LMHA or LBHA record for the resident with MI [~~MI's LMHA or LBHA record~~].

(e) Within ten calendar days after the PCRP is updated or renewed, the QMHP-CS must send each member of the MI specialized services team a copy of the revised PCRP.

(f) If the MI specialized services team determines a new MI specialized service is needed or determines a change in the frequency, amount, or duration of an existing service is needed, the PCRP must be revised before the LMHA or LBHA delivers a new or updated service.

(g) Before the QMHP-CS conducts the meeting described in subsection (a) of this section via audio-visual communication, the QMHP-CS must:

(1) do one of the following:

(A) obtain the written informed consent of the resident with MI or LAR; or

(B) obtain the oral consent from the resident with MI or LAR and document the oral consent in the record of the resident with MI; and

(2) document in the record of the resident with MI the extenuating circumstances which required the use of audio-visual communication.

(h) If the QMHP-CS does not obtain the written or oral consent required by subsection (g) of this section, the QMHP-CS must document the refusal of the resident with MI or LAR in the record of the resident with MI.

§303.909. Refusal of the Uniform Assessment or MI Specialized Services.

(a) When a resident with MI refuses the uniform assessment or MI specialized services, the LMHA or LBHA must:

(1) ask the resident with MI or the LAR to sign the Refusal of PASRR MI Specialized Services form and document on the form if the resident with MI or LAR refuses to sign;

(2) inform the resident with MI that a [~~of the need to conduct~~] follow-up visit will be conducted at the first MI quarterly meeting [~~visits every 30 days for 90 days after the initial IDT meeting~~]; and

(3) if the resident with MI or the LAR refuses [~~continues to refuse~~] the uniform assessment or MI specialized services at the first MI quarterly meeting [~~after 90 days,~~] inform the resident with MI and the LAR that an annual IDT meeting is required and will be conducted, at which time the uniform assessment and MI specialized services will be offered again.

(b) A resident with MI and their [~~or~~] LAR, if applicable, may agree to receive the uniform assessment or MI specialized services at any time.

§303.910. Suspension and Termination of MI Specialized Services.

(a) The LMHA or LBHA must suspend MI specialized services for a resident with [~~MI's~~] MI [~~specialized services~~] when:

(1) the resident with MI is admitted to an acute care hospital for fewer than 30 days and is returning to the same NF; or

(2) the resident with MI loses Medicaid eligibility.[~~; or~~]

[~~(3) the resident with MI or LAR requests that MI specialized services be suspended when transferring from one NF to another NF without an intervening hospital stay.~~]

(b) The LMHA or LBHA may terminate one or more MI specialized services of a resident with [~~MI's~~] MI [~~specialized services~~] if:

(1) the resident with MI loses Medicaid eligibility for more than 90 days; [~~or~~]

(2) the resident with MI or LAR requests the MI specialized services be terminated; or[~~.~~]

(3) the MI specialized services team, which includes the resident with MI and LAR, agrees the resident with MI no longer benefits from the MI specialized services.

§303.912. Documentation.

The [~~An~~] LMHA or LBHA must maintain the following documentation in the record of the resident with MI [~~MI's record~~]:

(1) all assessments used for service planning;

(2) documentation related to the initiation and delivery of MI specialized services, including reasons for delays and all follow-up activities;

(3) documentation related to monitoring MI specialized services, including:

(A) the satisfaction with MI specialized services by the resident with MI [~~MI's~~] or the LAR [~~LAR's satisfaction with MI specialized services~~]; and

(B) progress or lack of progress toward achieving goals and outcomes identified in the PCRP;

(4) documentation of all meetings required by this chapter[~~, including the required 30, 60, and 90 day follow-up meetings held after the initial IDT meeting for a resident with MI who refuses MI specialized services~~];

(5) guardianship paperwork and consents, if applicable; and

(6) documentation of the refusal of MI specialized services or uniform assessments or both by the [~~a~~] resident with MI [~~MI's refusal of MI specialized services or uniform assessments or both~~], if applicable.

§303.914. Required Training for an LMHA or LBHA Staff Responsible for Coordinating MI Specialized Services.

(a) The LMHA or LBHA must ensure:

(1) an LMHA or LBHA staff responsible for coordinating MI specialized services completes the following training before coordinating MI specialized services:

(A) training that addresses:

(i) appropriate LMHA or LBHA policies, procedures, and standards;

(ii) this chapter, other HHSC rules relating to the provision of specialized services, and other HHSC rules affecting the LMHA or LBHA; and

(iii) HHSC's PASRR MI Handbook;

(B) the HHSC computer-based PASRR training, "An Overview of the PASRR Process;" and

(C) additional trainings designated by HHSC through IDD-PASRR Handbook, PASRR MI Handbook, broadcasts, or other communications;

(2) an LMHA or LBHA staff completes HHSC approved computer-based person-centered planning and practices training within the first 60 days of coordinating MI specialized services;

(3) a supervisor, team lead, or quality monitoring staff person who has successfully completed the training in paragraph (2) of this subsection reviews and signs off on work completed by an LMHA or LBHA staff until an LMHA or LBHA staff completes the training required in paragraph (2) of this subsection; and

(4) an LMHA or LBHA staff responsible for coordinating MI specialized services completes HHSC approved person-centered thinking training within the first year of coordinating MI specialized services.

(b) The LMHA or LBHA must:

(1) ensure an LMHA or LBHA staff responsible for coordinating MI specialized services demonstrates competency in the coordination of MI specialized services; and

(2) maintain documentation of the training received by the LMHA or LBHA staff.

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 J. DISASTER RULE FLEXIBILITIES

26 TAC §303.1000

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

The new section implements Texas Government Code §531.02161.

§303.1000. Flexibilities to Certain Requirements During Declaration of Disaster.

(a) HHSC may allow LIDDAs, LMHAs, and LBHAs to use one or more of the exceptions described in subsection (c) of this section while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. HHSC will notify LIDDAs, LMHAs, and LBHAs when an exception is permitted and the date the exception must no longer be used, which may be before the declaration of a state of disaster expires.

(b) Subject to the notification by HHSC, the following flexibilities may be available to LIDDAs, LMHAs, and LBHAs to the extent the flexibility is permitted by and does not conflict with other laws or obligations of the LIDDAs, LMHAs, and LBHAs and is allowed by federal and state law.

(c) LIDDAs, LMHAs, and LBHAs, for services normally provided in person, may use audio-visual communication or audio-only communication methods to engage with the individual or resident to carry out the requirements in:

(1) §303.302(a)(2)(A)(ii) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process);

(2) §303.601(b)(7) of this chapter (relating to Habilitation Coordination for a Designated Resident);

(3) 303.602(e) of this chapter (relating to Service Planning Team Responsibilities Related to Specialized Services);

(4) 303.701(g) of this chapter (relating to Transition Planning for a Designated Resident);

(5) §303.905(c)(3) of this chapter (relating to Process for Service Initiation); and

(6) §303.907(a) of this chapter (relating to Renewal and Revision of Person-Centered Recovery Plan).

(d) LIDDAs, LMHAs, and LBHAs that use the flexibilities allowed under subsection (c) of this section, must comply with:

(1) all guidance on the application of the rules during the declaration of disaster that is published by HHSC on its website or in another communication format HHSC determines appropriate; and

(2) all policy guidance applicable to the rules identified in subsection (c) of this section issued by HHSC's Medicaid and CHIP Services.

(e) LIDDAs, LMHAs, and LBHAs must ensure any method of contact complies with all applicable requirements related to security and privacy of information.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 2. STATEWIDE PROCUREMENT DIVISION SERVICES - TRAVEL AND VEHICLES

34 TAC §20.411, §20.413

The Comptroller of Public Accounts proposes amendments to §20.411, concerning state agency reimbursement and reporting and §20.413, concerning state travel credit cards.

In its planning and administration of the state travel program, the comptroller utilizes data collected through the state travel credit card. Because that data is sufficient for comptroller purposes, the amendment deletes the requirement for agencies to manually report travel data. Reference to agency reporting is deleted from §20.411(e) and §20.413(a).

The amendment substantially modifies §20.413(c), regarding issuance of state travel credit cards to state agency employees, in three ways. First, it clarifies the obligation imposed by the first sentence of the subsection. The phrase "should be issued" could be interpreted as an aspiration rather than a requirement, and does not specify whether it addresses employees, state agencies, or the financial institution administering the credit card program. The amendment replaces that phrase with a plain statement that a state agency shall encourage certain employees to obtain the state travel credit card.

Second, the amendment raises the level of annual travel spending that §20.413(c) addresses from $500 to $1,000. The $1,000 threshold better balances the administrative costs of establishing, monitoring, and terminating card accounts against the rebates generated from the cards.

Finally, the amendment to §20.413(c) eliminates the need to forecast the number of trips an employee will take in a fiscal year. Instead, agencies will use the expected monetary value of travel to determine whether §20.413(c) applies. Because the amount spent through the state travel credit card is the primary factor in calculating rebates, it is the best measure of value.

Section 20.413 is further revised to ensure consistent usage of the term "state travel credit card."

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended 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 rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rules would benefit the public by updating the rule to update thresholds and eliminate unnecessary reports. The proposed amended rules would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:00 a.m. on November 9, 2023. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m22ca4d487d210a90f095abe7f2580780. To join the meeting by computer or cell phone using the Webex app, use the access code 2495 042 9928. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Data Management, Analytics & Technology Manager - Statewide Procurement Division, Texas Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by Wednesday, October 8, 2023.

You may submit comments on the proposal to Gerard MacCrossan, Data Management, Analytics & Technology Manager, P.O. Box 13528, Austin, Texas 78711-3528, or Gerard.MacCrossan@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

These amendments are proposed under Government Code, §403.023, which authorizes the comptroller to adopt rules relating to the use of credit or charge cards by state agencies to pay for purchases, and Government Code, §2171.002, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2171.

These amendments implement Government Code, §§403.023, 2171.051, and 2171.055.

§20.411. State Agency Reimbursement and Reporting.

(a) State agency officials and employees shall adhere to applicable laws and the regulations and guidelines of the comptroller governing travel vouchers.

(b) Reimbursement for Travel Expenses. State agencies shall not approve and the comptroller shall not pay travel vouchers for services at rates higher than contract rates, unless an exception in §20.408 of this title (relating to Exceptions to the Use of Contract Travel Services) or §20.409 of this title (relating to State Agency Contracts and Requests for Exceptions) applies. Travel vouchers submitted for reimbursement shall indicate the claimed exception in a manner prescribed by the comptroller.

(c) Audits. The comptroller may conduct pre-payment and post-payment audits of travel reimbursement requests; the audits may include a review of the propriety of claimed exceptions from the use of contract travel services.

(d) False claims for reimbursement. All claims for travel reimbursement are subject to Government Code, §403.071 relating to claims and available money. Any person who knowingly makes a false claim against the state is subject to the penalties in Government Code, §403.071(f) and other applicable laws.

~~[(e) Monthly reporting. The reports required by this subsection are for those travel services not charged to a state travel credit card.]~~

~~[(1) State agencies shall report the expenditures, as the total dollars spent, and activities, as the total number of trips and days of rental or lodging, relating to travel services as follows:]~~

~~[(A) air, bus, and rail travel: total dollar spend and total number of trips;]~~

~~[(B) rental car: total dollar spend, total number of trips, and total rental days;]~~

~~[(C) hotel/lodging: total dollar spend, total lodging trips; total number of nights; and]~~

~~[(D) travel reservation and booking fees: total dollar spend and total number of reservations.]~~

~~[(2) Travel reports shall be submitted to the comptroller's Procurement Policy and Strategy Program on or before the 28th day following the reporting month.]~~

~~[(3) Travel reports shall be submitted on a compact or floppy disc in Excel format via United States Postal Service or e-mail. The comptroller may also adopt other reporting methods, including web based reporting.]~~

§20.413. State Travel Credit Cards.

(a) State travel credit card. State agencies, officials, and employees shall use state travel credit cards to purchase contract and non-contract travel services. Travel services for airfare shall be charged to state travel credit cards. Travel services for lodging, rental vehicles and other necessary travel expenses shall be charged to state travel credit cards, when feasible[~~; purchases by other methods shall be reported monthly pursuant to §20.411(e) of this title (relating to State Agency Reimbursement and Reporting)~~].

(b) Eligibility. Any entity eligible to use contract travel services is also eligible to obtain state travel credit cards. State travel credit cards may be used only for official state business and may be issued to individuals and state agencies.

(c) State travel credit cards issued to individuals. State agencies shall encourage an employee to obtain [~~agency employees should be issued~~] a state travel credit card when the employee is expected to [~~take at least three trips or~~] spend at least $1000 [~~$500~~] per fiscal year for official state travel [~~business~~]. State agencies may, at their discretion, approve the issuance of the cards to any employee.

(d) State agencies shall ensure that:

(1) state travel credit cards are cancelled upon the employee's termination of employment;

(2) state travel credit cards are cancelled when the employee fails to timely pay the charges, uses the card for personal transactions, or any other misuse of the credit card; and

(3) individuals who are issued state travel credit cards understand that payment of charges on state travel credit cards is the sole responsibility of the individual and that the state shall not be responsible for the charges or for nonpayment by the employee.

(e) Individual billing. State travel credit cards issued to individuals shall be billed directly to the individual who may obtain reimbursement through properly submitted state travel vouchers that comply with this subchapter and the rules and guidelines of the comptroller. Other individuals eligible to use state travel credit cards shall comply with the reimbursement rules and procedures of their governing entity.

(f) Centralized billing. A state travel credit card issued to an eligible entity shall be billed to that entity which may receive reimbursement pursuant to applicable statutes and rules.

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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Victoria North
General Counsel, Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 4. TEXAS MILITARY DEPARTMENT

CHAPTER 138. HAZARDOUS PROFESSION DEATH BENEFITS

37 TAC §§138.1 - 138.3

The Texas Military Department (Department) proposes new Chapter 138 provisions relating to benefits for survivors of members of the Texas Military Forces. The Department proposes the new rule pursuant to House Bill 90, 88th Legislative Session (2023) which amended Chapter 615, Government Code.

Rulemaking authority is granted to state agencies by Texas Government Code § 2001.004, which requires a state agency to adopt rules of practice and procedure. The mandate in Texas Government Code § 615.024(c) requires the Department to adopt rules providing the circumstances under which the death of an individual described by Section 615.024(b) entitles an eligible survivor to the payment of assistance under Chapter

615. The new provisions are proposed to establish procedures for confirming eligibility for payment of survivor benefits, verifying to whom benefits are to be paid, and how benefits will be processed under the Chapter 615 claim process.

Proposed new rule 37 TAC 138.1: (a) defines the effective date for the death benefits; (b) defines survivor eligibility; and (c) establishes a personal injury sustained in the line of duty as the basis for benefits and defines the terms "personal injury" and "line of duty".

Proposed new rule 37 TAC 138.2 defines the investigative procedures that the Department will follow to determine eligibility for survivor benefits.

Proposed new rule 37 TAC 138.3 outlines the established process and required documentation for submitting eligible claims to the Employees Retirement System to initiate the payment process and identifies the Department certifying official.

Ms. Shelia Bailey Taylor, Director of State Administration, has determined that for the first five-year period during which the new rules is in effect any fiscal implications for state or local government as a result of enforcing or administering the new rule depend on the number of deaths that occur on or after September 1, 2023, which is not quantifiable at this time.

Ms. Shelia Bailey Taylor has also determined that for the first five-year period during which the new rule is in effect there is no anticipated economic cost to persons who are required to comply with the rule. There will be no effect on small businesses or micro-businesses as a result of enforcing this rule.

Ms. Shelia Bailey Taylor has determined that for each year of the first five years that the new rules will be in effect, the public benefit will be implementation of required legislation.

Pursuant to Government Code §2001.0221, the Department has determined the following for each year of the first five years the proposed rules will be in effect:

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 Department.

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

5. The proposed rules do create a new regulation.

6. The proposed rules do not expand, limit, or repeal an existing regulation.

7. The proposed rules increase the number of individuals subject to the rules' applicability.

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

Written comments on the proposed new Chapter 138 rule and/or subsequent provisions of the rule may be submitted to Bernie Garza by electronic mail to bernie.garza@military.texas.gov or by U.S. mail to P.O. Box 5218, Austin, Texas 78763-5218. Comments are due within 30 days of publication of the proposed adoption of the new rule in the *Texas Register.*

The new rules are proposed in accordance with Chapters 2001, 615, and 437 of the Texas Government Code.

No other statutes, articles, or codes are affected by the proposed new rules.

§138.1. Applicability.

(a) This rule applies to a member of the Texas Military Forces whose death occurs on or after September 1, 2023. For purposes of this rule, a death that occurs before September 1, 2023, is governed by the law in effect on the date the death occurred, and the former law is continued in effect for that purpose.

(b) A survivor of an individual who is a member of the Texas Military Forces is eligible to receive a lump sum payment under Texas Government Code Section 615.022 and monthly assistance under Section 615.023, as applicable, if:

(1) the individual died while on state active duty;

(2) the Texas Military Department certifies to the Employees Retirement System of Texas (ERS) that the circumstances of the individual's death entitle an eligible survivor to the payment of assistance under Chapter 615 of the Texas Government Code; and

(3) the survivor is:

(A) a beneficiary designated by the individual on the individual's United States Department of Defense Form DD-93; or

(B) a beneficiary designated by the individual on the Texas Military Department Record of Emergency Data form; or

(4) if there is no beneficiary described by Paragraph (3)(A) or (3)(B):

(A) the surviving spouse of the decedent;

(B) a surviving child of the decedent if there is no surviving spouse; or

(C) the surviving parent of the decedent if there is no surviving spouse or child.

(c) For purposes of this rule, a death on state active duty means the individual died because of a personal injury sustained in the line of duty in connection with the performance of military or emergency service for this state at the call of the governor or the governor's designee.

(1) "Personal injury" means an injury resulting from an external force, an activity, or a medical condition caused by or resulting from:

(A) a line-of-duty accident; or

(B) a medical condition caused by line-of-duty work under hazardous conditions.

(2) "Line of duty" means an action the individual is required or authorized by rule, condition of employment, or law to perform. The term includes, but is not limited to:

(A) an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer; and

(B) an action performed as part of a training program the individual is required or authorized by rule, condition of employment, or law to undertake.

§138.2. Eligibility Determination.

(a) The Department will utilize the investigative procedures established in Army Regulation 600-8-4, Line of Duty Policy, Proce-

dures, and Investigations, to verify the line of duty death of an individual in the Texas Military Forces, for purposes of confirming survivor eligibility for benefit payments under Chapter 615 of the Texas Government Code.

(b) In a determination of whether the survivor of a decedent listed under Section 615.003 is eligible for benefits under Chapter 615, any reasonable uncertainty arising from the circumstances of the individual's death shall be resolved in favor of the payment of benefits to the survivor.

§138.3. Filing the Claim.

(a) Upon determination by the Department that assistance is payable to an eligible survivor under Section 615.024 of the Texas Government Code, and verification of beneficiary information, the Department shall certify the following information on agency letterhead and submit the certification to Employees Retirement System (ERS) to initiate the payment process:

(1) Name of decedent;

(2) Date of death;

(3) Status of decedent at the time of death (i.e., State Active Duty and Specific Mission);

(4) Line of Duty determination: Yes/No; and

(5) Certification of Eligibility: Yes/No

(b) The Adjutant General or designee will serve as the certifying official for purposes of the Department certification.

(c) In addition to the Department certification, the following documentation must be submitted to ERS:

(1) a copy of the decedent's state active duty orders;

(2) a certified copy of the death certificate;

(3) a copy of the decedent's United States Department of Defense Form DD-93 for an individual in the Texas National Guard; or for the Texas State Guard, a Texas Military Department Record of Emergency Data form that provides emergency data comparable to that on the United States Department of Defense Form DD-93; and

(4) the name(s) and contact information for the beneficiary or beneficiaries to receive payment.

(d) Claims submitted to ERS by the Department will be processed for payment to the eligible beneficiary in accordance with Texas Government Code Chapter 615 and, as applicable, ERS Rule related to the filing of claims, 75 TAC §75.1.

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 October 9, 2023.

TRD-202303761
Shelia Bailey Taylor
Director of State Administration
Texas Military Department
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 782-3390

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 463. ADVISORY COMMITTEES, PRACTICE AND PROCEDURES

37 TAC §§463.1, 463.3, 463.5, 463.7, 463.9, 463.11, 463.13, 463.15, 463.17

The Texas Commission on Fire Protection (the Commission) proposes a new chapter, 37 Texas Administrative Code Chapter 463, Advisory Committees, Practice and Procedures, concerning §463.1 Objective, §463.3 General, §463.5 Eligibility, §463.7 Terms, §463.9 Meetings, §463.11 Limitation of Powers, §463.13 Testimony, §463.15 Expulsion, and §463.17 Abolishment Date.

BACKGROUND AND PURPOSE

The proposed new chapter aims to establish rules governing the Commission's advisory committees under Texas Government Code §419.908(f). This new chapter and rules implement a Sunset Commission's recommendation and Senate Bill 709 as passed by the 87th legislature. The chapter enhances transparency by setting out the objectives of the committees, and eligibility for membership, creates staggered terms and term limits, open meeting requirements, limits committees to recommendations only, and addresses public testimony, expulsion, and abolishment. The new chapter ensures each committee continues to achieve the objectives set out by law and rule, and requires the Commission to evaluate the need for the committee and continuation of each committee every four years.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period the proposed new chapter is in effect, there will be no significant fiscal impact to state government or local governments because of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the proposed new chapter is in effect, the public benefit will be accurate, clear, and concise rules.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed new chapter is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the proposed new chapter. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the proposed new chapter is in effect:

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

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

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

(6) the rules will not expand a regulation;

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

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The Commission has determined that no private real property interests are affected by this proposal and this proposal does 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, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

The proposed new chapter does not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, are not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The Commission has determined that the proposed new chapter does not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed new chapter may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register,* to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768, or e-mailed to amanda.khan@tcfp.texas.gov.

STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code §419.008(f), which provides the Commission may appoint an advisory committee to assist it in the performance of its duties, and under Texas Government Code §419.008(a), which provides the Commission may adopt rules for the administration of its powers and duties. Additionally, §463.7, Terms, is proposed pursuant to Texas Government Code §419.008(f), which provides members appointed under chapter 419 shall serve six-year staggered terms but may not be appointed to more than two consecutive terms.

CROSS-REFERENCE TO STATUTE

The new chapter also implements requirements of Texas Government Code §2110.005, and §2110.008, by setting out by rule the purpose of the committee, the manner the committee will report to the Commission, and the duration of the committees. No other statutes, articles, or codes are affected by these amendments.

§463.1. Objective.

(a) The Texas Commission on Fire Protection (TCFP) is organized to aid in the protection of the lives and property of Texas citizens through the development and enforcement of recognized professional standards for individuals and the fire service. To achieve the goals of TCFP, each committee will evaluate, make recommendations, and issue reports to the Commission on any issue in the committee's purview. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee. In this Chapter, "Commission" refers to the governing body, and TCFP refers to the state agency.

(b) The Commission has established a Firefighter Advisory Committee, Curriculum and Testing Committee, and Health and Wellness Committee in compliance with the Texas Government Code §2110.008, Duration of Advisory Committees. These committees will continue for four years from the date of creation and may be continued following a vote of the Commission to extend each of the established committees. The Commission may create short-term ad hoc working groups for specific purposes in accordance with this rule. The committee's purpose, eligibility, terms, and meeting procedures are identified in this rule.

§463.3. General.

(a) The Commission may convene committees that are deemed to be in the best interest of the TCFP and its mission.

(b) All committees shall be subject to and governed by these rules.

(c) The approved committee shall elect a member of their committee as the chairperson who may remain in this position for two (2) years before reappointment or until such time as a new person is appointed as the Chairperson.

(d) Committees should be composed of a reasonable odd number of members, with a minimum of nine and a maximum of 15 members.

(e) The committees shall meet at least twice each calendar year at the call of either the committee chairperson or the Commission.

(f) All committees shall be reviewed for relevance by the Commission every odd year and will either be renewed or discontinued.

(g) The committee chairperson may form ad hoc working groups when, in the judgment of the chair, it will enhance or provide guidance for a specific purpose or time period. The committee chairperson may determine working group selection, but membership is limited only to ad hoc and will disband once the purpose has been met.

(h) Annually each committee chairperson will present to the Commission an end-of-year status report.

(i) Meetings to deliberate a test item or information related to a test item do not require an open meeting per Texas Government Code §551.088.

§463.5. Eligibility.

(a) Any person, association, corporation, partnership, or other entity having an interest in the above-recited objectives shall be eligible for membership.

(b) Committee composition should have representatives from each fire protection stakeholder group, with consideration of department size, region, and mission.

(c) Vacant positions will be announced. Interested, qualified candidates may apply for committee appointments. A candidate selec-

tion committee may be formed to assist in the application process and may make recommendations for appointments. The list of candidates will then be presented to the Commission during its next meeting for consideration. The Commission will appoint committee members and select alternates at the same time in the event committee members cannot fulfill their tenure and/or replacement members are needed. Terms shall begin immediately following Commission approval. Interim appointments may be made to complete vacated, unexpired terms.

§463.7. Terms.

(a) Committee members shall be appointed to serve six-year terms of office, with the intent to stagger and to ensure continuity of membership from year to year. Committee members serve six-year terms and may serve consecutively; however, after a second six-year term, the member will not be eligible for another term until after a lapse of two years. For all committees, the member positions will be numbered 1-11.

Figure: 37 TAC §463.7(a)

(b) The current holdover member serving in positions 1-11 will expire on the last day of the month before the initial appointments commence. Current holdover members are eligible to apply for initial appointments.

(c) In the event that a member cannot fulfill a term, a new member shall be appointed to complete the term. This does not count as the individual's first term.

§463.9. Meetings.

(a) Committee chairperson or a designated committee member when the chairperson is unavailable shall conduct all committee meetings.

(b) Committee meetings should be held in Austin, Texas. Committee meetings cannot be held outside of the state of Texas.

(c) Committees shall post meeting times, locations, and agendas with the Secretary of State in accordance with the Open Meetings Act, Texas Government Code Chapter 551. Committees shall keep minutes in accordance with the Open Meetings Act. When feasible, committees may allow members of the public to participate in a meeting from a remote location by videoconference call pursuant to Texas Government Code §551.127(k) to encourage access and participation throughout the state.

(d) Committee chairpersons may limit discussion times if, in the opinion of the chairperson, it is warranted. Participants who fail to follow the above rules may be subject to removal from the meeting.

(e) Committees may meet by videoconference call, but only if they follow the requirements of Texas Government Code §551.127. The committee must still have a physical location for the public to attend. The member presiding over the meeting must attend in person, while other members and staff may attend remotely.

§463.11. Limitation of Powers.

No action by any committee chairperson or its members shall be binding upon, or constitute an expression of, the policy of TCFP until it has been approved or ratified by the Commission. It shall be the function of the committees to evaluate, make recommendations, and report only to the Commission. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee.

§463.13. Testimony.

Once committee action has been approved by the Commission, testimony and/or presentations may be given and made before stakeholders, governmental agencies, or any other entity as deemed appropriate by the chairperson of the Commission.

§463.15. Expulsion.

After written notice and a hearing before the Commission, any committee member may be expelled from a committee for conduct that is unbecoming or prejudicial to the aims or repute of TCFP or expelled for lack of attendance, unless excused, to more than half of the scheduled committee meetings in a calendar year.

§463.17. Abolishment Date.

Any advisory committee created by the Commission will be abolished after four years from the date of creation unless it is re-established by the Commission prior to the abolishment date.

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 October 6, 2023.

TRD-202303718
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 936-3841

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 94. NURSE AIDES

40 TAC §94.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Title 40, Part 1, Chapter 94, Nurse Aides, consisting of §94.1.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code. As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011. In September 2018, the rules pertaining to Nurse Aides in Chapter 94 were repealed and proposed as new rules in Title 26, Part 1, Chapter 556, and a reference to those rules was adopted in Chapter 94. This reference is no longer needed and not the current practice for repealing and proposing new rules.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §94.1 deletes the rule as it is no longer necessary.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed repeal is for a rule that only provides a reference to the new location of the rules pertaining to Nurse Aides.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the repeal is in effect, the public will benefit from removal of unnecessary rules from the Texas Administrative Code.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal because the rule only provides a reference to the new location of the rules pertaining to Nurse Aides.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R036" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0202(b), abolishing DADS, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011.

The repeal affects Texas Government Code §531.0055 and §531.0202.

§94.1. Reference to Chapter 94.

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 October 2, 2023.

TRD-202303671
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 221-9021

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CHAPTER 95. MEDICATION AIDES--PROGRAM REQUIREMENTS

40 TAC §95.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Title 40, Part 1, Chapter 95, Medication Aides--Program Requirements, consisting of §95.1.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code. As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011. In September 2018, the rules pertaining to Medication Aides--Program Requirements in Chapter 95 were repealed and proposed as new rules in Title 26, Part 1, Chapter 557, and a reference to those rules was adopted in Chapter 95. This reference is no longer needed and not the current practice for repealing and proposing new rules.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §95.1 deletes the rule as it is no longer necessary.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed repeal is for a rule that provides a reference to the new location of the rules pertaining to Medication Aides--Program Requirements.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the repeal is in effect, the public will benefit from removal of unnecessary rules from the Texas Administrative Code.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal because the rule only provides a reference to the new location of the rules pertaining to Medication Aides--Program Requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R036" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0202(b), abolishing DADS, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011.

The repeal affects Texas Government Code §531.0055 and §531.0202.

§95.1. Reference to Chapter 95.

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 October 2, 2023.

TRD-202303672
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 221-9021

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CHAPTER 99. DENIAL OR REFUSAL OF LICENSE

40 TAC §99.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Title 40, Part 1, Chapter 99, Denial or Refusal of License, consisting of §99.1.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code. As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011. In September 2018, the rules pertaining to Denial or Refusal of License in Chapter 99 were repealed and proposed as new rules in Title 26, Part 1, Chapter 560, and a reference to those rules was adopted in Chapter 99. This reference is no longer needed and not the current practice for repealing and proposing new rules.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §99.1 deletes the rule as it is no longer necessary.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed repeal is for a rule that provides a reference to the new location of the rules pertaining to Denial or Refusal of License.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the repeal is in effect, the public will benefit from removal of unnecessary rules from the Texas Administrative Code.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal because the rule only provides a reference to the new location of the rules pertaining to Denial or Refusal of License.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R036" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0202(b), abolishing DADS, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011.

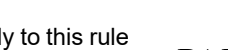
The repeal affects Texas Government Code §531.0055 and §531.0202.

§99.1. Reference to Chapter 99.

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 October 2, 2023.

TRD-202303673
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 221-9021



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER N. REPORTING WORKPLACE VIOLENCE

40 TAC §800.600

The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter 800, relating to General Administration:

Subchapter N. Reporting Workplace Violence, §800.600

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule change is to establish rules as required by House Bill (HB) 915, 88th Texas Legislature, Regular Session (2023), which added Chapter 104A to

the Texas Labor Code. HB 915 requires employers to post a notice to employees providing contact information so that employees can anonymously report their concerns regarding workplace violence or suspicious activities to the Texas Department of Public Safety.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER N. REPORTING WORKPLACE VIOLENCE

The Commission proposes new Subchapter N as follows:

New Subchapter N, regarding reporting workplace violence, provides rules regarding the form and content of a reporting workplace violence poster as required by HB 915 and Texas Labor Code Chapter 104A.

§800.600. Reporting Workplace Violence

New §800.600 prescribes the form and content of a reporting workplace violence poster as required by HB 915 and Texas Labor Code Chapter 104A.

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 no 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 Analysis 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 prescribe the form and content of the reporting workplace violence poster as required by HB 915.

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 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 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 not positively or adversely 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.

Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, 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 provide employers with a simple and efficient way to meet their workplace violence posting obligations under the new law.

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 915 requires joint rulemaking between TWC and the Texas Department of Public Safety.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than November 20, 2023.

PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code §104A.003, as enacted by House Bill 915, 88th Texas Legislature, Regular

Session (2023), which provides TWC authority to prescribe the form and content of the notice required under Texas Labor Code Chapter 104A.

The proposed rules affect Title 3, Texas Labor Code, particularly Chapter 104A.

§800.600. Reporting Workplace Violence.

(a) The purpose of this subchapter is to prescribe the form and content of the reporting workplace violence poster as required by House Bill 915, 88th Texas Legislature, Regular Session (2023), and Texas Labor Code Chapter 104A.

(b) Definitions:

(1) In this section, "Employee" and "Employer" shall have the meanings established under Texas Labor Code §104A.001.

(2) "Notice" means a notice to employees of the contact information for reporting instances of workplace violence or suspicious activity to the Texas Department of Public Safety.

(c) Each employer shall post the notice described in subsection (b) of this section:

(1) in a conspicuous place in the employer's place of business;

(2) in sufficient locations to be convenient to all employees; and

(3) in English and Spanish, as appropriate.

(d) A notice under this subchapter complies with Texas Labor Code, Chapter 104A, if, at a minimum, the following is conveyed: Figure: 40 TAC §800.600(d)

(e) The Agency will make an electronic copy of the Reporting Workplace Violence poster available on the Agency's website, which will be free of charge and allow employers to print a copy of the poster.

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 October 3, 2023.

TRD-202303677
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: November 19, 2023
For further information, please call: (512) 850-8356

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